

Regular Session, 2014

HOUSE BILL NO. 887

BY REPRESENTATIVE ST. GERMAIN

DISCRIMINATION: Provides with respect to discrimination regarding sexual orientation, gender identity, and gender expression

1 AN ACT

2 To amend and reenact R.S. 38:2315, R.S. 51:2231(C), 2232(12), 2235(16)(a), 2236(A), and
3 2237(2) and to enact R.S. 23:335, R.S. 38:1553.1 and 2183; relative to
4 discrimination; to provide with respect to sexual orientation, gender identity, and
5 gender expression; to prohibit discrimination with respect to employment; to prohibit
6 discrimination with respect to public services; to prohibit discrimination when
7 awarding public contracts and procurement contracts; to provide that parishes and
8 municipalities may prohibit discrimination; to provide with respect to local human
9 rights commission; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

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

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

14 A. It shall be unlawful for an employer to engage in any of the following
15 practices:

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

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

6 B. It shall be unlawful for an employment agency to fail or refuse to refer for
7 employment, or otherwise to discriminate against, any individual because of his
8 actual or perceived sexual orientation, gender identity, or gender expression, or to
9 classify or refer for employment any individual on the basis of his actual or
10 perceived sexual orientation, gender identity, or gender expression.

11 C. It shall be unlawful for a labor organization to engage in any of the
12 following practices:

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

16 (2) Limit, segregate, or classify its membership or applicants for
17 membership, or classify or fail or refuse to refer for employment any individual in
18 any way which would deprive or tend to deprive any individual of employment
19 opportunities, or would limit such employment opportunities, or otherwise adversely
20 affect his status as an employee or as an applicant for employment, because of such
21 individual's actual or perceived sexual orientation, gender identity, gender
22 expression.

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

25 D. It shall be unlawful for any employer, employment agency, or labor
26 organization controlling apprenticeship or other training or retraining, including on-
27 the-job training programs, to discriminate against any individual because of his
28 actual or perceived sexual orientation, gender identity, or gender expression in

1 admission to, or employment in, any program established to provide apprenticeship
2 or other training.

3 E. It shall be unlawful for an employer to discriminate against any of his
4 employees or applicants for employment, for an employment agency to discriminate
5 against any individual, or for a labor organization to discriminate against any
6 member thereof or applicant for membership because the individual, member, or
7 applicant for membership has opposed any practice made unlawful by this Section,
8 or because such individual, member, or applicant for membership has made a charge,
9 testified, assisted, or participated in any manner in an investigation, proceeding, or
10 litigation pursuant to this Part.

11 F. It shall be unlawful for an employer, employment agency, or labor
12 organization to print or publish, or cause to be printed or published, any notice or
13 advertisement relating to employment by an employer or membership in or any
14 classification or referral for employment by a labor organization, or relating to any
15 classification or referral for employment by an employment agency, or relating to
16 admission to, or employment in, any program established to provide apprenticeship
17 or other training, indicating any preference, limitation, specification, or
18 discrimination based on actual or perceived sexual orientation, gender identity, or
19 gender expression. However, a notice or advertisement may indicate a preference,
20 limitation, specification, or discrimination based on actual or perceived sexual
21 orientation, gender identity, or gender expression when actual or perceived sexual
22 orientation, gender identity, or gender expression is a bona fide occupational
23 qualification for employment.

24 G. Nothing contained in this Section shall be construed so as to create a
25 cause of action against an employer, employment agency, or labor organization for
26 employment practices pursuant to any affirmative action plan.

27 H. Nothing contained in this Section shall be construed so as to require an
28 employer, employment agency, labor organization, or insurer to grant preferential
29 treatment to any individual or to any group because of the actual or perceived sexual

1 orientation, gender identity, or gender expression of such individual or group on
2 account of an imbalance which may exist with respect to the total number or
3 percentage of persons of any actual or perceived sexual orientation, gender identity,
4 or gender expression, employed by any employer, referred or classified for
5 employment by any employment agency or labor organization, admitted to
6 membership or classified by any labor organization, or admitted to, or employed in,
7 any apprenticeship or other training program, in comparison with the total number
8 or percentage of persons of such actual or perceived sexual orientation, gender
9 identity, or gender expression in any city, parish or other area, or in the available
10 work force in any city, parish, or other area.

