

ESB 1961

THE HOUSE OF REPRESENTATIVES  
Wednesday, March 24, 2010

ENGROSSED  
Senate Bill No. 1961  
As Amended

ENGROSSED SENATE BILL NO. 1961 - By: JOLLEY AND JOHNSON (CONSTANCE)  
of the Senate and SULLIVAN of the House.

[ discrimination in employment - disability - genetic information - codification  
-  
effective date ]

~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

1 SECTION 1. AMENDATORY 25 O.S. 2001, Section 1101, is amended to read  
2 as follows:

3 Section 1101. A. ~~The general purposes of this~~ This act are to provide provides for  
4 ~~execution~~ exclusive remedies within the state of the policies embodied in the following  
5 federal laws:

6 1. Civil Rights Act of 1964,~~the~~;

7 2. The federal Age Discrimination in Employment Act of 1967,~~and~~;

8 3. Section 504 of the federal Rehabilitation Act of 1973;

9 4. Title I of the Americans with Disabilities Act;

10 5. The Equal Pay Act of 1963;

11 6. Sections 102 and 103 of the Civil Rights Act of 1991; and

1           7. The Genetic Information Nondiscrimination Act of 2008.

2           ~~to make uniform the law of those states which enact this act,~~ and to provide rights  
3 and remedies substantially equivalent to those granted under the federal Fair Housing  
4 Law.

5           B. This act shall be construed according to the fair import of its terms and shall be  
6 liberally construed to further the general purposes stated in this section and the special  
7 purposes of the particular provision involved.

8           SECTION 2.    AMENDATORY    25 O.S. 2001, Section 1301, is amended to read  
9 as follows:

10          Section 1301. In Sections 1101 through 1706 of this title:

11          1. "Employer" means

12                a.       a person who has fifteen or more employees for each working day in  
13                        each of twenty (20) or more calendar weeks in the current or preceding  
14                        calendar year, ~~or~~

15                b.       a person who ~~as a contractor or subcontractor is furnishing the~~  
16                        contracts or subcontracts with the state, a governmental entity or a  
17                        state agency to furnish material or performing perform work for the  
18                        ~~state or a governmental entity or agency of the state and includes, or~~

19                c.       an agent of ~~such a person but~~ defined in subparagraphs a or b of this  
20                        paragraph.

1        The term "employer" does not include ~~an Indian~~ a Native American tribe or a bona  
2 fide membership club ~~not organized for profit, other than a labor organization, that is~~  
3 exempt from taxation under Title 26, Section 501(c) of the United States Code;

4        2. "Employment agency" means a person regularly undertaking with or without  
5 compensation to procure employees for an employer or to procure for employees  
6 opportunities to work for an employer and includes an agent of such a person;

7        3. "Labor organization" includes:

- 8            a.        an organization of any kind, an agency or employee representation  
9                        committee, group, association, or plan in which employees participate  
10                        and which exists for the purpose, in whole or in part, of dealing with  
11                        employers concerning grievances, labor disputes, wages, rates of pay,  
12                        hours, or other terms or conditions of employment,
- 13            b.        a conference, general committee, joint or system board, or joint council  
14                        so engaged which is subordinate to a national or international labor  
15                        organization, or
- 16            c.        an agent of a labor organization;

17        4. ~~"Handicapped person"~~ "Disability" means ~~a person who has~~ a physical or mental  
18 impairment which substantially limits one or more ~~of such person's~~ major life activities,  
19 ~~has a record of such an impairment or is regarded as having such an impairment;~~ and

20        5. "Age discrimination in employment" means discrimination in employment of  
21 persons who are at least forty (40) years of age.

