By:  Coleman H.B. No. 2069

A BILL TO BE ENTITLED

AN ACT

relating to the prevention of discrimination based on sexual orientation or gender identity.

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

SECTION 1.  Articles 42.014(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a)  In the trial of an offense under Title 5, Penal Code, or Section 28.02, 28.03, or 28.08, Penal Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment of the case if at the guilt or innocence phase of the trial, the judge or the jury, whichever is the trier of fact, determines beyond a reasonable doubt that the defendant intentionally selected the person against whom the offense was committed, or intentionally selected the person's property that was damaged or affected as a result of the offense, because of the defendant's bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, [~~or~~] sexual preference, or gender identity or expression or by status as a peace officer or judge.

(c)  In this article:

(1)  "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 person's actual or perceived sex.

(2)  "Sexual [~~, "sexual~~] preference" has the following meaning only: a preference for heterosexuality, homosexuality, or bisexuality.

SECTION 2.  Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100E to read as follows:

CHAPTER 100E. LIABILITY ARISING FROM DISCRIMINATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 100E.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)  "Dwelling" means:

(A)  any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or

(B)  any vacant land that is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure described by Paragraph (A).

(4)  "Gender identity or expression" means having or being perceived as having gender-related identity, appearance, expression, or behavior, whether or not that identity, appearance, expression, or behavior is different from that commonly associated with the person's actual or perceived sex.

(5)  "Public accommodation" means a business or other entity that offers to the general public food, shelter, recreation, or amusement, or any other goods, service, privilege, facility, or accommodation.

(6)  "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.

(7)  "Sexual orientation" means:

(A)  having a preference for heterosexuality, homosexuality, or bisexuality;

(B)  having a history of such a preference; or

(C)  being identified or perceived as having such a preference.

[Sections 100E.002-100E.050 reserved for expansion]

SUBCHAPTER B. DISCRIMINATION IN PUBLIC ACCOMMODATIONS PROHIBITED

Sec. 100E.051.  PUBLIC ACCOMMODATIONS. A person commits a discriminatory practice and a violation of this chapter if the person, because of the sexual orientation or gender identity or expression of an individual:

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

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

[Sections 100E.052-100E.100 reserved for expansion]

SUBCHAPTER C. HOUSING DISCRIMINATION PROHIBITED

Sec. 100E.101.  REFUSAL TO SELL OR RENT. A person commits a discriminatory practice and a violation of this chapter if the person, because of the sexual orientation or gender identity or expression of an individual:

(1)  refuses to sell or rent a dwelling to the individual after the making of a bona fide offer by the individual;

(2)  refuses to negotiate for the sale or rental of a dwelling to the individual;

(3)  refuses to make available or otherwise denies a dwelling to the individual; or

(4)  discriminates against the individual in the terms, conditions, or privileges of the sale or rental of a dwelling, or the provision of services or facilities in connection with such a sale or rental.

Sec. 100E.102.  REAL ESTATE-RELATED TRANSACTIONS. A person who engages in real estate-related transactions commits a discriminatory practice and a violation of this chapter if, because of the sexual orientation or gender identity or expression of an individual, the person discriminates against the individual in making available such a transaction.

Sec. 100E.103.  REAL ESTATE SERVICES AND ORGANIZATION. A person who engages in real estate-related transactions commits a discriminatory practice and a violation of this chapter if, because of the sexual orientation or gender identity or expression of an individual, the person:

(1)  denies the individual access to or membership or participation in any multiple-listing service, real estate brokers organization, or other service, organization, or facility relating to the business of selling or renting dwellings; or

(2)  discriminates against the individual in the terms or conditions of the access, membership, or participation described by Subdivision (1).

