

2016 Regular Session

SENATE BILL NO. 436

BY SENATOR CARTER

DISCRIMINATION. Provides with respect to discrimination regarding sexual orientation, gender identity, and gender expression. (gov sig)

AN ACT

To amend and reenact R.S. 38:2315, the section heading of R.S. 51:2231, 2235(16)(a), 2236(A), and 2237(2) and to enact R.S. 23:335 and R.S. 39:1553.1 and 2183, relative to discrimination; to provide with respect to sexual orientation, gender identity, and gender expression; to prohibit discrimination with respect to employment; to prohibit discrimination with respect to public services; to prohibit discrimination when awarding public contracts and procurement contracts; to provide that parishes and municipalities may prohibit discrimination; to provide with respect to local human rights commission; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:335 is hereby enacted to read as follows:

§335. Discrimination based on actual or perceived sexual orientation, gender identity, or gender expression; prohibited

A. The legislature finds and declares that the prevention of discrimination and the protection of civil rights are compelling government interests. Nothing in this Section shall be interpreted to infringe upon the freedom of expressive association or the free exercise of religion protected by

1 the First Amendment of the United States Constitution and Article I, Section 8
2 of the Constitution of Louisiana.

3 B. It shall be unlawful for an employer to engage in any of the following
4 practices:

5 (1) Fail or refuse to hire or to discharge any individual or otherwise to
6 intentionally discriminate against any individual with respect to compensation,
7 or the terms, conditions, or privileges of employment because of the individual's
8 actual or perceived sexual orientation, gender identity, or gender expression.

9 (2) Limit, segregate, or classify employees or applicants for employment
10 in any way which would deprive or tend to deprive any individual of
11 employment opportunities or otherwise adversely affect his status as an
12 employee because of the individual's actual or perceived sexual orientation,
13 gender identity, or gender expression.

14 C. It shall be unlawful for an employment agency to fail or refuse to refer
15 for employment, or otherwise to discriminate against, any individual because
16 of his actual or perceived sexual orientation, gender identity, or gender
17 expression, or to classify or refer for employment any individual on the basis of
18 actual or perceived sexual orientation, gender identity, or gender expression.

19 D. It shall be unlawful for a labor organization to engage in any of the
20 following practices:

21 (1) Exclude or expel from its membership or otherwise discriminate
22 against any individual because of his actual or perceived sexual orientation,
23 gender identity, or gender expression.

24 (2) Limit, segregate, or classify its membership or applicants for
25 membership, or classify or fail or refuse to refer for employment any individual
26 in any way which would deprive or tend to deprive any individual of
27 employment opportunities, or would limit such employment opportunities, or
28 otherwise adversely affect his status as an employee or as an applicant for
29 employment, because of such individual's actual or perceived sexual orientation,

1 gender identity, or gender expression.

2 (3) Cause or attempt to cause an employer to discriminate against an
3 individual in violation of this Section.

4 E. It shall be unlawful for any employer, employment agency, or labor
5 organization controlling apprenticeship or other training or retraining,
6 including on-the-job training programs, to discriminate against any individual
7 because of his actual or perceived sexual orientation, gender identity, or gender
8 expression in admission to, or employment in, any program established to
9 provide apprenticeship or other training.

10 F. It shall be unlawful for an employer to discriminate against any of his
11 employees or applicants for employment, for an employment agency to
12 discriminate against any individual, or for a labor organization to discriminate
13 against any member thereof or applicant for membership because the
14 individual, member, or applicant for membership has opposed any practice
15 made unlawful by this Section or because such individual, member, or applicant
16 for membership has made a charge, testified, assisted, or participated in any
17 manner in an investigation, proceeding, or litigation pursuant to this Part.

18 G. It shall be unlawful for an employer, employment agency, or labor
19 organization to print or publish or cause to be printed or published any notice
20 or advertisement relating to employment by an employer or membership in or
21 any classification or referral for employment by a labor organization, or
22 relating to any classification or referral for employment by an employment
23 agency, or relating to admission to, or employment in, any program established
24 to provide apprenticeship or other training, indicating any preference,
25 limitation, specification, or discrimination based on actual or perceived sexual
26 orientation, gender identity, or gender expression. However, a notice or
27 advertisement may indicate a preference, limitation, specification, or
28 discrimination based on actual or perceived sexual orientation, gender identity,
29 or gender expression when actual or perceived sexual orientation, gender

1 identity, or gender expression is a bona fide occupational qualification for
2 employment.

