

**TITLE 2. PROTECTION OF LABORERS
SUBTITLE A. EMPLOYMENT DISCRIMINATION
CHAPTER 21. EMPLOYMENT DISCRIMINATION
SUBCHAPTER A. GENERAL PROVISIONS**

§ 21.001. Purposes

The general purposes of this chapter are to:

- (1) provide for the execution of the policies of Title VII of the Civil Rights Act of 1964 and its subsequent amendments (42 U.S.C. Section 2000e et seq.);
- (2) identify and create an authority that meets the criteria under 42 U.S.C. Section 2000e-5(c) and 29 U.S.C. Section 633;
- (3) provide for the execution of the policies embodied in Title I of the Americans with Disabilities Act of 1990 and its subsequent amendments (42 U.S.C. Section 12101 et seq.);
- (4) secure for persons in this state, including persons with disabilities, freedom from discrimination in certain employment transactions, in order to protect their personal dignity;
- (5) make available to the state the full productive capacities of persons in this state;
- (6) avoid domestic strife and unrest in this state;
- (7) preserve the public safety, health, and general welfare; and
- (8) promote the interests, rights, and privileges of persons in this state.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, § 9.01(a), eff. Sept. 1, 1995.

§ 21.015. Texas Workforce Commission Civil Rights Division.

The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the Texas Workforce Commission civil rights division. A reference in this chapter to the "commission" means the Texas Workforce Commission civil rights division.

§ 21.002. Definitions

In this chapter:

- (1) "Bona fide occupational qualification" means a qualification:
 - (A) reasonably related to the satisfactory performance of the duties of a job; and
 - (B) for which a factual basis exists for the belief that no person of an excluded group would be able to satisfactorily perform the duties of the job with safety or efficiency.
- (2) Repealed by Acts 2003, 78th Leg., ch. 302, §1, eff. Mar. 1, 2004.
- (3) Repealed by Acts 2003, 78th Leg., ch. 302, §1, eff. Mar. 1, 2004.
- (4) "Complainant" means an individual who brings an action or proceeding under this chapter.
- (5) "Demonstrates" means meets the burdens of production and persuasion.
- (6) "Disability" means, with respect to an individual, a mental or physical impairment that substantially limits at least one major life activity of that individual, a record of such an impairment, or being regarded as having such an impairment. The term does not include:
 - (A) a current condition of addiction to the use of alcohol, a drug, an illegal substance, or a federally controlled substance; or

- (B) a currently communicable disease or infection as defined in Section 81.003, Health and Safety Code, or required to be reported under Section 81.041, Health and Safety Code, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment.
- (7) "Employee" means an individual employed by an employer, including an individual subject to the civil service laws of this state or a political subdivision of this state, except that the term does not include an individual elected to public office in this state or a political subdivision of this state.
- (8) "Employer" means:
- (A) a person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year;
 - (B) an agent of a person described by Paragraph (A);
 - (C) an individual elected to public office in this state or a political subdivision of this state; or
 - (D) a county, municipality, state agency, or state instrumentality, regardless of the number of individuals employed.
- (9) "Employment agency" means a person or an agent of the person who regularly undertakes, with or without compensation, to procure:
- (A) employees for an employer; or
 - (B) the opportunity for employees to work for an employer.
- (10) "Labor organization" means a labor organization engaged in an industry affecting commerce. The term includes:
- (A) an organization, an agency, or an employee representation committee, group, association, or plan engaged in an industry affecting commerce in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, 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 that is subordinate to a national or international labor organization; and
 - (C) an agent of a labor organization.
- (11) "Local commission" means a commission on human relations created by one or more political subdivisions.
- (12) "Political subdivision" means a county or municipality.
- (13) "Respondent" means the person charged in a complaint filed under this chapter and may include an employer, employment agency, labor organization, or joint labor-management committee that controls an apprenticeship or other training or retraining program, including an on-the-job training program.
- (14) "State agency" means:
- (A) a board, commission, committee, council, department, institution, office, or agency in the executive branch of state government having statewide jurisdiction;
 - (B) the supreme court, the court of criminal appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction; or
 - (C) an institution of higher education as defined by Section 61.003, Education Code.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, § 9.02(a), eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 834, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 872, § 10, eff. Sept. 1, 1999.

§ 21.003. General Powers and Duties of Commission

- (a) The commission may:
- (1) promote the creation of local commissions on human rights by cooperating or contracting with individuals or state, local, or other agencies, public or private, including agencies of the federal government and of other states;
 - (2) receive, investigate, seek to conciliate, and pass on complaints alleging violations of this chapter;
 - (3) file civil actions to effectuate the purposes of this chapter;
 - (4) request and, if necessary, compel by subpoena:
 - (A) the attendance of necessary witnesses for examination under oath; and
 - (B) the production, for inspection and copying, of records, documents, and other evidence relevant to the investigation of alleged violations of this chapter;
 - (5) furnish technical assistance requested by a person subject to this chapter to further compliance with this chapter or with a rule or order issued under this chapter;
 - (6) recommend in its annual report legislation or other action to carry out the purposes and policies of this chapter;
 - (7) adopt procedural rules to carry out the purposes and policies of this chapter; and
 - (8) provide educational and outreach activities to individuals who have historically been victims of employment discrimination.
- (b) The commission by rule may authorize a commissioner or one of its staff to exercise the powers stated in Subsection (a)(4) on behalf of the commission.
- (c) The commission biennially shall develop an inventory of equal employment opportunity policies and programs adopted and implemented by the various state agencies.
- (d) The commission at least annually shall make a comprehensive written report to the governor and to the legislature.
- (e) The commission shall conduct a study of the policies and programs of a selected state agency if the commission is directed to conduct the study by legislative resolution or by executive order of the governor.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, § 9.03(a), eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 872, § 11, eff. Sept. 1, 1999.

§ 21.0035. Civilian Workforce Composition

- (a) The commission by rule shall biennially determine:
- (1) the percentage of the statewide civilian workforce composed of:
 - (A) Caucasian Americans;
 - (B) African Americans;
 - (C) Hispanic Americans;
 - (D) females; and
 - (E) males; and
 - (2) the percentage of the statewide civilian workforce of the groups listed in Subdivision (1) according to the following job categories:
 - (A) state agency administration;

- (B) professional;
- (C) technical;
- (D) protective services;
- (E) paraprofessional;
- (F) administrative support;
- (G) skilled craft; and
- (H) service and maintenance.

(b) The commission shall report the percentages of the statewide civilian workforce as determined under this section to the governor and the legislature not later than the fifth day of each regular session of the legislature.

Added by Acts 1999, 76th Leg., ch. 872, § 12, eff. Sept. 1, 1999.

