

By: Bernal

H.B. No. 256

A BILL TO BE ENTITLED

AN ACT

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

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" means the gender-related identity, appearance, or other gender-related characteristics of an individual with or without regard to the individual's designated sex at birth.

(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

1 accommodation.

2 (5) "Religious organization" means:

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

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

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

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

12 (6) "Sexual orientation" means an individual's actual
13 or perceived heterosexuality, bisexuality, or homosexuality.

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

17 (b) This chapter applies to activities conducted by a
18 religious organization for profit to the extent that those
19 activities are subject to federal taxation under Section 511(a),
20 Internal Revenue Code of 1986, as that section existed on September
21 1, 2021.

22 SUBCHAPTER B. DISCRIMINATION IN PUBLIC ACCOMMODATIONS

23 PROHIBITED

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

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

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

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

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

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

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

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

24 SUBCHAPTER C. CAUSE OF ACTION

25 Sec. 100B.101. CIVIL ACTION. An aggrieved person may file a
26 civil action in district court not later than the second
27 anniversary of the occurrence of the termination of an alleged

1 discriminatory practice under this chapter to obtain appropriate
2 relief with respect to the discriminatory practice.

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

6 (1) actual and punitive damages;

7 (2) reasonable attorney's fees;

8 (3) court costs; and

9 (4) any permanent or temporary injunction, temporary
10 restraining order, or other order, including an order enjoining the
11 defendant from engaging in the practice or ordering other
12 appropriate action.

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

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

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

20 (2) "Gender identity" means the gender-related
21 identity, appearance, or other gender-related characteristics of
22 an individual with or without regard to the individual's designated
23 sex at birth.

24 (3) "Sexual orientation" means an individual's actual
25 or perceived heterosexuality, bisexuality, or homosexuality.

26 (b) A state agency contracting with a contractor under this
27 subtitle shall require the contractor to adopt and apply an

1 employment policy under which the contractor and any subcontractor
2 may not, because of sexual orientation or gender identity:

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

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

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

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

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

23 (3) inform a contractor that the state agency may
24 impose an administrative penalty if the contractor fails to comply
25 with an employment policy required by Subsection (b) after the date
26 on which the contractor receives notice under Subdivision (2); and

27 (4) explain that an amount equal to the amount of the

1 administrative penalty may be withheld from a payment otherwise
2 owed to a contractor under a contract.

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

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

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

11 (9-a) "Gender identity" means the gender-related
12 identity, appearance, or other gender-related characteristics of
13 an individual with or without regard to the individual's designated
14 sex at birth.

15 (13-a) "Sexual orientation" means an individual's
16 actual or perceived heterosexuality, bisexuality, or
17 homosexuality.

18 SECTION 4. Section 21.051, Labor Code, is amended to read as
19 follows:

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

24 (1) fails or refuses to hire an individual, discharges
25 an individual, or discriminates in any other manner against an
26 individual in connection with compensation or the terms,
27 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 5. 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

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.

17 SECTION 6. Section 21.053, Labor Code, is amended to read as
18 follows:

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

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

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

1 (A) deprive or tend to deprive an individual of
2 any employment opportunity;

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

6 (C) cause or attempt to cause an employer to
7 violate this subchapter.

8 SECTION 7. Section 21.054, Labor Code, is amended to read as
9 follows:

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

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

23 (a) An employer, labor organization, employment agency, or
24 joint labor-management committee controlling an apprenticeship,
25 on-the-job training, or other training or retraining program
26 commits an unlawful employment practice if the employer, labor
27 organization, employment agency, or committee prints or publishes

1 or causes to be printed or published a notice or advertisement
2 relating to employment that:

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

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

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

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

17 SECTION 10. Section 21.112, Labor Code, is amended to read
18 as follows:

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

26 SECTION 11. Section 21.113, Labor Code, is amended to read
27 as follows:

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

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

10 (A) employed by an employer;

11 (B) referred or classified for employment by an
12 employment agency or labor organization;

13 (C) admitted to membership or classified by a
14 labor organization; or

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

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

20 (A) a community, this state, a region, or other
21 area; or

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

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

26 (b) Subsection (a) does not apply to a policy adopted or
27 applied with the intent to discriminate because of race, color,

1 sex, national origin, religion, age, [~~or~~] disability, sexual
2 orientation, or gender identity.

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

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

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

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

19 SECTION 14. Section 21.124, Labor Code, is amended to read
20 as follows:

21 Sec. 21.124. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST
22 SCORES. It is an unlawful employment practice for a respondent, in
23 connection with the selection or referral of applicants for
24 employment or promotion, to adjust the scores of, use different
25 cutoff scores for, or otherwise alter the results of
26 employment-related tests on the basis of race, color, sex, national
27 origin, religion, age, [~~or~~] disability, sexual orientation, or

1 gender identity.

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

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

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

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

19 SECTION 17. Section 21.126, Labor Code, is amended to read
20 as follows:

21 Sec. 21.126. COVERAGE OF PREVIOUSLY EXEMPT EMPLOYEES OF THE
22 STATE OR POLITICAL SUBDIVISION OF THE STATE. It is an unlawful
23 employment practice for a person elected to public office in this
24 state or a political subdivision of this state to discriminate
25 because of race, color, sex, national origin, religion, age, [~~or~~]
26 disability, sexual orientation, or gender identity against an
27 individual who is an employee or applicant for employment to:

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

7 SECTION 18. Section 21.152(a), Labor Code, is amended to

8 read as follows:

9 (a) A political subdivision or two or more political

10 subdivisions acting jointly may create a local commission to:

- 11 (1) promote the purposes of this chapter; and
- 12 (2) secure for all individuals in the jurisdiction of
- 13 each political subdivision freedom from discrimination because of
- 14 race, color, disability, religion, sex, national origin, ~~ex~~ age,
- 15 sexual orientation, or gender identity.