3 H. Nothing contained in this Section shall be construed to create a cause
4 of action against an employer, employment agency, or labor organization for
5 employment practices pursuant to any affirmative action plan.

6 I. Nothing contained in this Section shall be construed to require an
7 employer, employment agency, labor organization, or insurer to grant
8 preferential treatment to any individual or to any group because of the actual
9 or perceived sexual orientation, gender identity, or gender expression of such
10 individual or group on account of an imbalance which may exist with respect
11 to the total number or percentage of persons of any actual or perceived sexual
12 orientation, gender identity, or gender expression employed by any employer,
13 referred or classified for employment by any employment agency or labor
14 organization, admitted to membership or classified by any labor organization,
15 or admitted to or employed in any apprenticeship or other training program,
16 in comparison with the total number or percentage of persons of such actual or
17 perceived sexual orientation, gender identity, or gender expression in any city,
18 parish, or other area, or in the available work force in any city, parish, or other
19 area.

20 J. Notwithstanding any other provision of this Section, it shall not be
21 unlawful discrimination in employment for:

22 (1) An employer to hire and employ employees, for an employment
23 agency to classify or refer for employment any individual, for a labor
24 organization to classify its membership or to classify or refer for employment
25 any individual, or for an employer, employment agency, labor organization, or
26 insurer controlling apprenticeship or other training or retraining programs to
27 admit or employ any individual in any such program on the basis of his actual
28 or perceived sexual orientation, gender identity, or gender expression in those
29 certain instances where actual or perceived sexual orientation, gender identity,

or gender expression is a bona fide occupational qualification reasonably necessary for the normal operation of that particular business or enterprise.

(2) An employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production, or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of actual or perceived sexual orientation, gender identity, or gender expression.

(3) An employer to give and to act upon the results of any professionally developed ability test, provided that such test, its administration, or action upon the results is not designed, intended, or used to discriminate because of actual or perceived sexual orientation, gender identity, or gender expression.

(4) An employer to establish appropriate dress and appearance requirements for its employees, provided that employers allow any employee to appear and dress in a manner consistent with the employee's gender identity.

K. The provisions of this Section relative to discrimination on the basis of sexual orientation, gender identity, and gender expression shall not apply to a corporation, association, educational institution or institution of learning, or society that is exempt from the religious discrimination provisions of 42 USC 2000(e)-1(a) or 2000(e)-2(e) (formerly, Section 702(1) or 703(e)(2) of Title VII of the Civil Rights Act of 1964).

Section 2. R.S. 38:2315 is hereby amended and reenacted to read as follows:

§2315. Equal opportunity

Every person shall be guaranteed equal employment opportunities in the selection of persons for professional services and such selection shall not discriminate against any person because of race, religion, national ~~ancestry~~ origin, age, sex, or physical condition sexual orientation, gender identity, gender expression, or disability. If any person or persons violates the provisions of this section ~~Section~~, ~~they~~ he shall be subject to the same penalties as provided in R.S.

38:2314(A).

Section 3. R.S. 39:1553.1 and 2183 are hereby enacted to read as follows:

§1553.1. Equal opportunity

A. Every person shall be guaranteed equal employment opportunities in the selection of persons for procurement pursuant to this Chapter.

B. Procurement contracts shall not discriminate against any person because of race, religion, national origin, age, sex, sexual orientation, gender identity, gender expression, or disabilities.

C.(1) No governmental body, in the selection of a person for a procurement contract, shall discriminate against any person because that person is a member of a category designated in Subsection B of this Section.

(2) No person awarded a procurement contract shall discriminate in the employment of an individual because that individual is a member of a category of persons designated in Subsection B of this Section.

D.(1) Every contract, invitation to bid, or request for proposal pursuant to this Chapter, shall include a statement advising an applicant that, by signing the contract, bid document, or proposal, the applicant agrees that the applicant will not discriminate in the employment of individuals to perform the work or to provide materials, supplies, or services pursuant to the contract who are members of a category designated in Subsection B of this Section.