Sec. 100E.104.  COERCION. A person commits a discriminatory practice and a violation of this chapter if:

(1)  because of the sexual orientation or gender identity or expression of an individual, the person coerces, intimidates, threatens, or interferes with the individual in the exercise or enjoyment of a right granted or protected by this subchapter; or

(2)  the person coerces, intimidates, threatens, or interferes with an individual because the individual has exercised or enjoyed, or aided or encouraged any other person in the exercise or enjoyment of, a right granted or protected by this subchapter.

Sec. 100E.105.  PUBLICATIONS. A person commits a discriminatory practice and a violation of this chapter if the person makes, prints, or publishes, or causes to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on sexual orientation or gender identity or expression, or an intention to make such a preference, limitation, or discrimination.

Sec. 100E.106.  STEERING PROHIBITED. (a) A person commits a discriminatory practice and a violation of this chapter if the person, because of the sexual orientation or gender identity or expression of an individual, represents to the individual that a dwelling is not available for inspection, sale, or rental if the dwelling is in fact available.

(b)  A person violates this section if the person restricts or attempts to restrict the choices offered to any buyer or renter, including potential buyers or renters, because of the sexual orientation or gender identity or expression of the buyer or renter.

Sec. 100E.107.  ENTRY INTO NEIGHBORHOOD. A person commits a discriminatory practice and a violation of this chapter if the person, for profit, induces or attempts to induce any person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood in which the dwelling is located of an individual of a particular sexual orientation or gender identity or expression.

Sec. 100E.108.  EXEMPTIONS. (a) This subchapter does not apply to:

(1)  the rental of a room or rooms in a dwelling if the owner actually maintains and occupies part of the living quarters of the dwelling as the owner's residence; or

(2)  a unit in a dwelling containing living quarters occupied or intended to be occupied by not more than four families living independently of each other, if the owner actually maintains and occupies one of the units as the owner's residence.

(b)  This subchapter does not limit or affect the applicability of any reasonable state statute or municipal ordinance that restricts the maximum number of persons permitted to occupy a dwelling.

(c)  This subchapter does not prohibit a person engaged in the business of furnishing appraisals of real property from considering factors other than sexual orientation or gender identity or expression in making the appraisal.

[Sections 100E.109-100E.150 reserved for expansion]

SUBCHAPTER D. EXEMPTIONS

Sec. 100E.151.  RELIGIOUS ORGANIZATION. (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, 2009.

[Sections 100E.152-100E.200 reserved for expansion]

SUBCHAPTER E. CAUSE OF ACTION

Sec. 100E.201.  CIVIL ACTION. An aggrieved person may file a 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. 100E.202.  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)  subject to Section 100E.203, 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.

Sec. 100E.203.  EFFECT OF RELIEF GRANTED. Relief granted under this subchapter does not affect a contract, sale, encumbrance, or lease that:

(1)  was consummated before the granting of the relief; and

(2)  involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a civil action under this subchapter.

SECTION 3.  Subchapter D, Chapter 11, Education Code, is amended by adding Section 11.172 to read as follows:

Sec. 11.172.  DISCRIMINATION, HARASSMENT, AND RETALIATION PROHIBITED. (a) In this section:

(1)  "Gender identity or expression" means a person's having, or being perceived as having, a gender-related identity, appearance, expression, or behavior, whether or not that identity, appearance, expression, or behavior is different from that commonly associated with the person's assigned sex at birth.

(2)  "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.

(b)  A school district or employee of a school district may not:

(1)  discriminate against or harass an employee of the district or a student enrolled in the district on account of:

(A)  the actual or perceived ethnicity, color, gender, gender identity or expression, sexual orientation, disability, religion, or national origin of the employee, student, or student's parent; or

(B)  one or more persons with whom the employee, student, or student's parent associates; or

(2)  retaliate against an employee of the district or a student enrolled in the district for reporting potential discrimination or harassment prohibited by Subdivision (1).

(c)  This section applies to conduct that occurs:

(1)  on school property;

(2)  while attending a school-sponsored or school-related activity on or off of school property; or

(3)  in connection with transportation of students in a vehicle owned or operated by a school district or owned or operated by another entity under contract with a school district.

