

BILL ANALYSIS

Senate Research Center
83R1235 KSD-D

S.B. 237
By: Van de Putte
Economic Development
2/12/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 237 prohibits employment discrimination on the basis of sexual orientation or gender identity or expression.

Currently, employment protections are in place to protect employees and job applicants against discrimination based on race, color, disability, religion, sex, and national origin. S.B. 237 adds sexual orientation or gender identity or expression to that list.

Twenty-one states and the District of Columbia prohibit discrimination based on sexual orientation. Several cities in Texas, including Austin, Dallas, El Paso, Fort Worth, Houston, and San Antonio provide such protections to municipal employees.

As proposed, S.B. 237 amends current law relating to the prohibition of employment discrimination on the basis of sexual orientation or gender identity or expression.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 21.002, Labor Code, by adding Subdivisions (9-a) and (13-a), to define "gender identity or expression" and "sexual orientation."

SECTION 2. Amends Section 21.051, Labor Code, to provide that an employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression the employer fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

SECTION 3. Amends Section 21.052, Labor Code, to provide that an employment agency commits an unlawful employment practice if the employment agency fails or refuses to refer for employment or discriminates in any other manner against an individual because of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression; or classifies or refers an individual for employment on the basis of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression.

SECTION 4. Amends Section 21.053, Labor Code, to provide that a labor organization commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression, the labor organization excludes or expels from membership or discriminates in any other manner against an individual; or limits, segregates, or classifies a member or an applicant for membership or classifies or fails or refuses to refer for employment an individual in a manner that would deprive or tend to deprive an individual of any employment opportunity, limit an employment opportunity or adversely affect

in any other manner the status of an employee or of an applicant for employment, or cause or attempt to cause an employer to violate this subchapter.

SECTION 5. Amends Section 21.054(a), Labor Code, to provide that unless a training or retraining opportunity or program is provided under an affirmative action plan approved under a federal law, rule, or order, an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, or committee discriminates against the individual because of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression in admission to or participation in the program.

SECTION 6. Amends Section 21.059(a), Labor Code, to provide that an employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, employment agency, or committee prints or publishes or causes to be printed or published a notice or advertisement relating to employment that indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression, and concerns an employee's status, employment, or admission to or membership or participation in a labor union or training or retraining program.

SECTION 7. Amends Section 21.102(c), Labor Code, to provide that this section does not apply to standards of compensation or terms, conditions, or privileges of employment that are discriminatory on the basis of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression.

SECTION 8. Amends Section 21.112, Labor Code, to provide that an employer does not commit an unlawful employment practice by applying to employees who work in different locations different standards of compensation or different terms, conditions, or privilege of employment that are not discriminatory on the basis of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression.

SECTION 9. Amends Section 21.113, Labor Code, to provide that this chapter does not require a person subject to this chapter to grant preferential treatment to an individual or a group on the basis of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression because of an imbalance between the total number or percentage of persons of that individual's or group's race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression employed by an employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by a labor organization, or admitted to or employed in an apprenticeship, on-the-job training, or other training or retraining program; and the total number or percentage of persons of that race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression in a community, this state, a region, or other area, or the available work force in a community, this state, a region, or other area.

SECTION 10. Amends Section 21.120(b), Labor Code, to provide that Subsection (a) (relating to prohibiting of employment of an individual who uses controlled substances) does not apply to a policy adopted or applied with the intent to discriminate because of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression.

SECTION 11. Amends Section 21.122(a), Labor Code, to provide that an unlawful employment practice based on disparate impact is established under this chapter only if a complainant demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression, and the respondent fails to demonstrate that the challenged practice is job-related for the position in question and consistent with business necessity; or the complainant makes the demonstration in accordance with federal law as that law existed June 4, 1989, with respect to the concept of alternative employment practices, and the respondent refuses to adopt such an alternative employment practice.

SECTION 12. Amends Section 21.124, Labor Code, to provide that it is an unlawful employment practice for a respondent, in connection with the selection or referral of applicants for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment-related tests on the basis of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression.

SECTION 13. Amends the heading to Section 21.125, Labor Code, to read as follows:

Sec. 21.125. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION, AGE, DISABILITY, SEXUAL ORIENTATION, OR GENDER IDENTITY OR EXPRESSION IN EMPLOYMENT PRACTICES.

SECTION 14. Amends Section 21.125(a), Labor Code, to provide that, except as otherwise provided by this chapter, an unlawful employment practice is established when the complainant demonstrates that race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression was a motivating factor for an employment practice, even if other factors also motivated the practice, unless race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression is combined with objective job-related factors to attain diversity in the employer's work force.

SECTION 15. Amends Section 21.126, Labor Code, to provide that it is unlawful employment practice for a person elected to public office in this state or a political subdivision of this state to discriminate because of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression against an individual who is an employee or applicant for employment to serve on the elected official's personal staff, serve the elected official on a policy-making level, or serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

SECTION 16. Amends Section 21.152(a), Labor Code, to authorize a political subdivision or two or more political subdivisions acting jointly to create a local commission to promote the purposes of this chapter and secure for all individuals in the jurisdiction of each political subdivision freedom from discrimination because of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression.

SECTION 17. Amends Section 21.155(a), Labor Code, to require the Texas Workforce Commission civil rights division (commission), rather than the Commission on Human Rights, to refer a complaint concerning discrimination in employment because of race, color, disability, religion, sex, national origin, age, sexual orientation, or gender identity or expression that is filed with that commission to a local commission with the necessary investigatory and conciliatory powers if the complaint has been referred to the commission by the federal government or jurisdiction over the subject matter of the complaint has been deferred to the commission by the federal government and to make conforming changes.

SECTION 18. Makes application of this Act prospective.

SECTION 19. This Act takes effect September 1, 2013.