§ 21.004. Criminal Offense of Interference; Penalty

(a) A person commits an offense if the person wilfully resists, prevents, impedes, or interferes with the performance of a duty under or the exercise of a power provided by this chapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.005. Effect on Other State or Federal Laws

This chapter does not relieve a government agency or official of the responsibility to ensure nondiscrimination in employment as required under another provision of the state or federal constitutions or laws.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.006. Conformity With Federal Statutes

If a provision of this chapter is held by the Equal Employment Opportunity Commission to disqualify the commission as a deferral agency or for the receipt of federal funds, the commission shall administer this chapter to qualify for deferral status or the receipt of those funds until the legislature meets in its next session and has an opportunity to amend this chapter.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.007. Privileged Communication; Immunity

An oral or written statement made to a commissioner or an employee of the commission in connection with the discharge of the commissioner's or employee's duties under this chapter may not be the basis for an action for defamation of character.

Added by Acts 1995, 74th Leg., ch. 76, § 9.08(a), eff. Sept. 1, 1995.

§ 21.008. Limited Severability

(a) If any clause, sentence, subsection, section, or other provision of this chapter or the application of such a provision to any person or circumstances is held invalid or unconstitutional, that invalidity shall not affect the other clauses, sentences, subsections, sections, or provisions or applications of this chapter that may be given effect without the invalid clause, sentence, subsection, section, or provision or application and shall not affect, invalidate, impair, or nullify the remainder of this chapter. The effect of the determination of invalidity shall be confined to the clause, sentence, subsection, section, or provision or application so adjudicated to be invalid or unconstitutional, and to that end the provisions of this chapter are declared to be severable.

(b) If any limit on damages prescribed by Section 21.2585 is invalidated by a method other than by legislative means, the amount of civil liability for all past and future noneconomic losses, including past and future pain and suffering, mental anguish and suffering, and any other nonpecuniary damage, is limited to an amount not to exceed \$150,000.

- (c) If a limit on damages prescribed by Section 21.2585 is invalidated by a method other than by legislative means and if the alternative civil liability limits contained in Subsection (b) are also invalidated by a method other than by legislative means, Section 21.2585 is void.

Added by Acts 1995, 74th Leg., ch. 76, § 9.08(a), eff. Sept. 1, 1995.

§ 21.009. Joinder of Commission

- (a) In any civil action in which the validity of a provision of this chapter or Chapter 461, Government Code, a rule adopted under this chapter or Chapter 461, Government Code, or the application of the provision or rule is challenged as void, unconstitutional, or unenforceable, the commission shall be made a party to the proceedings, and, on the motion of the commission, venue of the cause may be transferred to the district courts of Travis County.
- (b) An order restraining the commission or invalidating a provision of this chapter or Chapter 461, Government Code, or a commission rule adopted under this chapter or Chapter 461, Government Code, may not be enforced and may not take effect until the commission has answered and appeared in the action and has exhausted all avenues of appeal and any judgment is final and enforceable.
- (c) Notwithstanding any other provision of state law, including this chapter, only the commission, if a prevailing party, may recover costs and attorney's fees in such a declaratory proceeding under this section.

Added by Acts 1995, 74th Leg., ch. 76, § 9.08(a), eff. Sept. 1, 1995.

§ 21.010. Employment Discrimination Training for State Employees

- (a) Each state agency shall provide to employees of the agency an employment discrimination training program that complies with this section.
- (b) The training program must provide the employee with information regarding the agency's policies and procedures relating to employment discrimination, including employment discrimination involving sexual harassment.
- (c) Each employee of a state agency shall attend the training program required by this section not later than the 30th day after the date the employee is hired by the agency and shall attend supplemental training every two years.
- (d) The commission shall develop materials for use by state agencies in providing employment discrimination training as required by this section.
- (e) Each state agency shall require an employee of the agency who attends a training program required by this section to sign a statement verifying the employee's attendance at the training program. The agency shall file the statement in the employee's personnel file.

Added by Acts 1999, 76th Leg., ch. 872, § 14, eff. Sept. 1, 1999.

SUBCHAPTER B. UNLAWFUL EMPLOYMENT PRACTICES

§ 21.051. Discrimination by Employer

An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:

- (1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or
- (2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.052. Discrimination by Employment Agency

An employment agency commits an unlawful employment practice if the employment agency:

- (1) fails or refuses to refer for employment or discriminates in any other manner against an individual because of race, color, disability, religion, sex, national origin, or age; or
- (2) classifies or refers an individual for employment on the basis of race, color, disability, religion, sex, national origin, or age.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.053. Discrimination by Labor Organization

A labor organization commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the labor organization:

- (1) excludes or expels from membership or discriminates in any other manner against an individual; or
- (2) limits, segregates, or classifies a member or an applicant for membership or classifies or fails or refuses to refer for employment an individual in a manner that would:
 - (A) deprive or tend to deprive an individual of any employment opportunity;
 - (B) limit an employment opportunity or adversely affect in any other manner the status of an employee or of an applicant for employment; or
 - (C) cause or attempt to cause an employer to violate this subchapter.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.054. Admission or Participation in Training Program

- (a) Unless a training or retraining opportunity or program is provided under an affirmative action plan approved under a federal law, rule, or order, an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, or committee discriminates against an individual because of race, color, disability, religion, sex, national origin, or age in admission to or participation in the program.
- (b) The prohibition against discrimination because of age in this section applies only to discrimination because of age against an individual who is at least 40 years of age but younger than 56 years of age.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.055. Retaliation

An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or discriminates against a person who, under this chapter:

- (1) opposes a discriminatory practice;
- (2) makes or files a charge;
- (3) files a complaint; or
- (4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.056. Aiding or Abetting Discrimination

An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency aids, abets, incites, or coerces a person to engage in a discriminatory practice.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.057. Interference With Commission

An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency wilfully interferes with the performance of a duty or the exercise of a power under this chapter or Chapter 461, Government Code, by the commission, the commission's staff, or the commission's representative.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.058. Prevention of Compliance

An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency willfully obstructs or prevents a person from complying with this chapter or a rule adopted or order issued under this chapter.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.059. Discriminatory Notice or Advertisement

(a) An employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, employment agency, or committee prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

- (1) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and
- (2) concerns an employee's status, employment, or admission to or membership or participation in a labor union or training or retraining program.

(b) This section does not apply if disability, religion, sex, national origin, or age is a bona fide occupational qualification.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.060. Violation of Conciliation Agreement

A party to a conciliation agreement made under this chapter commits an unlawful employment practice if the party violates the terms of the conciliation agreement.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.061. Insufficient Evidence of Unlawful Practice

In the absence of other evidence of an unlawful employment practice, evidence of the employment of one person in place of another is not sufficient to establish an unlawful employment practice.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

SUBCHAPTER C. APPLICATION; EXCEPTIONS

§ 21.101. Age Discrimination Limited to Individuals of Certain Age

Except as provided by Section 21.054, the provisions of this chapter referring to discrimination because of age or on the basis of age apply only to discrimination against an individual 40 years of age or older.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.102. Bona Fide Employee Benefit Plan; Production Measurement System

(a) Except as provided by Subsections (b) and (c), an employer does not commit an unlawful employment practice by applying different standards of compensation or different terms, conditions, or privileges of employment under:

- (1) a bona fide seniority system, merit system, or an employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade this chapter; or
- (2) a system that measures earnings by quantity or quality of production.

