

Bill 2334 (S 294) H. Res 3/12 (S 356)

SENATE FILE

2334
BY COMMITTEE ON BUSINESS AND
LABOR RELATIONS
copy sent to (p. 684)
(SUCCESSOR TO SSB 2277)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to unfair and discriminatory practices in
2 employment of persons with disabilities.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2334

1 Section 1. Section 601A.2, subsection 4, Code Supplement
2 1991, is amended by striking the subsection and inserting in
3 lieu thereof the following:

4 4. "Disability" means, with respect to an individual, a
5 physical or mental impairment, a record of a physical or
6 mental impairment, or being regarded as an individual with a
7 physical or mental impairment, any of which cause the
8 individual to substantially limit one or more of the major
9 life activities of the individual. "Disability" includes the
10 condition of an individual with a positive human
11 immunodeficiency virus test result, a diagnosis of acquired
12 immune deficiency syndrome, a diagnosis of acquired immune
13 deficiency syndrome-related complex, or any other condition
14 related to acquired immune deficiency syndrome. The inclusion
15 of a condition related to a positive human immunodeficiency
16 virus test result in the meaning of "disability" does not
17 preclude the application to conditions resulting from other
18 contagious or infectious diseases.

19 a. "Major life activity" includes functions such as caring
20 for one's self, performing manual tasks, walking, seeing,
21 hearing, speaking, breathing, learning, or working.

22 b. "Disability" does not include any of the following:

23 (1) Homosexuality or bisexuality.

24 (2) Transvestism, transsexualism, pedophilia,
25 exhibitionism, voyeurism, gender identity disorders not
26 resulting from physical impairments, or other sexual behavior
27 disorders.

28 (3) Compulsive gambling, kleptomania, or pyromania.

29 (4) Psychoactive substance abuse disorders resulting from
30 current illegal use of drugs.

31 c. (1) "Substantially limits" means:

32 (a) Unable to perform a major life activity that the
33 average person in the general population can perform.

34 (b) Significantly restricted as to the condition, manner,
35 or duration under which an individual can perform a particular

1 major life activity as compared to the condition, manner, or
2 duration under which the average person in the general
3 population can perform that same major life activity.

4 (2) The following factors may be considered in determining
5 whether or not an individual is substantially limited in a
6 major life activity:

7 (a) The nature and severity of the impairment.

8 (b) The duration or expected duration of the impairment.

9 (c) The permanent or long-term impact, or expected
10 permanent or long-term impact, of or resulting from the
11 impairment.

12 (3) With respect to the major life activity of working,
13 "substantially limits" means significantly restricted in the
14 ability to perform either a class of jobs or a broad range of
15 jobs in various classes as compared to the average person
16 having comparable training, skills, and abilities. The
17 inability to perform a single, particular job does not
18 constitute a substantial limitation in the major life activity
19 of working.

20 (4) In addition to the factors listed in paragraph "b",
21 subparagraph (2), the following factors may be considered in
22 determining whether or not an individual is substantially
23 limited in the major life activity of working:

24 (a) The geographical area to which the individual has
25 reasonable access.

26 (b) The job from which the individual has been
27 disqualified because of an impairment, and the number and
28 types of jobs using similar training, knowledge, skills, or
29 abilities, within that geographical area, from which the
30 individual is also disqualified because of the impairment.

31 (c) The job from which the individual has been
32 disqualified because of an impairment and the number and types
33 of other jobs not using similar training, knowledge, skills,
34 or abilities, within that geographical area, from which the
35 individual is also disqualified because of the impairment.

1 Sec. 2. Section 601A.2, subsection 6, Code Supplement
2 1991, is amended to read as follows:

3 6. a. "Employer" means the state of Iowa or any political
4 subdivision, board, commission, department, institution, or
5 school district thereof, and every other person employing
6 employees within the state.

7 b. Notwithstanding the term "employer" as used in section
8 601A.6A, paragraph "a" means for the period of time before
9 July 26, 1994, only those employers who have twenty-five or
10 more employees for each working day in each of twenty or more
11 calendar weeks in the current or preceding year, and any
12 agents of the person.

13 Sec. 3. Section 601A.2, subsection 12, Code Supplement
14 1991, is amended to read as follows:

15 12. "Unfair practice" or "discriminatory practice" means
16 those practices specified as unfair or discriminatory in
17 sections 601A.6, 601A.5A, 601A.7, 601A.8, 601A.9, 601A.10 and
18 601A.11.

19 Sec. 4. Section 601A.6, subsection 1, Code 1991, is
20 amended to read as follows:

21 1. It ~~shall be~~ is an unfair or discriminatory practice for
22 any:

23 a. Person to refuse to hire, accept, register, classify,
24 or refer for employment, to discharge any employee, or to
25 otherwise discriminate in employment against any applicant for
26 employment or any employee because of the age, race, creed,
27 color, sex, national origin, or religion or disability of such
28 the applicant or employee, unless based upon the nature of the
29 occupation. ~~if-a-disabled-person-is-qualified-to-perform-a~~
30 ~~particular-occupation, by reason of training or experience,~~
31 ~~the-nature-of-that-occupation-shall-not-be-the-basis-for~~
32 ~~exception-to-the-unfair-or-discriminating-practices-prohibited~~
33 ~~by-this-subsection.~~

34 b. Labor organization or the employees, agents, or members
35 thereof to refuse to admit to membership any applicant, to

1 expel any member, or to otherwise discriminate against any
2 applicant for membership or any member in the privileges,
3 rights, or benefits of such membership because of the age,
4 race, creed, color, sex, national origin, or religion or
5 disability of such the applicant or member.

6 c. Employer, employment agency, labor organization, or the
7 employees, agents, or members thereof to directly or
8 indirectly advertise or in any other manner indicate or
9 publicize that individuals of any particular age, race, creed,
10 color, sex, national origin, or religion or disability are
11 unwelcome, objectionable, not acceptable, or not solicited for
12 employment or membership, unless based on the nature of the
13 occupation. ~~If a disabled person is qualified to perform a~~
14 ~~particular occupation by reason of training or experience, the~~
15 ~~nature of that occupation shall not be the basis for exception~~
16 ~~to the unfair or discriminating practices prohibited by this~~
17 ~~subsection.~~

18 ~~An employer, employment agency, or their employees,~~
19 ~~servants or agents may offer employment or advertise for~~
20 ~~employment to only the disabled, when other applicants have~~
21 ~~available to them, other employment compatible with their~~
22 ~~ability which would not be available to the disabled because~~
23 ~~of their handicap. Any such employment or offer of employment~~
24 ~~shall not discriminate among the disabled on the basis of~~
25 ~~race, color, creed, sex or national origin.~~

26 d. Person to solicit or require as a condition of
27 employment of any employee or prospective employee a test for
28 the presence of the antibody to the human immunodeficiency
29 virus or to affect the terms, conditions, or privileges of
30 employment or terminate the employment of any employee solely
31 as a result of the employee obtaining a test for the presence
32 of the antibody to the human immunodeficiency virus. An
33 agreement between an employer, employment agency, or labor
34 organization, or their its employees, agents, or members and
35 an employee or prospective employee concerning employment,

1 pay, or benefits to an employee or prospective employee in
2 return for taking a test for the presence of the antibody to
3 the human immunodeficiency virus, is prohibited. The
4 prohibitions of this paragraph and section 601A.6A, subsection
5 3, as that subsection relates to tests for the presence of the
6 antibody to the human immunodeficiency virus do not apply if
7 the state epidemiologist determines and the director of public
8 health declares through the utilization of guidelines
9 established by the center for disease control of the United
10 States department of health and human services, that a person
11 with a condition related to acquired immune deficiency
12 syndrome poses a significant risk of transmission of the human
13 immunodeficiency virus to other persons, in a specific
14 occupation.

