

SECOND REGULAR SESSION

HOUSE BILL NO. 1639

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE OVERCAST.

4410H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapters 173 and 324, RSMo, by adding thereto two new sections relating to accommodations for individuals with disabilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapters 173 and 324, RSMo, are amended by adding thereto two new sections, to be known as sections 173.2525 and 324.1172, to read as follows:

173.2525. 1. This section and section 324.1172 shall be known and may be cited as the "Missouri Pathways to Access and Success Act (PASA)".

2. As used in this section, the following terms mean:

(1) "Accommodation", any modification or adjustment to the environment, format, or administrative process intended to ensure equal access and opportunity for an individual with a disability;

(2) "Disability", a physical or mental impairment substantially limiting one or more major life activities, as defined under the Americans with Disabilities Act (ADA), 42 U.S.C. Section 12101 et seq.

3. Each public institution of higher education shall adopt a policy on the documentation the institution requires from an enrolled or admitted student to establish that the student has a disability and is therefore eligible for accommodations. The policy shall make any of the following documentation sufficient to establish that the student has a disability:

(1) Documentation that the student has had an individualized education program (IEP) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq., as amended;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (2) Documentation that the student has received services or accommodations
19 under Section 504 of the Rehabilitation Act of 1973;

20 (3) Documentation that the student has received services under the Americans
21 with Disabilities Act (ADA);

22 (4) A record or evaluation from a licensed professional finding that the student
23 has a disability;

24 (5) A plan or record of disability services for the student from another
25 institution of higher education; or

26 (6) Documentation of a disability due to military service in the uniformed
27 services, as defined in 20 U.S.C. Section 1091c(a).

28 4. A public institution of higher education may establish less burdensome
29 criteria to establish that a student has a disability than the criteria described in
30 subsection 3 of this section.

31 5. The policy adopted under this section shall be transparent and provide
32 information about the process for determining eligibility for accommodations. Each
33 public institution of higher education shall disseminate such information to students,
34 parents, and faculty in accessible formats, including during orientation, and shall make
35 the information publicly available on the institution's website.

324.1172. 1. As used in this section, the following terms mean:

2 (1) "Accommodation", any modification or adjustment to the environment,
3 format, or administrative process intended to ensure equal access and opportunity for
4 an individual with a disability;

5 (2) "Accommodation request", any request for accommodations on a
6 professional licensing examination made by an applicant;

7 (3) "Applicant", any individual applying to take a professional licensing
8 examination;

9 (4) "Disability", a physical or mental impairment substantially limiting one or
10 more major life activities, as defined under the Americans with Disabilities Act (ADA),
11 42 U.S.C. Section 12101 et seq.;

12 (5) "Licensing body", any agency, board, commission, or entity responsible for
13 administering a professional licensing examination in this state;

14 (6) "Professional licensing examination", any examination required to be
15 successfully passed in order to obtain a license, certificate, registration, permit, or other
16 authorization to legally practice an occupation or profession in this state;

17 (7) "Qualified treating professional", a clinician who:

18 (a) Is licensed or certified in a field relevant to the applicant's disability
19 including, but not limited to, psychologists, psychiatrists, physicians, nurse

20 practitioners, audiologists, occupational therapists, speech therapists, and licensed
21 mental health professionals;

22 (b) Has an existing therapeutic or clinical relationship with the applicant;

23 (c) Has conducted an individualized evaluation that reviews medical or
24 psychological history, functional limitations, and diagnostic testing; and

25 (d) Is qualified to interpret assessment results and explain how those limitations
26 justify the requested accommodation.

27 2. An applicant's documented history of receiving accommodations during
28 secondary, postsecondary, or graduate education, or on comparable standardized
29 examinations, shall be considered strong evidence of the need for similar
30 accommodations and shall create a rebuttable presumption of eligibility for similar
31 accommodations on professional licensing examinations.

32 3. If an applicant provides documentation from a qualified treating professional
33 that certifies the need for a specific accommodation on a professional licensing
34 examination, the licensing body shall grant such accommodation unless the licensing
35 body provides clear and convincing evidence demonstrating that the requested
36 accommodation would fundamentally alter the nature of the examination or pose an
37 undue burden.

38 4. The opinion of a qualified treating professional shall be presumed valid and
39 afforded substantial deference by licensing bodies. Licensing bodies shall not deny
40 accommodations on a professional licensing examination based solely on the opinion of
41 an expert who has not personally examined or treated the applicant unless objective
42 evidence of fraud or misrepresentation supports the denial.

43 5. Licensing bodies shall provide written notification of decisions within thirty
44 days of receiving a complete application for a professional licensing examination
45 accompanied by an accommodation request.

46 6. Any denial of an accommodation request shall include a detailed explanation
47 specifying the reasons for denial, the evidence relied upon, and the qualifications and
48 credentials of any experts whose opinions were used.

49 7. Licensing bodies shall not impose excessive or repeated documentation
50 requirements for applicants making accommodation requests. Documentation
51 previously accepted by educational institutions or other examination bodies shall be
52 sufficient unless the licensing body provides clear evidence of a material change in
53 circumstances.

54 8. Licensing bodies that use experts to assist them in evaluating accommodation
55 requests shall:

56 (1) Engage only experts with specialized training in ADA compliance and
57 accommodation evaluations;

58 (2) Ensure the experts are independent and impartial; and

59 (3) Ensure the experts disclose all compensation, past recommendations, and
60 potential conflicts of interest to the applicant upon request.

61 9. Any applicant denied accommodations on a professional licensing
62 examination shall have the right to appeal to an independent review panel established
63 within the division of professional registration of the department of commerce and
64 insurance. The panel shall consist of three members appointed by the director of the
65 department of commerce and insurance, including at least one disability rights
66 advocate, one licensed professional examiner, and one attorney licensed in this state.
67 The panel shall render a decision within forty-five days of the filing of an appeal. The
68 decision of the panel shall be binding on the licensing body.

69 10. Any licensing body found by the independent review panel established in
70 subsection 9 of this section or a court of competent jurisdiction to have wrongfully
71 denied an accommodation shall reimburse the applicant for reasonable attorney's fees
72 and costs incurred in administrative proceedings, appeals, or litigation necessary to
73 obtain the accommodation.

74 11. Each licensing body shall annually report to the department of commerce
75 and insurance the number of accommodation requests received, granted, denied, and
76 appealed and the outcomes thereof. The reports shall be disaggregated by licensing
77 body and published on the department's public website before February first of each
78 year.

79 12. All licensing bodies shall provide ADA and accommodation compliance
80 training to all personnel involved in evaluating accommodation requests at least once
81 every two years. The training shall be provided by an external ADA compliance expert
82 approved by the Missouri commission on human rights or a federally recognized ADA
83 training entity.

84 13. No licensing body shall retaliate against an applicant for making an
85 accommodation request or appealing a denial of an accommodation request.

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