

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 866

Short Title: Persons With Disabilities Changes-AB. (Public)

Sponsors: Senators Miller, Rand, Martin of Guilford; and Dalton.

Referred to: Judiciary II.

April 4, 2001

A BILL TO BE ENTITLED
AN ACT TO MAKE CHANGES TO THE PERSONS WITH DISABILITIES
PROTECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 168A-2(a) reads as rewritten:

"(a) The purpose of this Chapter is to ensure equality of opportunity, to promote independent living and economic self-sufficiency, and to encourage and enable all persons with disabilities to participate fully to the maximum extent of their abilities in the social and economic life of the State, to engage in remunerative employment, to use available public accommodations and public services, and to otherwise pursue their rights and privileges as inhabitants of this State."

SECTION 2. G.S. 168A-3 reads as rewritten:

"§ 168A-3. Definitions.

As used in this Chapter, unless the context otherwise requires:

- (1) 'Disabling condition' means any condition or characteristic that renders a person a person with a disability.
- (1a) 'Discriminatory practice' means any practice prohibited by this Chapter.
- (2) 'Employer' means any person employing 15 or more full-time employees within the State, but excluding a person whose only employees are hired to work as domestic or farm workers at that person's home or farm.
- (3) 'Employment agency' means a person regularly undertaking with or without compensation to procure for employees opportunities to work for an employer and includes an agent of such a person.
- (4) Recodified as § 168A-3(7).
- (4a) 'Information technology' has the same meaning as in G.S. 147-33.81. The term also specifically includes information transaction machines.

- 1 (5) Recodified as § 168A-3(1).
- 2 (6) 'Labor organization' means an organization of any kind, an agency or
3 employee representation committee, a group association, or a plan, in
4 which employees participate and which exists for the purpose, in
5 whole or in part, of dealing with employers concerning grievances,
6 labor disputes, wages, rates of pay, hours, or other terms or conditions
7 of employment.
- 8 (7) 'Person' includes any individual, partnership, association, corporation,
9 labor organization, legal representative, trustee, receiver, and the State
10 and its departments, agencies, and political subdivisions.
- 11 (7a) 'Person with a disability' means any person who (i) has a physical or
12 mental impairment which substantially limits one or more major life
13 activities; (ii) has a record of such an impairment; or (iii) is regarded as
14 having such an impairment. As used in this subdivision, the term:
- 15 a. 'Physical or mental impairment' means (i) any physiological
16 disorder or abnormal condition, cosmetic disfigurement, or
17 anatomical loss, caused by bodily injury, birth defect or illness,
18 affecting one or more of the following body systems:
19 neurological; musculoskeletal; special sense organs; respiratory,
20 including speech organs; cardiovascular; reproductive;
21 digestive; genitourinary; hemic and lymphatic; skin; and
22 endocrine; or (ii) any mental disorder, such as mental
23 retardation, organic brain syndrome, mental illness, specific
24 learning disabilities, and other developmental disabilities, but
25 (iii) excludes (A) sexual preferences; (B) active alcoholism or
26 drug addiction or abuse; and (C) any disorder, condition or
27 disfigurement which is temporary in nature leaving no residual
28 impairment.
- 29 b. 'Major life activities' means functions such as caring for one's
30 self, performing manual tasks, walking, seeing, hearing,
31 speaking, breathing, learning, and working.
- 32 c. 'Has a record of such an impairment' means has a history of, or
33 has been misclassified as having, a mental or physical
34 impairment that substantially limits major life activities.
- 35 d. 'Is regarded as having an impairment' means (i) has a physical
36 or mental impairment that does not substantially limit major life
37 activities but that is treated as constituting such a limitation; (ii)
38 has a physical or mental impairment that substantially limits
39 major life activities because of the attitudes of others; or (iii)
40 has none of the impairments defined in paragraph a. of this
41 subdivision but is treated as having such an impairment.
- 42 (8) 'Place of public accommodations' includes, but is not limited to, any
43 place, facility, store, other establishment, hotel, or motel, which

1 supplies goods or services on the premises to the public or which
2 solicits or accepts the patronage or trade of any person.

3 (9) 'Qualified person with a disability' means:

- 4 a. With regard to employment, a person with a disability who can
5 satisfactorily perform the duties of the job in question, with or
6 without reasonable accommodation, (i) provided that the person
7 with a disability shall not be held to standards of performance
8 different from other employees similarly employed, and (ii)
9 further provided that the disabling condition does not create an
10 unreasonable risk to the safety or health of the person with a
11 disability, other employees, the employer's customers, or the
12 public;
- 13 b. With regard to places of public accommodation a person with a
14 disability who can benefit from the goods or services provided
15 by the place of public accommodation; and
- 16 c. With regard to public services and public transportation a
17 person with a disability who meets prerequisites for
18 participation that are uniformly applied to all participants, such
19 as income or residence, and that do not have the effect of
20 discriminating against persons with a disability.