15 Sec. 5. Section 601A.6, subsection 6, unnumbered paragraph
16 1, Code 1991, is amended to read as follows:

17 This section ~~shall~~ and section 601A.6A do not apply to:

18 Sec. 6. NEW SECTION. 601A.6A ADDITIONAL UNFAIR OR
19 DISCRIMINATORY EMPLOYMENT PRACTICES, DEFINITIONS, MEDICAL
20 EXAMINATIONS, APPROPRIATE EXAMINATIONS, AND INQUIRIES.

21 1. As used in this section, unless the context otherwise
22 requires:

23 a. "Covered entity" means an employer, employment agency,
24 labor organization, or joint labor-management committee, or
25 the employees, agents, or members of the employer, agency,
26 organization, or committee.

27 b. "Illegal use of drugs" means the use of drugs, the
28 possession or distribution of which is unlawful under the
29 federal Controlled Substances Act, 21 U.S.C. § 812. The term
30 does not include the use of a drug taken under supervision by
31 a licensed health care professional, or other uses authorized
32 by the federal Controlled Substances Act or other provisions
33 of state or federal law.

34 c. "Drug" means a controlled substance as defined in
35 schedules I through V of section 202 of the federal Controlled

1 Substances Act.

2 d. "Qualified individual with a disability" means an
3 individual with a disability who, with or without reasonable
4 accommodation, can perform the essential functions of the
5 employment position that the individual holds or desires.
6 "Qualified individual with a disability" does not include an
7 employee or applicant who is currently engaging in the illegal
8 use of drugs when the covered entity acts on the basis of this
9 use.

10 e. "Reasonable accommodation" may include, but is not
11 limited to any of the following:

12 (1) Making existing facilities used by employees readily
13 accessible to and usable by individuals with disabilities.

14 (2) Job restructuring, part-time or modified work
15 schedules, reassignment to a vacant position, acquisition or
16 modification of equipment or devices, appropriate adjustment
17 or modification of examinations, training materials, or
18 policies, the provision of qualified readers or interpreters,
19 and other similar accommodations for individuals with
20 disabilities.

21 f. "Undue hardship" means an action requiring significant
22 difficulty or expense, when considered in light of the factors
23 set forth in this paragraph. In determining whether or not an
24 accommodation will impose an undue hardship on a covered
25 entity, the following factors shall be considered:

26 (1) The nature and cost of the accommodation needed under
27 this section.

28 (2) The overall financial resources of the facility
29 involved in the provision of the reasonable accommodation, the
30 number of persons employed at the facility, the effect on
31 expenses and resources, or the impact otherwise of the
32 accommodation upon the operation of the facility.

33 (3) The overall financial resources of the covered entity,
34 the overall size of the business of a covered entity with
35 respect to the number of its employees, and the number, type,

1 and location of its facilities.

2 (4) The type of operation of the covered entity, including
3 the composition, structure, and functions of the workforce of
4 the entity, the geographic separateness, or administrative or
5 fiscal relationship of the facility in question to the covered
6 entity.

7 g. "Discriminate" includes any of the following:

8 (1) Limiting, segregating, or classifying a job applicant
9 or employee in a way that adversely affects the opportunities
10 or status of the applicant or employee because of the
11 disability of the applicant or employee.

12 (2) Participating in a contractual or other arrangement or
13 relationship that has the effect of subjecting a covered
14 entity's qualified applicant or employee with a disability to
15 the discrimination prohibited by this section. The
16 relationship includes a relationship with an employment or
17 referral agency, a labor union, an organization providing
18 fringe benefits to an employee of the covered entity, or an
19 organization providing training and apprenticeship programs.

20 (3) Using standards, criteria, or methods of
21 administration that have the effect of discrimination on the
22 basis of disability or that perpetuate the discrimination of
23 others who are subject to common administrative control.

24 (4) Excluding or otherwise denying equal jobs or benefits
25 to a qualified individual with a disability because of the
26 known disability of an individual with whom the qualified
27 individual is known to have a relationship or association.

28 (5) Not making reasonable accommodations to the known
29 physical or mental limitations of an otherwise qualified
30 individual with a disability who is an applicant or employee
31 unless the covered entity can demonstrate that the
32 accommodation would impose an undue hardship on the operation
33 of the business of the covered entity.

34 (6) Denying employment opportunities to a job applicant or
35 employee who is an otherwise qualified individual with a

1 disability if the denial is based on the need of the covered
2 entity to make reasonable accommodation to the physical or
3 mental impairments of the employee or applicant.

4 (7) Using a qualification standard, employment test, or
5 other selection criterion that screens out or tends to screen
6 out a qualified individual with a disability or a class of
7 qualified individuals with disabilities unless the standard,
8 test, or other selection criterion, as used by the covered
9 entity, is shown to be job-related for the position in
10 question and is consistent with business necessity.

11 (8) Failing to select and administer tests concerning
12 employment in the most effective manner to ensure that, when
13 the test is administered to a job applicant or employee who
14 has a disability that impairs sensory, manual, or speaking
15 skills, the test results accurately reflect the skills,
16 aptitude, or whatever other factor of the applicant or
17 employee that the test purports to measure, rather than
18 reflecting the impaired sensory, manual, or speaking skills of
19 the employee or applicant except where the skills are the
20 factors that the test purports to measure.

21 2. In determining the essential functions of an employment
22 position, consideration shall be given to the employer's
23 judgment as to which functions of a job are essential, and if
24 an employer has prepared a written description before
25 advertising or interviewing applicants for the job, this
26 description shall be considered evidence of the essential
27 functions of the job.

