

SUBJECT: Deleting AIDS/HIV disability reference in employment discrimination law

COMMITTEE: Economic Development — favorable, without amendment

VOTE: 8 ayes — Oliveira, Yarbrough, Greenberg, Keffer, Luna, Raymond, Siebert, Van de Putte

0 nays

1 absent — Seaman

WITNESSES: For — Judith Sokolow, Advocacy, Inc.; Laura Saponara, American Civil Liberties Union

Against — None

BACKGROUND : Congress enacted the American with Disabilities Act (ADA) in 1990. The ADA ensures equal access to employment opportunities by removing barriers that prevent qualified individuals with disabilities from accessing the same employment opportunities enjoyed by people without disabilities. The ADA defines the term disability for an individual as a physical or mental impairment that substantially limits one or more major life activities; having a record of such an impairment; or being regarded as having such an impairment.

The Texas Labor Code tracks the language of the ADA, with two exceptions. The definition of disability, and thus the protection against employment discrimination, does not include conditions of addiction to alcohol, drugs or illegal or controlled substances or communicable diseases that pose a direct threat to the health and safety of others or affect a person's ability to perform the duties of the job. Communicable diseases specifically include infection with AIDS or HIV.

DIGEST: HB 220 would amend the definition of disability in the Labor Code by deleting the reference to AIDS and HIV as communicable diseases.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY: HB 220 would simply eliminate redundancy in Texas employment discrimination law and bring it into line with the inclusive federal ADA statute. By definition, the phrase “communicable disease or infection” included in the Labor Code covers all communicable diseases; specific reference to AIDS and HIV is redundant and only serves to perpetuate public intolerance and bigotry. Texas law should be objective rather than single out one specific category of individuals.

OPPONENTS SAY: Regardless of its intent, HB 220 could possibly open the door to new interpretations as to whether AIDS and HIV are communicable diseases that constitute a “direct threat to the health and safety of other persons.” It could be argued that AIDS and HIV do not pose this level of danger to co-workers. Eliminating specific reference to these diseases could potentially make individuals with AIDS or HIV protected under Texas law from employment discrimination on the basis of disability.

NOTES: During the 74th legislative session a similar bill, HB 377 by Maxey, was reported favorably by the House Economic Development Committee, but was left pending in the House Calendars Committee.