
OLR Bill Analysis

HB 6599 (as amended by House "A")*

AN ACT CONCERNING DISCRIMINATION.

SUMMARY:

This bill explicitly prohibits discrimination on the basis of gender identity or expression in employment, public accommodations, the sale or rental of housing, the granting of credit, and other laws over which the Commission on Human Rights and Opportunities (CHRO) has jurisdiction. It explicitly authorizes people to file discrimination complaints with CHRO, which enforces antidiscrimination laws in these areas. CHRO issued a declaratory ruling in 2000 that the prohibition against sex discrimination in the laws over which CHRO has jurisdiction covers discrimination on the basis of gender identity or expression (see BACKGROUND – Declaratory Ruling).

The bill defines “gender identity or expression” as a person’s gender-related identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth. The definition specifies that gender-related identity can be shown by providing evidence in various ways that include (1) medical history, (2) care or treatment of the gender-related identity, (3) consistent and uniform assertion of such an identity, or (4) any other evidence that the identity is sincerely held, part of a person’s core identity, or that the person is not asserting such an identity for an improper purpose.

The bill gives CHRO jurisdiction to investigate complaints of discrimination on the basis of gender identity or expression against students by public schools (see BACKGROUND – Related Cases). It also allows CHRO to investigate this type of discrimination at private golf country clubs.

The bill also prohibits discrimination on the basis of gender identity

or expression in various other contexts beyond the scope of CHRO's declaratory ruling, including urban homesteading, public schools, boards of education, public libraries, electric suppliers, telephone or telecommunication providers, the employment codes that tribes must adopt to receive state services or funds, and discriminatory boycotts.

The bill specifies that its provisions prohibiting discrimination on the basis of gender identity or expression do not apply to religious corporations, entities, associations, educational institutions, or societies regarding (1) employment of people to perform work for them or (2) matters of discipline; faith; internal organization; or ecclesiastical rules, customs, or laws that they have established.

The bill makes it a class A misdemeanor to deprive someone of rights, privileges, or immunities secured or protected by the state or federal laws or constitutions because of the person's gender identity or expression. This crime is punishable by imprisonment for up to one year, a fine of up to \$ 2,000, or both. The bill makes it a class D felony for anyone to do so based on gender identity or expression while wearing a mask, hood, or other device designed to conceal his or her identity. A class D felony is punishable by imprisonment for up to five years, a fine of up to \$ 5,000, or both.

*House Amendment "A" adds to the definition of "gender identity or expression" the methods by which people can demonstrate their gender-related identity.

EFFECTIVE DATE: October 1, 2011

DISCRIMINATION IN EMPLOYMENT, PUBLIC ACCOMMODATIONS, HOUSING, CREDIT, AND OTHER AREAS WITHIN SCOPE OF CHRO'S DECLARATORY RULING

CHRO's 2000 declaratory ruling concluded CHRO has jurisdiction to investigate claims of discrimination on the basis of gender identity or expression in employment, public accommodations, the sale or rental of property, and the extension of credit because they are covered under the prohibition against sex discrimination. The bill explicitly authorizes CHRO to investigate complaints of discrimination on the

basis of gender identity or expression in these areas, including certain provisions beyond those specifically challenged in the petition leading to the declaratory ruling. The bill applies the same rules, procedures, and remedies that apply to other types of discrimination complaints, including the right to file a lawsuit if the investigation is not completed within a certain time.

§ 24 — Employment

The bill prohibits an employer or employer's agent, except in the case of a *bona fide* occupational qualification or need, from refusing to hire or employ someone; barring or discharging someone from employment; or discriminating against someone in pay or in employment terms, conditions, or privileges based on the individual's gender identity or expression. This prohibition applies to any employer, public or private, that employs three or more people. It applies to all employees except those employed by their parents, spouse, or children, or employed in domestic service.

