

By: Burnam

H.B. No. 978

Substitute the following for H.B. No. 978:

By: Keffer

C.S.H.B. No. 978

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the employment rights of certain individuals with
3 disabilities.

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

5 SECTION 1. Section 21.002, Labor Code, is amended by
6 amending Subdivision (1) and adding Subdivisions (2), (11-a), and
7 (12-a) to read as follows:

8 (1) "Auxiliary aids and services" includes:

9 (A) qualified interpreters or other effective
10 methods of making aurally delivered materials available to
11 individuals with hearing impairments;

12 (B) qualified readers, taped texts, or other
13 effective methods of making visually delivered materials available
14 to individuals with visual impairments;

15 (C) acquisition or modification of equipment or
16 devices; and

17 (D) services and actions similar to those
18 described by Paragraphs (A)-(C).

19 (2) "Bona fide occupational qualification" means a
20 qualification:

21 (A) reasonably related to the satisfactory
22 performance of the duties of a job; and

23 (B) for which a factual basis exists for the
24 belief that no person of an excluded group would be able to

1 satisfactorily perform the duties of the job with safety or
2 efficiency.

3 (11-a) "Major life activity" includes, but is not
4 limited to, caring for oneself, performing manual tasks, seeing,
5 hearing, eating, sleeping, walking, standing, lifting, bending,
6 speaking, breathing, learning, reading, concentrating, thinking,
7 communicating, and working. The term also includes the operation
8 of a major bodily function, including, but not limited to,
9 functions of the immune system, normal cell growth, and digestive,
10 bowel, bladder, neurological, brain, respiratory, circulatory,
11 endocrine, and reproductive functions.

12 (12-a) "Regarded as having such an impairment" means
13 subjected to an action prohibited under Subchapter B or C because of
14 an actual or perceived physical or mental impairment, other than an
15 impairment that is minor and is expected to last or actually lasts
16 less than six months, regardless of whether the impairment limits
17 or is perceived to limit a major life activity.

18 SECTION 2. Subchapter A, Chapter 21, Labor Code, is amended
19 by adding Section 21.0021 to read as follows:

20 Sec. 21.0021. CONSTRUCTION OF CERTAIN DEFINITIONS. (a) The
21 term "disability":

22 (1) shall be construed in favor of broad coverage of
23 individuals under Subchapters B and C, to the maximum extent
24 allowed under those subchapters; and

25 (2) includes an impairment that is episodic or in
26 remission that substantially limits a major life activity when
27 active.

1 (b) The determination of whether an impairment
2 substantially limits a major life activity must be made without
3 regard to the ameliorative effects of mitigating measures,
4 including:

5 (1) medication, medical supplies, medical equipment,
6 medical appliances, prosthetic limbs and devices, hearing aids,
7 cochlear implants and other implantable hearing devices, mobility
8 devices, and oxygen therapy equipment;

9 (2) devices that magnify, enhance, or otherwise
10 augment a visual image, other than eyeglasses and contact lenses
11 that are intended to fully correct visual acuity or eliminate
12 refractive error;

13 (3) the use of assistive technology;

14 (4) reasonable accommodations and auxiliary aids or
15 services; and

16 (5) learned behavioral or adaptive neurological
17 modifications.

18 SECTION 3. Section 21.005, Labor Code, is amended to read as
19 follows:

20 Sec. 21.005. CONSTRUCTION WITH ~~[EFFECT ON]~~ OTHER ~~[STATE OR~~
21 ~~FEDERAL]~~ LAWS. (a) This chapter does not relieve a government
22 agency or official of the responsibility to ensure
23 nondiscrimination in employment as required under another
24 provision of the state or federal constitutions or laws.

25 (b) This chapter does not affect the standards for
26 determining eligibility for benefits under Title 5 or under a state
27 or federal disability benefit program.

1 (c) Nothing in this chapter may be construed as the basis
2 for a claim by an individual without a disability that the
3 individual was subject to discrimination because of the
4 individual's lack of a disability.

5 SECTION 4. Section 21.115, Labor Code, is amended to read as
6 follows:

7 Sec. 21.115. BUSINESS NECESSITY. (a) Subject to Subsection
8 (b), an [An] employer does not commit an unlawful employment
9 practice by engaging in a practice that has a discriminatory effect
10 and that would otherwise be prohibited by this chapter if the
11 employer establishes that the practice:

12 (1) is not intentionally devised or operated to
13 contravene the prohibitions of this chapter; and

14 (2) is justified by business necessity.

15 (b) An employer may not use a qualification standard,
16 employment test, or other selection criterion based on an
17 individual's uncorrected vision unless the standard, test, or
18 criterion is consistent with business necessity and job-related for
19 the position to which the standard, test, or criterion applies.

20 SECTION 5. Section 21.128, Labor Code, is amended by adding
21 Subsection (d) to read as follows:

22 (d) A respondent is not obligated to make a reasonable
23 workplace accommodation to a known physical or mental limitation of
24 an otherwise qualified individual under Subsection (a) if the
25 individual's disability is based solely on being regarded as having
26 an impairment that substantially limits at least one major life
27 activity.

1 SECTION 6. The change in law made by this Act applies only
2 to a claim of discrimination based on conduct that occurs on or
3 after the effective date of this Act. A claim of discrimination
4 that is based on conduct that occurs before the effective date of
5 this Act is governed by the law in effect on the date the conduct
6 occurred, and the former law is continued in effect for that
7 purpose.

8 SECTION 7. This Act takes effect September 1, 2009.