(b) An employee benefit plan may not excuse a failure to hire on the basis of age. A seniority system or employee benefit plan may not require or permit involuntary retirement on the basis of age except as permitted by Section 21.103.

(c) This section does not apply to standards of compensation or terms, conditions, or privileges of employment that are discriminatory on the basis of race, color, disability, religion, sex, national origin, or age.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.103. Compulsory Retirement Permitted for Certain Employees

This chapter does not prohibit the compulsory retirement of an employee who is:

- (1) at least 65 years of age;
- (2) employed in a bona fide executive or high policy-making position for the two years preceding retirement; and

- (3) entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan or a combination of plans of the employee's employer that equals, in the aggregate, at least \$27,000.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.104. Age Requirement for Peace Officers or Fire Fighters

An employer does not commit an unlawful employment practice by imposing a minimum or maximum age requirement for peace officers or fire fighters.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.105. Discrimination Based on Disability

A provision in this subchapter or Subchapter B referring to discrimination because of disability or on the basis of disability applies only to discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.106. Sex Discrimination

- (a) A provision in this chapter referring to discrimination because of sex or on the basis of sex includes discrimination because of or on the basis of pregnancy, childbirth, or a related medical condition.
- (b) A woman affected by pregnancy, childbirth, or a related medical condition shall be treated for all purposes related to employment, including receipt of a benefit under a fringe benefit program, in the same manner as another individual not affected but similar in the individual's ability or inability to work.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.107. Effect on Abortion Benefits

This chapter does not:

- (1) require an employer to pay for health insurance benefits for abortion unless the life of the mother would be endangered if the fetus were carried to term;
- (2) preclude an employer from providing abortion benefits; or
- (3) affect a bargaining agreement relating to abortion.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.108. Discrimination Based on Religion

A provision in this chapter referring to discrimination because of religion or on the basis of religion applies to discrimination because of or on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.109. Employment by Religious Organization

- (a) A religious corporation, association, society, or educational institution or an educational organization operated, supervised, or controlled in whole or in substantial part by a religious corporation, association, or society does not commit an unlawful employment practice by limiting employment or giving a preference to members of the same religion.
- (b) Subchapter B does not apply to the employment of an individual of a particular religion by a religious corporation, association, or society to perform work connected with the performance of religious activities by the corporation, association, or society.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.110. Discrimination Based on National Origin

A provision in this chapter referring to discrimination because of national origin or on the basis of national origin includes discrimination because of or on the basis of the national origin of an ancestor.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.111. Person Employed Out of State

This chapter does not apply to an employer with respect to the employment of a person outside this state.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.112. Employees at Different Locations

An employer does not commit an unlawful employment practice by applying to employees who work in different locations different standards of compensation or different terms, conditions, or privileges of employment that are not discriminatory on the basis of race, color, disability, religion, sex, national origin, or age.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.113. Imbalance Plan not Required

This chapter does not require a person subject to this chapter to grant preferential treatment to an individual or a group on the basis of race, color, disability, religion, sex, national origin, or age because of an imbalance between:

- (1) the total number or percentage of persons of that individual's or group's race, color, disability, religion, sex, national origin, or age:
 - (A) employed by an employer;
 - (B) referred or classified for employment by an employment agency or labor organization;
 - (C) admitted to membership or classified by a labor organization; or
 - (D) admitted to or employed in an apprenticeship, on-the-job training, or other training or retraining program; and
- (2) the total number or percentage of persons of that race, color, disability, religion, sex, national origin, or age in:
 - (A) a community, this state, a region, or other area; or
 - (B) the available work force in a community, this state, a region, or other area.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.114. Plan to End Discriminatory School Practices

A public school official does not commit an unlawful employment practice by adopting or implementing a plan reasonably designed to end discriminatory school practices.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.115. Business Necessity

An employer does not commit an unlawful employment practice by engaging in a practice that has a discriminatory effect and that would otherwise be prohibited by this chapter if the employer establishes that the practice:

- (1) is not intentionally devised or operated to contravene the prohibitions of this chapter; and
- (2) is justified by business necessity.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.116. Reliance on Commission Interpretation or Opinion

- (a) A person is not liable for an unlawful employment practice performed in good faith and in conformity with and in reliance on a written interpretation or opinion of the commission.
- (b) In a proceeding alleging an unlawful employment practice, the respondent has the burden of pleading and proving the defense provided by this section.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.117. Employment of Family Member

Subchapter B does not apply to the employment of an individual by the individual's parent, spouse, or child.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.118. Statewide Hometown Plan

Subchapter B does not apply to a labor union, firm, association, or individual participating on September 23, 1983, in a statewide hometown plan approved by the United States Department of Labor.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.119. Bona Fide Occupational Qualification

If disability, religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise, performing any of the following practices on the basis of disability, religion, sex, national origin, or age of an employee, member, or other individual is not an unlawful employment practice:

- (1) an employer hiring and employing an employee;
- (2) an employment agency classifying or referring an individual for employment;
- (3) a labor organization classifying its members or classifying or referring an individual for employment; or
- (4) an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program admitting or employing an individual in its program.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.120. Use or Possession of Controlled Substance

(a) An employer does not commit an unlawful employment practice by adopting a policy prohibiting the employment of an individual who currently uses or possesses a controlled substance as defined in Schedules I and II of Section 202, Controlled Substances Act, and their subsequent amendments (21 U.S.C. Section 801 et seq.), other than the use or possession of a drug taken under the supervision of a licensed health care professional or any other use or possession authorized by the Controlled Substances Act or any other federal or state law.

(b) Subsection (a) does not apply to a policy adopted or applied with the intent to discriminate because of race, color, sex, national origin, religion, age, or disability.

Added by Acts 1995, 74th Leg., ch. 76, § 9.04(a), eff. Sept. 1, 1995.

§ 21.121. Work Force Diversity Programs

An employer does not commit an unlawful employment practice by developing and implementing personnel policies that incorporate work force diversity programs.

Added by Acts 1995, 74th Leg., ch. 76, § 9.04(a), eff. Sept. 1, 1995.

§ 21.122. Burden of Proof in Disparate Impact Cases

(a) An unlawful employment practice based on disparate impact is established under this chapter only if:

- (1) a complainant demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, sex, national origin, religion, or disability and the respondent fails to demonstrate that the challenged practice is job-related for the position in question and consistent with business necessity; or
- (2) the complainant makes the demonstration in accordance with federal law as that law existed June 4, 1989, with respect to the concept of alternative employment practices, and the respondent refuses to adopt such an alternative employment practice.

