

By: Gerdes

H.B. No. 5135

A BILL TO BE ENTITLED

AN ACT

relating to prohibition of discrimination by governmental entities based on immutable characteristics.

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

SECTION 1. This Act may be cited as the Texas Antidiscrimination Act.

SECTION 2. Subtitle A, Title 6, Government Code, is amended by adding Chapter 621 to read as follows:

CHAPTER 621. PROHIBITION OF DISCRIMINATION BY GOVERNMENTAL ENTITIES BASED ON IMMUTABLE CHARACTERISTICS

Sec. 621.001. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) Section 3, Article I, Texas Constitution (Equal Protection Clause), provides that "[a]ll freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public service;"

(2) Section 3a, Article I, Texas Constitution (Equal Rights Amendment), provides that "[e]quality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin;"

(3) The Texas Constitution's Equal Rights Amendment was designed expressly to provide protection which supplements the federal guarantees of equal treatment;

1 (4) The Texas Constitution's Equal Rights Amendment is
2 more extensive and provides more specific protection than both the
3 United States and Texas due-process and equal-protection
4 guarantees; and

5 (5) Discrimination by governmental entities is
6 antithetical to the Texas Constitution's Equal Protection Clause
7 and Equal Rights Amendment and lack a rational relationship to a
8 legitimate governmental purpose such that the initiatives violate
9 Texas's Equal Protection Clause and Equal Rights Amendment; and

10 (6) Texans deserve a government committed to serving
11 every person with equal dignity and respect and to expending
12 precious taxpayer resources only on making Texas great for all
13 Texans.

14 (b) The purpose of this act is to prevent the unlawful
15 discrimination that is antithetical to the Texas Constitution's
16 Equal Protection Clause and Equal Rights Amendment. This act does
17 not create any right or benefit, substantive or procedural,
18 enforceable at law or in equity by any party against the
19 governmental entities listed in Section 621.002(2), except as
20 provided by Section 621.004.

21 Sec. 621.002. DEFINITIONS. In this chapter:

22 (a) "Discriminatory office" means an office, division, or
23 other unit of a governmental entity established for the purpose of:

24 (1) influencing hiring or employment practices or
25 workforce composition at the entity with respect to race, sex,
26 color, or ethnicity, other than through the use of color-blind or
27 sex-neutral hiring processes in accordance with any applicable

1 state and federal antidiscrimination laws;

2 (2) promoting differential treatment or providing
3 special benefits to individuals on the basis of race, sex, color, or
4 ethnicity;

5 (3) promoting policies or procedures designed or
6 implemented in reference to race, sex, color, or ethnicity, other
7 than policies or procedures implemented for the sole purpose of
8 ensuring compliance with applicable federal law;

9 (4) conducting trainings, programs, or activities
10 designed or implemented in reference to race, sex, color, or
11 ethnicity, other than trainings, programs, or activities conducted
12 for the sole purpose of ensuring compliance with any applicable
13 court order or federal law; or

14 (5) promoting, as an official position of the entity,
15 a particular opinion referencing unconscious or implicit bias,
16 cultural appropriation, allyship, transgender ideology,
17 microaggressions, group marginalization, anti-racism, systemic
18 oppression, social justice, intersectionality, neo-pronouns,
19 heteronormativity, disparate impact, gender theory, racial or
20 sexual privilege, or any related formulation of these concepts.

21 (b) "Diversity, equity, and inclusion" means:

22 (1) influencing hiring or employment practices with
23 respect to race, sex, color, or ethnicity, other than through the
24 use of color-blind and sex-neutral hiring processes in accordance
25 with any applicable state and federal antidiscrimination laws;

26 (2) promoting differential treatment of or providing
27 special benefits to individuals on the basis of race, sex, color, or

ethnicity;

(3) promoting policies or procedures designed or implemented in reference to race, sex, color, or ethnicity, other than policies or procedures approved in writing by a respective agency general counsel for the sole purpose of ensuring compliance with any applicable court order or state or federal law; and

(4) conducting trainings, programs, or activities designed or implemented in reference to race, sex, color, or ethnicity, other than trainings, programs, or activities developed by an attorney and approved by a respective agency general counsel for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

(c) "Governmental entity" means:

(1) a state agency, which includes;

(A) a department, commission, board, office, or other agency that is in the executive branch of state government and that was created by the constitution or a statute, other than an institution of higher education as defined by Section 61.003, Education Code;

(B) the legislature or a legislative state agency; or

(C) the supreme court, the court of criminal appeals, a court of appeals, a district court, or the Texas Judicial Council or another agency in the judicial branch of state government; and

(2) a political subdivision, which includes:

(A) a county, municipality, special purpose

district, including a school district, or any other political subdivision of this state;

(B) an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code; or

(C) any other political subdivision of this state described by Section 2254.021(4), Government Code.

