

BILL ANALYSIS

C.S.H.B. 849
By: Strama
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Passed in 1990 and signed into law by former President George H. W. Bush, the Americans with Disabilities Act (ADA) is a 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: employment; public services, programs, and activities; and public accommodations. 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.

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. A few states, including Texas, assert that the Eleventh Amendment of the U.S. Constitution grants all states sovereign immunity from suit under the ADA. Texas made this assertion in an amicus brief filed in *Lane v. Tennessee*. Texas was one of only seven states making the sovereign immunity assertion. In contrast to Texas' position, 10 other states and former President George H. W. Bush filed amici briefs against sovereign immunity in *Lane*. At least 13 states have ADA immunity waivers laws enacted, proposed, or pending. In *Lane*, the U.S. Supreme Court ruled against sovereign immunity, but the decision was restricted only to physical accessibility of courthouses.

C.S.H.B. 849 offers protection to all Texans from instances of discrimination by state entities or actors by waiving Texas' immunity from suit for any ADA violations by a state entity or actor. The bill specifically establishes that no "undue burdens" are placed on the state and authorizes an employee of the state government who proves a claim of employment-related discrimination under the ADA to recover compensatory damages in the manner provided by relevant provisions of the Labor Code.

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

C.S.H.B. 849 amends the Civil Practice and Remedies Code to waive the sovereign immunity of the state government from suit and from liability for the limited purpose of allowing any person to maintain a lawsuit in state or federal court and obtain relief from the state government under the federal Americans with Disabilities Act (ADA). The bill does not require the state government to provide an individual with a disability with a personal or individually prescribed device, such as a wheelchair, prescription eyeglasses, or a hearing aid, or with services of a personal nature, such as assistance in eating, toileting, or dressing. The bill does not require the state to take any other action not required under the ADA or a regulation adopted under that act, including an action that would result in a fundamental alteration in the nature of a service,

program, or activity, or in undue financial and administrative burdens. The bill requires the state government, if a particular accommodation would result in a fundamental alteration in the nature of a service, program, or activity, or undue financial and administrative burdens, to determine whether another accommodation is available that would not result in those circumstances, and to take an alternative action that does not result in those circumstances if the alternative action is required by the ADA or a regulation adopted under that act. The bill authorizes an employee of the state government who proves a claim of employment-related discrimination under the ADA to recover compensatory damages in the manner provided by relevant provisions of the Labor Code. The bill defines "state government."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 849 removes a provision included in the original prohibiting an award of money damages for an employee of the state government who proves a claim of employment-related discrimination under the Americans with Disability Act (ADA) from exceeding \$250,000 for each person and \$500,000 for each single occurrence. The substitute adds a provision not in the original authorizing an employee of the state government who proves a claim of employment-related discrimination under the ADA to recover compensatory damages in the manner provided by a relevant provision of the Labor Code.