

By: Reynolds

H.B. No. 2692

A BILL TO BE ENTITLED

AN ACT

relating to the prohibition of certain discrimination based on sexual orientation or gender identity or expression; providing an administrative penalty; creating a criminal offense.

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

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100B to read as follows:

CHAPTER 100B. LIABILITY ARISING FROM DISCRIMINATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 100B.001. DEFINITIONS. In this chapter:

(1) "Aggrieved person" includes any person who:

(A) claims to have been injured by a discriminatory practice; or

(B) believes that he or she will be injured by a discriminatory practice that is about to occur.

(2) "Discriminatory practice" means an act prohibited by this chapter.

(3) "Gender identity or expression" means having or being perceived as having a gender-related identity, appearance, expression, or behavior, regardless of whether that identity, appearance, expression, or behavior is different from that commonly associated with the individual's actual or perceived sex.

(4) "Public accommodation" means a business or other entity that offers to the public food, shelter, recreation, or

amusement, or any other goods, service, privilege, facility, or accommodation.

(5) "Religious organization" means:

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

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

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

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

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

Sec. 100B.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter does not apply to a religious organization.

(b) This chapter applies to activities conducted by a religious organization for profit to the extent that those activities are subject to federal taxation under Section 511(a), Internal Revenue Code of 1986, as that section existed on September 1, 2019.

SUBCHAPTER B. DISCRIMINATION IN PUBLIC ACCOMMODATIONS PROHIBITED

Sec. 100B.051. PUBLIC ACCOMMODATIONS. (a) Except as provided by Subsection (b), a person engages in a discriminatory practice and violates this chapter if the person, because of the sexual orientation or gender identity or expression of an

1 individual:

2 (1) denies that individual full and equal
3 accommodations in any place of public accommodation in this state,
4 subject only to the conditions and limitations established by law
5 and applicable to all persons; or

6 (2) otherwise discriminates against or segregates or
7 separates the individual based on sexual orientation or gender
8 identity or expression.

9 (b) A person does not engage in a discriminatory practice or
10 violate this chapter under Subsection (a) if segregation or
11 separation of an individual is necessary to provide a service that:

12 (1) provides acceptance, support, and understanding
13 to the individual;

14 (2) assists the individual with coping with the
15 individual's sexual orientation or gender identity or expression,
16 maintaining social support, and exploring and identifying the
17 individual's identity; or

18 (3) provides support to an individual undergoing a
19 gender transition.

20 (c) The services described by Subsection (b)(2) include a
21 sexual orientation-neutral intervention for preventing or
22 addressing unlawful conduct or unsafe sexual practices if the
23 intervention does not seek to change the individual's sexual
24 orientation or gender identity or expression.

25 SUBCHAPTER C. CAUSE OF ACTION

26 Sec. 100B.101. CIVIL ACTION. An aggrieved person may file a
27 civil action in district court not later than the second

anniversary of the occurrence of the termination of an alleged discriminatory practice under this chapter to obtain appropriate relief with respect to the discriminatory practice.

Sec. 100B.102. RELIEF GRANTED. In an action under this subchapter, if the court finds that a discriminatory practice has occurred or is about to occur, the court may award to the plaintiff:

- (1) actual and punitive damages;
- (2) reasonable attorney's fees;
- (3) court costs; and
- (4) any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering other appropriate action.

SECTION 2. Subchapter A, Chapter 2155, Government Code, is amended by adding Section 2155.0065 to read as follows:

Sec. 2155.0065. PROHIBITION AGAINST DISCRIMINATION BY STATE CONTRACTOR BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY OR EXPRESSION. (a) In this section:

(1) "Employee" means an individual who is employed by a contractor or subcontractor for compensation.

(2) "Gender identity or expression" means having or being perceived as having a gender-related identity, appearance, expression, or behavior, regardless of whether that identity, appearance, expression, or behavior is different from that commonly associated with the individual's actual or perceived sex.

