

By: Morales Shaw

H.B. No. 3796

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 21.002, Labor Code, is amended by adding Subdivisions (9-a) and (13-a) to read as follows:

(9-a) "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.

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

SECTION 2. Section 21.051, Labor Code, is amended to read as follows:

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

(1) 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

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

5           SECTION 3. Section 21.052, Labor Code, is amended to read as  
6 follows:

7           Sec. 21.052. DISCRIMINATION BY EMPLOYMENT AGENCY. An  
8 employment agency commits an unlawful employment practice if the  
9 employment agency:

10           (1) fails or refuses to refer for employment or  
11 discriminates in any other manner against an individual because of  
12 race, color, disability, religion, sex, national origin, ~~or~~ age,  
13 sexual orientation, or gender identity or expression; or

14           (2) classifies or refers an individual for employment  
15 on the basis of race, color, disability, religion, sex, national  
16 origin, ~~or~~ age, sexual orientation, or gender identity or  
17 expression.

18           SECTION 4. Section 21.053, Labor Code, is amended to read as  
19 follows:

20           Sec. 21.053. DISCRIMINATION BY LABOR ORGANIZATION. A labor  
21 organization commits an unlawful employment practice if because of  
22 race, color, disability, religion, sex, national origin, ~~or~~ age,  
23 sexual orientation, or gender identity or expression the labor  
24 organization:

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

27           (2) limits, segregates, or classifies a member or an

1 applicant for membership or classifies or fails or refuses to refer  
2 for employment an individual in a manner that would:

3 (A) deprive or tend to deprive an individual of  
4 any employment opportunity;

5 (B) limit an employment opportunity or adversely  
6 affect in any other manner the status of an employee or of an  
7 applicant for employment; or

8 (C) cause or attempt to cause an employer to  
9 violate this subchapter.

10 SECTION 5. Section 21.054, Labor Code, is amended to read as  
11 follows:

12 Sec. 21.054. ADMISSION OR PARTICIPATION IN TRAINING  
13 PROGRAM. [~~(a)~~] Unless a training or retraining opportunity or  
14 program is provided under an affirmative action plan approved under  
15 a federal law, rule, or order, an employer, labor organization, or  
16 joint labor-management committee controlling an apprenticeship,  
17 on-the-job training, or other training or retraining program  
18 commits an unlawful employment practice if the employer, labor  
19 organization, or committee discriminates against an individual  
20 because of race, color, disability, religion, sex, national origin,  
21 [~~or~~] age, sexual orientation, or gender identity or expression in  
22 admission to or participation in the program.

23 SECTION 6. Section 21.059(a), Labor Code, is amended to  
24 read as follows:

25 (a) An employer, labor organization, employment agency, or  
26 joint labor-management committee controlling an apprenticeship,  
27 on-the-job training, or other training or retraining program

1 commits an unlawful employment practice if the employer, labor  
2 organization, employment agency, or committee prints or publishes  
3 or causes to be printed or published a notice or advertisement  
4 relating to employment that:

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

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

12 SECTION 7. Section 21.102(c), Labor Code, is amended to  
13 read as follows:

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

19 SECTION 8. Section 21.112, Labor Code, is amended to read as  
20 follows:

21 Sec. 21.112. EMPLOYEES AT DIFFERENT LOCATIONS. An employer  
22 does not commit an unlawful employment practice by applying to  
23 employees who work in different locations different standards of  
24 compensation or different terms, conditions, or privileges of  
25 employment that are not discriminatory on the basis of race, color,  
26 disability, religion, sex, national origin, [~~or~~] age, sexual  
27 orientation, or gender identity or expression.

1 SECTION 9. Section 21.113, Labor Code, is amended to read as  
2 follows:

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

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

13 (A) employed by an employer;

14 (B) referred or classified for employment by an  
15 employment agency or labor organization;

16 (C) admitted to membership or classified by a  
17 labor organization; or

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

20 (2) the total number or percentage of persons of that  
21 race, color, disability, religion, sex, national origin, ~~or~~ age,  
22 sexual orientation, or gender identity or expression in:

23 (A) a community, this state, a region, or other  
24 area; or

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

27 SECTION 10. Section 21.120(b), Labor Code, is amended to

1 read as follows:

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

6 SECTION 11. Section 21.122(a), Labor Code, is amended to  
7 read as follows:

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

10 (1) a complainant demonstrates that a respondent uses  
11 a particular employment practice that causes a disparate impact on  
12 the basis of race, color, sex, national origin, religion, [~~or~~]  
13 disability, sexual orientation, or gender identity or expression  
14 and the respondent fails to demonstrate that the challenged  
15 practice is job-related for the position in question and consistent  
16 with business necessity; or

17 (2) the complainant makes the demonstration in  
18 accordance with federal law as that law existed June 4, 1989, with  
19 respect to the concept of alternative employment practices, and the  
20 respondent refuses to adopt such an alternative employment  
21 practice.

22 SECTION 12. Section 21.124, Labor Code, is amended to read  
23 as follows:

24 Sec. 21.124. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST  
25 SCORES. It is an unlawful employment practice for a respondent, in  
26 connection with the selection or referral of applicants for  
27 employment or promotion, to adjust the scores of, use different

1 cutoff scores for, or otherwise alter the results of  
2 employment-related tests on the basis of race, color, sex, national  
3 origin, religion, age, [~~or~~] disability, sexual orientation, or  
4 gender identity or expression.

5 SECTION 13. The heading to Section 21.125, Labor Code, is  
6 amended to read as follows:

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

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

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

23 SECTION 15. Section 21.126, Labor Code, is amended to read  
24 as follows:

25 Sec. 21.126. COVERAGE OF PREVIOUSLY EXEMPT EMPLOYEES OF THE  
26 STATE OR POLITICAL SUBDIVISION OF THE STATE. It is an unlawful  
27 employment practice for a person elected to public office in this

1 state or a political subdivision of this state to discriminate  
2 because of race, color, sex, national origin, religion, age, [~~or~~]  
3 disability, sexual orientation, or gender identity or expression  
4 against an individual who is an employee or applicant for  
5 employment to:

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

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

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

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

21 SECTION 17. Section 21.155(a), Labor Code, is amended to  
22 read as follows:

23 (a) The commission [~~Commission on Human Rights~~] shall refer  
24 a complaint concerning discrimination in employment because of  
25 race, color, disability, religion, sex, national origin, [~~or~~] age,  
26 sexual orientation, or gender identity or expression that is filed  
27 with that commission to a local commission with the necessary



1 investigatory and conciliatory powers if:

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

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

7 SECTION 18. The changes in law made by this Act apply to  
8 conduct occurring on or after the effective date of this Act.  
9 Conduct occurring before that date is governed by the law in effect  
10 on the date the conduct occurred, and the former law is continued in  
11 effect for that purpose.

12 SECTION 19. This Act takes effect September 1, 2021.