

By: Strama, Rose, et al.

H.B. No. 849

Substitute the following for H.B. No. 849:

By: Hughes

C.S.H.B. No. 849

A BILL TO BE ENTITLED

AN ACT

relating to the liability of the state for a violation of the federal Americans with Disabilities Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 112 to read as follows:

CHAPTER 112. LIABILITY OF STATE UNDER CERTAIN FEDERAL LAWS

Sec. 112.001. DEFINITION. In this chapter, "state government" has the meaning assigned by Section 101.001.

Sec. 112.002. WAIVER OF IMMUNITY. (a) The sovereign immunity of the state government from suit and from liability is waived 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 Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.).

(b) This section does not require the state government to:

(1) provide an individual with a disability with:

(A) a personal or individually prescribed device, such as a wheelchair, prescription eyeglasses, or a hearing aid; or

(B) services of a personal nature, such as assistance in eating, toileting, or dressing; or

(2) take any other action not required under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.)

1 or a regulation adopted under that act, including an action that  
2 would result in:

3 (A) a fundamental alteration in the nature of a  
4 service, program, or activity; or

5 (B) undue financial and administrative burdens.

6 (c) If a particular accommodation would result in  
7 circumstances described by Subsection (b)(2), the state government  
8 must:

9 (1) determine whether another accommodation is  
10 available that would not result in those circumstances; and

11 (2) take an alternative action that does not result in  
12 those circumstances if the alternative action is required by the  
13 Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.)  
14 or a regulation adopted under that act.

15 Sec. 112.003. LIMITATION ON AMOUNT OF LIABILITY. An  
16 employee of the state government who proves a claim of  
17 employment-related discrimination under the Americans with  
18 Disabilities Act (42 U.S.C. Section 12101 et seq.) may recover  
19 compensatory damages in the manner provided by Section 21.2585,  
20 Labor Code.

21 SECTION 2. The change in law made by this Act applies only  
22 to a cause of action that accrues on or after the effective date of  
23 this Act. A cause of action that accrues before the effective date  
24 of this Act is governed by the law in effect immediately before that  
25 date, and that law is continued in effect for that purpose.

26 SECTION 3. This Act takes effect September 1, 2009.