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

1 (b) A state agency contracting with a contractor under this
2 subtitle shall require the contractor to adopt and apply an
3 employment policy under which the contractor and any subcontractor
4 may not, because of sexual orientation or gender identity or
5 expression:

6 (1) fail or refuse to hire an individual, discharge an
7 individual, or discriminate in any other manner against an
8 individual in connection with compensation or the terms,
9 conditions, or privileges of employment; or

10 (2) limit, segregate, or classify an employee or
11 applicant for employment in a manner that would deprive or tend to
12 deprive an individual of any employment opportunity or adversely
13 affect in any other manner the status of an employee.

14 (c) Each contract entered into between a state agency and a
15 contractor under this subtitle must include terms that:

16 (1) authorize an employee of a contractor or
17 subcontractor, or an applicant for employment with the contractor
18 or subcontractor, to make a verbal or written complaint to the state
19 agency regarding the contractor's or subcontractor's noncompliance
20 with an employment policy required by Subsection (b);

21 (2) explain that, on confirmation of a contractor's or
22 subcontractor's noncompliance with an employment policy required
23 by Subsection (b) that is the subject of a complaint, the state
24 agency shall provide to the contractor written notice of the
25 noncompliance by hand delivery or certified mail;

26 (3) inform a contractor that the state agency may
27 impose an administrative penalty if the contractor fails to comply

1 with an employment policy required by Subsection (b) after the date
2 on which the contractor receives notice under Subdivision (2); and
3 (4) explain that an amount equal to the amount of the
4 administrative penalty may be withheld from a payment otherwise
5 owed to a contractor under a contract.

6 (d) The amount of an administrative penalty imposed under
7 Subsection (c)(3) is \$100 per day for each employee or applicant for
8 employment who is discriminated against in violation of an
9 employment policy required by Subsection (b).

10 (e) Each state agency shall develop procedures for the
11 administration of this section.

12 SECTION 3. Section 21.002, Labor Code, is amended by adding
13 Subdivisions (9-a) and (13-a) to read as follows:

14 (9-a) "Gender identity or expression" means having or
15 being perceived as having a gender-related identity, appearance,
16 expression, or behavior, regardless of whether that identity,
17 appearance, expression, or behavior is different from that commonly
18 associated with the individual's actual or perceived sex.

19 (13-a) "Sexual orientation" means the actual or
20 perceived status of an individual with respect to the individual's
21 sexuality.

22 SECTION 4. Section 21.051, Labor Code, is amended to read as
23 follows:

24 Sec. 21.051. DISCRIMINATION BY EMPLOYER. An employer
25 commits an unlawful employment practice if because of race, color,
26 disability, religion, sex, national origin, ~~or~~ age, sexual
27 orientation, or gender identity or expression the employer:

1 (1) fails or refuses to hire an individual, discharges
2 an individual, or discriminates in any other manner against an
3 individual in connection with compensation or the terms,
4 conditions, or privileges of employment; or

5 (2) limits, segregates, or classifies an employee or
6 applicant for employment in a manner that would deprive or tend to
7 deprive an individual of any employment opportunity or adversely
8 affect in any other manner the status of an employee.

9 SECTION 5. Section 21.052, Labor Code, is amended to read as
10 follows:

11 Sec. 21.052. DISCRIMINATION BY EMPLOYMENT AGENCY. An
12 employment agency commits an unlawful employment practice if the
13 employment agency:

14 (1) fails or refuses to refer for employment or
15 discriminates in any other manner against an individual because of
16 race, color, disability, religion, sex, national origin, ~~[or]~~ age,
17 sexual orientation, or gender identity or expression; or

18 (2) classifies or refers an individual for employment
19 on the basis of race, color, disability, religion, sex, national
20 origin, ~~[or]~~ age, sexual orientation, or gender identity or
21 expression.

