

As Amended by House Committee

Session of 2010

HOUSE BILL No. 2533

By Committee on Federal and State Affairs

1-25

10 AN ACT concerning the Kansas act against discrimination; relating to
11 disability; amending K.S.A. 44-1001, 44-1002 and 44-1006 and re-
12 pealing the existing sections.
13

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

15 Section 1. K.S.A. 44-1001 is hereby amended to read as follows: 44-
16 1001. This act shall be known as the Kansas act against discrimination. It
17 shall be deemed an exercise of the police power of the state for the
18 protection of the public welfare, safety, health and peace of the people
19 of this state. The practice or policy of discrimination against individuals
20 in employment relations, in relation to free and public accommodations,
21 in housing by reason of race, religion, color, sex, ~~disability~~, national origin
22 ~~or~~, ancestry *or on the basis of disability*, or in housing by reason of familial
23 status is a matter of concern to the state, since such discrimination threat-
24 ens not only the rights and privileges of the inhabitants of the state of
25 Kansas but menaces the institutions and foundations of a free democratic
26 state. It is hereby declared to be the policy of the state of Kansas to
27 eliminate and prevent discrimination in all employment relations, to elim-
28 inate and prevent discrimination, segregation, or separation in all places
29 of public accommodations covered by this act, and to eliminate and pre-
30 vent discrimination, segregation or separation in housing.

31 It is also declared to be the policy of this state to assure equal oppor-
32 tunities and encouragement to every citizen regardless of race, religion,
33 color, sex, ~~disability~~, national origin ~~or~~, ancestry *or on the basis of disa-*
34 *bility*, in securing and holding, without discrimination, employment in
35 any field of work or labor for which a person is properly qualified, to
36 assure equal opportunities to all persons within this state to full and equal
37 public accommodations, and to assure equal opportunities in housing
38 without distinction on account of race, religion, color, sex, ~~disability~~, fam-
39 ilial status, national origin ~~or~~, ancestry *or on the basis of disability*. It is
40 further declared that the opportunity to secure and to hold employment,
41 the opportunity for full and equal public accommodations as covered by
42 this act and the opportunity for full and equal housing are civil rights of
43 every citizen.

1 To protect these rights, it is hereby declared to be the purpose of this
2 act to establish and to provide a state commission having power to elim-
3 inate and prevent segregation and discrimination, or separation in em-
4 ployment, in all places of public accommodations covered by this act, in
5 housing because of race, religion, color, sex, ~~disability~~, national origin ~~or~~,
6 ancestry *or on the basis of disability*, and in housing because of familial
7 status, either by employers, labor organizations, employment agencies,
8 realtors, financial institutions or other persons as hereinafter provided.

9 Sec. 2. K.S.A. 44-1002 is hereby amended to read as follows: 44-
10 1002. When used in this act:

11 (a) "Person" includes one or more individuals, partnerships, associ-
12 ations, organizations, corporations, legal representatives, trustees, trus-
13 tees in bankruptcy or receivers.

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

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

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

27 (e) "Employment agency" includes any person or governmental
28 agency undertaking, with or without compensation, to procure opportu-
29 nities to work or to procure, recruit, refer or place employees.

30 (f) "Commission" means the Kansas human rights commission cre-
31 ated by this act.

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

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

1 corporation.

2 (i) “Unlawful discriminatory practice” means: (1) Any discrimination
3 against persons, by reason of their race, religion, color, sex, ~~disability,~~
4 national origin ~~or~~, ancestry *or on the basis of disability*;

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

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

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

16 This term shall not apply to a religious or private fraternal and benev-
17 olent association or corporation.

18 (j) “Disability” means, with respect to an individual:

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

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

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

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

32 (k) “Reasonable accommodation” means:

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

35 (2) job restructuring; part-time or modified work schedules; reassign-
36 ment to a vacant position; acquisition or modification of equipment or
37 devices; appropriate adjustment or modifications of examinations, train-
38 ing materials or policies; provision of qualified readers or interpreters;
39 and other similar accommodations for individuals with disabilities.

