

By: Burnam

H.B. No. 978

A BILL TO BE ENTITLED

AN ACT

relating to the employment rights of certain individuals with disabilities.

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

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

(1) "Auxiliary aids and services" includes:

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

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

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

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

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

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

(B) for which a factual basis exists for the 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 caring for
4 oneself, performing manual tasks, seeing, hearing, eating,
5 sleeping, walking, standing, lifting, bending, speaking,
6 breathing, learning, reading, concentrating, thinking,
7 communicating, and working. The term also includes the operation
8 of a major bodily function, including:

9 (A) functions of the immune system;

10 (B) normal cell growth; and

11 (C) digestive, bowel, bladder, neurological,
12 brain, respiratory, circulatory, endocrine, and reproductive
13 functions.

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

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

22 Sec. 21.0021. CONSTRUCTION OF CERTAIN DEFINITIONS. (a) The
23 term "disability":

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

27 (2) includes an impairment that is episodic or in

1 remission that substantially limits a major life activity when
2 active.

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

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

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

15 (3) the use of assistive technology;

16 (4) reasonable accommodations and auxiliary aids or
17 services; and

18 (5) learned behavioral or adaptive neurological
19 modifications.

20 SECTION 3. Section 21.005, Labor Code, is amended to read as
21 follows:

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

27 (b) This chapter does not affect the standards for

1 determining eligibility for benefits under Title 5 or under a state
2 or federal disability benefit program.

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

7 SECTION 4. Section 21.115, Labor Code, is amended to read as
8 follows:

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

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

16 (2) is justified by business necessity.

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

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

24 (d) A respondent is not obligated to make a reasonable
25 workplace accommodation to a known physical or mental limitation of
26 an otherwise qualified individual under Subsection (a) if the
27 individual's disability is based solely on being regarded as having

1 an impairment that substantially limits at least one major life
2 activity.

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

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