

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2335

By Committee on Federal and State Affairs

2-14

1 AN ACT concerning the Kansas act against discrimination; amending K.S.A.
2 44-1002 and 44-1006 and repealing the existing sections.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 44-1002 is hereby amended to read as follows: 44-
6 1002. When used in this act:

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

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

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

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

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

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

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

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

1 any public transportation facility. Public accommodations do not include a
2 religious or nonprofit fraternal or social association or corporation.

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

6 (A) In any place of public accommodations; or

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

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

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

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

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

22 (2) a record of such an impairment; or

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

26 Disability does not include current, illegal use of a controlled substance
27 as defined in section 102 of the federal controlled substance act (21 U.S.C.
28 § 802), in housing discrimination. In employment and public
29 accommodation discrimination, "disability" does not include an individual
30 who is currently engaging in the illegal use of drugs where possession or
31 distribution of such drugs is unlawful under the controlled substance act
32 (21 U.S.C. § 812), when the covered entity acts on the basis of such use.

33 (k)(1) "Reasonable accommodation" means:

34 (+)(A) Making existing facilities used by employees readily
35 accessible to and usable by individuals with disabilities; and

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

42 (2) *A reasonable accommodation or a reasonable modification to*
43 *policies, practices or procedures need not be provided to an individual*

1 *who meets the definition of disability in K.S.A. 44-1002(j)(3)(a), and*
2 *amendments thereto.*

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

13 (m) "Major life activities" means:

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

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

22 (n) "Genetic screening or testing" means a laboratory test of a
23 person's genes or chromosomes for abnormalities, defects or deficiencies,
24 including carrier status, that are linked to physical or mental disorders or
25 impairments, or that indicate a susceptibility to illness, disease or other
26 disorders, whether physical or mental, which test is a direct test for
27 abnormalities, defects or deficiencies, and not an indirect manifestation of
28 genetic disorders.

29 Sec. 2. K.S.A. 44-1006 is hereby amended to read as follows: 44-
30 1006. (a) The provisions of this act shall be construed liberally for the
31 accomplishment of the purposes thereof. ~~Furthermore, it is the intent of the~~
32 ~~legislature that the Kansas act against discrimination is modeled after the~~
33 ~~Americans with disabilities act and shall be construed as a state law~~
34 ~~remedy consistent with the provisions of such federal law, except where~~
35 ~~the state law offers greater protections.~~ Nothing contained in this act shall
36 be deemed to repeal any of the provisions of any other law of this state
37 relating to discrimination because of race, religion, color, sex, disability,
38 national origin or ancestry, unless the same is specifically repealed by this
39 act.

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

43 (c) *The definition of "disability" in K.S.A. 44-1002(j), and*

- 1 *amendments thereto, shall be construed in accordance with the following:*
2 *(1) The definition of disability in this act shall be construed in favor*
3 *of broad coverage of individuals under this act, to the maximum extent*
4 *permitted by the terms of this act;*
5 *(2) an impairment that substantially limits one major life activity*
6 *need not limit other major life activities in order to be considered a*
7 *disability;*
8 *(3) an impairment that is episodic or in remission is a disability if it*
9 *would substantially limit a major life activity when active; and*
10 *(4) (A) The determination of whether an impairment substantially*
11 *limits a major life activity shall be made without regard to the*
12 *ameliorative effects of mitigating measures such as the following:*
13 *(i) Medication, medical supplies, equipment, or appliances, low-*
14 *vision devices (which do not include ordinary eye glasses or contact*
15 *lenses), prosthetics including limbs and devices, hearing aids and*
16 *cochlear implants or other implantable hearing devices, mobility devices,*
17 *or oxygen therapy equipment and supplies;*
18 *(ii) use of assistive technology;*
19 *(iii) reasonable accommodations or auxiliary aides or services; or*
20 *(iv) learned behavioral or adaptive neurological modifications.*
21 *(B) The ameliorative effects of the mitigating measures of ordinary*
22 *eyeglasses or contact lenses shall be considered in determining whether*
23 *and impairment substantially limits a major life activity.*
24 *(C) As used in this subparagraph:*
25 *(i) "Ordinary eyeglasses or contact lenses" means lenses that are*
26 *intended to fully correct visual acuity or eliminate refractive error; and*
27 *(ii) "low-vision devices" means devices that magnify, enhance, or*
28 *otherwise augment a visual image.*
29 *Sec. 3. K.S.A. 44-1002 and 44-1006 are hereby repealed.*
30 *Sec. 4. This act shall take effect and be in force from and after its*
31 *publication in the statute book.*
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