40 (l) “Regarded as having such an impairment” means: ~~(1) The absence~~
41 ~~of a physical or mental impairment but regarding or treating an individual~~
42 ~~as though such an impairment exists.~~

43 ~~—(2) (1) An individual meets the requirement of “being regarded as~~

1 *having such an impairment” if the individual establishes that the individ-*
2 *ual has been subjected to an action prohibited under this act because of*
3 *an actual or perceived physical or mental impairment whether or not the*
4 *impairment limits or is perceived to limit a major life activity.*

5 ~~(1)~~ **(2)** *Paragraph (1) shall not apply to impairments that are tran-*
6 *sitory or minor. A transitory impairment is an impairment with an actual*
7 *or expected duration of six months or less.*

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

12 (2) *“Major life activities” include the operation of a major bodily func-*
13 *tion, including but not limited to, functions of the immune system, normal*
14 *cell growth, digestive, bowel, bladder, neurological, brain, respiratory,*
15 *circulatory, endocrine and reproductive functions.*

16 (n) *“Genetic screening or testing” means a laboratory test of a per-*
17 *son’s genes or chromosomes for abnormalities, defects or deficiencies,*
18 *including carrier status, that are linked to physical or mental disorders or*
19 *impairments, or that indicate a susceptibility to illness, disease or other*
20 *disorders, whether physical or mental, which test is a direct test for ab-*
21 *normalities, defects or deficiencies, and not an indirect manifestation of*
22 *genetic disorders.*

23 Sec. 3. K.S.A. 44-1006 is hereby amended to read as follows: 44-
24 1006. (a) The provisions of this act shall be construed liberally for the
25 accomplishment of the purposes thereof. Nothing contained in this act
26 shall be deemed to repeal any of the provisions of any other law of this
27 state relating to discrimination because of race, religion, color, sex, disa-
28 bility, national origin or ancestry, unless the same is specifically repealed
29 by this act.

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

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

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

38 (2) *An impairment that substantially limits one major life activity*
39 *need not limit other major life activities in order to be considered a*
40 *disability.*

41 (3) *An impairment that is episodic or in remission is a disability if it*
42 *would substantially limit a major life activity when active.*

43 (4) (A) *The determination of whether an impairment substantially*

- 1 *limits a major life activity shall be made without regard to the ameliorative*
2 *effects of mitigating measures such as:*
- 3 (i) *Medication, medical supplies, equipment or appliances, low-vision*
4 *devices except ordinary eye glasses or contact lenses, prosthetics including*
5 *limbs and devices, hearing aids and cochlear implants or other implant-*
6 *able hearing devices, mobility devices or oxygen therapy equipment and*
7 *supplies;*
 - 8 (ii) *use of assistive technology;*
 - 9 (iii) *reasonable accommodations or auxiliary aides or services; or*
 - 10 (iv) *learned behavioral or adaptive neurological modifications.*
- 11 (B) *The ameliorative effects of the mitigating measures of ordinary*
12 *eye glasses or contact lenses shall be considered in determining whether*
13 *an impairment substantially limits a major life activity.*
- 14 (C) *As used in this paragraph:*
- 15 (i) *“Ordinary eyeglasses or contact lenses” means lenses that are in-*
16 *tended to fully correct visual acuity or eliminate refractive error; and*
 - 17 (ii) *“low-vision devices” means devices that magnify, enhance or oth-*
18 *erwise augment a visual image.*
- 19 **(d) Covered employers are not required to reasonably accom-**
20 **modate or reasonably modify policies, practices and procedures**
21 **for any person who solely meets the definition of disability under**
22 **K.S.A. 44-1002(j)(3).**
- 23 Sec. 4. K.S.A. 44-1001, 44-1002 and 44-1006 are hereby repealed.
- 24 Sec. 5. This act shall take effect and be in force from and after its
25 publication in the statute book.