

By: Hughes

S.B. No. 2118

A BILL TO BE ENTITLED

AN ACT

relating to ensuring compliance with federal civil-rights laws by corporations doing business in Texas, and prohibiting discrimination in the selection of a corporation's board members.

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

SECTION 1. Chapter 21, Business Organizations Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. PROHIBITED DISCRIMINATORY PRACTICES

Sec. 21.981. APPLICABILITY. This subchapter applies to:

(1) a corporation that:

(A) formed under the laws of this state; or

(B) conducts business in this state; and

Sec. 27.982. COMPLIANCE WITH FEDERAL CIVIL-RIGHTS STATUTES. (a) No corporation described by Section 21.981, and no director, officer, shareholder, employee, or agent of that corporation, may ask, encourage, or induce any of that corporation's suppliers, vendors, contractors, or firms that provide goods or services to that corporation to violate any federal civil-rights statute, including the Civil Rights Act of 1866, as amended and codified at 42 U.S.C. § 1981, and Title VII of the Civil Rights Act of 1964, as amended and codified at 42 U.S.C. § 2000e et seq.

Sec. 27.983. DISCRIMINATION IN THE SELECTION OF A CORPORATION'S BOARD MEMBERS. (a) No corporation described by

1 Section 21.981, and no director, officer, shareholder, employee, or
2 agent of that corporation, may establish or enforce any quota or
3 set-aside in the selection of board members that depends in any way
4 upon an individual's race, sex, religion, sexual orientation or
5 sexual practices, or gender identity or gender-nonconforming
6 behavior.

7 (b) No corporation described by Section 21.981, and no
8 director, officer, shareholder, employee, or agent of that
9 corporation, may discriminate against or give preferential
10 treatment to any individual on account of race or sex when selecting
11 the board members of that corporation.

12 Sec. 27.984. PUBLIC ENFORCEMENT PROHIBITED. (a) An
13 executive officer, administrative officer, or public employee of a
14 state or local governmental entity in this state may not enforce
15 this subchapter in the capacity of a public officer or employee
16 through any means of public enforcement.

17 (b) This section does not limit or affect the availability
18 of a private enforcement action under Section 21.985.

19 Sec. 21.985. PRIVATE ENFORCEMENT. (a) Any person, other
20 than an officer or employee of a state or local governmental entity
21 in this state, may bring a civil action against a corporation or
22 individual that violates Sections 21.982 or 21.983.

23 (b) On finding that a defendant has violated Section 21.982,
24 the court shall award:

25 (1) declaratory relief;

26 (2) injunctive relief;

27 (3) statutory damages in an amount not less than 25

1 percent of the total amount paid by the corporation to the supplier,
2 vendor, contractor, or firm that was asked, encouraged, or induced
3 to violate the federal civil-rights statutes;

4 (4) punitive damages of not less than one million
5 dollars (\$1,000,000.00);

6 (5) costs and attorneys' fees.

7 (c) On finding that a defendant has violated Section 21.983,
8 the court shall award:

9 (1) injunctive relief;

10 (2) statutory damages of not less than one million
11 dollars (\$1,000,000.00); and

12 (3) Costs and attorneys' fees.

13 (d) Notwithstanding Subsections (b) and (c), a court may not
14 award relief under this section in response to a violation of
15 Section 21.982 or Section 21.983 if the defendant demonstrates that
16 the defendant previously paid statutory damages in a previous
17 action for that particular violation.

18 (e) Notwithstanding Chapter 16, Civil Practice and Remedies
19 Code, a person may bring an action under this section not later than
20 the sixth anniversary of the date the cause of action accrues.