11 I. Notwithstanding any other provision of this Section, it shall not be
12 unlawful discrimination in employment for:

13 (1) An employer to hire and employ employees, for an employment agency
14 to classify or refer for employment any individual, for a labor organization to
15 classify its membership or to classify or refer for employment any individual, or for
16 an employer, employment agency, labor organization, or insurer controlling
17 apprenticeship or other training or retraining programs to admit or employ any
18 individual in any such program on the basis of his actual or perceived sexual
19 orientation, gender identity, or gender expression in those certain instances where
20 actual or perceived sexual orientation, gender identity, or gender expression is a bona
21 fide occupational qualification reasonably necessary for the normal operation of that
22 particular business or enterprise.

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

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

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

8 (5) An employer to refuse to provide benefits for the partner of any
9 employee.

10 J. The provisions of this Section relative to discrimination on the basis of
11 sexual orientation, gender identity, and gender expression shall not apply to a
12 corporation, association, educational institution or institution of learning, or society
13 that is exempt from the religious discrimination provisions of title VII of the Civil
14 Rights Act of 1964 pursuant to section 702(1) or 703(e)(2) of such Act.

15 Section 2. R.S. 38:2315 is hereby amended and reenacted and R.S. 38:1553.1 and
16 2183 are hereby enacted to read as follows:

17 §1553.1 Equal opportunity

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

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

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

26 (2) No person awarded a procurement contract shall discriminate in the
27 employment of an individual because that individual is a member of a category of
28 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 service men or service women.

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.

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

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

9 E. Nothing in this Section shall be construed to nullify or supersede any
 10 preference in law for veterans of the military or military service men or service
 11 women.

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

14 * * *

15 §2315. Equal opportunity

16 Every person shall be guaranteed equal employment opportunities in the
 17 selection of persons for professional services, and such selection of persons for
 18 professional services ~~and such selection~~ shall not discriminate against any person
 19 because of race, religion, national ~~ancestry~~ origin, age, sex, ~~or physical condition~~
 20 sexual orientation, gender identity, gender expression, or disability. If any person
 21 or persons violates the provisions of this section, they shall be subject to the same
 22 penalties as provided in R.S. 38:2314(A).

23 * * *

24 Section 3. R.S.51:2231(C), 2232(12), 2235(16)(a), 2236(A), and 2237(2) are hereby
 25 amended and reenacted to read as follows:

26 §2231. Statement of purpose; limitation on prohibitions against discrimination
 27 ~~because of age~~

28 * * *

1 C. The Louisiana Commission on Human Rights shall have enforcement
2 powers including adjudication of claims of discrimination prohibited by R.S. 23:312,
3 323, ~~and 332, 335~~, sickle cell trait discrimination prohibited by R.S. 23:352, and
4 discrimination because of pregnancy prohibited by R.S. 23:341 et seq.

5 §2232. Definitions

6 As used in this Chapter:

7 * * *

8 (12) "Discriminatory practice in connection with employment" means an
9 employment practice prohibited by R.S. 23:312, 323, ~~or 332~~, or 335.

10 * * *

11 §2235. Powers and duties of commission

12 In the enforcement of this Chapter, the commission shall have the following
13 powers and duties:

14 * * *

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

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

23 * * *

24 §2236. Parishes and municipalities may prohibit discrimination

25 A. Parishes and municipalities may adopt and enforce ordinances, orders,
26 and resolutions prohibiting all forms of discrimination, including discrimination on
27 the basis of race, creed, color, religion, national origin, sex, disability, sexual
28 orientation, gender identity, gender expression, or age, and to prescribe penalties for

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violations thereof, such penalties being in addition to the remedial orders and

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enforcement herein authorized.

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§2237. Local human rights commissions

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

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

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commission":

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* * *

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(2) To safeguard all individuals within its jurisdiction from discrimination

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because of race, creed, color, religion, national origin, sex, disability, sexual

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orientation, gender identity, gender expression, or age.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

St. Germain

HB No. 887

Abstract: Provides with respect to discrimination based on sexual orientation, gender identity, or gender expression.

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 it's 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.

Proposed law provides that it is not unlawful to refuse to provide benefits to the partner of an employee.

Proposed law 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. 38:1553.1 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 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 is required to 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.

(Amends R.S. 38:2315, R.S. 51:2231(C), 2232(12), 2235(16)(a), 2236(A), and 2237(2); Adds R.S. 23:335, R.S. 38:1553.1 and 2183)