Sec. 621.003. DISCRIMINATION BY GOVERNMENTAL ENTITIES PROHIBITED. (a) Notwithstanding any other law, and other than through color-blind, race-neutral, or sex-neutral processes, a governmental entity shall not:

(1) establish or maintain a discriminatory office;

(2) hire or assign an employee of the entity or contract with a third party to perform the duties of a discriminatory office;

(3) compel, require, induce, or solicit any person to provide a discriminatory statement or give preferential consideration to any person based on the provision of a discriminatory statement;

(4) give preference on the basis of race, sex, color, or ethnicity to an applicant for employment, an employee, or a participant in any function of the entity;

(5) promote or adopt any theory justifying differential treatment based on race, sex, color, or ethnicity;

(6) Consider race, sex, color, or ethnicity when making employment, contracting, funding, or policy determinations;

(7) require an employee to participate in a diversity, equity, or inclusion program or a discriminatory training, which

1 includes a training, program, or activity designed or implemented
2 in reference to race, sex, color, or ethnicity;

3 (8) spend monies on a diversity, equity, and inclusion
4 program, including to acquire services, supplies, information
5 technology, or goods for a diversity, equity and inclusion program;

6 (9) award a contract or provide preferential or
7 discriminatory treatment to a person submitting a bid for a
8 contract on the basis of race, sex, color, or ethnicity, provided
9 that this prohibition shall only apply to contracts executed or
10 renewed on or after September 1, 2025; or

11 (10) enter into or renew a contract with a contractor
12 or vendor that engages in conduct that would be prohibited by this
13 chapter if done by a governmental entity, provided that this
14 prohibition shall only apply to contracts executed or renewed on or
15 after September 1, 2025.

16 (b) Subsection (a) may not be construed to apply to offering
17 training on sexual harassment or a training, program, or activity
18 developed for the purpose of ensuring compliance with any
19 applicable federal law.

20 (c) A governmental entity shall adopt policies and
21 procedures for appropriately disciplining, including by
22 termination, an employee or contractor of the entity who engages in
23 conduct in violation of Subdivision (a);

24 (d) If a state agency or political subdivision determines
25 that a contractor or vendor has violated this chapter, it shall
26 cancel the contract without penalty. The state agency or political
27 subdivision shall be prohibited from entering into future contracts

1 with the violating contractor or vendor until the entity provides
2 sufficient evidence that the violation has been cured.

3 Sec. 621.004. ENFORCEMENT AGAINST A POLITICAL SUBDIVISION.

4 (a) A person who has a reasonable belief that a political
5 subdivision is violating this chapter may file a complaint with the
6 attorney general.

7 (b) If the attorney general determines that a political
8 subdivision named in a complaint received under Subsection (a) is
9 violating this chapter, the attorney general shall provide written
10 notice of the violation to the political subdivision, and:

11 (1) require the political subdivision to submit a
12 corrective action plan within fourteen days; and

13 (2) designate the political subdivision as
14 noncompliant.

15 (c) Notwithstanding any other law, the comptroller may not
16 distribute to a political subdivision designated as non-compliant
17 any sales and use tax revenue collected under Chapter 321, Tax Code,
18 or mixed beverage tax revenue collected under Chapter 183, Tax
19 Code, that is on deposit in the suspense account of the political
20 subdivision. The funds shall remain in trust and may not be used
21 for any purpose until compliance is restored. Upon compliance with
22 this section the comptroller shall resume distribution of withheld
23 funds to the political subdivision.

24 (d) If a political subdivision does not receive funds under
25 Chapter 321 or Chapter 183, Tax Code, or if a political subdivision
26 fails to timely submit a corrective action plan, the Attorney
27 General may seek declaratory, injunctive, or mandamus relief to

1 compel compliance with this chapter.

2 (e) An action under Subsection (d) must be filed in the
3 county in which the political subdivision is located, and any
4 appeal shall be heard by the Fifteenth Court of Appeals.

5 Sec. 621.005. ENFORCEMENT AGAINST A STATE AGENCY. (a) A
6 state agency that is required to appoint an internal auditor to
7 submit the annual report required by Section 2102.009, Government
8 Code, shall include in its report a description of the state
9 agency's compliance or failure to comply with this chapter.

10 (b) A state agency that is not required to appoint an
11 auditor under Chapter 2102, Government Code, shall appoint an
12 auditor for the specific purpose of reporting annually on the state
13 agency's compliance or failure to comply with this chapter.

14 (c) If a state agency is in compliance with this chapter,
15 the internal auditor shall include in its report an affirmative
16 acknowledgment of compliance with Chapter 621, Government Code.

17 (d) If a state agency is not in compliance with this
18 chapter, the internal auditor shall include in its report a summary
19 of instances of non-compliance and actions taken or planned to be
20 taken to remedy any non-compliance.

21 SECTION 3. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2025.