

operation of, on the licensed premises, or in any room adjoining the licensed premises, any slot machine, dice, or any gambling device or apparatus, nor permit any gambling therein, nor permit the licensed premises or any room in the same, or in any adjoining building, directly or indirectly under its control to be used as a resort for prostitutes or other disorderly persons, except that gambling devices may be kept or operated and raffles conducted on licensed premises and adjoining rooms when such activities are licensed by the local unit of government pursuant to section 349.26. No person under 18 years of age shall be employed in any rooms constituting the place in which intoxicating liquors are sold at retail "on-sale," except that persons under 18 years of age may be employed as musicians or to perform the duties of a busboy or dishwashing services in places defined as a restaurant or hotel or motel serving food in rooms in which intoxicating liquors are sold at retail "on-sale." Persons under 18 years of age may be employed as waiters or waitresses in places defined as a restaurant, hotel or motel to serve food in rooms in which only wine is sold on-sale, provided they shall not be permitted to serve or sell wine.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Approved June 6, 1983

CHAPTER 276 — S.F.No. 529

An act relating to human rights; prohibiting discrimination because of disability; providing penalties; clarifying the meaning of a change in the time for filing suit in the district court; amending Minnesota Statutes 1982, sections 363.01, subdivision 25, and by adding subdivisions; 363.02, subdivisions 1 and 5; 363.03, subdivisions 1, 3, 4, and 7; and repealing Minnesota Statutes 1982, section 363.03, subdivision 4a.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1982, section 363.01, subdivision 25, is amended to read:

Subd. 25. **DISABILITY.** "Disability" means a ~~mental or physical~~ any condition which constitutes a handicap or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical or mental impairment which substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.

Sec. 2. Minnesota Statutes 1982, section 363.01, is amended by adding a subdivision to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 25a. QUALIFIED DISABLED PERSON. "Qualified disabled person" means:

(1) with respect to employment, a disabled person who, with reasonable accommodation, can perform the essential functions required of all applicants for the job in question; and

(2) with respect to services and programs, a disabled person who, with physical and program access, meets the essential eligibility criteria required of all applicants for the program or service in question.

For the purposes of this subdivision, "disability" excludes any condition resulting from alcohol or drug abuse which prevents a person from performing the essential functions of the job in question or constitutes a direct threat to property or the safety of others.

Sec. 3. Minnesota Statutes 1982, section 363.01, is amended by adding a subdivision to read:

Subd. 33. PHYSICAL ACCESS. "Physical access" means (1) the absence of physical obstacles that limit a disabled person's opportunity for full and equal use of or benefit from goods, services, and privileges; or, when necessary, (2) the use of methods to overcome the discriminatory effect of physical obstacles. The methods may include redesign of equipment, assignment of aides, or use of alternate accessible locations.

Sec. 4. Minnesota Statutes 1982, section 363.01, is amended by adding a subdivision to read:

Subd. 34. PROGRAM ACCESS. "Program access" means (1) the use of auxiliary aids or services to ensure full and equal use of or benefit from goods, services, and privileges; and (2) the absence of criteria or methods of administration that directly, indirectly, or through contractual or other arrangements, have the effect of subjecting qualified disabled persons to discrimination on the basis of disability, or have the effect of defeating or impairing the accomplishment of the objectives of the program.

Sec. 5. Minnesota Statutes 1982, section 363.02, subdivision 1, is amended to read:

Subdivision 1. **EMPLOYMENT.** The provisions of section 363.03, subdivision 1, shall not apply to:

- (1) The employment of any individual
 - (a) by his parent, grandparent, spouse, child, or grandchild, or
 - (b) in the domestic service of any person;

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(2) A religious or fraternal corporation, association, or society, with respect to qualifications based on religion, when religion shall be a bona fide occupational qualification for employment;

(3) The employment of one person in place of another, standing by itself, shall not be evidence of an unfair discriminatory practice;

