

BILL ANALYSIS

Senate Research Center
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H.B. 978
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Americans with Disabilities Act (ADA) Amendments Act of 2008 was signed into law by President George W. Bush to expand the scope and coverage of the original ADA. The United States Congress amended the original ADA in the ADA Amendments Act of 2008 to expand protections and clarify the meaning of "disability." Current law in Texas fails to provide sufficient protection for disabled individuals. This bill fulfills Governor Rick Perry's disability initiative to expand opportunities for disabled Texans.

This bill amends the Labor Code to require the term "disability" to be construed in favor of broad coverage of individuals under provisions that prohibit employment discrimination against certain classes of individuals to the maximum extent allowed under those provisions and to include an impairment that is episodic or in remission that substantially limits a major life activity when active.

H.B. 978 relates to the employment rights of certain individuals with disabilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 21.002, Labor Code, by amending Subdivision (1) and adding Subdivisions (2), (11-a), and (12-a), to define "auxiliary aids and services," "major life activity," and "regarded as having such an impairment." Makes a nonsubstantive change.

SECTION 2. Amends Subchapter A, Chapter 21, Labor Code, by adding Section 21.0021, as follows:

Sec. 21.0021. CONSTRUCTION OF CERTAIN DEFINITIONS. (a) Provides that the term "disability" is required to be construed in favor of board coverage of individuals under Subchapters B (Unlawful Employment Practices) and C (Application; Exceptions), to the maximum extent allowed under those subchapters and includes an impairment that is episodic or in remission that substantially limits a major life activity when active.

(b) Requires that the determination of whether an impairment substantially limits a major life activity be made without regard to the ameliorative effects of certain mitigating measures.

SECTION 3. Amends Section 21.005, Labor Code, as follows:

Sec. 21.005. New heading: CONSTRUCTION WITH OTHER LAWS. (a) Creates this subsection from existing text.

(b) Provides that this chapter does not affect the standards for determining eligibility for benefits under Title 5 or under a state or federal disability benefit program.

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

SECTION 4. Amends Section 21.115, Labor Code, as follows:

Sec. 21.115. BUSINESS NECESSITY. (a) Provides that subject to Subsection (b), an employer does not commit an unlawful employment practice by engaging in a practice that has a discriminatory effect and that would otherwise be prohibited by this chapter if the employer establishes that the practice is not intentionally devised or operated to contravene the prohibitions of this chapter and is justified by business necessity.

(b) Prohibits an employer from using a qualification standard, employment test, or other selection criterion based on an individual's uncorrected vision unless the standard, test, or criterion is consistent with business necessity and job-related for the position to which the standard, test, or criterion applies.

SECTION 5. Amends Section 21.128, Labor Code, by adding Subsection (d) to provide that a respondent is not obligated to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual under Subsection (a) (relating to provision that it is unlawful to not make a reasonable accommodation for a person with a disability) if the individual's disability is based solely on being regarded as having an impairment that substantially limits at least one major life activity.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2009.