LEGISLATURE OF THE STATE OF IDAHO

Sixty-third Legislature Second Regular Session - 2016

IN THE SENATE

SENATE BILL NO. 1196

BY BUCKNER-WEBB AND BURGOYNE

AN ACT

RELATING TO CIVIL RIGHTS; AMENDING SECTION 67-5901, IDAHO CODE, TO PROVIDE THAT FREEDOM FROM DISCRIMINATION BECAUSE OF SEXUAL ORIENTATION OR GENDER IDENTITY IS A CIVIL RIGHT; AMENDING SECTION 67-5902, IDAHO CODE, TO PROVIDE ADDITIONAL DEFINITIONS; AND AMENDING SECTION 67-5909, IDAHO CODE, TO PROHIBIT DISCRIMINATION AGAINST A PERSON BECAUSE OF SEXUAL ORIENTATION OR GENDER IDENTITY AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5901, Idaho Code, be, and the same is hereby amended to read as follows:

67-5901. PURPOSE OF CHAPTER. The general purposes of this chapter are:

(1) To provide for execution within the state of the policies embodied herein and in the federal Civil Rights Act of 1964, as amended, ~~and~~ the Age Discrimination in Employment Act of 1967, as amended, and Titles I and III of the Americans with Disabilities Act.

(2) To secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, sexual orientation, gender identity, ~~or~~ national origin or disability in connection with employment, public accommodations, and real property transactions, discrimination because of race, color, religion, sex, sexual orientation, gender identity or national origin in connection with education, discrimination because of age in connection with employment, and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individuals within the state.

SECTION 2. That Section 67-5902, Idaho Code, be, and the same is hereby amended to read as follows:

67-5902. DEFINITIONS. In this chapter, unless the context otherwise requires:

(1) "Commission" means the commission on human rights created by this chapter;

(2) "Commissioner" means a member of the commission;

(3) "Discriminatory practice" means a practice designated as discriminatory under the terms of this chapter;

(4) "National origin" includes the national origin of an ancestor;

(5) "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, any other legal or commercial entity, the state, or any governmental entity or agency;

(6) "Employer" means a person, wherever situated, who hires five (5) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year whose services are to be partially or wholly performed in the state of Idaho, except for domestic servants hired to work in and about the person's household. The term also means:

(a) A person who as contractor or subcontractor is furnishing material or performing work for the state;

(b) Any agency of or any governmental entity within the state; and

(c) Any agent of such employer.

(7) "Employment agency" means a person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person;

(8) "Labor organization" includes:

(a) An organization of any kind, an agency or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievance, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(b) A conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization; or

(c) An agent of a labor organization.

(9) "Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public;

(10) "Educational institution" means a public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, or university and a business, nursing, professional, secretarial, technical, or vocational school and includes an agent of an educational institution;

(11) "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal or any interest therein;

(12) "Real estate transaction" includes the sale, exchange, rental or lease of real property;

(13) "Housing accommodation" includes any improved or unimproved real property, or part thereof, which is used or occupied, or as the home or residence of one (1) or more individuals;

(14) "Real estate broker or salesman" means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these;

(15) "Disability" means a physical or mental condition of a person, whether congenital or acquired, which constitutes a substantial limitation to that person and is demonstrable by medically accepted clinical or laboratory diagnostic techniques. A person with a disability is one who (a) has such a disability, or (b) has a record of such a disability, or (c) is regarded as having such a disability;

(16) "Reasonable accommodation" means an adjustment which does not (a) unduly disrupt or interfere with the employer's normal operations, (b) threaten the health or safety of the person with the disability or others, (c) contradict a business necessity of the employer, or (d) impose undue hardship on the employer based on the size of the employer's business, the type of business, the financial resources, and the estimated cost and extent of the adjustment;

(17) "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include (a) the nature and cost of the action needed under this chapter, (b) the overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and resources, or the impact otherwise of the action upon the operation of the facility, (c) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities, and (d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of the entity, the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity;

(18) "Gender identity" means a person's actual or perceived gender identity, appearance, mannerisms or other characteristics, with or without regard to the person's sex at birth;

(19) "Sexual orientation" means a person's actual or perceived orientation as heterosexual, homosexual, bisexual or asexual.

