

RESOLUTION 06-07-2013 (As Amended and Adopted)

DIGEST

Civil- Discrimination Based on Sexual Orientation

Amends Civil Code §52.4 to add sexual orientation to the list of motivating factors in the use of physical force for which the victim may bring a civil action.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 52.4 to add gender identity and sexual orientation to the list of motivating factors in the use of physical force for which the victim may bring a civil action. This resolution should be approved in principle because criminal acts using physical force continue to plague the LGBT community motivated by hatred of a minority group.

This resolution would provide civil remedies for LGBT individuals whose complaints are often ignored as whining by police agencies. Even if prosecuted, criminal conviction and/or incarceration for the perpetrator does not salve the wounds suffered by the victim. A civil remedy provides some hope of justice.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 52.4 to read as follows:

§ 52.4. Action for damages against party responsible for gender violence, gender identity violence, or sexual orientation violence

(a) Any person who has been subjected to gender, gender identity violence, or sexual orientation violence may bring a civil action for damages against any responsible party. The plaintiff may seek actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs.

(b) An action brought pursuant to this section shall be commenced within three years of the act, or if the victim was a minor when the act occurred, within eight years after the date the plaintiff attains the age of majority or within three years after the date the plaintiff discovers or reasonably should have discovered the psychological injury or illness occurring after the age of majority that was caused by the act, whichever date occurs later.

(c) For purposes of this section, "gender violence", "gender identity violence" or "sexual orientation violence" is a form of sex discrimination and means any of the

following:

(1) One or more acts that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, ~~committed at least in part based on the gender of the victim, motivated by~~ the gender, gender identity, or sexual orientation of the victim whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

(2) A physical intrusion or physical invasion of a sexual nature under coercive conditions, motivated by the gender, gender identity, or sexual orientation of the victim whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

(d) Notwithstanding any other laws that may establish the liability of an employer for the acts of an employee, this section does not establish any civil liability of a person because of his or her status as an employer, unless the employer personally committed an act of gender violence.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: The statute only makes reference to gender violence and does not include sexual orientation violence. Under existing law, the gender violence must be “committed at least in part based on the gender of the victim”.

The statutory language of §52.4 does not include an express prohibition against sexual orientation violence. The statute’s reference to gender violence that is “committed at least in part based on the gender of the victim” is vague, general, and non-specific. The broadening of this statute’s reach, to protect all individuals against sexual orientation violence in addition to gender violence, and the specific description of the prohibited acts, will serve to protect the interests of all people living and working in California.

This Solution: Would amend the title of §52.4 to state “Action for damages against party responsible for gender violence, gender identity violence, and sexual orientation violence.” Would amend section 52.4 (a) to include any person who has been subjected to gender “gender identify, or sexual orientation violence.” Would amend section 52.4 (c) to include “gender identity or sexual orientation violence” as a form of sex discrimination. Would amend §52.4 (c)(1) by striking out the term “committed at least in part based on the gender of the victim” and replacing it with the term “motivated by the gender, gender identify, or sexual orientation of the victim”. Would amend §52.4 (c)(2) to include the term “motivated by the gender and/or sexual orientation of the victim.”

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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