(b) To determine the availability of and burden of proof applicable to a disparate impact case involving age discrimination, the court shall apply the judicial interpretation of the Age Discrimination in Employment Act of 1967 and its subsequent amendments (29 U.S.C. Section 621 et seq.).

- (c) To demonstrate that a particular employment practice causes a disparate impact, the complainant must demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complainant demonstrates to the satisfaction of the court that the elements of a respondent's decision-making process are not capable of separation for analysis, that decision-making process may be analyzed as one employment practice.
- (d) If the respondent demonstrates that a specific practice does not cause a disparate impact, the respondent may not be required to demonstrate that the practice is consistent with business necessity.

Added by Acts 1995, 74th Leg., ch. 76, § 9.05(a), eff. Sept. 1, 1995.

§ 21.123. Scope of Defense

A demonstration that an employment practice is consistent with business necessity may not be used as a defense under this chapter against a complaint of intentional discrimination.

Added by Acts 1995, 74th Leg., ch. 76, § 9.05(a), eff. Sept. 1, 1995.

§ 21.124. Prohibition Against Discriminatory Use of Test Scores

It is an unlawful employment practice for a respondent, in connection with the selection or referral of applicants for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment-related tests on the basis of race, color, sex, national origin, religion, age, or disability.

Added by Acts 1995, 74th Leg., ch. 76, § 9.05(a), eff. Sept. 1, 1995.

§ 21.125. Clarifying Prohibition Against Impermissible Consideration of Race, Color, Sex, National Origin, Religion, Age, or Disability in Employment Practices

- (a) Except as otherwise provided by this chapter, an unlawful employment practice is established when the complainant demonstrates that race, color, sex, national origin, religion, age, or disability was a motivating factor for an employment practice, even if other factors also motivated the practice, unless race, color, sex, national origin, religion, age, or disability is combined with objective job-related factors to attain diversity in the employer's work force.
- (b) In a complaint in which a complainant proves a violation under Subsection (a) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court may grant declaratory relief, injunctive relief except as otherwise provided by this subsection, and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a complaint under Subsection (a), but may not award damages or issue an order requiring an admission, reinstatement, hiring, promotion, or back pay.

Added by Acts 1995, 74th Leg., ch. 76, § 9.05(a), eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1126, § 1, eff. Sept. 1, 1997.

§ 21.126. Coverage of Previously Exempt Employees of the State or Political Subdivision of the State

It is an unlawful employment practice for a person elected to public office in this state or a political subdivision of this state to discriminate because of race, color, sex, national origin, religion, age, or disability against an individual who is an employee or applicant for employment to:

- (1) serve on the elected official's personal staff;
- (2) serve the elected official on a policy-making level; or
- (3) serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

Added by Acts 1995, 74th Leg., ch. 76, § 9.05(a), eff. Sept. 1, 1995.

§ 21.127. Expansion of Rights to Challenge Discriminatory Seniority Systems

With respect to a seniority system adopted for an intentionally discriminatory purpose in violation of this chapter, whether that discriminatory purpose is apparent on the face of the seniority provision, an unlawful employment practice occurs when:

- (1) the seniority system is adopted;
- (2) an individual becomes subject to the system; or
- (3) an individual is injured by the application of the system or a provision of the system.

Added by Acts 1995, 74th Leg., ch. 76, § 9.05(a), eff. Sept. 1, 1995.

§ 21.128. Reasonable Accommodation; Good Faith Effort

- (a) It is an unlawful employment practice for a respondent covered under this chapter to fail or refuse to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability who is an employee or applicant for employment, unless the respondent demonstrates that the accommodation would impose an undue hardship on the operation of the business of the respondent.
- (b) A showing of undue hardship by the respondent is a defense to a complaint of discrimination made by an otherwise qualified individual with a disability. In considering a complaint based on a disability, the commission shall consider the reasonableness of the cost of any necessary workplace accommodation and the availability of alternatives or other appropriate relief.
- (c) In a complaint in which a discriminatory employment practice involves the provision of a reasonable workplace accommodation under this chapter, damages may not be awarded under Subchapter F if the respondent demonstrates good faith efforts, in consultation with the otherwise qualified individual with a disability who has informed the respondent that accommodation is needed, to identify and make a reasonable workplace accommodation that would provide the individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

Added by Acts 1995, 74th Leg., ch. 76, § 9.05(a), eff. Sept. 1, 1995.

§ 21.129. Court-Ordered Remedies, Affirmative, Action Agreements, and Conciliation Agreements Not Affected

This chapter does not affect a court-ordered remedy, affirmative action agreement, or conciliation agreement made in accordance with law.

Added by Acts 1995, 74th Leg., ch. 76, § 9.05(a), eff. Sept. 1, 1995.

SUBCHAPTER D. LOCAL ENFORCEMENT

§ 21.151. Enforcement by Ordinance

A political subdivision may adopt and enforce an order or ordinance that prohibits a practice that is unlawful under this chapter, another state law, or federal law.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.152. Creation of Local Commission

- (a) A political subdivision or two or more political subdivisions acting jointly may create a local commission to:
 - (1) promote the purposes of this chapter; and
 - (2) secure for all individuals in the jurisdiction of each political subdivision freedom from discrimination because of race, color, disability, religion, sex, national origin, or age.
- (b) The political subdivision creating a local commission may appropriate funds for the expenses of the local commission.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.153. General Powers and Duties of Local Commission

- (a) A local commission may:
 - (1) employ an executive director and other employees and agents and set their compensation;
 - (2) cooperate or contract with a person, including an agency of the federal government or of another state or municipality; and
 - (3) accept a public grant or private gift, bequest, or other payment.
- (b) A local commission shall prepare at least annually a report and furnish a copy of the report to the Commission on Human Rights.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.154. Investigatory and Conciliatory Powers of Local Commission

- (a) If the federal government or the Commission on Human Rights refers a complaint alleging a violation of this chapter to a local commission or defers jurisdiction over the subject matter of the complaint to a local commission, the local commission may receive, investigate, conciliate, or rule on the complaint and may file a civil action to carry out the purposes of this chapter.
- (b) The local commission may request, and as necessary, compel by subpoena:

- (1) the attendance of a witness for examination under oath; or
- (2) the production for inspection or copying of a record, document, or other evidence relevant to the investigation of an alleged violation of this chapter.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.155. Referral to Local Commission and Action on Complaints