22 SECTION 6. Section 21.053, Labor Code, is amended to read as
23 follows:

24 Sec. 21.053. DISCRIMINATION BY LABOR ORGANIZATION. A labor
25 organization commits an unlawful employment practice if because of
26 race, color, disability, religion, sex, national origin, ~~[or]~~ age,
27 sexual orientation, or gender identity or expression the labor

1 organization:

2 (1) excludes or expels from membership or
3 discriminates in any other manner against an individual; or

4 (2) limits, segregates, or classifies a member or an
5 applicant for membership or classifies or fails or refuses to refer
6 for employment an individual in a manner that would:

7 (A) deprive or tend to deprive an individual of
8 any employment opportunity;

9 (B) limit an employment opportunity or adversely
10 affect in any other manner the status of an employee or of an
11 applicant for employment; or

12 (C) cause or attempt to cause an employer to
13 violate this subchapter.

14 SECTION 7. Section 21.054(a), Labor Code, is amended to
15 read as follows:

16 (a) Unless a training or retraining opportunity or program
17 is provided under an affirmative action plan approved under a
18 federal law, rule, or order, an employer, labor organization, or
19 joint labor-management committee controlling an apprenticeship,
20 on-the-job training, or other training or retraining program
21 commits an unlawful employment practice if the employer, labor
22 organization, or committee discriminates against an individual
23 because of race, color, disability, religion, sex, national origin,
24 ~~or~~ age, sexual orientation, or gender identity or expression in
25 admission to or participation in the program.

26 SECTION 8. Section 21.059(a), Labor Code, is amended to
27 read as follows:

1 (a) An employer, labor organization, employment agency, or
2 joint labor-management committee controlling an apprenticeship,
3 on-the-job training, or other training or retraining program
4 commits an unlawful employment practice if the employer, labor
5 organization, employment agency, or committee prints or publishes
6 or causes to be printed or published a notice or advertisement
7 relating to employment that:

8 (1) indicates a preference, limitation,
9 specification, or discrimination based on race, color, disability,
10 religion, sex, national origin, ~~[ex]~~ age, sexual orientation, or
11 gender identity or expression; and

12 (2) concerns an employee's status, employment, or
13 admission to or membership or participation in a labor union or
14 training or retraining program.

15 SECTION 9. Section 21.102(c), Labor Code, is amended to
16 read as follows:

17 (c) This section does not apply to standards of compensation
18 or terms, conditions, or privileges of employment that are
19 discriminatory on the basis of race, color, disability, religion,
20 sex, national origin, ~~[ex]~~ age, sexual orientation, or gender
21 identity or expression.

22 SECTION 10. Section 21.112, Labor Code, is amended to read
23 as follows:

24 Sec. 21.112. EMPLOYEES AT DIFFERENT LOCATIONS. An employer
25 does not commit an unlawful employment practice by applying to
26 employees who work in different locations different standards of
27 compensation or different terms, conditions, or privileges of

1 employment that are not discriminatory on the basis of race, color,
2 disability, religion, sex, national origin, [~~or~~] age, sexual
3 orientation, or gender identity or expression.

4 SECTION 11. Section 21.113, Labor Code, is amended to read
5 as follows:

6 Sec. 21.113. IMBALANCE PLAN NOT REQUIRED. This chapter
7 does not require a person subject to this chapter to grant
8 preferential treatment to an individual or a group on the basis of
9 race, color, disability, religion, sex, national origin, [~~or~~] age,
10 sexual orientation, or gender identity or expression because of an
11 imbalance between:

12 (1) the total number or percentage of persons of that
13 individual's or group's race, color, disability, religion, sex,
14 national origin, [~~or~~] age, sexual orientation, or gender identity
15 or expression:

16 (A) employed by an employer;

17 (B) referred or classified for employment by an
18 employment agency or labor organization;

19 (C) admitted to membership or classified by a
20 labor organization; or

21 (D) admitted to or employed in an apprenticeship,
22 on-the-job training, or other training or retraining program; and

23 (2) the total number or percentage of persons of that
24 race, color, disability, religion, sex, national origin, [~~or~~] age,
25 sexual orientation, or gender identity or expression in:

26 (A) a community, this state, a region, or other
27 area; or

(B) the available work force in a community, this state, a region, or other area.