28 3. It is an unfair or discriminatory practice for a
29 covered entity to discriminate against a qualified individual
30 with a disability because of the disability of the individual
31 in regard to job application procedures, the hiring,
32 advancement, or discharge of employees, employee compensation,
33 job training, and other terms, conditions, and privileges of
34 employment. Consideration shall be given to the employer's
35 judgment as to what functions of a job are essential, and if

1 an employer has prepared a written description before
2 advertising or interviewing applicants for the job, this
3 description shall be considered evidence of the essential
4 functions of the job.

5 4. a. The prohibition against discrimination as provided
6 in subsection 3 includes medical examinations and inquiries.

7 b. Except as provided in paragraph "c", a covered entity
8 shall not conduct a medical examination or make inquiries of a
9 job applicant as to whether or not the applicant is an
10 individual with a disability or as to the nature or severity
11 of the disability. A covered entity may make preemployment
12 inquiries into the ability of an applicant to perform job-
13 related functions.

14 c. A covered entity may require a medical examination
15 after an offer of employment has been made to a job applicant
16 and prior to the commencement of the employment duties of the
17 applicant, and may condition an offer of employment on the
18 results of the examination if all entering employees are
19 subjected to the same examination regardless of disability,
20 the results of the examination are used only in accordance
21 with this section, and information obtained regarding the
22 medical condition or history of the applicant is collected and
23 maintained on separate forms and in separate medical files and
24 is treated as a confidential medical record. However,
25 supervisors and managers may be informed regarding necessary
26 restrictions on the work or duties of the employee and
27 necessary accommodations; first aid and safety personnel may
28 be informed, when appropriate, if the disability might require
29 emergency treatment; and government officials investigating
30 compliance with this section shall be provided relevant
31 information on request.

32 d. A covered entity shall not require a medical
33 examination and shall not make inquiries of an employee as to
34 whether the employee is an individual with a disability or the
35 nature or severity of a disability unless the examination or

1 inquiry is shown to be job-related and consistent with
2 business necessity.

3 e. A covered entity may conduct voluntary medical
4 examinations including voluntary medical histories which are
5 part of an employee health program available to employees at
6 the worksite. A covered entity may make inquiries into the
7 ability of any employee to perform job-related functions.

8 f. Information obtained under subsection 4, paragraph "e",
9 regarding the medical condition or history of an employee are
10 subject to the requirements of paragraph "c".

11 5. It is an unfair and discriminatory practice for a labor
12 organization or the employees, agents, or members of the
13 organization to refuse to admit to membership any applicant,
14 to expel any member, or to otherwise discriminate against any
15 applicant for membership or any member in the privileges,
16 rights, or benefits of membership because of the disability of
17 the applicant or member.

18 6. It is an unfair or discriminatory practice for any
19 employer, employment agency, or labor organization, or the
20 employees, agents, or members of the employer, agency, or
21 organization, to directly or indirectly advertise or in any
22 other manner indicate or publicize that individuals with a
23 disability or with a particular disability are unwelcome,
24 objectionable, not acceptable, or not solicited for employment
25 or membership, unless based upon the nature of the occupation.
26 If a disabled person is qualified to perform a particular
27 occupation, by reason of training or experience, the nature of
28 that occupation shall not be the basis for exception to the
29 unfair or discriminatory practices prohibited by this
30 subsection. An employer or employment agency, or an
31 employer's or agency's employees or agents, may offer
32 employment only to the disabled, when other applicants have
33 available to them other employment compatible with their
34 ability which would not be available to the disabled because
35 of their disability. The employment or offer of employment

1 shall not discriminate among the disabled on the basis of age,
2 race, color, creed, sex, national origin, or religion.

3 7. a. It may be a defense to a charge of discrimination
4 under this section that an alleged application of
5 qualification standards, tests, or selection criteria that
6 screen out or tend to screen out or otherwise deny a job or
7 benefit to an individual with a disability has been shown to
8 be job-related and consistent with business necessity, and
9 that the job performance cannot be accomplished by reasonable
10 accommodation as required under this section.

11 b. "Qualification standards" may include a requirement
12 that an individual shall not pose a threat to the health and
13 safety of other individuals in the workplace.

14 c. In a case in which an individual has an infectious or
15 communicable disease that is transmitted to others through the
16 handling of food, that is included on the list developed by
17 the United States secretary of health and human services, and
18 that cannot be eliminated by reasonable accommodation, a
19 covered entity may refuse to assign or continue to assign the
20 individual to a job involving food handling.

21 d. This section does not preempt, modify, or amend a
22 state, county, or local law, ordinance, or regulation
23 applicable to food handling which is designed to protect the
24 public health from individuals who pose a significant risk to
25 the health or safety of others, which risk cannot be
26 eliminated by reasonable accommodation, pursuant to the list
27 of infectious or communicable diseases and the modes of
28 transmissibility published by the United States secretary of
29 health and human services.

30 8. a. Concerning the illegal use of drugs, this section
31 does not exclude, as a qualified individual with a disability,
32 an individual who meets any of the following criteria:

33 (1) Has successfully completed a supervised drug
34 rehabilitation program and is no longer engaging in the
35 illegal use of the drugs or has otherwise been rehabilitated

1 successfully and is no longer engaging in the use.

2 (2) Is participating in a supervised rehabilitation
3 program and is no longer engaging in the use.

4 (3) Is erroneously regarded as engaging in the illegal use
5 but is not engaging in the use.

6 b. A covered entity may do one or more of the following:

7 (1) Prohibit the illegal use of drugs and the use of
8 alcohol at the workplace by all employees.

9 (2) Require that employees shall not be under the
10 influence of alcohol or be engaging in the illegal use of
11 drugs at the workplace.

12 (3) Require that employees behave in conformance with the
13 requirements established under the federal Drug-Free Workplace
14 Act of 1988, 41 U.S.C. § 701 et seq.

15 (4) Hold an employee who engages in the illegal use of
16 drugs or who is an alcoholic to the same qualification
17 standards for employment of job performance and behavior that
18 the covered entity holds other employees even if an
19 unsatisfactory performance or behavior is related to the
20 illegal drug use or alcoholism of the employee.

21 (5) With respect to federal regulations regarding alcohol
22 and the illegal use of drugs, require that employees comply
23 with the standards established in the federal regulations of
24 the following agencies:

25 (a) United States department of defense if the employees
26 of the covered entity are employed in an industry subject to
27 the federal regulations, including complying with regulations
28 that apply to employment in the industry for employees of the
29 covered entity who are employed in sensitive positions as
30 defined in the regulations of the United States department of
31 defense.

32 (b) United States nuclear regulatory commission if the
33 employees of the covered entity are employed in an industry
34 subject to the regulations, including complying with
35 regulations that apply to employment in the industry for

1 employees of the covered entity who are employed in sensitive
2 positions as defined in the regulations of the United States
3 nuclear regulatory commission.