- (a) The Commission on Human Rights shall refer a complaint concerning discrimination in employment because of race, color, disability, religion, sex, national origin, or age that is filed with that commission to a local commission with the necessary investigatory and conciliatory powers if:
 - (1) the complaint has been referred to the Commission on Human Rights by the federal government; or
 - (2) jurisdiction over the subject matter of the complaint has been deferred to the Commission on Human Rights by the federal government.
- (b) The local commission shall take appropriate action to remedy the practice alleged as discriminatory in the referred complaint.
- (c) If the local commission does not act on the complaint within 60 days or a longer time that is reasonable, the Commission on Human Rights shall reassume responsibility for the complaint and take appropriate action on the complaint.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.156. Referral by Local Commission to State Commission

A local commission may refer a matter under its jurisdiction to the Commission on Human Rights.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

SUBCHAPTER E. ADMINISTRATIVE REVIEW

§ 21.201. Filing of Complaint; Form and Content; Service

- (a) A person claiming to be aggrieved by an unlawful employment practice or the person's agent may file a complaint with the commission.
- (b) The complaint must be in writing and made under oath.
- (c) The complaint must state:
 - (1) that an unlawful employment practice has been committed;
 - (2) the facts on which the complaint is based, including the date, place, and circumstances of the alleged unlawful employment practice; and
 - (3) facts sufficient to enable the commission to identify the respondent.
- (d) The executive director or the executive director's designee shall serve the respondent with a copy of the perfected complaint not later than the 10th day after the date the complaint is filed.
- (e) A complaint may be amended to cure technical defects or omissions, including a failure to verify the complaint or to clarify and amplify an allegation made in the complaint.
- (f) An amendment to a complaint alleging additional facts that constitute unlawful employment practices relating to or arising from the subject matter of the original complaint relates back to the date the complaint was first received by the commission.
- (g) If a perfected complaint is not received by the commission within 180 days of the alleged unlawful employment practice, the commission shall notify the respondent that a complaint has been filed and that the process of perfecting the complaint is in progress.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, § 9.06(a), eff. Sept. 1, 1995.

§ 21.202. Statute of Limitations

(a) A complaint under this subchapter must be filed not later than the 180th day after the date the alleged unlawful employment practice occurred.

(b) The commission shall dismiss an untimely complaint.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1993.

§ 21.203. Alternative Dispute Resolution; Office

(a) The use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter. The settlement of a disputed claim under this chapter that results from the use of traditional or alternative means of dispute resolution is binding on the parties to the claim.

(b) The commission shall establish an office of alternative dispute resolution. At any time after a complaint is received under Section 21.201, at the request of a party or at the direction of the commission the matter may be referred to the office of alternative dispute resolution.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, § 9.06(b), eff. Sept. 1, 1995.

§ 21.204. Investigation by Commission

(a) The executive director or a staff member of the commission designated by the executive director shall investigate a complaint and determine if there is reasonable cause to believe that the respondent engaged in an unlawful employment practice as alleged in the complaint.

(b) If the federal government has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the executive director or the executive director's designee shall promptly investigate the allegations stated in the complaint.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.205. Lack of Reasonable Cause; Dismissal of Complaint

(a) If after investigation the executive director or the executive director's designee determines that reasonable cause does not exist to believe that the respondent engaged in an unlawful employment practice as alleged in a complaint, the executive director or the executive director's designee shall issue a written determination, incorporating the finding that the evidence does not support the complaint and dismissing the complaint.

(b) The executive director or the executive director's designee shall serve a copy of the determination on the complainant, the respondent, and other agencies as required by law.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.206. Determination of Reasonable Cause; Review by Panel

(a) If after investigation the executive director or the executive director's designee determines that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice as alleged in a complaint, the executive director or the executive director's designee shall review with a panel of three commissioners the evidence in the record.

(b) If after the review at least two of the three commissioners determine that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice, the executive director shall:

(1) issue a written determination incorporating the executive director's finding that the evidence supports the complaint; and

(2) serve a copy of the determination on the complainant, the respondent, and other agencies as required by law.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.207. Resolution by Informal Methods

(a) If a determination of reasonable cause is made under Section 21.206, the commission shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.

(b) Without the written consent of the complainant and respondent, the commission, its executive director, or its other officers or employees may not disclose to the public information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, conciliation, or persuasion, regardless of whether there is a determination of reasonable cause.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.208. Notice of Dismissal or Unresolved Complaint

If the commission dismisses a complaint filed under Section 21.201 or does not resolve the complaint before the 181st day after the date the complaint was filed, the commission shall inform the complainant of the dismissal or failure to resolve the complaint in writing by certified mail.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.210. Temporary Injunctive Relief

- (a) If the commission concludes from a preliminary investigation of an unlawful employment practice alleged in a complaint that prompt judicial action is necessary to carry out the purpose of this chapter, the commission shall file a petition seeking appropriate temporary relief against the respondent pending final determination of a proceeding under this chapter.
- (b) The petition shall be filed in a district court in a county in which:
 - (1) the alleged unlawful employment practice that is the subject of the complaint occurred; or
 - (2) the respondent resides.
- (c) A court may not issue temporary injunctive relief unless the commission shows:
 - (1) a substantial likelihood of success on the merits; and
 - (2) irreparable harm to the complainant in the absence of the preliminary relief pending final determination on the merits.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.211. Election of Remedies

A person who has initiated an action in a court of competent jurisdiction or who has an action pending before an administrative agency under other law or an order or ordinance of a political subdivision of this state based on an act that would be an unlawful employment practice under this chapter may not file a complaint under this subchapter for the same grievance.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

SUBCHAPTER F. JUDICIAL ENFORCEMENT

§ 21.251. Civil Action by Commission

- (a) The commission may bring a civil action against a respondent if:
 - (1) the commission determines that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice;
 - (2) the commission's efforts to resolve the discriminatory practice to the satisfaction of the complainant and respondent through conciliation have been unsuccessful; and
 - (3) a majority of the commissioners determines that the civil action may achieve the purposes of this chapter.
- (b) The complainant may intervene in a civil action brought by the commission.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.252. Notice of Complainant's Right to File Civil Action

- (a) A complainant who receives notice under Section 21.208 that the complaint is not dismissed or resolved is entitled to request from the commission a written notice of the complainant's right to file a civil action.
- (b) The complainant must request the notice in writing.
- (c) The executive director may issue the notice.

- (d) Failure to issue the notice of a complainant's right to file a civil action does not affect the complainant's right under this subchapter to bring a civil action against the respondent.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.253. Expedited Notice of Complainant's Right to File Civil Action

- (a) On receipt of a written request by a complainant, the commission shall issue before the 181st day after the date the complaint was filed a notice of the right to file a civil action if:
- (1) the complainant alleges an unlawful employment practice based on the complainant's status as an individual with a life-threatening illness, as confirmed in writing by a physician licensed to practice medicine in this state; or
 - (2) the executive director certifies that administrative processing of the complaint cannot be completed before the 181st day after the date the complaint was filed.
- (b) The commission shall issue the expedited notice by certified mail not later than the fifth business day after the date the commission receives the written request.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.254. Civil Action by Complainant

Within 60 days after the date a notice of the right to file a civil action is received, the complainant may bring a civil action against the respondent.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.255. Commission's Intervention in Civil Action by Complainant

After receipt of a timely application, a court may permit the commission to intervene in a civil action filed under Section 21.254 if:

- (1) the commission certifies that the case is of general public importance; and
- (2) before commencement of the action the commission issued a determination of reasonable cause to believe that this chapter was violated.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.256. Statute of Limitations

A civil action may not be brought under this subchapter later than the second anniversary of the date the complaint relating to the action is filed.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, § 9.07(a), eff. Sept. 1, 1995.