(2) State agencies or other state entities may designate categories of persons or factors in addition to those provided in Subsection B of this Section in nondiscrimination clauses in a procurement contract, invitation to bid, or request for proposal.

E. Nothing in this Section shall be construed to nullify or supersede any preference in law for veterans of the military or military servicemen or servicewomen.

F. Nothing in this Section shall be construed to nullify or supersede any minimum requirement related to education, licensure, or other vocational

standards.

* * *

§2183. Equal opportunity

A. Every person shall be guaranteed equal employment opportunities in
the selection of persons for public contracts pursuant to this Chapter.

B. Public contracts shall not discriminate against any person because of race, religion, national origin, age, sex, sexual orientation, gender identity, gender expression, or disability.

C.(1) No public entity, in the selection of a person to award a public contract, shall discriminate against any person because that person is a member of a category designated in Subsection B of this Section.

(2) No person awarded a public contract shall discriminate in the rendering of services to, or employment of, an individual because that individual is a member of a category of persons designated in Subsection B of this Section.

D.(1) Every contract and bidding document shall include a statement advising that, by signing the contract, the contractor shall not discriminate in the rendering of services to, or employment of, individuals to perform the work, or to provide materials, supplies, or services pursuant to the contract, who are members of a category designated in Subsection B of this Section.

(2) State agencies or other state entities may designate categories of persons or factors in addition to those provided in Subsection B of this Section in nondiscrimination clauses in public contracts.

E. Nothing in this Section shall be construed to nullify or supersede any preference in law for veterans of the military or military servicemen or servicewomen.

F. Nothing in this Section shall be construed to nullify or supersede any minimum requirement related to education, licensure, or other vocational standards.

Section 4. The section heading of R.S. 51:2231, 2235(16)(a), 2236(A), and 2237(2) are hereby amended and reenacted to read as follows:

§2231. Statement of purpose; limitation on prohibitions against discrimination

~~because of age~~

* * *

§2235. Powers and duties of commission

In the enforcement of this Chapter or of Chapter 3-A of Title 23 of the Louisiana Revised Statutes of 1950, or R.S. 23:664, the commission shall have the following powers and duties:

* * *

(16) To create local or statewide advisory committees that in its judgment will aid in effectuating the purposes of this Chapter. Members of such committees shall serve without pay but shall be reimbursed for expenses incurred in such service. The commission may make provision for technical and clerical assistance to the committees. The commission may empower these committees:

(a) To study and report on problems of discrimination because of race, creed, color, religion, sex, age, disability, **sexual orientation, gender identity, gender expression,** or national origin.

* * *

§2236. Parishes and municipalities may prohibit discrimination

A. Parishes and municipalities may adopt and enforce ordinances, orders, and resolutions prohibiting all forms of discrimination, including discrimination on the basis of race, creed, color, religion, national origin, sex, disability, **sexual orientation, gender identity, gender expression,** or age, and to prescribe penalties for violations thereof, such penalties being in addition to the remedial orders and enforcement herein authorized.

* * *

§2237. Local human rights commissions

Any parish or municipality, or one or more parishes and municipalities acting

jointly, may create a human rights commission, hereinafter referred to as a "local commission":

* * *

(2) To safeguard all individuals within its jurisdiction from discrimination because of race, creed, color, religion, national origin, sex, disability, sexual orientation, gender identity, gender expression, or age.

Section 5. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela L. De Jean.

DIGEST

SB 436 Engrossed

2016 Regular Session

Carter

Proposed law provides legislative intent.

Proposed law (R.S. 23:335) provides that it is unlawful for any employer to refuse to hire, discharge, or otherwise discriminate with respect to compensation, terms, conditions of employment, segregate, limit, or classify his employees or applicants for employment due to an individual's actual or perceived sexual orientation, gender identity, or gender expression.

Proposed law provides that it is unlawful for an employment agency to refuse to refer someone for employment due to his actual or perceived sexual orientation, gender identity, or gender expression.

Proposed law provides that it is unlawful for any labor organization to exclude or expel someone from membership, or otherwise limit, or segregate membership or applicants for membership due to an individual's actual or perceived sexual orientation, gender identity, or gender expression.