The bill also prohibits the following kinds of employment discrimination based on gender identity or expression:

1. employment agencies failing or refusing to classify properly or refer for employment or otherwise discriminating against someone except in the case of a *bona fide* occupational qualification or need;
2. labor organizations excluding someone from full membership rights, expelling a member, or discriminating in any way against a member, employer, or employee, unless the action is due to a *bona fide* occupational qualification;
3. employers, employment agencies, labor organizations, or anyone else taking adverse action against someone because he or she opposed a discriminatory employment practice, brought a complaint, or testified or assisted someone else in a complaint;
4. any person aiding, abetting, inciting, compelling, or coercing someone to commit a discriminatory employment practice or

attempting to do so;

5. employers, employment agencies, labor organizations, or anyone else advertising employment opportunities in a way that restricts employment and thus discriminates, except for a *bona fide* occupational qualification or need; and
6. employers, employment agencies, labor organizations, or any of their agents harassing an employee, person seeking employment, or member.

§ 25 — Public Accommodations

The bill prohibits anyone from denying someone, on the basis of gender identity or expression, full and equal accommodations in any public establishment (i.e., one that caters or offers its services, facilities, or goods to the general public), including any commercial property or building lot on which a commercial building will be built or offered for sale or rent, subject to lawful conditions and limitations that apply alike to all people. It further prohibits discriminating, segregating, or separating people on the basis of gender identity or expression. Violators are subject to a fine of between \$25 and \$100, up to 30 days' imprisonment, or both.

§§ 26-27 — Housing

The bill prohibits the following kinds of housing discrimination based on gender identity or expression:

1. refusing to sell or rent after a person makes a *bona fide* offer, or refusing to negotiate for the sale or rental of a dwelling, or otherwise denying or making a dwelling unavailable;
2. discriminating in the terms, conditions, or privileges of a dwelling's sale or rental, or in the provision of services or facilities in connection with the sale or rental;
3. making, printing, publishing, or causing this to be done, any notice, statement, or advertisement concerning the sale or rental of a dwelling that indicates a preference, limitation, or

discrimination, or an intention to make such a preference, limitation, or discrimination;

4. falsely representing to someone that a dwelling is not available for inspection, sale, or rental (this includes restricting or attempting to restrict someone's choices to buy or rent a dwelling (a) to an area substantially populated, even if less than a majority, by other persons of the same gender identity or expression, (b) by a person authorized to offer for sale or rent another dwelling which meets the buyer's or renter's expressed housing criteria, and (c) that other dwelling is in an area not substantially populated by people of the same gender identity or expression as the buyer or renter);
5. for profit, inducing or attempting to induce someone to sell or rent a dwelling by representing that people of a particular gender identity or expression are moving, or may move, into the neighborhood;
6. any person or entity engaging in residential real estate transactions discriminating in (a) making a transaction available or (b) its terms or conditions;
7. denying someone access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminating in the terms or conditions of such access, membership, or participation; and
8. coercing, intimidating, threatening, or interfering with someone in the exercise or enjoyment of, or on account of the person having exercised, enjoyed, or aided or encouraged someone else in the exercise or enjoyment of, these rights.

Violators are subject to a fine of between \$25 and \$100, up to 30 days' imprisonment, or both.

The law's prohibitions on housing discrimination do not apply to

either of the following, if the owner maintains his or her residence there: (1) renting a room or rooms in a single-family dwelling unit or (2) a unit in a two-family dwelling.

The bill also makes a conforming change by specifying that it does not prohibit a property appraiser from considering factors other than gender identity or expression or other specified impermissible factors.

§ 28 — Credit

The bill prohibits a creditor from discriminating against any adult in a credit transaction on the basis of gender identity or expression.

Other Areas Subject to CHRO's Jurisdiction

CHRO's declaratory ruling also determined that CHRO has jurisdiction to investigate claims of discrimination based on gender identity or expression under other laws over which CHRO has jurisdiction. The bill gives CHRO the explicit authority to investigate such complaints under these other laws. Specifically, it:

1. subjects any professional or trade association, board, or other organization whose profession, trade, or occupation requires a state license, to a fine of \$100 to \$500 for denying a person membership because of his or her gender identity or expression (§ 23);
2. requires state officials and supervisory personnel to recruit, appoint, assign, train, evaluate, and promote state personnel on the basis of merit and qualifications, without regard to gender identity or expression (§ 29);
3. requires state agency services to be performed without discrimination based on gender identity or expression (§ 30);
4. requires any state agency that provides employment referrals or placement services to public or private employers to reject any job request that indicates an intention to exclude anyone based on his or her gender identity or expression (§ 31);

5. prohibits state departments, boards, or agencies from granting, denying, or revoking a person's license or charter on the grounds of gender identity or expression (§ 32);
6. requires all educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state agencies, or in which state agencies participate, to be open to all qualified persons, without regard to gender identity or expression (§ 33); and
7. prohibits gender identity or expression from being considered as limiting factors in state-administered programs involving the distribution of funds to qualify applicants for benefits authorized by law, and prohibits the state from giving financial assistance to public agencies, private institutions, or other organizations which discriminate on this basis (§ 34).