§ 21.257. Assignment to Early Hearing

The court shall set an action brought under this subchapter for hearing at the earliest practicable date to expedite the action.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.258. Injunction; Equitable Relief

- (a) On finding that a respondent engaged in an unlawful employment practice as alleged in a complaint, a court may:
- (1) prohibit by injunction the respondent from engaging in an unlawful employment practice; and
 - (2) order additional equitable relief as may be appropriate.
- (b) Additional equitable relief may include:
- (1) hiring or reinstating with or without back pay;
 - (2) upgrading an employee with or without pay;
 - (3) admitting to or restoring union membership;

- (4) admitting to or participating in a guidance program, apprenticeship, or on-the-job training or other training or retraining program, using objective job-related criteria in admitting an individual to a program;
 - (5) reporting on the manner of compliance with the terms of a final order issued under this chapter; and
 - (6) paying court costs.
- (c) Liability under a back pay award may not accrue for a date more than two years before the date a complaint is filed with the commission. Interim earnings, workers' compensation benefits, and unemployment compensation benefits received operate to reduce the back pay otherwise allowable.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.2585. Compensatory and Punitive Damages

- (a) On finding that a respondent engaged in an unlawful intentional employment practice as alleged in a complaint, a court may, as provided by this section, award:
- (1) compensatory damages; and
 - (2) punitive damages.
- (b) A complainant may recover punitive damages against a respondent, other than a respondent that is a governmental entity, if the complainant demonstrates that the respondent engaged in a discriminatory practice with malice or with reckless indifference to the state-protected rights of an aggrieved individual.
- (c) Compensatory damages awarded under this section may not include:
- (1) back pay;
 - (2) interest on back pay; or
 - (3) other relief authorized under Section 21.258(b).
- (d) The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses and the amount of punitive damages awarded under this section may not exceed, for each complainant:
- (1) \$50,000 in the case of a respondent that has fewer than 101 employees;
 - (2) \$100,000 in the case of a respondent that has more than 100 and fewer than 201 employees;
 - (3) \$200,000 in the case of a respondent that has more than 200 and fewer than 501 employees; and
 - (4) \$300,000 in the case of a respondent that has more than 500 employees.
- (e) For the purposes of Subsection (d), in determining the number of employees of a respondent, the requisite number of employees must be employed by the respondent for each of 20 or more calendar weeks in the current or preceding calendar year.

Added by Acts 1995, 74th Leg., ch. 76, § 9.07(b), eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 872, § 13, eff. Sept. 1, 1999.

§ 21.259. Attorney's Fees; Costs

- (a) In a proceeding under this chapter, a court may allow the prevailing party, other than the commission, a reasonable attorney's fee as part of the costs.
- (b) The state, a state agency, or a political subdivision is liable for costs, including attorney's fees, to the same extent as a private person.
- (c) In awarding costs and attorney's fees in an action or a proceeding under this chapter, the court, in its discretion, may include reasonable expert fees.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, § 9.07(c), eff. Sept. 1, 1995.

§ 21.260. Relief for Disabled Employee or Applicant

If the affected employee or applicant for employment has a disability, a court shall consider the undue hardship defense, including the reasonableness of the cost of necessary workplace accommodation and the availability of alternatives or other appropriate relief.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.261. Compelled Compliance

If an employer, employment agency, or labor organization fails to comply with a court order issued under this subchapter, a party to the action or the commission, on the written request of a person aggrieved by the failure, may commence proceedings to compel compliance with the order.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.262. Trial De Novo

(a) A judicial proceeding under this chapter is by trial de novo.

(b) A commission finding, recommendation, determination, or other action is not binding on a court.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

SUBCHAPTER G. RECORDS

§ 21.301. Recordkeeping; Reports

A person under investigation in connection with a charge filed under this chapter and who is subject to this chapter shall:

- (1) make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed;
- (2) preserve the records for the period required by commission rule or court order; and
- (3) make reports from the records as prescribed by commission rule or court order as reasonable, necessary, or appropriate for the enforcement of this chapter or a rule or order issued under this chapter.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.302. Records; Training Program

The commission by rule shall require that a person subject to this chapter who controls an apprenticeship, on-the-job training, or other training or retraining program:

- (1) keep all records reasonably necessary to carry out the purposes of this chapter, including a list of applicants for participation in the program and a record of the chronological order in which applications for the program were received; and
- (2) furnish to the commission on request a detailed description of the manner in which individuals are selected to participate in the program.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.303. Conformity to Federal Law

A report or record required by the commission under this subchapter must conform to a similar record or report required under 42 U.S.C. Section 2000e-8(c).

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.304. Confidentiality of Records

An officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except as necessary to the conduct of a proceeding under this chapter.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.305. Access to Commission Records

(a) The commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint.

(b) Unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records:

- (1) after the final action of the commission; or
- 2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

§ 21.306. Subpoena of Record or Report

(a) If a person fails to permit access, examination, photographing, or copying or fails to make, keep, or preserve a record or make a report in accordance with this subchapter, the commission may issue a subpoena requiring compliance.

(b) On a failure to comply with a subpoena of the commission, the commission shall apply for an order directing compliance to the district court of the county in which the person is found, resides, or transacts business.

Acts 1993, 73rd Leg., ch. 269, § 1, eff. Sept. 1, 1993.

SUBCHAPTER H. DISCRIMINATORY USE OF GENETIC INFORMATION

§ 21.401. Definitions

In this subchapter:

(1) "DNA" means deoxyribonucleic acid.

(2) "Family health history" means a history taken by a physician or genetic professional to ascertain genetic or medical information about an individual's family.

(3) "Genetic characteristic" means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that:

(A) is scientifically or medically believed to:

- (i) predispose an individual to a disease, disorder, or syndrome; or
- (ii) be associated with a statistically significant increased risk of development of a disease, disorder, or syndrome; and

(B) may or may not be associated with any symptom of an ongoing disease, disorder, or syndrome affecting an individual on the date that genetic information is obtained regarding that individual.

(4) "Genetic information" means information that is:

(A) obtained from or based on a scientific or medical determination of the presence or absence in an individual of a genetic characteristic; or

(B) derived from the results of a genetic test performed on, or a family health history obtained from, that individual.

