

BILL ANALYSIS

C.S.H.B. 1299
By: Strama
Civil Practices
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The greatest paradigm shifting achievement of 20th century America is the enactment of federal civil rights laws that codified the Declaration of Independence's promise that all Americans are created equal.

Passed in 1990 and signed into law by former President George H.W. Bush, the Americans with Disabilities Act (ADA) is landmark federal civil rights law prohibiting discrimination against people with disabilities. The ADA forbids discrimination against persons with disabilities in three major areas of public life: (1) employment, which is covered by Title I of the statute; (2) public services, programs, and activities, which are the subject of Title II of the statute; and, (3) public accommodations, which are covered by Title III of the statute. Enacted to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities, the ADA mandates that "reasonable accommodations" be made for individuals with disabilities in the three areas of public life outlined in the statute.

A few states — including Texas — assert that the Eleventh Amendment of the United States Constitution grants all states sovereign immunity from suit under the ADA. Texas made this assertion by filing an amici brief in *Lane v. Tennessee*. Texas was one of only seven states making the sovereign immunity assertion. In contrast to the position of the state of Texas, ten other states and former President George H. W. Bush filed amici against immunity in *Lane*. Furthermore, at least 13 states have ADA immunity waivers laws enacted, proposed, or pending. In *Lane*, the U.S. Supreme Court ruled against sovereign immunity. However, the decision was restricted only to physical accessibility of courthouses.

Currently in Texas, individuals with disabilities who experience discrimination on the part of a state entity or actor have no legal recourse if a state entity or actor refuses to make reasonable accommodations for them. Committee Substitute House Bill (CSHB) 1299 seeks to offer protection to all Texans from all instances of discrimination by state entities or actors. As proposed, CSHB 1299 would waive Texas' immunity from lawsuit for any violations of the ADA by a state entity or actor. Furthermore, CSHB 1299 specifically states that no "undue burdens," e.g. new state-funded services or costly accommodations, are required and places limitations on the amount of damages that may be awarded: a maximum of \$250,000 per person and \$500,000 per single occurrence.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Title 5 of the Civil Practice and Remedies Code by adding Chapter 111 to read as follows:

Section 111.001. DEFINITIONS. Defines "readily available" with regard to an accommodation as an accommodation that can be fulfilled with minimal difficulty or cost. "State government" has the meaning listed in Section 101.001, and "undue hardship" means an accommodation that causes significant hardship or expense.

Section 111.002. WAIVER OF IMMUNITY. Provides that the sovereign immunity of the state government from suit and from liability is waived for the limited purpose of allowing any person to sue a governmental unit under the ADA in state or federal court. Notes that the state government does not have to provide an individual with disability with a personal or individually prescribed device (e.g., provide a wheelchair, prescription eyeglasses, or a hearing aid). Notes that the state government will also not be required to provide services of a personal nature (e.g., assistance in eating, toileting, or dressing). Notes that the state government will not be required to make a change to a program of said state government that would result in significant difficulty or expense relative to the operation of the program of said state government. The accommodation must be readily available and not cause undue hardship to the state government. If the accommodation results in circumstances noted, the state government must determine if another accommodation is available that would satisfy the same circumstance.

Section 111.003. LIMITATION OF AMOUNT OF LIABILITY. Provides that the liability of the state government is limited to money damages in the maximum amount of \$250,000 for each person and \$500,000 for each single occurrence.

SECTION 2. Provides that the change in law made under this statute applies only to cause of action that accrues on or after the effective date.

.SECTION 3. Effective date is September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original bill defined "governmental unit" and C.S.H.B. 1299 deletes the "governmental unit" definition from Section 111.001. Further, where the original bill referred to "governmental unit" C.S.H.B. 1299 replaces all previous references to "a government unit" in H.B. 1299 with "the state government." The substitute bill adds the definition of "readily available" and "undue hardship," where the original bill had no such definitions. Section 111.002 (b)(1)(B) of the original bill is amended to add a new subsection (3) in the substitute which states that the accommodation should not cause the state undue hardship and be readily available. Finally, C.S.H.B. 1299 deletes Section 111.003(b) and Section 111.003(c) which were both originally included in H.B. 1299.