4 (c) United States department of transportation, if the
5 employees of the covered entity are employed in a
6 transportation industry subject to the regulations, including
7 complying with the regulations that apply to employment in the
8 industry for employees of the covered entity who are employed
9 in sensitive positions as defined in the regulations of the
10 United States department of transportation.

11 9. Regarding insurance or health benefits coverage, this
12 section does not prohibit or restrict any of the following:

13 a. An insurer, hospital, or medical service company, a
14 health maintenance organization, an agent or entity that
15 administers benefit plans, or similar organizations, from
16 underwriting risks, classifying risks, or administering the
17 risks, which actions are based on or not inconsistent with
18 other laws of this state.

19 b. A person covered by this section, from establishing,
20 sponsoring, observing, or administering the terms of a bona
21 fide benefit plan that are based on underwriting risks,
22 classifying risks, or administering the risks, which terms are
23 based on or not inconsistent with other laws of this state.

24 c. A person covered by this section, from establishing,
25 sponsoring, observing, or administering the terms of a bona
26 fide benefit plan that is subject to the laws of this state
27 that regulate insurance.

28 d. Paragraphs "a", "b", and "c" shall not be used as a
29 subterfuge to evade the purposes of this section.

30 Sec. 7. Section 601A.18, Code 1991, is amended to read as
31 follows:

32 601A.18 RULE OF CONSTRUCTION -- SMOKING RESTRICTIONS --
33 UNWANTED ASSISTANCE.

34 1. This chapter shall be construed broadly to effectuate
35 its purposes.

1 Section 2 provides a temporary exemption for certain
2 employers of less than twenty-five employees from compliance
3 with this Act.

4 Section 3 amends the current law in chapter 601A relating
5 to unfair or discriminatory practices against disabled
6 persons.

7 Section 4 amends the definition of "employer".

8 Section 5 amends the current law relating to unfair or
9 discriminatory practices against disabled persons.

10 Section 6 adds a new section to chapter 601A. The new
11 section includes additional definitions of terms specifically
12 related to unfair or discriminatory practices in the
13 employment of persons with disabilities. Definitions are
14 provided for "qualified individual with a disability",
15 "covered entity" or employer, "reasonable accommodation" as it
16 relates to facilities, job restructuring, and work schedules
17 which may be arranged to help a disabled person perform a job,
18 and "undue hardship" which basically describes an
19 accommodation which a covered entity cannot afford. The use
20 of medical examinations and related inquiries are prohibited
21 to determine if a person has a disability or the severity of
22 the disability. The bill prohibits labor organizations and
23 employers from publicizing or advertising that disabled
24 persons are not welcome as members or employees. Labor unions
25 or organizations are prohibited from excluding or expelling
26 disabled persons from their organizations.

27 The bill specifies the allowable use of medical
28 examinations with regard to the employment of disabled persons
29 and outlines what "qualification standards" may be applied to
30 jobs. "undue hardship" is defined to allow a covered entity
31 recourse if the cost and nature of an accommodation for a
32 disabled worker is too high.

33 Disabilities caused by the use of illegal drugs are not
34 covered by this bill unless the individual with a disability
35 has successfully completed a supervised rehabilitation program

1 and is no longer using the drugs or is currently under
2 treatment and no longer using the drugs.

3 The bill also authorizes a covered entity to require a
4 drug-free and alcohol-free environment for the workplace.

5 The bill does not prohibit or restrict insurers, hospitals,
6 or medical service companies, health maintenance
7 organizations, or related agents in developing or assigning
8 health or benefit risks, or administering such risks within
9 state law.

10 Section 7 provides that chapter 601A does not preclude
11 smoking restrictions in places of employment, public
12 accommodation, or public conveyance, and does not impose upon
13 disabled persons for unwanted services.

14 Section 8 relates to lawful restrictions on drug and
15 alcohol use in the work place.

16 Section 9 repeals section 601A.14 because it is redundant.

17 Section 10 provides a delayed effective date for section 4.

18 The bill may include a state mandate as defined in section
19 25B.3.

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SENATE FILE 2334

S-5294

- 1 Amend Senate File 2334 as follows:
2 1. Page 1, by inserting before line 1 the fol-
3 lowing:
4 "Section 1. Section 15.108, subsection 1,
5 paragraph a, Code Supplement 1991, is amended by
6 adding the following new unnumbered paragraph:
7 NEW UNNUMBERED PARAGRAPH. The department shall set
8 aside ten percent of all community development block
9 grant funds for distribution in the form of forgivable
10 loans to small businesses, as defined in section
11 15.102, subsection 4, to assist in small business com-
12 pliance with section 601A.6A. Each forgivable loan
13 shall not exceed five thousand dollars. Forgivable
14 loans shall only be made to small businesses with net
15 profits of fifty thousand dollars or less."
16 2. By renumbering as necessary.

By COMMITTEE ON SMALL BUSINESS
AND ECONOMIC DEVELOPMENT
BY JIM RIORDAN, Chairperson

S-5294 FILED MARCH 18, 1992

SENATE FILE 2334

S-5321

- 1 Amend Senate File 2334 as follows:
2 1. Page 3, line 12, by inserting after the word
3 "person" the following: " , and for the period of time
4 on or after July 26, 1994, only those employers who
5 have fifteen or more employees for each working day in
6 each of twenty or more calendar weeks in the current
7 or preceding year, or any agents of the person".
8 2. Page 5, by inserting after line 17 the
9 following:
10 "Sec. ____ Section 601A.5, subsection 5, paragraph
11 a, Code 1991, is amended to read as follows:
12 a. ____ Any employer who regularly employs less
13 than four individuals. For purposes of this
14 subsection, individuals who are members of the
15 employer's family shall not be counted as employees.
16 (2) For purposes of section 601A.6A, any employer
17 who regularly employs less than twenty-five
18 individuals, which number shall be reduced to fifteen
19 effective July 26, 1994."
20 3. Page 13, line 25, by inserting after the word
21 "purposes." the following: "Section 601A.6A shall be
22 construed to complement and be harmonized with the
23 applied laws of the United States which have the same
24 or similar purpose as that section. This construction
25 shall not be made in a way which constitutes a
26 delegation of state authority to the federal
27 government, but shall be made to achieve uniform
28 application of the state and federal laws."

By JIM RIORDAN
RICHARD VANDE HOEF
MARY E. KRAMER
ALBERT SORENSEN

JOHN P. KIBBIE
EMIL J. HUSAK
HARRY G. SLIFE
LEONARD L. BOSWELL

S-5321 FILED MARCH 19, 1992

SENATE FILE 2334

S-5362

1 Amend Senate File 2334 as follows:

2 1. Page 1, line 5, by adding after the word
3 "impairment" the following: "that substantially
4 limits one or more of the major life activities of the
5 individual".

6 2. Page 1, lines 7 through 9, by striking the
7 words ", any of which cause the individual to
8 substantially limit one or more of the major life
9 activities of the individual".

