Regular Session, 2012

HOUSE BILL NO. 691

BY REPRESENTATIVE MORENO

STATE EMPLOYEES: Prohibits discrimination in state employment based upon sexual orientation

AN ACT

To amend and reenact R.S. 51:2231(C) and to enact Chapter 16 of Title 42 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 42:1251 through 1254, relative to employment discrimination in state government; to prohibit discrimination in employment and employment opportunities on the basis of sexual orientation; to provide for applicability and enforcement; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 16 of Title 42 of the Louisiana Revised Statutes of 1950, comprised of R.S. 42:1251 through 1254, is hereby enacted to read as follows:

CHAPTER 16. UNIFORM EMPLOYMENT STANDARDS FOR STATE EMPLOYEES

§1251. Definitions

For purposes of this Chapter the following terms shall have the following meanings unless the context clearly requires a different meaning:

(1) "Gender expression" means all of the external characteristics or behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns, and social interactions.

(2) "Gender identity" means a person's internal, deeply felt sense of being either male or female.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

(3) "Sexual orientation" means being or perceived as being heterosexual, homosexual, or bisexual, or having or being perceived as having a gender-related self-identity, appearance, or behavior whether or not associated with a person's assigned sex at birth.

(4) "State employer" means any department, office, division, agency, commission, board, officer, or other organizational unit of the legislative, executive, or judicial branch of state government. It shall not include municipalities, parishes, or other political subdivisions.

§1252. Discrimination based on sexual orientation; prohibited

It shall be unlawful discrimination in employment for any state employer to subject employees to different standards of treatment or otherwise discriminate in employment on the basis of sexual orientation. Employment shall include recruitment, opportunity for employment, hiring, firing, a disciplinary action of any kind, promotion, tenure, compensation paid, and any other term, condition. privilege, or status of an individual's employment.

§1253. Applicability

A. Each state employer shall cooperate in implementation of this Chapter.

B. The provisions of this Chapter shall not be construed to:

(1) Require a state employer to justify neutral practices that may result in a disparate impact against people of a particular sexual orientation, whether actual or perceived.

(2) Require a state employer to adopt quotas or give preferential treatment to an individual on the basis of actual or perceived sexual orientation.

(3) Preclude a state employer from adopting and implementing reasonable dress or appearance requirements that require employees to adhere to reasonable workplace appearance, grooming, and dress standards not precluded by other provisions of state or federal law; however, an employer shall allow any employee to appear and dress consistently with the employee's gender identity or gender expression.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

(4) Require a state employer to provide any benefits to a partner of any employee who is not a legal spouse.

§1254. Enforcement

A. An employee in the classified state civil who is discriminated against in violation of this Chapter shall have the right to appeal to the State Civil Service Commission pursuant to Article X, Section 12 of the Constitution of Louisiana.

B. Any state employee who is discriminated against in violation of this Chapter may seek redress under the Louisiana Employment Discrimination Law, R.S. 23:303, et. seq.

C. The Louisiana Commission on Human Rights shall have power to enforce this Chapter, including but not limited to power to adjudicate claims of discrimination pursuant to this Chapter.

* * *

Section 2. R.S. 51:2231(C) is hereby amended and reenacted to read as follows:

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

* * *

C. The Louisiana Commission on Human Rights shall have enforcement powers including adjudication of claims of discrimination prohibited by R.S. 23:312, 323, and 332, sickle cell trait discrimination prohibited by R.S. 23:352, ~~and~~ discrimination because of pregnancy prohibited by R.S. 23:341 et seq., and state employment discrimination prohibited by R.S. 42:1252.

Section 3. All state departments and state employers are authorized and directed to adopt, prior to October 1, 2012, such rules and regulations as may be necessary to comply with the provisions of this Act.

Section 4(A). The provisions of Sections 1 and 2 of this Act shall become effective on October 1, 2012.

(B) The provisions of this Section and of Section 3 of this Act shall become effective upon signature by the governor or, if this Act is not signed by the governor, upon expiration

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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 this Act is vetoed by the governor and subsequently approved by the legislature, this Section and of Section 3 of this Act shall become effective on the day following such approval.

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)]

Moreno HB No. 691

Abstract: Prohibits discrimination in state employment on the basis of sexual orientation.

Proposed law provides that it shall be unlawful discrimination in employment for any state employer to subject employees to different standards of treatment or otherwise discriminate in employment, on the basis of sexual orientation. Provides that employment includes recruitment, opportunity for employment, hiring, firing, a disciplinary action of any kind, promotion, tenure, compensation paid, and any other term, condition, privilege, or status of an individual's employment.

Proposed law includes the following definitions:

(1) Gender expression - all of the external characteristics or behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns, and social interactions.

(2) Gender identity - a person's internal, deeply felt sense of being either male or female.

(3) Sexual orientation - being or perceived as being heterosexual, homosexual, or bisexual, or having or being perceived as having a gender-related self-identity, appearance, or behavior whether or not associated with a person's assigned sex at birth.

(4) State employer - any department, office, division, agency, commission, board, officer, or other organizational unit of the legislative, executive, or judicial branch of state government. It shall not include municipalities, parishes, or other political subdivisions.

Proposed law does not:

(1) Require employers to justify neutral practices that may result in a disparate impact against people of a particular sexual orientation, whether actual or perceived.

(2) Require employers to adopt quotas or give preferential treatment to an individual on the basis of actual or perceived sexual orientation.

(3) Preclude the adoption or implementation of reasonable dress or appearance requirements that require employees to adhere to reasonable workplace appearance, grooming, and dress standards not precluded by other provisions of state or federal law; however, requires an employer to allow any employee to appear and dress consistently with the employee's gender identity or gender expression.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

(4) Require employers to provide any benefits to the partner of any employee who is not a legal spouse.

Proposed law provides for enforcement as follows:

(1) Provides that a classified state employee who is discriminated against in violation of proposed law has the right to appeal to the State Civil Service Commission pursuant to Const. Art. X, §12. Present constitution (Art. X, §§8 and12) grants the right of appeal to the State Civil Service Commission to a state employee for discrimination by the employer because of religious or political beliefs, sex, or race and provides for hearing and decisions in such cases. Provides for appeal of commission decisions in such decisions to the First Circuit Court of Appeal.

(2) Provides that a state employee who is discriminated against in violation of proposed law may file suit as authorized by R.S. 23:303.

[Present law (R.S. 23:301 et seq.) provides relative to discrimination in employment (public and private) and includes provisions authorizing a plaintiff who has a cause of action for prohibited discrimination to file a civil suit in a district court seeking compensatory damages, back pay, benefits, reinstatement, or if appropriate, front pay, reasonable attorney fees, and court costs; requires that a plaintiff found to have brought a frivolous claim shall be held liable for reasonable damages incurred as a result of the claim, reasonable attorney fees, and court costs; provides that the plaintiff give written notice of intention to pursue court action to the person who has allegedly discriminated at least 30 days before initiating court action with details of the alleged discrimination and requires both parties to make a good faith effort to resolve the dispute prior to initiating court action; and provides for a prescriptive period of one year to file suit.]

(3) Provides that the La. Commission on Human Rights shall have power to enforce proposed law, including but not limited to power to adjudicate claims of discrimination pursuant to proposed law.

Proposed law provides that all state departments and state employers are authorized and directed to adopt, prior to Oct. 1, 2012, such rules and regulations as may be necessary to comply with the Act.

Effective Oct. 1, 2012, except provision for adoption of implementing rules is effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 51:2231(C); Adds R.S. 42:1251-1254)

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.