(5) "Genetic test" means a presymptomatic laboratory test of an individual's genes, gene products, or chromosomes to identify by analysis of the individual's DNA, RNA, proteins, or chromosomes genetic variations, compositions, or alterations that are associated with a statistically increased risk to develop a clinically recognized disease, disorder, or syndrome or to be a carrier of such a disease, disorder, or syndrome. The term does not include a blood test, cholesterol test, urine test, or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition, or alteration in a specific individual.

(6) "RNA" means ribonucleic acid.

Added by Acts 1997, 75th Leg., ch. 1215, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1215, § 1, eff. Sept. 1, 2001.

§ 21.402. Discriminatory Use of Genetic Information Prohibited

- (a) An employer commits an unlawful employment practice if the employer fails or refuses to hire, discharges, or otherwise discriminates against an individual with respect to compensation or the terms, conditions, or privileges of employment:
 - (1) on the basis of genetic information concerning the individual; or
 - (2) because of the refusal of the individual to submit to a genetic test.
- (b) A labor organization commits an unlawful employment practice if the labor organization excludes or expels from membership or otherwise discriminates against an individual:
 - (1) on the basis of genetic information concerning the individual; or
 - (2) because of the refusal of the individual to submit to a genetic test.
- (c) An employment agency commits an unlawful employment practice if the employment agency classifies or refers for employment, fails or refuses to refer for employment, or otherwise discriminates against an individual:
 - (1) on the basis of genetic information concerning the individual; or
 - (2) because of the refusal of the individual to submit to a genetic test.
- (d) An employer, labor organization, or employment agency commits an unlawful employment practice if the employer, labor organization, or employment agency limits, segregates, or classifies an employee, member, or applicant for employment or membership in a way that would deprive or tend to deprive the employee, member, or applicant of employment opportunities or otherwise adversely affect the status of the employee, member, or applicant:
 - (1) on the basis of genetic information concerning the employee, member, or applicant; or
 - (2) because of the refusal of the employee, member, or applicant to submit to a genetic test.

Added by Acts 1997, 75th Leg., ch. 1215, § 1, eff. Sept. 1, 1997.

§ 21.403. Information Confidential; Exceptions

- (a) Except as provided by Subsections (c) and (d), genetic information is confidential and privileged regardless of the source of the information. A person who holds that information may not disclose or be compelled to disclose, by subpoena or otherwise, genetic information about an individual unless the disclosure is specifically authorized by the individual as provided by Subsection (b). This subsection applies to a redisclosure of genetic information by a secondary recipient of the information after disclosure of the information by an initial recipient.
- (b) An individual or the legal representative of an individual may authorize the disclosure of genetic information relating to that individual through a written authorization that includes:
 - (1) a description of the information to be disclosed;
 - (2) the name of the person to whom the disclosure is made; and
 - (3) the purpose for the disclosure.
- (c) Subject to Subchapter G, Chapter 411, Government Code, genetic information relating to an individual may be disclosed without the authorization required under Subsection (b) if the disclosure is:
 - (1) authorized under a state or federal criminal law relating to:
 - (A) the identification of individuals; or
 - (B) a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child-abuse team;
 - (2) required under a specific order of a state or federal court;
 - (3) authorized under a state or federal law to establish paternity;

- (4) made to furnish genetic information relating to a decedent to the blood relatives of the decedent for the purpose of medical diagnosis; or
 - (5) made to identify a decedent.
- (d) In addition to the exceptions under Subsection (c), genetic information relating to an individual may be disclosed without the authorization required under Subsection (b) if:
- (1) the disclosure is for information from a research study in which the procedure for obtaining informed written consent and use of the information is governed by national standards for protecting participants involved in research projects, including guidelines issued under 21 C.F.R. Part 50 and 45 C.F.R. Part 46;
 - (2) the information does not identify a particular individual; and
 - (3) the information is provided to the Texas Department of Health to comply with Chapter 87, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1215, § 1, eff. Sept. 1, 1997.

§ 21.404. Right to Know Test Results

An individual who submits to a genetic test has the right to know the results of that test. On the written request of the individual, the entity that performed the test shall disclose the test results to the individual or to a physician designated by the individual.

Added by Acts 1997, 75th Leg., ch. 1215, § 1, eff. Sept. 1, 1997.

§ 21.405. Retention of Sample

A sample of genetic material taken for a genetic test from an individual shall be destroyed promptly after the purpose for which the sample was obtained is accomplished unless:

- (1) the sample is retained under a court order;
- (2) the individual tested authorizes retention of the sample for purposes of medical treatment or scientific research;
- (3) for a sample obtained for research that is cleared by an institutional review board, the sample is retained under the requirements that the institutional review board imposes on a specific research project or as authorized by the research participant with institutional review board approval under federal law; or
- (4) the sample was obtained for a screening test established by the Texas Department of Health and performed by that department or by a laboratory approved by that department under Section 33.011, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1215, § 1, eff. Sept. 1, 1997.

SUBCHAPTER I. PERSONNEL POLICIES AND PROCEDURES

§ 21.451. Definition

In this subchapter, "state agency" does not include a public junior college as defined by Section 61.003, Education Code.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.452. Development and Implementation of Personnel Policies and Procedures

Each state agency shall develop and implement personnel policies and procedures that comply with this chapter, including personnel selection procedures that incorporate a workforce diversity program.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.453. Review

- (a) The commission shall review the personnel policies and procedures of each state agency on a six-year cycle to determine whether the policies and procedures comply with this chapter.
- (b) The commission by rule shall establish a system to stagger the reviews of state agency personnel policies and procedures required under this section.
- (c) If the commission determines that the personnel policies and procedures of a state agency do not comply with this chapter, the commission shall recommend appropriate revisions to the personnel policies and procedures.

(d) The state agency shall take these recommendations into consideration and determine whether to revise the personnel policies and procedures.

(e) The review of a state agency's personnel policies and procedures shall be completed within one year.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.454. Compliance Report

Not later than 60 days after the commission completes the review of a state agency's personnel policies and procedures as required by Section 21.453 and provides its review and any recommendations to the agency, the agency shall submit to the commission, the governor, the legislature, and the Legislative Budget Board a report detailing:

(1) whether the agency implemented the recommendations of the commission; and

(2) if the agency did not implement all of the commission's recommendations, the reasons for rejecting those recommendations.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.455. Reimbursement; Audit

(a) A state agency shall reimburse the commission through interagency contract for the reasonable and necessary expenses incurred by the commission in conducting a review under Section 21.453. The actual expenses incurred by the commission shall be determined by the state auditor's office.

(b) The commission shall maintain a record of the time expended and the actual costs and travel expenses incurred by the commission in conducting a review under Section 21.453.