10 3. Page 3, by striking lines 7 through 12 and
11 inserting the following:

12 "b. The previous paragraph notwithstanding, the
13 term "employer" as used in section 601A.6A means prior
14 to July 26, 1994, only those employers who have
15 twenty-five or more employees for each working day in
16 each of twenty or more calendar weeks for each working
17 day in each of twenty or more calendar weeks in the
18 current or preceding year, and any agents of the
19 person."

20 4. Page 6, by inserting before line 21 the
21 following:

22 "This chapter does not require an individual with a
23 disability to accept an accommodation, aid, service,
24 opportunity, or benefit which the individual chooses
25 not to accept."

26 5. Page 7, line 25, by striking the words "with a
27 disability".

28 6. Page 11, by striking lines 30 through 32 and
29 inserting the following:

30 "8. a. For the purposes of this section, the term
31 "qualified individual with a disability" shall not
32 include any employee or applicant who is currently
33 engaging in the illegal use of drugs, when the covered
34 entity acts on the basis of the use.

35 b. Paragraph "a" does not exclude as a qualified
36 individual with a disability an individual who does
37 any of the following:".

38 7. By striking page 13, line 30 through page 14,
39 line 8.

40 8. By renumbering and relettering as necessary.

By FLORENCE BUHR

S-5362 FILED MARCH 24, 1992

BURR, CH
STURGEON
SLIFE

SSB 2277

BUSINESS & LABOR RELATIONS
NOW

SENATE FILE 2334
BY (PROPOSED COMMITTEE ON
BUSINESS AND LABOR
RELATIONS BILL BY
CHAIRPERSON RUNNING)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to unfair and discriminatory practices in
2 employment of persons with disabilities.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 601A.2, subsection 4, Code Supplement
2 1991, is amended by striking the subsection and inserting in
3 lieu thereof the following:

4 4. "Disability" means, with respect to an individual, a
5 physical or mental impairment, a record of a physical or
6 mental impairment, or being regarded as an individual with a
7 physical or mental impairment, any of which cause the
8 individual to substantially limit one or more of the major
9 life activities of the individual. "Disability" includes the
10 condition of an individual with a positive human
11 immunodeficiency virus test result, a diagnosis of acquired
12 immune deficiency syndrome, a diagnosis of acquired immune
13 deficiency syndrome-related complex, or any other condition
14 related to acquired immune deficiency syndrome. The inclusion
15 of a condition related to a positive human immunodeficiency
16 virus test result in the meaning of "disability" does not
17 preclude the application to conditions resulting from other
18 contagious or infectious diseases.

19 a. "Major life activity" includes functions such as caring
20 for one's self, performing manual tasks, walking, seeing,
21 hearing, speaking, breathing, learning, or working.

22 b. "Disability" does not include any of the following:

23 (1) Homosexuality or bisexuality.

24 (2) Transvestism, transsexualism, pedophilia,
25 exhibitionism, voyeurism, gender identity disorders not
26 resulting from physical impairments, or other sexual behavior
27 disorders.

28 (3) Compulsive gambling, kleptomania, or pyromania.

29 (4) Psychoactive substance abuse disorders resulting from
30 current illegal use of drugs.

31 c. (1) "Substantially limits" means:

32 (a) Unable to perform a major life activity that the
33 average person in the general population can perform.

34 (b) Significantly restricted as to the condition, manner,
35 or duration under which an individual can perform a particular

1 major life activity as compared to the condition, manner, or
2 duration under which the average person in the general
3 population can perform that same major life activity.

4 (2) The following factors may be considered in determining
5 whether or not an individual is substantially limited in a
6 major life activity:

- 7 (a) The nature and severity of the impairment.
- 8 (b) The duration or expected duration of the impairment.
- 9 (c) The permanent or long-term impact, or expected
10 permanent or long-term impact, of or resulting from the
11 impairment.

12 (3) With respect to the major life activity of working,
13 "substantially limits" means significantly restricted in the
14 ability to perform either a class of jobs or a broad range of
15 jobs in various classes as compared to the average person
16 having comparable training, skills, and abilities. The
17 inability to perform a single, particular job does not
18 constitute a substantial limitation in the major life activity
19 of working.

20 (4) In addition to the factors listed in paragraph "b",
21 subparagraph (2), the following factors may be considered in
22 determining whether or not an individual is substantially
23 limited in the major life activity of working:

- 24 (a) The geographical area to which the individual has
25 reasonable access.
- 26 (b) The job from which the individual has been
27 disqualified because of an impairment, and the number and
28 types of jobs using similar training, knowledge, skills, or
29 abilities, within that geographical area, from which the
30 individual is also disqualified because of the impairment.
- 31 (c) The job from which the individual has been
32 disqualified because of an impairment and the number and types
33 of other jobs not using similar training, knowledge, skills,
34 or abilities, within that geographical area, from which the
35 individual is also disqualified because of the impairment.

1 Sec. 2. Section 601A.2, subsection 6, Code Supplement
2 1991, is amended to read as follows:

3 6. a. "Employer" means the state of Iowa or any political
4 subdivision, board, commission, department, institution, or
5 school district thereof, and every other person employing
6 employees within the state.

7 b. Notwithstanding the term "employer" as used in section
8 601A.6A, paragraph "a" means for the period of time before
9 July 26, 1994, only those employers who have twenty-five or
10 more employees for each working day in each of twenty or more
11 calendar weeks in the current or preceding year, and any
12 agents of the person.

13 Sec. 3. Section 601A.2, subsection 12, Code Supplement
14 1991, is amended to read as follows:

15 12. "Unfair practice" or "discriminatory practice" means
16 those practices specified as unfair or discriminatory in
17 sections 601A.6, 601A.6A, 601A.7, 601A.8, 601A.9, 601A.10 and
18 601A.11.

19 Sec. 4. Section 601A.6, subsection 1, Code 1991, is
20 amended to read as follows:

21 1. It ~~shall-be~~ is an unfair or discriminatory practice for
22 any:

23 a. Person to refuse to hire, accept, register, classify,
24 or refer for employment, to discharge any employee, or to
25 otherwise discriminate in employment against any applicant for
26 employment or any employee because of the age, race, creed,
27 color, sex, national origin, or religion or disability of such
28 the applicant or employee, unless based upon the nature of the
29 occupation. ~~if-a-disabled-person-is-qualified-to-perform-a~~
30 particular-occupation, ~~by-reason-of-training-or-experience,~~
31 the-nature-of-that-occupation-shall-not-be-the-basis-for
32 exception-to-the-unfair-or-discriminating-practices-prohibited
33 by-this-subsection.

34 b. Labor organization or the employees, agents, or members
35 thereof to refuse to admit to membership any applicant, to

1 expel any member, or to otherwise discriminate against any
2 applicant for membership or any member in the privileges,
3 rights, or benefits of such membership because of the age,
4 race, creed, color, sex, national origin, or religion or
5 disability of such the applicant or member.

