

By: Farrar

H.B. No. 143

A BILL TO BE ENTITLED

AN ACT

relating to the prohibition of employment discrimination on the basis of sexual orientation or gender identity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 2, Labor Code, is amended by adding Chapter 23 to read as follows:

CHAPTER 23. EMPLOYMENT DISCRIMINATION

BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 23.001. SHORT TITLE. This chapter may be cited as the Texas Employment Nondiscrimination Act.

Sec. 23.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Workforce Commission.

(2) "Covered entity" includes an employer, an employment agency, a labor organization, a joint labor-management committee, or another person.

(3) "Division" means the Texas Workforce Commission civil rights division.

(4) "Employer" has the meaning assigned by Section 21.002(8).

(5) "Employment agency" has the meaning assigned by Section 21.002(9).

(6) "Gender identity" means the actual or perceived

1 gender of an individual.

2 (7) "Labor organization" has the meaning assigned by
3 Section 21.002(10).

4 (8) "Religious organization" means:

5 (A) a religious corporation, association, or
6 society; or

7 (B) a school, institution of higher education, or
8 other educational institution, not otherwise a religious
9 organization, that:

10 (i) is wholly or substantially controlled,
11 managed, owned, or supported by a religious organization; or

12 (ii) has a curriculum directed toward the
13 propagation of a particular religion.

14 (9) "Sexual orientation" means the actual or perceived
15 status of an individual with respect to the individual's sexuality.

16 Sec. 23.003. RULES. The commission may adopt rules as
17 necessary to implement this chapter.

18 Sec. 23.004. NOTICES. Each covered entity shall post, in
19 the form and manner prescribed by commission rule, notices to
20 inform employees, applicants for employment, and members of the
21 entity of the applicable provisions of this chapter.

22 Sec. 23.005. EFFECT ON OTHER LAW. This chapter does not
23 limit or affect the rights, remedies, or procedures available to an
24 individual who claims discrimination prohibited under federal law,
25 another state law, or an order or ordinance of a political
26 subdivision of this state.

27 Sec. 23.006. NO DISPARATE IMPACT. The fact that a

1 particular employment practice has a disparate impact, as that term
2 is used under Section 703(k), Civil Rights Act of 1964 (42 U.S.C.
3 Section 2000e-2(k)), on the basis of sexual orientation or gender
4 identity does not establish a prima facie violation of this
5 chapter.

6 [Sections 23.007-23.020 reserved for expansion]

7 SUBCHAPTER B. UNLAWFUL EMPLOYMENT PRACTICES

8 Sec. 23.021. DISCRIMINATION PROHIBITED. A covered entity
9 may not:

10 (1) subject an individual to different standards or
11 treatment on the basis of sexual orientation or gender identity;

12 (2) discriminate against an individual based on the
13 sexual orientation or gender identity of persons with whom the
14 individual is believed to associate or to have associated; or

15 (3) otherwise discriminate against an individual on
16 the basis of sexual orientation or gender identity.

17 Sec. 23.022. RETALIATION AND COERCION PROHIBITED. (a) A
18 covered entity may not discriminate against an individual because
19 the individual:

20 (1) opposes any act or practice prohibited by this
21 chapter;

22 (2) makes or files a charge; or

23 (3) assists, testifies, or participates in any manner
24 in an investigation, proceeding, or hearing conducted under this
25 chapter.

26 (b) A covered entity may not coerce, intimidate, threaten,
27 or interfere with an individual in the exercise or enjoyment of, or

1 because the individual has exercised, enjoyed, assisted, or
2 encouraged the exercise or enjoyment of, a right granted or
3 protected by this chapter.

4 Sec. 23.023. PROHIBITION OF QUOTAS AND PREFERENTIAL
5 TREATMENT. A covered entity may not:

6 (1) adopt or implement a quota on the basis of sexual
7 orientation or gender identity; or

8 (2) give preferential treatment to an individual on
9 the basis of sexual orientation or gender identity.

10 [Sections 23.024-23.040 reserved for expansion]

11 SUBCHAPTER C. APPLICATION; EXCEPTIONS

12 Sec. 23.041. LIABILITY OF GOVERNMENTAL ENTITY. (a) The
13 state or a political subdivision of this state is liable for a
14 violation of this chapter.

15 (b) Sovereign immunity is waived and abolished to the extent
16 of liability created by this chapter.

17 Sec. 23.042. APPLICATION TO CERTAIN BENEFITS. This chapter
18 does not apply to the provision of employee benefits to an
19 individual for the benefit of the individual's partner.

20 Sec. 23.043. RELIGIOUS ORGANIZATION. (a) Except as
21 provided by Subsection (b), this chapter does not apply to a
22 religious organization.

23 (b) This chapter applies to activities conducted by a
24 religious organization for profit to the extent that those
25 activities are subject to federal taxation under Section 511(a),
26 Internal Revenue Code of 1986, as that section existed on September
27 1, 2005.

1 Sec. 23.044. VETERANS' PREFERENCE. This chapter does not
2 repeal or modify a state or local law that creates a special right
3 or preference in employment for a veteran of the armed forces of the
4 United States.

5 [Sections 23.045-23.060 reserved for expansion]

6 SUBCHAPTER D. ENFORCEMENT

7 Sec. 23.061. DIVISION AUTHORITY; ENFORCEMENT; PROCEDURES.

8 (a) The division has the same authority to administer and enforce
9 this chapter as it exercises under Chapter 21.

10 (b) The procedures and remedies applicable to a claim for a
11 violation of this chapter are the procedures and remedies
12 applicable to a claim brought under Chapter 21.

13 Sec. 23.062. ATTORNEY'S FEES. A prevailing party to an
14 action brought under this chapter is entitled to attorney's fees in
15 the manner provided by Section 21.259.

16 SECTION 2. This Act applies to conduct of a covered entity,
17 as that term is defined by Chapter 23, Labor Code, as added by this
18 Act, occurring on or after the effective date of this Act. Conduct
19 occurring before that date is governed by the law in effect on the
20 date the claim was filed, and the former law is continued in effect
21 for that purpose.

22 SECTION 3. This Act takes effect September 1, 2005.