16 SECTION 19. Section 21.155(a), Labor Code, is amended to

17 read as follows:

18 (a) The commission [~~Commission on Human Rights~~] shall refer

19 a complaint concerning discrimination in employment because of

20 race, color, disability, religion, sex, national origin, ~~ex~~ age,

21 sexual orientation, or gender identity that is filed with that

22 commission to a local commission with the necessary investigatory

23 and conciliatory powers if:

24 (1) the complaint has been referred to the commission

25 [~~Commission on Human Rights~~] by the federal government; or

26 (2) jurisdiction over the subject matter of the

27 complaint has been deferred to the commission [~~Commission on Human~~

1 ~~Rights~~] by the federal government.

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

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

12 (9-a) "Gender identity" means the gender-related
13 identity, appearance, or other gender-related characteristics of
14 an individual with or without regard to the individual's designated
15 sex at birth.

16 (10-a) "Sexual orientation" means an individual's
17 actual or perceived heterosexuality, bisexuality, or
18 homosexuality.

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

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

26 (b) A person may not discriminate against another in the
27 terms, conditions, or privileges of sale or rental of a dwelling or

1 in providing services or facilities in connection with a sale or
2 rental of a dwelling because of race, color, religion, sex,
3 familial status, [~~or~~] national origin, sexual orientation, or
4 gender identity.

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

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

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

17 Sec. 301.023. INSPECTION. A person may not represent to
18 another because of race, color, religion, sex, disability, familial
19 status, [~~or~~] national origin, sexual orientation, or gender
20 identity that a dwelling is not available for inspection for sale or
21 rental when the dwelling is available for inspection.

22 SECTION 24. Section 301.024, Property Code, is amended to
23 read as follows:

24 Sec. 301.024. ENTRY INTO NEIGHBORHOOD. A person may not,
25 for profit, induce or attempt to induce another to sell or rent a
26 dwelling by representations regarding the entry or prospective
27 entry into a neighborhood of a person of a particular race, color,

1 religion, sex, disability, familial status, [~~or~~] national origin,
2 sexual orientation, or gender identity.

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

5 (a) A person whose business includes engaging in
6 residential real estate related transactions may not discriminate
7 against another in making a real estate related transaction
8 available or in the terms or conditions of a real estate related
9 transaction because of race, color, religion, sex, disability,
10 familial status, [~~or~~] national origin, sexual orientation, or
11 gender identity.

12 SECTION 26. Section 301.027, Property Code, is amended to
13 read as follows:

14 Sec. 301.027. BROKERAGE SERVICES. A person may not deny
15 another access to, or membership or participation in, a
16 multiple-listing service, real estate brokers' organization, or
17 other service, organization, or facility relating to the business
18 of selling or renting dwellings, or discriminate against a person
19 in the terms or conditions of access, membership, or participation
20 in such an organization, service, or facility because of race,
21 color, religion, sex, disability, familial status, [~~or~~] national
22 origin, sexual orientation, or gender identity.

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

25 (a) This chapter does not prohibit a religious
26 organization, association, or society or a nonprofit institution or
27 organization operated, supervised, or controlled by or in

1 conjunction with a religious organization, association, or society
2 from:

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

6 (2) giving preference to persons of the same religion,
7 unless membership in the religion is restricted because of race,
8 color, ~~[ex]~~ national origin, sexual orientation, or gender
9 identity.

10 (c) This chapter does not prohibit a person engaged in the
11 business of furnishing appraisals of real property from considering
12 in those appraisals factors other than race, color, religion, sex,
13 disability, familial status, ~~[ex]~~ national origin, sexual
14 orientation, or gender identity.

15 SECTION 28. Section 301.068, Property Code, is amended to
16 read as follows:

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

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

25 (1) the complaint alleges discrimination based on
26 sexual orientation or gender identity; and

27 (2) the municipality does not have laws prohibiting

1 the alleged discrimination.

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

4 (a) A person commits an offense if the person, without
5 regard to whether the person is acting under color of law, by force
6 or threat of force intentionally intimidates or interferes with a
7 person:

8 (1) because of the person's race, color, religion,
9 sex, disability, familial status, [~~or~~] national origin, sexual
10 orientation, or gender identity and because the person is or has
11 been selling, purchasing, renting, financing, occupying, or
12 contracting or negotiating for the sale, purchase, rental,
13 financing, or occupation of any dwelling or applying for or
14 participating in a service, organization, or facility relating to
15 the business of selling or renting dwellings; or

16 (2) because the person is or has been or to intimidate
17 the person from:

18 (A) participating, without discrimination
19 because of race, color, religion, sex, disability, familial status,
20 [~~or~~] national origin, sexual orientation, or gender identity, in an
21 activity, service, organization, or facility described by
22 Subdivision (1); [~~or~~]

23 (B) affording another person opportunity or
24 protection to so participate; or

25 (C) lawfully aiding or encouraging other persons
26 to participate, without discrimination because of race, color,
27 religion, sex, disability, familial status, [~~or~~] national origin,

1 sexual orientation, or gender identity, in an activity, service,
2 organization, or facility described by Subdivision (1).

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

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

13 (c) The changes in law made by this Act to the Property Code
14 apply only to a complaint filed with the Texas Workforce Commission
15 on or after the effective date of this Act. A complaint filed
16 before that date is governed by the law as it existed immediately
17 before the effective date of this Act, and that law is continued in
18 effect for that purpose.

19 SECTION 31. This Act takes effect September 1, 2023.