6 c. Employer, employment agency, labor organization, or the
7 employees, agents, or members thereof to directly or
8 indirectly advertise or in any other manner indicate or
9 publicize that individuals of any particular age, race, creed,
10 color, sex, national origin, or religion ~~or disability~~ are
11 unwelcome, objectionable, not acceptable, or not solicited for
12 employment or membership, unless based on the nature of the
13 occupation. ~~if a disabled person is qualified to perform a~~
14 ~~particular occupation by reason of training or experience, the~~
15 ~~nature of that occupation shall not be the basis for exception~~
16 ~~to the unfair or discriminating practices prohibited by this~~
17 subsection:

18 An employer, employment agency, or their employees,
19 servants or agents may offer employment or advertise for
20 employment to only the disabled, when other applicants have
21 available to them, other employment compatible with their
22 ability which would not be available to the disabled because
23 of their handicap. -- Any such employment or offer of employment
24 shall not discriminate among the disabled on the basis of
25 race, color, creed, sex or national origin.

26 d. Person to solicit or require as a condition of
27 employment of any employee or prospective employee a test for
28 the presence of the antibody to the human immunodeficiency
29 virus or to affect the terms, conditions, or privileges of
30 employment or terminate the employment of any employee solely
31 as a result of the employee obtaining a test for the presence
32 of the antibody to the human immunodeficiency virus. An
33 agreement between an employer, employment agency, or labor
34 organization, or their its employees, agents, or members and
35 an employee or prospective employee concerning employment,

1 pay, or benefits to an employee or prospective employee in
2 return for taking a test for the presence of the antibody to
3 the human immunodeficiency virus, is prohibited. The
4 prohibitions of this paragraph and section 601A.6A, subsection
5 3, as that subsection relates to tests for the presence of the
6 antibody to the human immunodeficiency virus do not apply if
7 the state epidemiologist determines and the director of public
8 health declares through the utilization of guidelines
9 established by the center for disease control of the United
10 States department of health and human services, that a person
11 with a condition related to acquired immune deficiency
12 syndrome poses a significant risk of transmission of the human
13 immunodeficiency virus to other persons, in a specific
14 occupation.

15 Sec. 5. Section 601A.6, subsection 6, unnumbered paragraph
16 1, Code 1991, is amended to read as follows:

17 6. This section ~~shall~~ and section 601A.6A do not apply to:

18 Sec. 6. NEW SECTION. 601A.6A ADDITIONAL UNFAIR OR
19 DISCRIMINATORY EMPLOYMENT PRACTICES, DEFINITIONS, MEDICAL
20 EXAMINATIONS, APPROPRIATE EXAMINATIONS, AND INQUIRIES.

21 1. As used in this section, unless the context otherwise
22 requires:

23 a. "Covered entity" means an employer, employment agency,
24 labor organization, or joint labor-management committee, or
25 the employees, agents, or members of the employer, agency,
26 organization, or committee.

27 b. "Illegal use of drugs" means the use of drugs, the
28 possession or distribution of which is unlawful under the
29 federal Controlled Substances Act, 21 U.S.C. § 812. The term
30 does not include the use of a drug taken under supervision by
31 a licensed health care professional, or other uses authorized
32 by the federal Controlled Substances Act or other provisions
33 of state or federal law.

34 c. "Drug" means a controlled substance as defined in
35 schedules I through V of section 202 of the federal Controlled

1 Substances Act.

2 d. "Qualified individual with a disability" means an
3 individual with a disability who, with or without reasonable
4 accommodation, can perform the essential functions of the
5 employment position that the individual holds or desires.
6 "Qualified individual with a disability" does not include an
7 employee or applicant who is currently engaging in the illegal
8 use of drugs when the covered entity acts on the basis of this
9 use.

10 e. "Reasonable accommodation" may include, but is not
11 limited to any of the following:

12 (1) Making existing facilities used by employees readily
13 accessible to and usable by individuals with disabilities.

14 (2) Job restructuring, part-time or modified work
15 schedules, reassignment to a vacant position, acquisition or
16 modification of equipment or devices, appropriate adjustment
17 or modification of examinations, training materials, or
18 policies, the provision of qualified readers or interpreters,
19 and other similar accommodations for individuals with
20 disabilities.

21 f. "Undue hardship" means an action requiring significant
22 difficulty or expense, when considered in light of the factors
23 set forth in this paragraph. In determining whether or not an
24 accommodation will impose an undue hardship on a covered
25 entity, the following factors shall be considered:

26 (1) The nature and cost of the accommodation needed under
27 this section.

28 (2) The overall financial resources of the facility
29 involved in the provision of the reasonable accommodation, the
30 number of persons employed at the facility, the effect on
31 expenses and resources, or the impact otherwise of the
32 accommodation upon the operation of the facility.

33 (3) The overall financial resources of the covered entity,
34 the overall size of the business of a covered entity with
35 respect to the number of its employees, and the number, type,

1 and location of its facilities.

2 (4) The type of operation of the covered entity, including
3 the composition, structure, and functions of the workforce of
4 the entity, the geographic separateness, or administrative or
5 fiscal relationship of the facility in question to the covered
6 entity.

7 g. "Discriminate" includes any of the following:

8 (1) Limiting, segregating, or classifying a job applicant
9 or employee in a way that adversely affects the opportunities
10 or status of the applicant or employee because of the
11 disability of the applicant or employee.

12 (2) Participating in a contractual or other arrangement or
13 relationship that has the effect of subjecting a covered
14 entity's qualified applicant or employee with a disability to
15 the discrimination prohibited by this section. The
16 relationship includes a relationship with an employment or
17 referral agency, a labor union, an organization providing
18 fringe benefits to an employee of the covered entity, or an
19 organization providing training and apprenticeship programs.

20 (3) Using standards, criteria, or methods of
21 administration that have the effect of discrimination on the
22 basis of disability or that perpetuate the discrimination of
23 others who are subject to common administrative control.

24 (4) Excluding or otherwise denying equal jobs or benefits
25 to a qualified individual with a disability because of the
26 known disability of an individual with whom the qualified
27 individual is known to have a relationship or association.

28 (5) Not making reasonable accommodations to the known
29 physical or mental limitations of an otherwise qualified
30 individual with a disability who is an applicant or employee
31 unless the covered entity can demonstrate that the
32 accommodation would impose an undue hardship on the operation
33 of the business of the covered entity.

34 (6) Denying employment opportunities to a job applicant or
35 employee who is an otherwise qualified individual with a

1 disability if the denial is based on the need of the covered
2 entity to make reasonable accommodation to the physical or
3 mental impairments of the employee or applicant.

