

HOUSE BILL No. 2335

AN ACT concerning the Kansas act against discrimination; amending K.S.A. 44-1002 and 44-1006 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 44-1002 is hereby amended to read as follows: 44-1002. When used in this act:

(a) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(b) "Employer" includes any person in this state employing four or more persons and any person acting directly or indirectly for an employer, labor organizations, nonsectarian corporations, organizations engaged in social service work and the state of Kansas and all political and municipal subdivisions thereof, but shall not include a nonprofit fraternal or social association or corporation.

(c) "Employee" does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any person.

(d) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

(e) "Employment agency" includes any person or governmental agency undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer or place employees.

(f) "Commission" means the Kansas human rights commission created by this act.

(g) "Unlawful employment practice" includes only those unlawful practices and acts specified in K.S.A. 44-1009, and amendments thereto, and includes segregate or separate.

(h) "Public accommodations" means any person who caters or offers goods, services, facilities and accommodations to the public. Public accommodations include, but are not limited to, any lodging establishment or food service establishment, as defined by K.S.A. 36-501, and amendments thereto; any bar, tavern, barbershop, beauty parlor, theater, skating rink, bowling alley, billiard parlor, amusement park, recreation park, swimming pool, lake, gymnasium, mortuary or cemetery which is open to the public; or any public transportation facility. Public accommodations do not include a religious or nonprofit fraternal or social association or corporation.

(i) "Unlawful discriminatory practice" means: (1) Any discrimination against persons, by reason of their race, religion, color, sex, disability, national origin or ancestry:

(A) In any place of public accommodations; or

(B) in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof; and

(2) any discrimination against persons in regard to membership in a nonprofit recreational or social association or corporation by reason of race, religion, sex, color, disability, national origin or ancestry if such association or corporation has 100 or more members and: (A) Provides regular meal service; and (B) receives payment for dues, fees, use of space, use of facility, services, meals or beverages, directly or indirectly, from or on behalf of nonmembers.

This term shall not apply to a religious or private fraternal and benevolent association or corporation.

(j) "Disability" means, with respect to an individual:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) a record of such an impairment; or

(3) being regarded as having such an impairment ~~by the person or entity alleged to have committed the unlawful discriminatory practice complained of.~~

Disability does not include current, illegal use of a controlled substance as defined in section 102 of the federal controlled substance act (21 U.S.C. § 802), in housing discrimination. In employment and public accommodation discrimination, "disability" does not include an individual who is currently engaging in the illegal use of drugs where possession or

distribution of such drugs is unlawful under the controlled substance act (21 U.S.C. § 812), when the covered entity acts on the basis of such use.

(k) (1) “Reasonable accommodation” means:

~~(1)~~(A) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

~~(2)~~(B) job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(2) *A reasonable accommodation or a reasonable modification to policies, practices or procedures need not be provided to an individual who meets the definition of disability in K.S.A. 44-1002(j)(3), and amendments thereto.*

(l) “Regarded as having such an impairment” means the absence of a physical or mental impairment but regarding or treating an individual as though such an impairment exists. *An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that such individual has been subjected to an action prohibited under this act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. Subsection (j)(3) shall not apply to impairments that are transitory or minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.*

(m) “Major life activities” means:

(1) *Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.*

(2) *It also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.*

~~(n)~~(n) “Genetic screening or testing” means a laboratory test of a person’s genes or chromosomes for abnormalities, defects or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease or other disorders, whether physical or mental, which test is a direct test for abnormalities, defects or deficiencies, and not an indirect manifestation of genetic disorders.

Sec. 2. K.S.A. 44-1006 is hereby amended to read as follows: 44-1006.

(a) The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this act shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, religion, color, sex, disability, national origin or ancestry, unless the same is specifically repealed by this act.

(b) Nothing in this act shall be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel, or discharge qualified or competent personnel.

(c) *The definition of “disability” in K.S.A. 44-1002(j), and amendments thereto, shall be construed in accordance with the following:*

(1) *The definition of disability in this act shall be construed in favor of broad coverage of individuals under this act, to the maximum extent permitted by the terms of this act;*

(2) *an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability;*

(3) *an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and*

(4) (A) *The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as the following:*

(i) *Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eye glasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;*

- (ii) *use of assistive technology;*
- (iii) *reasonable accommodations or auxiliary aides or services; or*
- (iv) *learned behavioral or adaptive neurological modifications.*
- (B) *The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether and impairment substantially limits a major life activity.*
- (C) *As used in this subparagraph:*
 - (i) *“Ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and*
 - (ii) *“low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.*

Sec. 3. K.S.A. 44-1002 and 44-1006 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.