SECTION 12. Section 21.120(b), Labor Code, is amended to read as follows:

(b) Subsection (a) does not apply to a policy adopted or applied with the intent to discriminate because of race, color, sex, national origin, religion, age, ~~[or]~~ disability, sexual orientation, or gender identity or expression.

SECTION 13. Section 21.122(a), Labor Code, is amended to read as follows:

(a) An unlawful employment practice based on disparate impact is established under this chapter only if:

(1) a complainant demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, sex, national origin, religion, ~~[or]~~ disability, 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

(2) 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 14. Section 21.124, Labor Code, is amended to read as follows:

Sec. 21.124. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST

1 SCORES. It is an unlawful employment practice for a respondent, in
2 connection with the selection or referral of applicants for
3 employment or promotion, to adjust the scores of, use different
4 cutoff scores for, or otherwise alter the results of
5 employment-related tests on the basis of race, color, sex, national
6 origin, religion, age, [~~or~~] disability, sexual orientation, or
7 gender identity or expression.

8 SECTION 15. The heading to Section 21.125, Labor Code, is
9 amended to read as follows:

10 Sec. 21.125. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE
11 CONSIDERATION OF RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION, AGE,
12 [~~OR~~] DISABILITY, SEXUAL ORIENTATION, OR GENDER IDENTITY OR
13 EXPRESSION IN EMPLOYMENT PRACTICES.

14 SECTION 16. Section 21.125(a), Labor Code, is amended to
15 read as follows:

16 (a) Except as otherwise provided by this chapter, an
17 unlawful employment practice is established when the complainant
18 demonstrates that race, color, sex, national origin, religion, age,
19 [~~or~~] disability, sexual orientation, or gender identity or
20 expression was a motivating factor for an employment practice, even
21 if other factors also motivated the practice, unless race, color,
22 sex, national origin, religion, age, [~~or~~] disability, sexual
23 orientation, or gender identity or expression is combined with
24 objective job-related factors to attain diversity in the employer's
25 work force.

26 SECTION 17. Section 21.126, Labor Code, is amended to read
27 as follows:

1 Sec. 21.126. COVERAGE OF PREVIOUSLY EXEMPT EMPLOYEES OF THE
2 STATE OR POLITICAL SUBDIVISION OF THE STATE. It is an unlawful
3 employment practice for a person elected to public office in this
4 state or a political subdivision of this state to discriminate
5 because of race, color, sex, national origin, religion, age, ~~[or]~~
6 disability, sexual orientation, or gender identity or expression
7 against an individual who is an employee or applicant for
8 employment to:

- 9 (1) serve on the elected official's personal staff;
10 (2) serve the elected official on a policy-making
11 level; or
12 (3) serve the elected official as an immediate advisor
13 with respect to the exercise of the constitutional or legal powers
14 of the office.

15 SECTION 18. Section 21.152(a), Labor Code, is amended to
16 read as follows:

17 (a) A political subdivision or two or more political
18 subdivisions acting jointly may create a local commission to:

- 19 (1) promote the purposes of this chapter; and
20 (2) secure for all individuals in the jurisdiction of
21 each political subdivision freedom from discrimination because of
22 race, color, disability, religion, sex, national origin, ~~[or]~~ age,
23 sexual orientation, or gender identity or expression.

24 SECTION 19. Section 21.155(a), Labor Code, is amended to
25 read as follows:

26 (a) The commission [~~Commission on Human Rights~~] shall refer
27 a complaint concerning discrimination in employment because of

1 race, color, disability, religion, sex, national origin, ~~[or]~~ age,
2 sexual orientation, or gender identity or expression that is filed
3 with that commission to a local commission with the necessary
4 investigatory and conciliatory powers if:

5 (1) the complaint has been referred to the commission
6 ~~[Commission on Human Rights]~~ by the federal government; or

7 (2) jurisdiction over the subject matter of the
8 complaint has been deferred to the commission ~~[Commission on Human~~
9 ~~Rights]~~ by the federal government.