4 (7) Using a qualification standard, employment test, or
5 other selection criterion that screens out or tends to screen
6 out a qualified individual with a disability or a class of
7 qualified individuals with disabilities unless the standard,
8 test, or other selection criterion, as used by the covered
9 entity, is shown to be job-related for the position in
10 question and is consistent with business necessity.

11 (8) Failing to select and administer tests concerning
12 employment in the most effective manner to ensure that, when
13 the test is administered to a job applicant or employee who
14 has a disability that impairs sensory, manual, or speaking
15 skills, the test results accurately reflect the skills,
16 aptitude, or whatever other factor of the applicant or
17 employee that the test purports to measure, rather than
18 reflecting the impaired sensory, manual, or speaking skills of
19 the employee or applicant except where the skills are the
20 factors that the test purports to measure.

21 2. In determining the essential functions of an employment
22 position, consideration shall be given to the employer's
23 judgment as to which functions of a job are essential, and if
24 an employer has prepared a written description before
25 advertising or interviewing applicants for the job, this
26 description shall be considered evidence of the essential
27 functions of the job.

28 3. It is an unfair or discriminatory practice for a
29 covered entity to discriminate against a qualified individual
30 with a disability because of the disability of the individual
31 in regard to job application procedures, the hiring,
32 advancement, or discharge of employees, employee compensation,
33 job training, and other terms, conditions, and privileges of
34 employment. Consideration shall be given to the employer's
35 judgment as to what functions of a job are essential, and if

1 an employer has prepared a written description before
2 advertising or interviewing applicants for the job, this
3 description shall be considered evidence of the essential
4 functions of the job.

5 4. a. The prohibition against discrimination as provided
6 in subsection 3 includes medical examinations and inquiries.

7 b. Except as provided in paragraph "c", a covered entity
8 shall not conduct a medical examination or make inquiries of a
9 job applicant as to whether or not the applicant is an
10 individual with a disability or as to the nature or severity
11 of the disability. A covered entity may make preemployment
12 inquiries into the ability of an applicant to perform job-
13 related functions.

14 c. A covered entity may require a medical examination
15 after an offer of employment has been made to a job applicant
16 and prior to the commencement of the employment duties of the
17 applicant, and may condition an offer of employment on the
18 results of the examination if all entering employees are
19 subjected to the same examination regardless of disability,
20 the results of the examination are used only in accordance
21 with this section, and information obtained regarding the
22 medical condition or history of the applicant is collected and
23 maintained on separate forms and in separate medical files and
24 is treated as a confidential medical record. However,
25 supervisors and managers may be informed regarding necessary
26 restrictions on the work or duties of the employee and
27 necessary accommodations; first aid and safety personnel may
28 be informed, when appropriate, if the disability might require
29 emergency treatment; and government officials investigating
30 compliance with this section shall be provided relevant
31 information on request.

32 d. A covered entity shall not require a medical
33 examination and shall not make inquiries of an employee as to
34 whether the employee is an individual with a disability or the
35 nature or severity of a disability unless the examination or

1 inquiry is shown to be job-related and consistent with
2 business necessity.

3 e. A covered entity may conduct voluntary medical
4 examinations including voluntary medical histories which are
5 part of an employee health program available to employees at
6 the worksite. A covered entity may make inquiries into the
7 ability of any employee to perform job-related functions.

8 f. Information obtained under subsection 4, paragraph "e",
9 regarding the medical condition or history of an employee are
10 subject to the requirements of paragraph "c".

11 5. It is an unfair and discriminatory practice for a labor
12 organization or the employees, agents, or members of the
13 organization to refuse to admit to membership any applicant,
14 to expel any member, or to otherwise discriminate against any
15 applicant for membership or any member in the privileges,
16 rights, or benefits of membership because of the disability of
17 the applicant or member.

18 6. It is an unfair or discriminatory practice for any
19 employer, employment agency, or labor organization, or the
20 employees, agents, or members of the employer, agency, or
21 organization, to directly or indirectly advertise or in any
22 other manner indicate or publicize that individuals with a
23 disability or with a particular disability are unwelcome,
24 objectionable, not acceptable, or not solicited for employment
25 or membership, unless based upon the nature of the occupation.
26 If a disabled person is qualified to perform a particular
27 occupation, by reason of training or experience, the nature of
28 that occupation shall not be the basis for exception to the
29 unfair or discriminatory practices prohibited by this
30 subsection. An employer or employment agency, or an
31 employer's or agency's employees or agents, may offer
32 employment only to the disabled, when other applicants have
33 available to them other employment compatible with their
34 ability which would not be available to the disabled because
35 of their disability. The employment or offer of employment

1 shall not discriminate among the disabled on the basis of age,
2 race, color, creed, sex, national origin, or religion.

3 7. a. It may be a defense to a charge of discrimination
4 under this section that an alleged application of
5 qualification standards, tests, or selection criteria that
6 screen out or tend to screen out or otherwise deny a job or
7 benefit to an individual with a disability has been shown to
8 be job-related and consistent with business necessity, and
9 that the job performance cannot be accomplished by reasonable
10 accommodation as required under this section.

11 b. "Qualification standards" may include a requirement
12 that an individual shall not pose a threat to the health and
13 safety of other individuals in the workplace.

14 c. In a case in which an individual has an infectious or
15 communicable disease that is transmitted to others through the
16 handling of food, that is included on the list developed by
17 the United States secretary of health and human services, and
18 that cannot be eliminated by reasonable accommodation, a
19 covered entity may refuse to assign or continue to assign the
20 individual to a job involving food handling.

21 d. This section does not preempt, modify, or amend a
22 state, county, or local law, ordinance, or regulation
23 applicable to food handling which is designed to protect the
24 public health from individuals who pose a significant risk to
25 the health or safety of others, which risk cannot be
26 eliminated by reasonable accommodation, pursuant to the list
27 of infectious or communicable diseases and the modes of
28 transmissibility published by the United States secretary of
29 health and human services.

30 8. a. Concerning the illegal use of drugs, this section
31 does not exclude, as a qualified individual with a disability,
32 an individual who meets any of the following criteria:

33 (1) Has successfully completed a supervised drug
34 rehabilitation program and is no longer engaging in the
35 illegal use of the drugs or has otherwise been rehabilitated

1 successfully and is no longer engaging in the use.

2 (2) Is participating in a supervised rehabilitation
3 program and is no longer engaging in the use.

4 (3) Is erroneously regarded as engaging in the illegal use
5 but is not engaging in the use.

6 b. A covered entity may do one or more of the following:

7 (1) Prohibit the illegal use of drugs and the use of
8 alcohol at the workplace by all employees.

9 (2) Require that employees shall not be under the
10 influence of alcohol or be engaging in the illegal use of
11 drugs at the workplace.

12 (3) Require that employees behave in conformance with the
13 requirements established under the federal Drug-Free Workplace
14 Act of 1988, 41 U.S.C. § 701 et seq.