(4) An age restriction applied uniformly and without exception to all individuals established by a bona fide apprenticeship program established pursuant to chapter 178, which limits participation to persons who enter the program prior to some specified age and the trade involved in the program predominantly involves heavy physical labor or work on high structures. Neither shall the operation of a bona fide seniority system which mandates differences in such things as wages, hiring priorities, lay-off priorities, vacation credit, and job assignments based on seniority, be a violation of the age discrimination provisions of section 363.03, subdivision 1, so long as the operation of such the system is not a subterfuge to evade the provisions of chapter 363;

(5) With respect to age discrimination, a practice ~~whereby~~ by which a labor organization or employer offers or supplies varying insurance benefits or other fringe benefits to members or employees of differing ages, so long as the cost to the labor organization or employer for such the benefits is reasonably equivalent for all members or employees;

(6) A restriction imposed by state statute, home rule charter, ordinance, or civil service rule, and applied uniformly and without exception to all individuals, which establishes a maximum age for entry into employment as a peace officer or firefighter.

(7) Nothing in this chapter concerning age discrimination shall be construed to validate or permit age requirements which have a disproportionate impact on persons of any class otherwise protected by section 363.03, subdivision 1 or 5.

It is not an unfair employment practice for an employer, employment agency or labor organization:

(i) to require or request a person to undergo physical examination, which may include a medical history, for the purpose of determining the person's capability to perform available employment, provided (a) that an offer of employment has been made on condition that the person meets the physical or mental requirements of the job; (b) that the examination tests only for essential job-related abilities; and (c) that the examination, unless limited to determining whether the person's disability would prevent performance of the job, is required of all persons conditionally offered employment for the same position regardless of disability; or

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(ii) to conduct an investigation as to the person's medical history for the purpose of determining the person's capability to perform available employment with the consent of the employee, to obtain additional medical information for the purposes of establishing an employee health record;

(iii) to administer pre-employment tests, provided that the tests (a) measure only essential job-related abilities, (b) are required of all applicants for the same position regardless of disability unless limited to determining whether the person's disability would prevent performance of the job, and (c) accurately measure the applicant's aptitude, achievement level, or whatever factors they purport to measure rather than reflecting the applicant's impaired sensory, manual, or speaking skills, except when those skills are the factors that the tests purport to measure; or

(iii) (iv) to limit receipt of benefits payable under a fringe benefit plan for disabilities to that period of time which a licensed physician reasonably determines a person is unable to work; or

(iv) (v) to provide special safety considerations for pregnant women involved in tasks which are potentially hazardous to the health of the unborn child, as determined by medical criteria.

Sec. 6. Minnesota Statutes 1982, section 363.02, subdivision 5, is amended to read:

Subd. 5. **DISABILITY.** Nothing in this chapter shall be construed to prohibit any program, service, facility or privilege afforded to a person with a disability which is intended to habilitate, rehabilitate or accommodate that person. It is a defense to a complaint or action brought under this chapter that the person bringing the complaint or action ~~suffers from~~ has a disability which in the circumstances and even with reasonable accommodation, as defined in section 363.03, subdivision 1, clause (6), poses a serious threat to the health or safety of the disabled person or others. The burden of proving this defense is upon the respondent.

Sec. 7. Minnesota Statutes 1982, section 363.03, subdivision 1, is amended to read:

Subdivision 1. **EMPLOYMENT.** Except when based on a bona fide occupational qualification, it is an unfair employment practice:

(1) For a labor organization, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age,

(a) to deny full and equal membership rights to a person seeking membership or to a member;

(b) to expel a member from membership;

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(c) to discriminate against a person seeking membership or a member with respect to his hire, apprenticeship, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment; or

(d) to fail to classify properly, or refer for employment or otherwise to discriminate against a person or member.

(2) For an employer, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, or age,

(a) to refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment; or

(b) to discharge an employee; or

(c) to discriminate against a person with respect to his hire, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.