10 SECTION 20. Section 301.003, Property Code, is amended by
11 amending Subdivision (6) and adding Subdivisions (9-a) and (10-a)
12 to read as follows:

13 (6) "Disability" means a mental or physical impairment
14 that substantially limits at least one major life activity, a
15 record of the impairment, or being regarded as having the
16 impairment. The term does not include current illegal use of or
17 addiction to any drug or illegal or federally controlled substance
18 ~~[and does not apply to an individual because of an individual's~~
19 ~~sexual orientation or because that individual is a transvestite]~~.

20 (9-a) "Gender identity or expression" means having or
21 being perceived as having a gender-related identity, appearance,
22 expression, or behavior, regardless of whether that identity,
23 appearance, expression, or behavior is different from that commonly
24 associated with the individual's actual or perceived sex.

25 (10-a) "Sexual orientation" means the actual or
26 perceived status of an individual with respect to the individual's
27 sexuality.

SECTION 21. Sections 301.021(a) and (b), Property Code, are amended to read as follows:

(a) A person may not refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to another because of race, color, religion, sex, familial status, ~~or~~ national origin, sexual orientation, or gender identity or expression.

(b) A person may not discriminate against another in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with a sale or rental of a dwelling because of race, color, religion, sex, familial status, ~~or~~ national origin, sexual orientation, or gender identity or expression.

SECTION 22. Section 301.022, Property Code, is amended to read as follows:

Sec. 301.022. PUBLICATION. A person may not make, print, or publish or effect the making, printing, or publishing of a notice, statement, or advertisement that is about the sale or rental of a dwelling and that indicates any preference, limitation, or discrimination or the intention to make a preference, limitation, or discrimination because of race, color, religion, sex, disability, familial status, ~~or~~ national origin, sexual orientation, or gender identity or expression.

SECTION 23. Section 301.023, Property Code, is amended to read as follows:

Sec. 301.023. INSPECTION. A person may not represent to

1 another because of race, color, religion, sex, disability, familial
2 status, [~~or~~] national origin, sexual orientation, or gender
3 identity or expression that a dwelling is not available for
4 inspection for sale or rental when the dwelling is available for
5 inspection.

6 SECTION 24. Section 301.024, Property Code, is amended to
7 read as follows:

8 Sec. 301.024. ENTRY INTO NEIGHBORHOOD. A person may not,
9 for profit, induce or attempt to induce another to sell or rent a
10 dwelling by representations regarding the entry or prospective
11 entry into a neighborhood of a person of a particular race, color,
12 religion, sex, disability, familial status, [~~or~~] national origin,
13 sexual orientation, or gender identity or expression.

14 SECTION 25. Section 301.026(a), Property Code, is amended
15 to read as follows:

16 (a) A person whose business includes engaging in
17 residential real estate related transactions may not discriminate
18 against another in making a real estate related transaction
19 available or in the terms or conditions of a real estate related
20 transaction because of race, color, religion, sex, disability,
21 familial status, [~~or~~] national origin, sexual orientation, or
22 gender identity or expression.

23 SECTION 26. Section 301.027, Property Code, is amended to
24 read as follows:

25 Sec. 301.027. BROKERAGE SERVICES. A person may not deny
26 another access to, or membership or participation in, a
27 multiple-listing service, real estate brokers' organization, or

1 other service, organization, or facility relating to the business
2 of selling or renting dwellings, or discriminate against a person
3 in the terms or conditions of access, membership, or participation
4 in such an organization, service, or facility because of race,
5 color, religion, sex, disability, familial status, ~~[or]~~ national
6 origin, sexual orientation, or gender identity or expression.