21 (10) 'Reasonable accommodations' means:

- 22 a. With regard to employment, making reasonable physical
23 changes in the workplace, including, but not limited to, making
24 facilities accessible, modifying equipment and providing
25 mechanical aids to assist in operating equipment, or making
26 reasonable changes in the duties of the job in question that
27 would accommodate the known disabling conditions of the
28 person with a disability seeking the job in question by enabling
29 him or her to satisfactorily perform the duties of that job;
30 provided that 'reasonable accommodation' does not require that
31 an employer:
- 32 1. Hire one or more employees, other than the person with
33 a disability, for the purpose, in whole or in part, of
34 enabling the person with a disability to be employed; or
 - 35 2. Reassign duties of the job in question to other employees
36 without assigning to the employee with a disability
37 duties that would compensate for those reassigned; or
 - 38 3. Reassign duties of the job in question to one or more
39 other employees where such reassignment would
40 increase the skill, effort or responsibility required of such
41 other employee or employees from that required prior to
42 the change in duties; or
 - 43 4. Alter, modify, change or deviate from bona fide seniority
44 policies or practices; or

- 1 5. Provide accommodations of a personal nature, including,
2 but not limited to, eyeglasses, hearing aids, or
3 prostheses, except under the same terms and conditions
4 as such items are provided to the employer's employees
5 generally; or
6 6. ~~Make physical changes to accommodate a person with a
7 disability where:~~
8 I. ~~For a new employee the cost of such changes
9 would exceed five percent (5%) of the annual
10 salary or annualized hourly wage for the job in
11 question; or~~
12 II. ~~For an existing employee the cost of the changes
13 would bring the total cost of physical changes
14 made to accommodate the employee's disabling
15 conditions since the beginning of the employee's
16 employment with the employer to greater than
17 five percent (5%) of the employee's current salary
18 or current annualized hourly wage; or~~
19 7.6. Make any changes that would impose on the employer
20 an undue hardship, ~~provided that the costs of less than
21 five percent (5%) of an employee's salary or annualized
22 wage as determined in subsection (6) above shall be
23 presumed not to be an undue hardship.~~
24 b. With regard to a place of public accommodations, making
25 reasonable efforts to accommodate the disabling conditions of a
26 person with a disability, including, but not limited to, making
27 facilities accessible to and usable by persons with a disability,
28 redesigning equipment, provide mechanical aids or other
29 assistance, or using alternative accessible locations, provided
30 that reasonable accommodations does not require efforts which
31 would impose an undue hardship on the entity involved.
32 (11) 'Undue hardship' means a significant difficulty or expense. The
33 following factors shall be considered in determining whether an
34 accommodation would impose an undue hardship:
35 a. The nature and cost of the accommodations needed under this
36 Chapter.
37 b. The overall financial resources of the particular facility or
38 facilities involved in the provision of the accommodation, the
39 number of persons employed at the facility, the effect on
40 expenses and resources at the facility, and any other impact on
41 the operation of the facility.
42 c. The overall effect on the financial resources of the covered
43 entity, the number of persons employed by the covered entity,

1 and the number, type, and location of the covered entity's
2 facilities.

3 d. The type of operations of the covered entity, including the
4 composition, structure, and functions of the workforce of the
5 entity; the geographic separateness of the particular facility to
6 the covered entity, and the administrative or fiscal relationship
7 of the particular facility to the covered entity."

8 **SECTION 3.** G.S. 168A-7 reads as rewritten:

9 **"§ 168A-7. Discrimination in public service.**

10 (a) It is a discriminatory practice for a State department, institution, or agency, or
11 any political subdivision of the State or any person that contracts with the above for the
12 delivery of public services including but not limited to education, health, social services,
13 recreation, and rehabilitation, to refuse to provide reasonable aids and adaptations
14 necessary for a known qualified person with a disability to use or benefit from existing
15 public services operated by such entity; provided that the aids and adaptations do not
16 impose an undue hardship on the entity involved.

17 (b) The North Carolina Office on the ADA is responsible for coordinating
18 technical assistance and determining the standards of review for accessibility of
19 information technology.

20 (c) A State department, institution or agency, any political subdivision of the
21 State, and any person that contracts with these entities for the delivery of public services
22 shall administer its services, programs, and activities in the most integrated setting
23 appropriate to the needs of qualified persons with disabilities."

24 **SECTION 4.** Chapter 168A of the General Statutes is amended by adding a
25 new section to read:

26 **"§ 168A-10.1. Alternative dispute resolution in public services discrimination**
27 **cases.**

28 The North Carolina Office on the ADA shall adopt rules for an alternative dispute
29 resolution process to improve public services' responsiveness and to provide a
30 consistent and comprehensive mechanism for accommodating accessibility requests."

31 **SECTION 5.** G.S. 168A-11(b) reads as rewritten:

32 "(b) Any relief granted by the court ~~shall be limited to declaratory~~ may include
33 declaratory, compensatory, and injunctive relief, including orders to hire or reinstate an
34 aggrieved person or admit such person to a labor organization. In a civil action brought
35 to enforce provisions of this Chapter relating to employment, the court may award back
36 pay and any equitable relief the court finds appropriate. Any such back pay liability
37 shall not accrue from a date more than two years prior to the filing of an action under
38 this Chapter. Interim earnings or amounts earnable with reasonable diligence by the
39 aggrieved person shall operate to reduce the back pay otherwise allowable."

40 **SECTION 6.** This act becomes effective October 1, 2001. The provisions of
41 G.S. 168A-7(b) apply to information technology placed into service on or after July 1,
42 2002.