(d)  A school district shall provide periodic training to district employees regarding prevention of discrimination and harassment prohibited by this section and procedures for responding to reported or observed incidents of prohibited discrimination or harassment. The training may be provided in conjunction with any training provided under Section 37.083.

(e)  In accordance with rules adopted by the commissioner, each school district shall report annually to the agency information regarding each incident of alleged discrimination or harassment that occurred in the district during the preceding year. The agency shall include the information in the comprehensive annual report required by Section 39.182.

SECTION 4.  Section 2.001(a), Family Code, is amended to read as follows:

(a)  A man and a woman, a man and a man, or a woman and a woman desiring to enter into a ceremonial marriage must obtain a marriage license from the county clerk of any county of this state.

SECTION 5.  Section 2.401(a), Family Code, is amended to read as follows:

(a)  In a judicial, administrative, or other proceeding, the marriage of a man and woman, a man and a man, or a woman and a woman may be proved by evidence that:

(1)  a declaration of their marriage has been signed as provided by this subchapter; or

(2)  the man and woman, man and man, or woman and woman agreed to be married and after the agreement they lived together in this state as spouses [~~husband and wife~~] and there represented to others that they were married.

SECTION 6.  Section 2.402(b), Family Code, is amended to read as follows:

(b)  The declaration form must contain:

(1)  a heading entitled "Declaration and Registration of Informal Marriage, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Texas";

(2)  spaces for each party's full name, including the [~~woman's~~] maiden surname for a woman, address, date of birth, place of birth, including city, county, and state, and social security number, if any;

(3)  a space for indicating the type of document tendered by each party as proof of age and identity;

(4)  printed boxes for each party to check "true" or "false" in response to the following statement: "The other party is not related to me as:

(A)  an ancestor or descendant, by blood or adoption;

(B)  a brother or sister, of the whole or half blood or by adoption;

(C)  a parent's brother or sister, of the whole or half blood or by adoption;

(D)  a son or daughter of a brother or sister, of the whole or half blood or by adoption;

(E)  a current or former stepchild or stepparent; or

(F)  a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption.";

(5)  a printed declaration and oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT WE, THE UNDERSIGNED, ARE MARRIED TO EACH OTHER BY VIRTUE OF THE FOLLOWING FACTS: ON OR ABOUT (DATE) WE AGREED TO BE MARRIED, AND AFTER THAT DATE WE LIVED TOGETHER AS SPOUSES [~~HUSBAND AND WIFE~~] AND IN THIS STATE WE REPRESENTED TO OTHERS THAT WE WERE MARRIED. SINCE THE DATE OF MARRIAGE TO THE OTHER PARTY I HAVE NOT BEEN MARRIED TO ANY OTHER PERSON. THIS DECLARATION IS TRUE AND THE INFORMATION IN IT WHICH I HAVE GIVEN IS CORRECT.";

(6)  spaces immediately below the printed declaration and oath for the parties' signatures; and

(7)  a certificate of the county clerk that the parties made the declaration and oath and the place and date it was made.

SECTION 4.  Section 3.401(5), Family Code, is amended to read as follows:

(5)  "Spouse" means a party to a marriage [~~husband, who is a man, or a wife, who is a woman. A member of a civil union or similar relationship entered into in another state between persons of the same sex is not a spouse~~].

SECTION 7.  Section 6.202(b), Family Code, is amended to read as follows:

(b)  The later marriage that is void under this section becomes valid when the prior marriage is dissolved if, after the date of the dissolution, the parties have lived together as spouses [~~husband and wife~~] and represented themselves to others as being married.

SECTION 8.  Section 6.704, Family Code, is amended to read as follows:

Sec. 6.704.  TESTIMONY OF SPOUSE [~~HUSBAND OR WIFE~~]. (a) In a suit for dissolution of a marriage, each spouse is a [~~the husband and wife are~~] competent witness [~~witnesses~~] for and against the [~~each~~] other spouse. A spouse may not be compelled to testify as to a matter that will incriminate the spouse.

