By: Eckhardt, et al. S.B. No. 204

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition of employment discrimination on the basis
of reproductive decisions and certain employment agreements
limiting reproductive decisions.

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

SECTION 1. Subchapter C, Chapter 21, Labor Code, is amended
by adding Section 21.1061 to read as follows:

Sec. 21.1061. DISCRIMINATION BASED ON REPRODUCTIVE
DECISIONS; CERTAIN AGREEMENTS VOID. (a) A provision in this
chapter referring to discrimination because of or on the basis of a
reproductive decision includes discrimination because of or on the
basis of:

(1) marital status at the time of a pregnancy;
(2) the use of assisted reproduction to become
pregnant;
(3) the use of contraception or a specific form of
contraception; or
(4) the obtainment or use of any other health care
drug, device, or service relating to reproductive health.

(b) An employer commits an unlawful employment practice if
the employer discrimines because of or on the basis of a
reproductive decision of the employee, the employee's spouse or
partner, the employee's dependent, or any other member of the
employee's family or household.
(c) An employer that provides an employee handbook or manual to employees shall include in the handbook or manual information regarding the prohibition of discrimination based on a reproductive decision.

(d) A mandatory arbitration agreement between an employer and an employee is void and unenforceable as against the public policy of this state to the extent the agreement limits the reproductive decisions of an employee, an employee's spouse or partner, an employee's dependent, or any other member of the employee's family or household.

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, or reproductive decisions 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

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

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

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

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual because of race, color, disability, religion, sex, national origin, [or] age, or reproductive decisions; or

(2) classifies or refers an individual for employment on the basis of race, color, disability, religion, sex, national origin, [or] age, or reproductive decisions.

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

Sec. 21.053. DISCRIMINATION BY LABOR ORGANIZATION. A labor organization commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, [or] age, or reproductive decisions the labor organization:

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

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

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

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

(C) cause or attempt to cause an employer to violate this subchapter.
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SECTION 5. Section 21.054, Labor Code, is amended to read as follows:

Sec. 21.054. ADMISSION OR PARTICIPATION IN TRAINING PROGRAM. [\(\text{a}\)] Unless a training or retraining opportunity or program is provided under an affirmative action plan approved under a federal law, rule, or order, an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, or committee discriminates against an individual because of race, color, disability, religion, sex, national origin, [or] age, or reproductive decisions in admission to or participation in the program.

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

(a) An employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, employment agency, or committee prints or publishes a notice or advertisement relating to employment that:

(1) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, [or] age, or reproductive decisions; and

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

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

(c) This section does not apply to standards of compensation
or terms, conditions, or privileges of employment that are
discriminatory on the basis of race, color, disability, religion,
sex, national origin, [or] age, or reproductive decisions.

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

Sec. 21.112. EMPLOYEES AT DIFFERENT LOCATIONS. An employer
does not commit an unlawful employment practice by applying to
employees who work in different locations different standards of
compensation or different terms, conditions, or privileges of
employment that are not discriminatory on the basis of race, color,
disability, religion, sex, national origin, [or] age, or
reproductive decisions.

SECTION 9. 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, or
reproductive decisions.

SECTION 10. 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, or reproductive decisions 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 11. Section 21.124, Labor Code, is amended to read as follows:

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

SECTION 12. The heading to Section 21.125, Labor Code, is amended to read as follows:

Sec. 21.125. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION, AGE, [OR] DISABILITY, OR REPRODUCTIVE DECISIONS IN EMPLOYMENT PRACTICES.

SECTION 13. Section 21.125(a), Labor Code, is amended to
read as follows:

(a) Except as otherwise provided by this chapter, an unlawful employment practice is established when the complainant demonstrates that race, color, sex, national origin, religion, age, [or] disability, or a reproductive decision was a motivating factor for an employment practice, even if other factors also motivated the practice, unless race, color, sex, national origin, religion, age, [or] disability, or a reproductive decision is combined with objective job-related factors to attain diversity in the employer's work force.

SECTION 14. Section 21.126, Labor Code, is amended to read as follows:

Sec. 21.126. COVERAGE OF PREVIOUSLY EXEMPT EMPLOYEES OF THE STATE OR POLITICAL SUBDIVISION OF THE STATE. It is an unlawful employment practice for a person elected to public office in this state or a political subdivision of this state to discriminate because of race, color, sex, national origin, religion, age, [or] disability, or reproductive decisions against an individual who is an employee or applicant for employment to:

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

SECTION 15. Section 21.152(a), Labor Code, is amended to read as follows:
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(a) A political subdivision or two or more political subdivisions acting jointly may create a local commission to:

(1) promote the purposes of this chapter; and

(2) secure for all individuals in the jurisdiction of each political subdivision freedom from discrimination because of race, color, disability, religion, sex, national origin, [or] age, or reproductive decisions.

SECTION 16. Section 21.155(a), Labor Code, is amended to read as follows:

(a) The commission [Commission on Human Rights] shall refer a complaint concerning discrimination in employment because of race, color, disability, religion, sex, national origin, [or] age, or reproductive decisions that is filed with the [that] commission to a local commission with the necessary investigatory and conciliatory powers if:

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

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

SECTION 17. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies only to a claim of discrimination based on conduct occurring on or after the effective date of this Act. A claim of discrimination that is based on conduct occurring before that date is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.
Section 21.1061(d), Labor Code, as added by this Act, applies to an agreement entered into before, on, or after the effective date of this Act.

SECTION 18. This Act takes effect September 1, 2023.