

1-1 By: Burnam, et al. (Senate Sponsor - Watson) H.B. No. 978  
1-2 (In the Senate - Received from the House May 11, 2009;  
1-3 May 11, 2009, read first time and referred to Committee on Business  
1-4 and Commerce; May 20, 2009, reported favorably by the following  
1-5 vote: Yeas 8, Nays 0; May 20, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the employment rights of certain individuals with  
1-9 disabilities.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 21.002, Labor Code, is amended by  
1-12 amending Subdivision (1) and adding Subdivisions (2), (11-a), and  
1-13 (12-a) to read as follows:

1-14 (1) "Auxiliary aids and services" includes:

1-15 (A) qualified interpreters or other effective  
1-16 methods of making aurally delivered materials available to  
1-17 individuals with hearing impairments;

1-18 (B) qualified readers, taped texts, or other  
1-19 effective methods of making visually delivered materials available  
1-20 to individuals with visual impairments;

1-21 (C) acquisition or modification of equipment or  
1-22 devices; and

1-23 (D) services and actions similar to those  
1-24 described by Paragraphs (A)-(C).

1-25 (2) "Bona fide occupational qualification" means a  
1-26 qualification:

1-27 (A) reasonably related to the satisfactory  
1-28 performance of the duties of a job; and

1-29 (B) for which a factual basis exists for the  
1-30 belief that no person of an excluded group would be able to  
1-31 satisfactorily perform the duties of the job with safety or  
1-32 efficiency.

1-33 (11-a) "Major life activity" includes, but is not  
1-34 limited to, caring for oneself, performing manual tasks, seeing,  
1-35 hearing, eating, sleeping, walking, standing, lifting, bending,  
1-36 speaking, breathing, learning, reading, concentrating, thinking,  
1-37 communicating, and working. The term also includes the operation  
1-38 of a major bodily function, including, but not limited to,  
1-39 functions of the immune system, normal cell growth, and digestive,  
1-40 bowel, bladder, neurological, brain, respiratory, circulatory,  
1-41 endocrine, and reproductive functions.

1-42 (12-a) "Regarded as having such an impairment" means  
1-43 subjected to an action prohibited under Subchapter B or C because of  
1-44 an actual or perceived physical or mental impairment, other than an  
1-45 impairment that is minor and is expected to last or actually lasts  
1-46 less than six months, regardless of whether the impairment limits  
1-47 or is perceived to limit a major life activity.

1-48 SECTION 2. Subchapter A, Chapter 21, Labor Code, is amended  
1-49 by adding Section 21.0021 to read as follows:

1-50 Sec. 21.0021. CONSTRUCTION OF CERTAIN DEFINITIONS. (a) The  
1-51 term "disability":

1-52 (1) shall be construed in favor of broad coverage of  
1-53 individuals under Subchapters B and C, to the maximum extent  
1-54 allowed under those subchapters; and

1-55 (2) includes an impairment that is episodic or in  
1-56 remission that substantially limits a major life activity when  
1-57 active.

1-58 (b) The determination of whether an impairment  
1-59 substantially limits a major life activity must be made without  
1-60 regard to the ameliorative effects of mitigating measures,  
1-61 including:

1-62 (1) medication, medical supplies, medical equipment,  
1-63 medical appliances, prosthetic limbs and devices, hearing aids,  
1-64 cochlear implants and other implantable hearing devices, mobility

2-1 devices, and oxygen therapy equipment;  
 2-2 (2) devices that magnify, enhance, or otherwise  
 2-3 augment a visual image, other than eyeglasses and contact lenses  
 2-4 that are intended to fully correct visual acuity or eliminate  
 2-5 refractive error;  
 2-6 (3) the use of assistive technology;  
 2-7 (4) reasonable accommodations and auxiliary aids or  
 2-8 services; and  
 2-9 (5) learned behavioral or adaptive neurological  
 2-10 modifications.

2-11 SECTION 3. Section 21.005, Labor Code, is amended to read as  
 2-12 follows:

2-13 Sec. 21.005. CONSTRUCTION WITH [EFFECT ON] OTHER [STATE OR  
 2-14 FEDERAL] LAWS. (a) This chapter does not relieve a government  
 2-15 agency or official of the responsibility to ensure  
 2-16 nondiscrimination in employment as required under another  
 2-17 provision of the state or federal constitutions or laws.

2-18 (b) This chapter does not affect the standards for  
 2-19 determining eligibility for benefits under Title 5 or under a state  
 2-20 or federal disability benefit program.

2-21 (c) Nothing in this chapter may be construed as the basis  
 2-22 for a claim by an individual without a disability that the  
 2-23 individual was subject to discrimination because of the  
 2-24 individual's lack of a disability.

2-25 SECTION 4. Section 21.115, Labor Code, is amended to read as  
 2-26 follows:

2-27 Sec. 21.115. BUSINESS NECESSITY. (a) Subject to Subsection  
 2-28 (b), an [An] employer does not commit an unlawful employment  
 2-29 practice by engaging in a practice that has a discriminatory effect  
 2-30 and that would otherwise be prohibited by this chapter if the  
 2-31 employer establishes that the practice:

2-32 (1) is not intentionally devised or operated to  
 2-33 contravene the prohibitions of this chapter; and

2-34 (2) is justified by business necessity.

2-35 (b) An employer may not use a qualification standard,  
 2-36 employment test, or other selection criterion based on an  
 2-37 individual's uncorrected vision unless the standard, test, or  
 2-38 criterion is consistent with business necessity and job-related for  
 2-39 the position to which the standard, test, or criterion applies.

2-40 SECTION 5. Section 21.128, Labor Code, is amended by adding  
 2-41 Subsection (d) to read as follows:

2-42 (d) A respondent is not obligated to make a reasonable  
 2-43 workplace accommodation to a known physical or mental limitation of  
 2-44 an otherwise qualified individual under Subsection (a) if the  
 2-45 individual's disability is based solely on being regarded as having  
 2-46 an impairment that substantially limits at least one major life  
 2-47 activity.

2-48 SECTION 6. The change in law made by this Act applies only  
 2-49 to a claim of discrimination based on conduct that occurs on or  
 2-50 after the effective date of this Act. A claim of discrimination  
 2-51 that is based on conduct that occurs before the effective date of  
 2-52 this Act is governed by the law in effect on the date the conduct  
 2-53 occurred, and the former law is continued in effect for that  
 2-54 purpose.

2-55 SECTION 7. This Act takes effect September 1, 2009.

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