1 SECTION 3. AMENDATORY 25 O.S. 2001, Section 1302, is amended to read  
2 as follows:

3 Section 1302. A. It is a discriminatory practice for an employer:

4 1. To fail or refuse to hire, to discharge, or otherwise to discriminate against an  
5 individual with respect to compensation or the terms, conditions, privileges or  
6 responsibilities of employment, because of race, color, religion, sex, national origin, age,  
7 ~~or handicap unless such action is related to a bona fide occupational qualification~~  
8 ~~reasonably necessary to the normal operation of the employer's business or enterprise~~  
9 disability or genetic information with respect to the employee; or

10 2. To limit, segregate, or classify an employee or applicant for employment in a way  
11 which would deprive or tend to deprive an individual of employment opportunities or  
12 otherwise adversely affect the status of an employee, because of race, color, religion, sex,  
13 national origin, age, ~~or handicap unless such action is related to a bona fide occupational~~  
14 ~~qualification reasonably necessary to the normal operation of the employer's business or~~  
15 ~~enterprise~~ disability or genetic information with respect to the employee.

16 B. This section does not apply to the employment of an individual by his parents,  
17 spouse, or child or to employment in the domestic service of the employer.

18 SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma  
19 Statutes as Section 1350 of Title 25, unless there is created a duplication in numbering,  
20 reads as follows:

21 A. A cause of action for employment based discrimination is hereby created and any  
22 common law remedies are hereby abolished.

1 B. In order to have standing in a court of law to allege discrimination arising from  
2 an employment related matter, in a cause of action against an employer for  
3 discrimination based on race, color, religion, sex, national origin, age, or genetic  
4 information with respect to the employee or retaliation, an aggrieved party must, within  
5 three hundred days from the last date of alleged discrimination, file a charge of  
6 discrimination in employment with the Equal Employment Opportunity Commission  
7 and/or the Oklahoma Human Rights Commission alleging the basis of discrimination  
8 believed to have been perpetrated on the aggrieved party. Upon completion of any  
9 investigation, the Oklahoma Human Rights Commission shall issue the complaining  
10 party a Notice of a Right to Sue.

11 C. Should a charge of discrimination be filed with the Oklahoma Human Rights  
12 Commission and not be resolved to the satisfaction of the charging party within one  
13 hundred eighty (180) days from the date of filing of such charge, the charging party may  
14 request the Commission to issue a Notice of a Right to Sue, which must be first obtained  
15 in order to commence a civil action under this section.

16 D. All civil actions brought pursuant to a Notice of a Right to Sue from the  
17 Oklahoma Human Rights Commission for redress against any person who is alleged to  
18 have discriminated against the charging party and against any person named as  
19 respondent in the charge shall be commenced in the district court of this state for the  
20 county in which the unlawful employment practice is alleged to have been committed.

21 E. Either party in any such action shall be entitled to a jury trial of any facts in  
22 dispute in the action.

1 F. The defending party may allege a bona fide occupational qualification as a  
2 defense only as to religion, sex, national origin and age.

3 G. If it is determined in such action that the defendant or defendants in such action  
4 have discriminated against the charging party as charged in the petition, the aggrieved  
5 party shall be entitled to nominal or actual damages. Actual damages shall include, but  
6 not be limited to, reinstatement or hiring, with or without back pay, or any other legal or  
7 equitable relief as the court deems appropriate. Interim earnings or amounts earnable  
8 with reasonable diligence by the person discriminated against shall operate to reduce the  
9 back pay otherwise allowable. If an individual was refused employment or advancement,  
10 was suspended and/or was discharged for legitimate reasons other than discrimination as  
11 provided by this act, then no order of the court shall require the hiring, reinstatement or  
12 promotion of that individual as an employee, nor shall it order payment of any back pay.

13 H. In any action or proceeding under this section the court shall allow a prevailing  
14 party a reasonable attorneys fee.

15 I. No action may be filed in district court as herein provided more than ninety (90)  
16 days after receiving a Notice of a Right to Sue from the Oklahoma Human Rights  
17 Commission.

18 SECTION 5. This act shall become effective November 1, 2010.

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03-23-10 - DO PASS,  
20 As Amended.