Proposed law provides that it is unlawful for an employer, employment agency, or labor organization controlling apprenticeship or other training or retraining programs to discriminate against an individual due to an individual's actual or perceived sexual orientation, gender identity, or gender expression.

Proposed law further prohibits the discrimination against an individual because the individual has made a charge, testified, assisted, or participated in an investigation, proceeding, or litigation relative to a discrimination charge.

Proposed law prohibits an employer, employment agency, or labor organization from publishing or advertising an employment or training position indicating any preference, limitation, specification, or discrimination based on actual or perceived sexual orientation,

gender identity, or gender expression unless it is a bona fide occupational qualification for employment.

Proposed law does not intend to create a cause of action pursuant to any affirmative action plan.

Proposed law does not require any employer, employment agency, labor organization, or insurer to grant preferential treatment to any individual because of actual or perceived sexual orientation, gender identity, or gender expression.

Proposed law allows an employer, employment agency, labor organization, or training program to hire, admit, or train someone based on actual or perceived sexual orientation, gender identity, or gender expression unless it is a bona fide occupational qualification reasonably necessary for the normal operation of that particular business or enterprise.

Proposed law allows an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to seniority or a merit system, or a system which measures earnings by quantity or quality of production, or to employees who work in different locations, provided that the differences are not a result of an intention to discriminate.

Proposed law provides that it is not discrimination for an employer to give a professionally developed ability test if the test is not used to discriminate.

Proposed law further provides that it is not unlawful for an employer to specify a dress code, provided it is consistent with the employee's gender identity.

Provides that proposed law does not apply to a corporation, association educational institution or institution of learning, or society that is exempt from the religious discrimination provisions of the Civil Rights Act.

Proposed law (R.S. 39:1553.1 and 2183) provides for equal employment opportunities in the selection of persons for public contracts and procurement contracts.

Proposed law prohibits discrimination against any person because of race, religion, national origin, age, sex, sexual orientation, gender identity, gender expression, or disability, in awarding public contracts or procurement contracts.

Proposed law requires that every contract, invitation to bid, request for proposal, or bidding document include a statement advising that the contractor shall not discriminate when he renders services to or in the employment of individuals to perform the work, or provide materials, supplies, or services pursuant to the contract, who are members of the category of individuals listed in proposed law.

Proposed law is not intended to nullify or supercede any preference in law for veterans of the military or military service men and women.

Proposed law is not intended to nullify or supercede any minimum requirement related to education, licensure, or other vocational standards.

Present law (R.S. 38:2315) requires that every person be guaranteed equal opportunity in the selection of persons for professional services.

Present law provides that a selection for professional services shall not discriminate against anyone based on race, religion, national ancestry, age, sex, or physical condition.

Proposed law changes "national ancestry" to "national origin" and "physical condition" to "disability".

Proposed law adds sexual orientation, gender identity, and gender expression to the list of prohibited discriminatory classifications.

Present law (R.S. 51:2231) provides that the Louisiana Commission on Human Rights has enforcement powers over certain discrimination statutes.

Present law adds proposed law (R.S. 23:335) to the statutes over which the Louisiana Commission on Human Rights has enforcement authority.

Present law provides that the Louisiana Commission on Human Rights may study and report on problems of discrimination because of race, creed, color, religion, sex, age, disability, or national origin.

Proposed law adds sexual orientation, gender identity, and gender expression to the list of discriminatory classifications that the Louisiana Commission on Human Rights may study.

Present law (R.S. 23:2237) provides that parishes and municipalities may adopt and enforce ordinances prohibiting all forms of discrimination including race, creed, color, religion, national origin, sex, disability, or age.

Proposed law adds sexual orientation, gender identity, and gender expression to present law.

Present law (R.S. 23:2237) allows any parish, municipality, or multiple parishes or municipalities to create a local human rights commission to safeguard individuals from discrimination because of race, creed, color, religion, national origin, sex, disability, or age.

Proposed law adds sexual orientation, gender identity, and gender expression to present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 38:2315, R.S. 51:2231(section heading), 2235(16)(a), 2236(A), and 2237(2); adds R.S. 23:335 and R.S. 39:1553.1 and 2183)