(3) For an employment agency, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age,

(a) to refuse or fail to accept, register, classify properly, or refer for employment or otherwise to discriminate against a person; or

(b) to comply with a request from an employer for referral of applicants for employment if the request indicates directly or indirectly that the employer fails to comply with the provisions of this chapter.

(4) For an employer, employment agency, or labor organization, before a person is employed by an employer or admitted to membership in a labor organization, to

(a) require the person to furnish information that pertains to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability, unless, for the purpose of national security, information pertaining to national origin is required by the United States, this state or a political subdivision or agency of the United States or this state, or for the purpose of compliance with the public contracts act or any rule, regulation or laws of the United States or of this state requiring information pertaining to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability is required by the United States or a political subdivision or agency of the United States; or

(b) cause to be printed or published a notice or advertisement that relates to employment or membership and discloses a preference, limitation, specification, or discrimination based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability or age.

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(5) For an employer, an employment agency or a labor organization, with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work.

(6) For an employer with 50 or more permanent, full-time employees, an employment agency or a labor organization, not to make reasonable accommodation to the known disability of a qualified disabled person unless the employer, agency, or organization can demonstrate that the accommodation would impose an undue hardship on the business, agency, or organization. "Reasonable accommodation" means steps which must be taken to accommodate the known physical or mental limitations of a qualified disabled person. "Reasonable accommodation" may include but is not limited to: (a) making facilities readily accessible to and usable by disabled persons; and (b) job restructuring, modified work schedules that do not reduce the total number of hours normally worked, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis.

In determining whether an accommodation would impose an undue hardship on the operation of a business or organization, factors to be considered include:

(a) the overall size of the business or organization with respect to number of employees or members and the number and type of facilities;

(b) the type of the operation, including the composition and structure of the work force, and the number of employees at the location where the employment would occur;

(c) the nature and cost of the needed accommodation;

(d) the reasonable ability to finance the accommodation at each site of business; and

(e) documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with the disabled person or with knowledgeable disabled persons or organizations.

In the case of an accommodation for a job applicant, any cost in excess of \$50 imposed on the prospective employer shall be deemed an undue hardship if no alternative costing \$50 or less exists. A prospective employer need not pay for an accommodation for a job applicant which costs \$50 or less if it is available from an alternative source without cost to the employer or applicant.

Sec. 8. Minnesota Statutes 1982, section 363.03, subdivision 3, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 3. **PUBLIC ACCOMMODATIONS.** It is an unfair discriminatory practice:

To deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin or sex. It is an unfair discriminatory practice for a taxicab company to discriminate in the access to, full utilization of or benefit from service because of a person's disability. Nothing in this subdivision requires any person to exercise a higher degree of care for a person having a disability or to modify property in any way except as required by the accessibility provisions of the state building code.

Sec. 9. Minnesota Statutes 1982, section 363.03, subdivision 4, is amended to read:

Subd. 4. **PUBLIC SERVICES.** It is an unfair discriminatory practice:

(1) To discriminate against any person in the access to, admission to, full utilization of or benefit from any public service because of race, color, creed, religion, national origin, disability, sex or status with regard to public assistance or to fail to ensure physical and program access for disabled persons unless the public service can demonstrate that providing the access would impose an undue hardship on its operation. In determining whether providing physical and program access would impose an undue hardship, factors to be considered include:

(a) the type and purpose of the public service's operation;

(b) the nature and cost of the needed accommodation;

(c) documented good faith efforts to explore less restrictive or less expensive alternatives; and

(d) the extent of consultation with knowledgeable disabled persons and organizations.

Physical and program access must be accomplished within six months of the effective date of this section, except for needed architectural modifications, which must be made within two years of the effective date of this section.