(c) The amount of reimbursement paid by a state agency under Subsection (a) and the record maintained by the commission under Subsection (b) is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.456. Failure to Comply With Subchapter; Administrative Penalty

(a) If the commission determines that a state agency has failed to comply with this subchapter, the commission shall certify that determination to the comptroller.

(b) On receipt of a certification by the commission under Subsection (a), the comptroller shall notify the state agency that is the subject of the certification that funds appropriated to the agency are subject to a reduction in the amount of \$5,000 as provided by this section unless, not later than the 30th day after the date the agency receives notice from the comptroller under this subsection, the agency submits to the comptroller proof that the agency has complied with this subchapter. If the agency fails to submit to the comptroller the proof required by this subsection, the comptroller shall:

(1) if the state agency failed to develop or implement personnel policies and procedures as required by Section 21.452:

(A) reduce the funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter by the amount of \$5,000; or

(B) if all funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter have been distributed to the agency, reduce the funds appropriated to the agency during the next fiscal year by the amount of \$5,000; or

(2) if the state agency failed to reimburse the commission as required by Section 21.455:

(A) transfer the amount of the reimbursement from the agency to the commission's appropriations and reduce the funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter by an amount that equals the difference between the amount of the reimbursement and \$5,000; or

(B) if all funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter have been distributed to the agency:

- (i) during the next fiscal year, transfer the amount of the reimbursement from the funds appropriated to the agency for that fiscal year to the commission's appropriations; and
- (ii) reduce the funds appropriated to the agency during the next fiscal year by an amount that equals the difference between the amount of the reimbursement and \$5,000.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

SUBCHAPTER J. HIRING PRACTICES

§ 21.501. Workforce Analysis

Each state fiscal biennium, each state agency shall analyze its current workforce and compare the number of African Americans, Hispanic Americans, and females employed by the agency in each job category to the available African Americans, Hispanic Americans, and females in the statewide civilian workforce to determine the percentage of exclusion or underutilization by each job category.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.502. Recruitment Plan

Based upon a workforce availability analysis under Section 21.501 that demonstrates the exclusion or underutilization of African Americans, Hispanic Americans, and females, or court-ordered remedies, or supervised conciliations or settlement agreements, each state agency, other than a public junior college as defined by Section 61.003, Education Code, shall develop and implement a plan to recruit qualified African Americans, Hispanic Americans, and females. The plan must comply with this chapter. The commission shall monitor state agencies to determine compliance with this section.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.503. Effect on Remedies Under Other Laws

This subchapter does not affect a remedy, agreement, settlement, or affirmative action plan that has been ordered or approved by a court or that has been adopted in accordance with other law.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.504. Annual Report

Not later than November 1 of each calendar year, each state agency shall report to the commission the total number of African Americans, Hispanic Americans, females, and other persons hired for each job category by the agency during the preceding state fiscal year. The commission shall compile this information and submit a report based on the information to the governor and the Legislative Budget Board not later than January 1 of the subsequent calendar year.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

SUBCHAPTER K. EQUAL EMPLOYMENT OPPORTUNITY REPORTS

§ 21.551. Definition

In this subchapter, "racial and ethnic group" means Caucasian American, African American, or Hispanic American.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.552. Equal Employment Opportunity Report Required

- (a) Not later than the seventh day of each calendar year, excluding legal holidays and weekends, each state agency shall report equal employment opportunity information for the preceding calendar year to the commission as required by this subchapter. The report must be made in the form prescribed by the commission and include information compiled on a monthly basis.
- (b) Each year the commission shall compile equal employment opportunity information reported to the commission by a state agency. The information must include:
 - (1) the total number of employees of the agency and the total number of new employees hired since the date of the last report made by the agency;
 - (2) the total number of employees of the agency listed by racial and ethnic group and the percentage of the total number of agency employees for each racial and ethnic group, including a distinction for those categories

between the total number of employees and the total number of employees hired since the date of the last report made by the agency;

- (3) the total number of male employees and the total number of female employees of the agency, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the agency;
- (4) the total number of male employees and the total number of female employees of the agency for each racial and ethnic group, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the agency;
- (5) the total number of disabled employees of the agency, including a distinction for that category between the total number of employees and the total number of employees hired since the date of the last report made by the agency; and
- (6) the total number of employees of the agency listed by job classification and the total number of employees for each sex, racial and ethnic group, and disability listed by job classification, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the agency.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.553. Cooperation With Comptroller and Uniform Statewide Accounting System; Report to Legislature

- (a) The commission shall compile the information reported to the commission under this subchapter with the assistance of the comptroller and the uniform statewide accounting system.
- (b) The commission shall conduct an analysis of the information reported to the commission under this subchapter and report the results of that analysis to the legislature not later than the fifth day of each regular session of the legislature. The report required under this subsection must be written in plain language.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.554. Form

Not later than December 15 of each year, the commission shall notify each state agency of the form to be used to make a report under this subchapter for the following year.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.555. Failure to File Required Report; Administrative Penalty

- (a) If the commission determines that a state agency has failed to file a report required under this subchapter, the commission shall certify that determination to the comptroller.
- (b) On receipt of a certification by the commission under Subsection (a), the comptroller shall notify the state agency that is the subject of the certification that funds appropriated to the agency are subject to a reduction in the amount of \$2,000 as provided by this section unless, not later than the 30th day after the date the agency receives notice from the comptroller under this subsection, the agency submits to the comptroller proof that the agency filed the report required under this subchapter. If the agency fails to submit to the comptroller the proof required by this subsection, the comptroller shall:
 - (1) reduce the funds appropriated to the agency for the fiscal year in which the agency fails to file the report required under this subchapter by the amount of \$2,000; or
 - (2) if all funds appropriated to the agency for the fiscal year in which the agency fails to file the report required under this subchapter have been distributed to the agency, reduce the funds appropriated to the agency during the next fiscal year by the amount of \$2,000.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.

§ 21.556. Required Compliance Training for State Agencies

- (a) A state agency that receives three or more complaints of employment discrimination in a fiscal year, other than complaints determined to be without merit, shall provide a comprehensive equal employment opportunity training program to appropriate supervisory and managerial employees.

- (b) The training may be provided by the commission or by another entity or person approved by the commission, including a state agency.
- (c) The state agency shall provide documentation of the training to the commission if the training is not conducted by the commission. The documentation shall include the dates the training was provided, the names of the persons attending the training, an agenda for the training program, and the name of the entity or person providing the training.
- (d) The commission by rule shall adopt minimum standards for a training program described by Subsection (a) and shall approve an entity or person to provide a training program if the program complies with the minimum standards adopted by the commission under this subsection.
- (e) An agency required to participate in a program under this section shall pay the cost of attending the program or shall reimburse the commission or state agency providing the program through interagency contract. The cost of providing the program shall be determined and approved by the commission or state agency in cooperation with the state auditor's office.

Added by Acts 1999, 76th Leg., ch. 872, § 15, eff. Sept. 1, 1999.