(b)  If a spouse [~~the husband or wife~~] testifies, the court or jury trying the case shall determine the credibility of the witness and the weight to be given the witness's testimony.

SECTION 9.  Subchapter B, Chapter 45, Family Code, is amended by adding Section 45.108 to read as follows:

Sec. 45.108.  CHANGE OF NAME AND VITAL STATISTICS INFORMATION. (a) Subject to the eligibility requirements for a name change under Section 45.103, a court shall order a change of name under this subchapter for a petitioner whose petition is accompanied by a sworn affidavit of a licensed physician stating the petitioner identifies as a gender other than the gender indicated on the petitioner's driver's license, birth certificate, or other official document.

(b)  A court that orders a change of name for a petitioner under this section shall simultaneously order:

(1)  the Department of Public Safety, as soon as practicable, to change the petitioner's name and gender on the petitioner's driver's license and other identification documents under the department's control; and

(2)  the vital statistics unit of the Department of State Health Services, on receipt of a licensed physician's sworn affidavit that the petitioner identifies as a gender other than the gender indicated on the petitioner's birth certificate, to amend the petitioner's birth certificate in the manner provided by Section 192.011, Health and Safety Code, to reflect the petitioner's true gender.

(c)  This section may not be construed to require a surgical procedure as a prerequisite for a court order under Subsection (a) or (b).

SECTION 10.  Section 163.002, Health and Safety Code, is amended to read as follows:

Sec. 163.002.  INSTRUCTIONAL ELEMENTS. Course materials and instruction relating to sexual education or sexually transmitted diseases should include:

(1)  an emphasis on sexual abstinence as the only completely reliable method of avoiding unwanted teenage pregnancy and sexually transmitted diseases;

(2)  an emphasis on the importance of self-control, responsibility, and ethical conduct in making decisions relating to sexual behavior;

(3)  statistics, based on the latest medical information, that indicate the efficacy of the various forms of contraception;

(4)  information concerning the laws relating to the financial responsibilities associated with pregnancy, childbirth, and child rearing;

(5)  information concerning the laws prohibiting sexual abuse and the legal and counseling options available to victims of sexual abuse;

(6)  information on how to cope with and rebuff unwanted physical and verbal sexual advances, as well as the importance of avoiding the sexual exploitation of other persons;

(7)  psychologically sound methods of resisting unwanted peer pressure; and

(8)  emphasis, provided in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public [~~and that homosexual conduct is a criminal offense under Section 21.06, Penal Code~~].

SECTION 11.  Section 21.11(b), Penal Code, is amended to read as follows:

(b)  It is an affirmative defense to prosecution under this section that the actor:

(1)  was not more than three years older than the victim [~~and of the opposite sex~~];

(2)  did not use duress, force, or a threat against the victim at the time of the offense; and

(3)  at the time of the offense:

(A)  was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B)  was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

SECTION 12.  The following laws are repealed:

(1)  Section 2.001(b), Family Code;

(2)  Section 6.204, Family Code;

(3)  Sections 810.001(g), (h), and (i), Government Code;

(4)  Section 85.007(b)(2), Health and Safety Code; and

(5)  Section 21.06, Penal Code, is repealed.

SECTION 13.  The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 14.  (a)  Each school district shall submit to the Texas Education Agency information as required under Section 11.172(e), Education Code, as added by this Act, beginning with the 2022-2023 school year based on incidents of discrimination or harassment during the 2021-2022 school year.

(b)  The Texas Education Agency shall include the information required under Section 11.172(e), Education Code, as added by this Act, in the comprehensive annual report required by Section 39.182, Education Code, beginning with the report required to be submitted not later than December 1, 2022.

SECTION 15.  This Act applies beginning with the 2021-2022 school year.

SECTION 16.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.