15 (4) Hold an employee who engages in the illegal use of
16 drugs or who is an alcoholic to the same qualification
17 standards for employment of job performance and behavior that
18 the covered entity holds other employees even if an
19 unsatisfactory performance or behavior is related to the
20 illegal drug use or alcoholism of the employee.

21 (5) With respect to federal regulations regarding alcohol
22 and the illegal use of drugs, require that employees comply
23 with the standards established in the federal regulations of
24 the following agencies:

25 (a) United States department of defense if the employees
26 of the covered entity are employed in an industry subject to
27 the federal regulations, including complying with regulations
28 that apply to employment in the industry for employees of the
29 covered entity who are employed in sensitive positions as
30 defined in the regulations of the United States department of
31 defense.

32 (b) United States nuclear regulatory commission if the
33 employees of the covered entity are employed in an industry
34 subject to the regulations, including complying with
35 regulations that apply to employment in the industry for

1 employees of the covered entity who are employed in sensitive
2 positions as defined in the regulations of the United States
3 nuclear regulatory commission.

4 (c) United States department of transportation, if the
5 employees of the covered entity are employed in a
6 transportation industry subject to the regulations, including
7 complying with the regulations that apply to employment in the
8 industry for employees of the covered entity who are employed
9 in sensitive positions as defined in the regulations of the
10 United States department of transportation.

11 9. Regarding insurance or health benefits coverage, this
12 section does not prohibit or restrict any of the following:

13 a. An insurer, hospital, or medical service company, a
14 health maintenance organization, an agent or entity that
15 administers benefit plans, or similar organizations, from
16 underwriting risks, classifying risks, or administering the
17 risks, which actions are based on or not inconsistent with
18 other laws of this state.

19 b. A person covered by this section, from establishing,
20 sponsoring, observing, or administering the terms of a bona
21 fide benefit plan that are based on underwriting risks,
22 classifying risks, or administering the risks, which terms are
23 based on or not inconsistent with other laws of this state.

24 c. A person covered by this section, from establishing,
25 sponsoring, observing, or administering the terms of a bona
26 fide benefit plan that is subject to the laws of this state
27 that regulate insurance.

28 d. Paragraphs "a", "b", and "c" shall not be used as a
29 subterfuge to evade the purposes of this section.

30 Sec. 7. Section 601A.18, Code 1991, is amended to read as
31 follows:

32 601A.18 RULE OF CONSTRUCTION -- SMOKING RESTRICTIONS --
33 UNWANTED ASSISTANCE.

34 1. This chapter shall be construed broadly to effectuate
35 its purposes.

1 2. This chapter does not preclude the prohibition of, or
2 the imposition of restrictions on, smoking in a place of
3 employment, in a public conveyance, or in a place of public
4 accommodation.

5 3. This chapter does not require an individual with a
6 disability to accept an accommodation, aid, service,
7 opportunity, or benefit which the individual chooses not to
8 accept.

9 Sec. 8. Section 730.5, subsection 2, unnumbered paragraph
10 1, Code 1991, is amended to read as follows:

11 Except as provided in subsection 7 and as allowed by
12 section 601A.6A, subsection 8, paragraph "b", an employer
13 shall not require or request employees or applicants for
14 employment to submit to a drug test as a condition of
15 employment, preemployment, promotion, or change in status of
16 employment. An employer shall not request, require, or
17 conduct random or blanket drug testing of employees. However,
18 this section does not apply to preemployment drug tests
19 authorized for peace officers or correctional officers of the
20 state, or to drug tests required under federal statutes or
21 under federal regulations adopted as of July 1, 1990, or to
22 drug tests conducted pursuant to a nuclear regulatory
23 commission policy statement, or to drug tests conducted to
24 determine if an employee is ineligible to receive workers'
25 compensation under section 85.16, subsection 2.

26 Sec. 9. Section 601A.14, Code 1991, is repealed.

27 Sec. 10. Section 4 takes effect on July 26, 1994.

28 EXPLANATION

29 The purpose of this bill is to prohibit unfair or
30 discriminatory practices in the employment of persons with
31 disabilities. It is intended to comply with the federal
32 Americans with Disabilities Act of 1990.

33 Section 1 strikes and rewrites the definition of disability
34 in chapter 601A and defines other terms such as "major life
35 activity".

1 Section 2 provides a temporary exemption for certain
2 employers of less than twenty-five employees from compliance
3 with this Act.

4 Section 3 amends the current law in chapter 601A relating
5 to unfair or discriminatory practices against disabled
6 persons.

7 Section 4 amends the definition of "employer".

8 Section 5 amends the current law relating to unfair or
9 discriminatory practices against disabled persons.

10 Section 6 adds a new section to chapter 601A. The new
11 section includes additional definitions of terms specifically
12 related to unfair or discriminatory practices in the
13 employment of persons with disabilities. Definitions are
14 provided for "qualified individual with a disability",
15 "covered entity" or employer, "reasonable accommodation" as it
16 relates to facilities, job restructuring, and work schedules
17 which may be arranged to help a disabled person perform a job,
18 and "undue hardship" which basically describes an
19 accommodation which a covered entity cannot afford. The use
20 of medical examinations and related inquiries are prohibited
21 to determine if a person has a disability or the severity of
22 the disability. The bill prohibits labor organizations and
23 employers from publicizing or advertising that disabled
24 persons are not welcome as members or employees. Labor unions
25 or organizations are prohibited from excluding or expelling
26 disabled persons from their organizations.

27 The bill specifies the allowable use of medical
28 examinations with regard to the employment of disabled persons
29 and outlines what "qualification standards" may be applied to
30 jobs. "Undue hardship" is defined to allow a covered entity
31 recourse if the cost and nature of an accommodation for a
32 disabled worker is too high.

33 Disabilities caused by the use of illegal drugs are not
34 covered by this bill unless the individual with a disability
35 has successfully completed a supervised rehabilitation program

1 and is no longer using the drugs or is currently under
2 treatment and no longer using the drugs.

3 The bill also authorizes a covered entity to require a
4 drug-free and alcohol-free environment for the workplace.

5 The bill does not prohibit or restrict insurers, hospitals,
6 or medical service companies, health maintenance
7 organizations, or related agents in developing or assigning
8 health or benefit risks, or administering such risks within
9 state law.

10 Section 7 provides that chapter 601A does not preclude
11 smoking restrictions in places of employment, public
12 accommodation, or public conveyance, and does not impose upon
13 disabled persons for unwanted services.

14 Section 8 relates to lawful restrictions on drug and
15 alcohol use in the work place.

16 Section 9 repeals section 601A.14 because it is redundant.

17 Section 10 provides a delayed effective date for section 4.

18 The bill may include a state mandate as defined in section
19 25B.3.

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