7 SECTION 27. Sections 301.042(a) and (c), Property Code, are
8 amended to read as follows:

9 (a) This chapter does not prohibit a religious
10 organization, association, or society or a nonprofit institution or
11 organization operated, supervised, or controlled by or in
12 conjunction with a religious organization, association, or society
13 from:

14 (1) limiting the sale, rental, or occupancy of
15 dwellings that it owns or operates for other than a commercial
16 purpose to persons of the same religion; or

17 (2) giving preference to persons of the same religion,
18 unless membership in the religion is restricted because of race,
19 color, ~~[or]~~ national origin, sexual orientation, or gender identity
20 or expression.

21 (c) This chapter does not prohibit a person engaged in the
22 business of furnishing appraisals of real property from considering
23 in those appraisals factors other than race, color, religion, sex,
24 disability, familial status, ~~[or]~~ national origin, sexual
25 orientation, or gender identity or expression.

26 SECTION 28. Section 301.068, Property Code, is amended to
27 read as follows:

1 Sec. 301.068. REFERRAL TO MUNICIPALITY. (a) Subject to
2 Subsection (b), the ~~[The]~~ commission may defer proceedings under
3 this chapter and refer a complaint to a municipality that has been
4 certified by the federal Department of Housing and Urban
5 Development as a substantially equivalent fair housing agency.

6 (b) The commission may not defer proceedings and refer a
7 complaint under Subsection (a) to a municipality in which the
8 alleged discrimination occurred if:

9 (1) the complaint alleges discrimination based on
10 sexual orientation or gender identity or expression; and

11 (2) the municipality does not have laws prohibiting
12 the alleged discrimination.

13 SECTION 29. Section 301.171(a), Property Code, is amended
14 to read as follows:

15 (a) A person commits an offense if the person, without
16 regard to whether the person is acting under color of law, by force
17 or threat of force intentionally intimidates or interferes with a
18 person:

19 (1) because of the person's race, color, religion,
20 sex, disability, familial status, ~~[or]~~ national origin, sexual
21 orientation, or gender identity or expression and because the
22 person is or has been selling, purchasing, renting, financing,
23 occupying, or contracting or negotiating for the sale, purchase,
24 rental, financing, or occupation of any dwelling or applying for or
25 participating in a service, organization, or facility relating to
26 the business of selling or renting dwellings; or

27 (2) because the person is or has been or to intimidate

1 the person from:

2 (A) participating, without discrimination
3 because of race, color, religion, sex, disability, familial status,
4 ~~[or]~~ national origin, sexual orientation, or gender identity or
5 expression, in an activity, service, organization, or facility
6 described by Subdivision (1); ~~[or]~~

7 (B) affording another person opportunity or
8 protection to so participate; or

9 (C) lawfully aiding or encouraging other persons
10 to participate, without discrimination because of race, color,
11 religion, sex, disability, familial status, ~~[or]~~ national origin,
12 sexual orientation, or gender identity or expression, in an
13 activity, service, organization, or facility described by
14 Subdivision (1).

15 SECTION 30. (a) Section 2155.0065, Government Code, as
16 added by this Act, applies only to a contract for which a state
17 agency first advertises or otherwise solicits bids, proposals,
18 offers, qualifications, or other similar expressions of interest on
19 or after the effective date of this Act.

20 (b) The changes in law made by this Act to the Labor Code
21 apply to conduct occurring on or after the effective date of this
22 Act. Conduct occurring before that date is governed by the law in
23 effect on the date the conduct occurred, and the former law is
24 continued in effect for that purpose.

25 (c) The changes in law made by this Act to the Property Code
26 apply only to a complaint filed with the Texas Workforce Commission
27 on or after the effective date of this Act. A complaint filed

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1 before that date is governed by the law as it existed immediately
2 before the effective date of this Act, and that law is continued in
3 effect for that purpose.

4 SECTION 31. This Act takes effect September 1, 2019.