SECTION 3. That Section 67-5909, Idaho Code, be, and the same is hereby amended to read as follows:

67-5909. ACTS PROHIBITED. It shall be a prohibited act to discriminate against a person because of, or on a basis of, race, color, religion, sex, sexual orientation, gender identity or national origin, in any of the following subsections. It shall be a prohibited act to discriminate against a person because of, or on the basis of, age in subsections (1), (2), (3) and (4) of this section. It shall be a prohibited act to discriminate against a person because of, or on the basis of, disability in subsections (1), (2), (3) and (4) of this section, provided that the prohibition against discrimination because of disability shall not apply if the particular disability, even with a reasonable accommodation, prevents the performance of the work required in that job, and in subsections (6), (8), (9), (10) and (11) of this section. The prohibition to discriminate shall also apply to those individuals without disabilities who are associated with a person with a disability.

(1) For an employer to fail or refuse to hire, to discharge, or to otherwise discriminate against an individual with respect to compensation or the terms, conditions or privileges of employment or to reduce the wage of any employee in order to comply with this chapter~~;~~.

(2) For an employment agency to fail or refuse to refer for employment~~,~~ or otherwise to discriminate against an individual or to classify or refer an individual for employment~~;~~.

(3) For a labor organization:

(a) To exclude or to expel from membership, or to otherwise discriminate against, a member or applicant for membership~~,~~;

(b) To limit, segregate or classify membership, or to fail or refuse to refer for employment, an individual in any way~~,~~:

1. Which would deprive an individual of employment opportunities~~,~~; or

2. Which would limit employment opportunities or adversely affect the status of an employee or of an applicant for employment~~,~~; or

(c) To cause or attempt to cause an employer to violate this chapter.

(4) For an employer labor organization or employment agency to print or publish or cause to be printed or published a notice or advertisement relating to employment by the employer or membership in or a classification or referral for employment by the labor organization, or relating to a classification or referral for employment by an employment agency, indicating a preference, limitation, specification or discrimination; but a notice or advertisement may indicate a preference limitation, specification, or discrimination when such is a bona fide occupational qualification for employment~~;~~.

(5) For a person:

(a) To deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a place of public accommodation~~,~~; or

(b) To print, circulate, post, or mail or otherwise cause to be published a statement, advertisement or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable.

(6) For a person who owns, leases or operates a place of public accommodation:

(a) To deny an individual on the basis of disability the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation;

(b) To impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages or accommodations being offered;

(c) To fail to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages or accommodations;

(d) To fail to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden;

(e) To fail to remove architectural barriers and communication barriers that are structural in nature~~,~~ in existing facilities and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through retrofitting of vehicles), where such removal is readily achievable; or

(f) Where an entity can demonstrate that the removal of a barrier under paragraph (e) of this subsection is not readily achievable, to fail to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods, if such methods are readily achievable.

(7) For an educational institution:

(a) To exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, and privileges of the institution~~, or~~;

(b) To make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information~~,~~ or to make or keep a record~~,~~ of an applicant for admission, except as permitted by the regulations of the commission~~,~~;

(c) To print or publish or cause to be printed or published a catalogue or other notice or advertisement indicating a preference, limitation, specification~~,~~ or discrimination of an applicant for admission~~,~~; or

(d) To announce or follow a policy of denial or limitation through a quota or otherwise of educational opportunities of a group or its members.

(8) For an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman:

(a) To refuse to engage in a real estate transaction with a person~~,~~;

(b) To discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith~~,~~;

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person~~,~~;

(d) To refuse to negotiate a real estate transaction with a person~~,~~;

(e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property~~,~~;

(f) To print, circulate, post or mail or cause to be so published a statement, advertisement or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto~~,~~;

(g) To offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith~~,~~; or

(h) To refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if the modifications may be necessary to afford such person full enjoyment of the premises. Provided, that in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior, exterior, or both, of the premises~~,~~ to the condition that existed before the modification, reasonable wear and tear excepted. The provision for restoration shall be included in any lease or rental agreement.

(9) For a person to whom application is made for financial assistance in connection with a real estate transaction or for the construction, rehabilitation, repair, maintenance, or improvement of real property, or a representative of such a person:

(a) To discriminate against the applicant~~,~~; or

(b) To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination.

(10) To insert in a written instrument relating to real property a provision which purports to forbid or restrict the conveyance, encumbrance, occupancy or lease thereof~~,~~.

(11) For a person for the purpose of inducing a real estate transaction from which he may benefit financially:

(a) To represent that a change has occurred or will or may occur in the composition of the owners or occupants in the block, neighborhood, or area in which the real property is located~~,~~; or

(b) To represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.