21 (f) The following are not defenses to liability in an action
22 brought under this section:

23 (1) ignorance or mistake of law;

24 (2) the business judgment rule;

25 (3) a defendant's belief that the requirements of this
26 chapter are unconstitutional or were unconstitutional;

27 (4) a defendant's reliance on any court decision that

1 has been overruled on appeal or by a subsequent court, even if that
2 court decision had not been overruled when the defendant engaged in
3 conduct that violates this chapter;

4 (5) a defendant's reliance on any state or federal
5 court decision that is not binding on the court in which the action
6 has been brought;

7 (6) nonmutual issue preclusion or nonmutual claim
8 preclusion;

9 (7) the need to comply with another state's law; or

10 (8) the need to comply with the requirements of being
11 listed on a stock exchange.

12 (g) Notwithstanding any other provision of law, no court may
13 award costs or attorney's fees under Rule 91a of the Texas Rules of
14 Civil Procedure, or under any other rule adopted by the supreme
15 court under Section 22.004(g), Government Code, to any defendant
16 sued under this section.

17 Sec. 21.986. SOVEREIGN AND OFFICIAL IMMUNITY PRESERVED.

18 This subchapter does not waive:

19 (1) the state's sovereign immunity from liability; or

20 (2) an officer or employee of this state's official
21 immunity from liability.

22 Sec. 21.987. SEVERABILITY. (a) Mindful of Leavitt v. Jane
23 L., 518 U.S. 137 (1996), in which in the context of determining the
24 severability of a state statute the United States Supreme Court
25 held that an explicit statement of legislative intent is
26 controlling, it is the intent of the Legislature that every
27 provision, section, subsection, sentence, clause, phrase, or word

1 in this subchapter, and every application of the provisions in this
2 subchapter, are severable from each other. If any application of
3 any provision in this subchapter to any person, group of persons, or
4 circumstances is found by a court to be invalid or
5 unconstitutional, then the remaining applications of that
6 provision to all other persons and circumstances shall be severed
7 and may not be affected. All constitutionally valid applications
8 of this subchapter shall be severed from any applications that a
9 court finds to be invalid, leaving the valid applications in force,
10 because it is the Legislature's intent and priority that the valid
11 applications be allowed to stand alone. Even if a reviewing court
12 finds a provision of this subchapter to violate the Constitution in
13 a large or substantial fraction of relevant cases, the applications
14 that do not present an undue burden shall be severed from the
15 remaining provisions and shall remain in force, and shall be
16 treated as if the Legislature had enacted a provision limited to the
17 persons, group of persons, or circumstances for which the
18 provision's application does not violate the Constitution. The
19 Legislature further declares that it would have passed this
20 subchapter, and each provision, section, subsection, sentence,
21 clause, phrase, or word, and all constitutional applications of
22 this subchapter, irrespective of the fact that any provision,
23 section, subsection, sentence, clause, phrase, or word, or
24 applications of this subchapter, were to be declared
25 unconstitutional or invalid.

26 (b) If any provision of this subchapter is found by any
27 court to be unconstitutionally vague, then the applications of that

1 provision that do not present constitutional vagueness problems
2 shall be severed and remain in force, consistent with the
3 declarations of the Legislatures intent in Subsection (a).

4 (c) No court may decline to enforce the severability
5 requirements in Subsections (a) or (b) on the ground that severance
6 would rewrite the statute or involve the court in legislative or
7 lawmaking activity. A court that declines to enforce or enjoins a
8 state official from enforcing a subset of a statute's applications
9 is never rewriting a statute, as the statute continues to say
10 exactly what it said before. A judicial injunction or declaration
11 of unconstitutionality is nothing more than a non-enforcement edict
12 that can always be vacated by later courts if they have a different
13 understanding of what the state or federal Constitution requires;
14 it is not a formal amendment of the language in a statute. A
15 judicial injunction or declaration of unconstitutionality no more
16 rewrites a statute than a decision by the executive not to enforce a
17 duly enacted statute in a limited and defined set of circumstances.

18 (d) The legislature intends that the provisions of this
19 subchapter apply to the maximum extent permitted by law.

20 SECTION 2. This Act takes effect September 1, 2021.