(2) For public transit services to discriminate in the access to, full utilization of, or benefit from service because of a person's disability. Public transit services may use any of a variety of methods to provide transportation for disabled people, provided that persons who are disabled are offered transportation that, in relation to the transportation offered nondisabled persons, is:

(a) in a similar geographic area of operation. To the extent that the transportation provided disabled people is not provided in the same geographic area of operation as that provided nondisabled people, priority must be given to those areas which contain the largest percent of disabled riders. A public transit

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service may not fail to provide transportation to disabled persons in a geographic area for which it provides service to nondisabled persons if doing so will exclude a sizeable portion of the disabled ridership;

(b) during similar hours of operation;

(c) for comparable fares;

(d) with similar or no restrictions as to trip purpose; and

(e) with reasonable response time.

Public transit services must meet these five criteria for the provision of transit services within three years of the effective date of this section.

Sec. 10. Minnesota Statutes 1982, section 363.03, subdivision 7, is amended to read:

Subd. 7. **REPRISALS.** It is an unfair discriminatory practice for any employer, labor organization, employment agency, public accommodation, public service, educational institution, or owner, lessor, lessee, sublessee, assignee or managing agent of any real property, or any real estate broker, real estate salesperson or employee or agent thereof to intentionally engage in any reprisal against any person because that person:

(1) Opposed a practice forbidden under this chapter or has filed a charge, testified, assisted, or participated in any matter in an investigation, proceeding or hearing under this chapter; or

(2) Associated with a person or group of persons who are disabled or who are of different race, color, creed, religion, or national origin.

A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment. It is a reprisal for an employer to do any of the following with respect to an individual because that individual has engaged in the activities listed in clause (1) or (2): refuse to hire the individual; depart from any customary employment practice; transfer or assign the individual to a lesser position in terms of wages, hours, job classification, job security, or other employment status; or inform another employer that the individual has engaged in the activities listed in clause (1) or (2).

Sec. 11. **REPEALER.**

Minnesota Statutes 1982, section 363.03, subdivision 4a, is repealed.

Sec. 12. **CLARIFICATION OF LEGISLATIVE INTENT.**

The purpose of this section is to clarify the intent of an amendment to the Human Rights Act adopted as Laws 1978, chapter 793, section 74. This section does not alter the meaning of that enactment. The legislature did not intend, by Laws 1978, chapter 793, section 74 to deprive a charging party under the Human

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Rights Act of one remedy while preserving another remedy. A party with a charge pending in the human rights department on the effective date of Laws 1978, chapter 793, section 74 could have elected either to continue the charge for investigation by the department or, as expressly stated in Laws 1978, chapter 793, section 74, could have withdrawn the charge and filed a civil action in district court within 90 days of the withdrawal. Therefore, notwithstanding that any party's charge was filed prior to the effective date of Laws 1978, chapter 793, section 74, a party who after the effective date of the 1978 act, withdrew a charge from the department and complied with the time limits of the 1978 act for filing an action in district court, may maintain the action. The state may not raise the defense of res judicata in connection with any such action commenced before the effective date of this section.

Sec. 13. **EFFECTIVE DATE.**

Sections 1 to 12 are effective the day following final enactment.

Approved June 6, 1983

CHAPTER 277 — S.F.No. 616

An act relating to the council for the handicapped; providing for appointment of members to the council; decreasing the number of council members; making the council permanent; clarifying the purposes of committees within the council; describing duties; amending Minnesota Statutes 1982, sections 256.481; and 256.482; repealing Minnesota Statutes 1982, section 256.483.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1982, section 256.481, is amended to read:

256.481 HANDICAPPED PERSON; DEFINITION.

For the purposes of sections 256.481 to ~~256.483~~ 256.482 "handicapped person" means ~~one who, because of a substantial physical, mental or emotional disability or dysfunction requires special services in order to enjoy the benefits of our society any person who:~~

- (a) has a physical, mental, or emotional impairment which substantially limits one or more major life activities;
- (b) has a record of such an impairment; or
- (c) is regarded as having such an impairment.

Sec. 2. Minnesota Statutes 1982, section 256.482, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.