§§ 8, 9 & 22 — DISCRIMINATION AGAINST STUDENTS IN PUBLIC SCHOOLS

The bill requires public schools to be open to all children and to give them an equal opportunity to participate in the activities, programs, and courses of study the schools offer without discrimination on account of gender identity or expression. It also prohibits boards of education from discriminating on the basis of gender identity or expression in employing or paying teachers.

Under current law, it is a discriminatory practice for anyone to deprive another person of any rights, privileges, or immunities, secured or protected by Connecticut or federal laws or constitutions, or cause such a deprivation, because of religion, national origin, alienage, color, race, sex, sexual orientation, blindness, or physical disability. The bill adds gender identity or expression to this list. By doing so, and by prohibiting discrimination against students on the basis of gender identity or expression in public schools with respect to activities, programs, and courses of study, the bill authorizes CHRO to investigate claims of discrimination against students on the basis of gender identity or expression by public schools (see BACKGROUND –

Related Cases).

§§ 3-7, 10-19, & 35 — DISCRIMINATION IN OTHER CONTEXTS

The bill also prohibits discrimination on the basis of gender identity or expression in various other contexts beyond the scope of CHRO's declaratory ruling. Specifically, it:

1. requires every contract to which the state or any political subdivision of the state, other than a municipality, is a party to require the contractor to (a) agree that, in performing the contract, he or she will not unlawfully discriminate or permit discrimination on the grounds of gender identity or expression and (b) agree to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated without regard to their gender identity or expression (§ 3);
2. requires that contracts transferring urban homesteading property provide, among other things, that in the sale or rental of such property, no person be discriminated against on the basis of gender identity or expression (§ 4);
3. requires the Connecticut Housing Finance Authority to require that occupancy of all housing it finances or otherwise assists be open to all people regardless of gender identity or expression and that the contractors and subcontractors engaged in building or rehabilitating such housing take affirmative action to provide equal opportunity for employment without discrimination as to gender identity or expression (§ 5);
4. requires transfers of urban rehabilitation property by legislative bodies to be made through a contract that provides, among other things, that in the sale or rental of such property, people may not be discriminated against because of their gender identity or expression (§ 6);
5. requires municipalities to take all necessary steps to ensure that occupancy of all housing financed or otherwise assisted under

- the Municipal Housing Finance Assistance Act be open to all people regardless of gender identity or expression (§ 7);
6. requires, within the limits of authorized expenditures, that the policies of the state system of higher education be consistent with the goal of ensuring that no qualified person is denied the opportunity for higher education because of gender identity or expression (§ 10);
 7. conditions a public library's state grant eligibility on the library providing equal access to library services and not discriminating on the basis of gender identity or expression, among other requirements (§ 11);
 8. prohibits electric suppliers from refusing to provide electric generation services, or refusing to negotiate to provide such services, to any customer because of gender identity or expression (§ 12);
 9. prohibits telephone companies or certified telecommunications providers from refusing to provide telecommunications services, or refusing to negotiate to provide such services, to any customer because of gender identity or expression (§ 13);
 10. prohibits anyone from discriminating on the basis of gender identity or expression in carrying out any civil preparedness or federal major disaster or emergency assistance function (§ 14);
 11. requires the labor commissioner to formulate apprenticeship work training standards and a full craft experience in any skill, in order to provide equal opportunities to all, without regard to gender identity or expression (§ 15);
 12. requires that the employment rights code tribes must adopt in order to receive certain state services or funds to include a provision that a commercial enterprise subject to tribal jurisdiction must not, except for a *bona fide* occupational qualification or need, refuse to hire or employ, or bar or

discharge from employment, any individual or discriminate against him or her in compensation or in employment terms, conditions, or privileges because of the individual's gender identity or expression (§ 16);

