

THE SMALBANIANS WITH DISABILITIES ACT
15 Sma. Code 2001 (2005)
Passed by the Eugenia Legislature on September 30, 2005

SEC. 101. PURPOSE.

It is the purpose of this Act—

- (1) to provide a clear and comprehensive statewide mandate for the elimination of discrimination in employment against individuals with disabilities; and
- (2) to provide clear, strong, consistent, enforceable standards addressing discrimination in employment against individuals with disabilities.

SEC. 102. DEFINITIONS.

As used in this Act:

- (1) Disability.—The term “disability” means, with respect to an individual –
 - (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
 - (B) a record of such an impairment; or
 - (C) being regarded as having such an impairment.
- (2) Employee.—The term “employee” means an individual employed by an employer.
- (3) Employer.—The term “employer” means a person engaged in an industry affecting commerce who has 5 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.
- (4) Qualified individual with a disability.—The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this law, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.
- (5) Reasonable accommodation.—The term “reasonable accommodation” may include—
 - (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
 - (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, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.
- (6) Undue hardship.—
 - (A) In general.—The term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

- (B) Factors to be considered.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—
- (i) the nature and cost of the accommodation needed under this Act; and
 - (ii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities.

SEC 103. DISCRIMINATION.

- (1) General Rule.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to any terms, conditions, and privileges of employment.
- (2) Construction.—As used in subsection (1), the term “discriminate” includes—
 - (A) utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability;
 - (B) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

SEC. 104 DEFENSES.

- (1) In General.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards that screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this title.
- (2) Undue Hardship.—It may be a defense to a charge of discrimination under this Act that the implementation of reasonable accommodations to a qualified individual with a disability will pose an undue hardship to the employer.

SEC. 105 REMEDIES

- (1) In General.—This Act is not intended primarily to punish employers for violations of its provisions. It is intended primarily to provide remedies that seek to place an individual employee against whom improper discrimination has occurred in the same position that the individual would have occupied had the discrimination not occurred.
- (2) Remedies.—In the event of a finding that improper discrimination has occurred, the individual employee against whom such discrimination has occurred may be entitled to any or all of the following remedies:
 - (A) Back Pay.—The employee may be awarded the pay that he or she would have received had the discrimination not occurred.
 - (B) Reinstatement.—The employee may be reinstated in a position that he or she has lost as a direct result of the prohibited discrimination.

- (C) Transfer.—The employee may be transferred to a position of comparable responsibility and remuneration if such a solution does not impose an undue hardship on the employer.
- (D) Attorney's fees.—The finder of fact may award the employee any and all attorney's fees that he or she has incurred in the process of pursuing the lawsuit.