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SENATE BILL 866
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Short Title: Persons With Disabilities Changes-AB.

(Public)

Sponsors:

Referred to:

April 4, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE PERSONS WITH DISABILITIES
3 PROTECTION ACT AND TO REQUIRE THE JOINT SELECT COMMITTEE
4 ON INFORMATION TECHNOLOGY TO STUDY AND MAKE
5 RECOMMENDATIONS REGARDING THE ACCESSIBILITY OF SERVICES
6 PROVIDED VIA INFORMATION TECHNOLOGY.

7 The General Assembly of North Carolina enacts:

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

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

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

16 "**§ 168A-3. Definitions.**

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

- 18 (1) 'Disabling condition' means any condition or characteristic that renders
19 a person a person with a disability.
20 (1a) 'Discriminatory practice' means any practice prohibited by this
21 Chapter.
22 (2) 'Employer' means any person employing 15 or more full-time
23 employees within the State, but excluding a person whose only
24 employees are hired to work as domestic or farm workers at that
25 person's home or farm.

- 1 (3) 'Employment agency' means a person regularly undertaking with or
2 without compensation to procure for employees opportunities to work
3 for an employer and includes an agent of such a person.
- 4 (4) Recodified as § 168A-3(7).
- 5 (5) Recodified as § 168A-3(1).
- 6 (6) 'Labor organization' means an organization of any kind, an agency or
7 employee representation committee, a group association, or a plan, in
8 which employees participate and which exists for the purpose, in
9 whole or in part, of dealing with employers concerning grievances,
10 labor disputes, wages, rates of pay, hours, or other terms or conditions
11 of employment.
- 12 (7) 'Person' includes any individual, partnership, association, corporation,
13 labor organization, legal representative, trustee, receiver, and the State
14 and its departments, agencies, and political subdivisions.
- 15 (7a) 'Person with a disability' means any person who (i) has a physical or
16 mental impairment which substantially limits one or more major life
17 activities; (ii) has a record of such an impairment; or (iii) is regarded as
18 having such an impairment. As used in this subdivision, the term:
- 19 a. 'Physical or mental impairment' means (i) any physiological
20 disorder or abnormal condition, cosmetic disfigurement, or
21 anatomical loss, caused by bodily injury, birth defect or illness,
22 affecting one or more of the following body systems:
23 neurological; musculoskeletal; special sense organs; respiratory,
24 including speech organs; cardiovascular; reproductive;
25 digestive; genitourinary; hemic and lymphatic; skin; and
26 endocrine; or (ii) any mental disorder, such as mental
27 retardation, organic brain syndrome, mental illness, specific
28 learning disabilities, and other developmental disabilities, but
29 (iii) excludes (A) sexual preferences; (B) active alcoholism or
30 drug addiction or abuse; and (C) any disorder, condition or
31 disfigurement which is temporary in nature leaving no residual
32 impairment.
- 33 b. 'Major life activities' means functions such as caring for one's
34 self, performing manual tasks, walking, seeing, hearing,
35 speaking, breathing, learning, and working.
- 36 c. 'Has a record of such an impairment' means has a history of, or
37 has been misclassified as having, a mental or physical
38 impairment that substantially limits major life activities.
- 39 d. 'Is regarded as having an impairment' means (i) has a physical
40 or mental impairment that does not substantially limit major life
41 activities but that is treated as constituting such a limitation; (ii)
42 has a physical or mental impairment that substantially limits

- 1 major life activities because of the attitudes of others; or (iii)
2 has none of the impairments defined in paragraph a. of this
3 subdivision but is treated as having such an impairment.
- 4 (8) 'Place of public accommodations' includes, but is not limited to, any
5 place, facility, store, other establishment, hotel, or motel, which
6 supplies goods or services on the premises to the public or which
7 solicits or accepts the patronage or trade of any person.
- 8 (9) 'Qualified person with a disability' means:
- 9 a. With regard to employment, a person with a disability who can
10 satisfactorily perform the duties of the job in question, with or
11 without reasonable accommodation, (i) provided that the person
12 with a disability shall not be held to standards of performance
13 different from other employees similarly employed, and (ii)
14 further provided that the disabling condition does not create an
15 unreasonable risk to the safety or health of the person with a
16 disability, other employees, the employer's customers, or the
17 public;
- 18 b. With regard to places of public accommodation a person with a
19 disability who can benefit from the goods or services provided
20 by the place of public accommodation; and
- 21 c. With regard to public services and public transportation a
22 person with a disability who meets prerequisites for
23 participation that are uniformly applied to all participants, such
24 as income or residence, and that do not have the effect of
25 discriminating against persons with a disability.
- 26 (10) 'Reasonable accommodations' means:
- 27 a. With regard to employment, making reasonable physical
28 changes in the workplace, including, but not limited to, making
29 facilities accessible, modifying equipment and providing
30 mechanical aids to assist in operating equipment, or making
31 reasonable changes in the duties of the job in question that
32 would accommodate the known disabling conditions of the
33 person with a disability seeking the job in question by enabling
34 him or her to satisfactorily perform the duties of that job;
35 provided that 'reasonable accommodation' does not require that
36 an employer:
- 37 1. Hire one or more employees, other than the person with
38 a disability, for the purpose, in whole or in part, of
39 enabling the person with a disability to be employed; or
- 40 2. Reassign duties of the job in question to other employees
41 without assigning to the employee with a disability
42 duties that would compensate for those reassigned; or

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

- 1 a. The nature and cost of the accommodations needed under this
2 Chapter.
- 3 b. The overall financial resources of the particular facility or
4 facilities involved in the provision of the accommodation, the
5 number of persons employed at the facility, the effect on
6 expenses and resources at the facility, and any other impact on
7 the operation of the facility.
- 8 c. The overall effect on the financial resources of the covered
9 entity, the number of persons employed by the covered entity,
10 and the number, type, and location of the covered entity's
11 facilities.
- 12 d. The type of operations of the covered entity, including the
13 composition, structure, and functions of the workforce of the
14 entity, the geographic separateness of the particular facility to
15 the covered entity, and the administrative or fiscal relationship
16 of the particular facility to the covered entity."

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

18 "**§ 168A-7. Discrimination in public service.**

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

26 (b) A State department, institution, or agency, any political subdivision of the
27 State, and any person that contracts with these entities for the delivery of public services
28 shall administer its services programs, and activities in the most integrated setting
29 appropriate to the needs of persons with disabilities."

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

32 "**§ 168A-10.1. Dispute resolution in public services discrimination cases.**

33 The North Carolina Office on the Americans with Disabilities Act shall adopt rules
34 to provide a consistent and comprehensive mechanism for accommodating requests
35 regarding accessibility to public services, and shall adopt dispute resolution procedures
36 to govern responsiveness to those requests. This section does not authorize the North
37 Carolina Office on the Americans with Disabilities Act to adopt rules or procedures that
38 apply to the resolution of matters constituting grounds for a contested case under
39 Chapter 126 of the General Statutes."

40 **SECTION 5.** The Joint Select Committee on Information Technology shall
41 study the question of whether the North Carolina Persons with Disabilities Protection
42 Act should be amended to specifically apply to services provided via information

1 technology. The Committee shall review the report of the IRMC's Accessibility Work
2 Group and shall consider such other information as it may deem pertinent. The
3 Committee shall include its findings as a part of its March 1 2002, report.

4 **SECTION 6.** Section 5 of this act is effective when the act becomes law.
5 The remainder of this act becomes effective October 1, 2001.