13. requires the Lower Fairfield County Conference or Exhibition Authority to adopt procedures for contractors and subcontractors engaged in building the Stamford conference or exhibition facility project that require them to take affirmative action to provide equal opportunity for employment without discrimination based on gender identity or expression (§ 17);
14. requires applicants for financial assistance from a regional corporation to certify that they will not discriminate against any employee or job applicant because of gender identity or expression (a regional corporation provides financial assistance to businesses for projects that demonstrate a substantial likelihood of providing increases in net new permanent jobs or retaining jobs in businesses that need such financial assistance to remain viable) (§ 18);
15. prohibits auto insurance companies from declining, canceling, or refusing to renew auto insurance policies solely on the basis of gender identity or expression, unless the company is part of an insurer group and another member of the group would not decline a similar application on this basis (§ 19); and
16. prohibits golf country clubs from denying membership on the basis of gender identity or expression and requires that all classes of membership be available without regard to gender identity or expression (§ 35).

§§ 20, 21 — Discriminatory Boycotts

The bill extends the state policy to oppose discriminatory boycotts, not specifically authorized by federal law, which are fostered or imposed by foreign persons, foreign governments, or international organizations, to include any such boycott against any domestic

individual on the basis of gender identity or expression.

By law, “participating in a discriminatory boycott” includes entering into or performing an agreement, understanding, or contractual arrangement for economic benefit by a person with a foreign government, foreign person, or international organization, not specifically authorized by federal law, in order to restrict, condition, prohibit, or interfere with any business relationship in Connecticut on the basis of a domestic individual’s gender identity or expression.

For these purposes, domestic individuals include people and businesses whose residence, domicile, or principal place of business is in Connecticut or who do business in Connecticut.

BACKGROUND

CHRO Declaratory Ruling

On January 31, 2000, CHRO received a petition seeking a ruling that the statutory prohibitions against discrimination on the basis of sex encompass discrimination based upon a person’s apparent gender, specifically discrimination against transsexual individuals. The request asked that CHRO find such prohibitions in CGS §§ 46a-60(a)(1) (employment discrimination), 46a-64(a)(1) (public accommodations), 46a-64c(a)(1) (housing discrimination), and 46a-66(a) (credit discrimination).

In response to the request, CHRO issued a declaratory ruling on November 9, 2000, that transsexuals, as defined in the ruling, are covered by these statutes. It also stated in footnote 13 of the ruling that the ruling should be understood to apply uniformly to all other sex discrimination laws over which CHRO has jurisdiction.

Related Cases

In a case decided before CHRO issued its declaratory ruling, a Superior Court judge ruled that Connecticut's prohibition against harassment on the basis of sex did not extend to transsexuals (*Conway v. City of Hartford*, 1997 WL 78585 *7, No. CV-95-0553003, J.D. of Hartford-New Britain at Hartford (February 4, 1997) (Hale, J.R.)

(unreported)). In its declaratory ruling, CHRO noted that although it normally looks to Superior Court decisions for guidance in interpreting the laws it enforces, especially in the absence of any other state precedent, it is not required to do so. In its ruling, CHRO also noted that *Conway* recognizes that transsexuals may properly pursue claims of discrimination based on mental disorder. But CHRO declined to issue a ruling on that issue in its declaratory ruling.

In a recent unreported Superior Court case, the complainant and CHRO challenged the CHRO referee's ruling dismissing the claims of the complainant, a transgendered woman, against her employer, a police department. The court sent the matter back to CHRO after determining that the CHRO referee erred in dismissing her claims. The court determined that among other issues, the CHRO referee incorrectly relied on *Conway* in concluding that the complainant could not pursue a claim of discrimination based on physical disability. The court cited the CHRO's declaratory ruling, among other factors (*Commission on Human Rights and Opportunities v. City of Hartford*, 2010 Conn. Super. LEXIS 2727, CV094019485S, J.D. of New Britain (Oct. 27, 2010) (unreported)).

In another case, the state Supreme Court held that CHRO has jurisdiction to investigate claims of racial discrimination filed by students against a public school because CGS § 46a-58 prohibits racial discrimination, and CGS § 10-15c makes public schools open to all students without discrimination on the basis of race (*Commission on Human Rights and Opportunities v. Board of Education*, 270 Conn. 665 (2004)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 27 Nay 14 (04/05/2011)