

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-163
SENATE BILL 866**

**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, self-determination, 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.
- (5) Recodified as § 168A-3(1).
- (6) 'Labor organization' means an organization of any kind, an agency or employee representation committee, a group association, or a plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.
- (7) 'Person' includes any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.
- (7a) 'Person with a disability' means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, the term:
 - a. 'Physical or mental impairment' means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness,

affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.

- b. 'Major life activities' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
 - c. 'Has a record of such an impairment' means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.
 - d. 'Is regarded as having an impairment' means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.
- (8) 'Place of public accommodations' includes, but is not limited to, any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person.
- (9) 'Qualified person with a disability' means:
- a. With regard to employment, a person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation, (i) provided that the person with a disability shall not be held to standards of performance different from other employees similarly employed, and (ii) further provided that the disabling condition does not create an unreasonable risk to the safety or health of the person with a disability, other employees, the employer's customers, or the public;
 - b. With regard to places of public accommodation a person with a disability who can benefit from the goods or services provided by the place of public accommodation; and
 - c. With regard to public services and public transportation a person with a disability who meets prerequisites for participation that are uniformly applied to all participants, such as income or residence, and that do not have the effect of discriminating against persons with a disability.
- (10) 'Reasonable accommodations' means:
- a. With regard to employment, making reasonable physical changes in the workplace, including, but not limited to, making facilities accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the duties of the job in question that would accommodate the known disabling conditions of the person with a disability seeking the job in question by enabling him or her to satisfactorily perform the duties of that job;

provided that 'reasonable accommodation' does not require that an employer:

1. Hire one or more employees, other than the person with a disability, for the purpose, in whole or in part, of enabling the person with a disability to be employed; or
 2. Reassign duties of the job in question to other employees without assigning to the employee with a disability duties that would compensate for those reassigned; or
 3. Reassign duties of the job in question to one or more other employees where such reassignment would increase the skill, effort or responsibility required of such other employee or employees from that required prior to the change in duties; or
 4. Alter, modify, change or deviate from bona fide seniority policies or practices; or
 5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally; or
 - ~~6. Make physical changes to accommodate a person with a disability where:
 - I. For a new employee the cost of such changes would exceed five percent (5%) of the annual salary or annualized hourly wage for the job in question; or
 - II. For an existing employee the cost of the changes would bring the total cost of physical changes made to accommodate the employee's disabling conditions since the beginning of the employee's employment with the employer to greater than five percent (5%) of the employee's current salary or current annualized hourly wage; or~~
 - ~~7.6. Make any changes that would impose on the employer an undue hardship, provided that the costs of less than five percent (5%) of an employee's salary or annualized wage as determined in subsection (6) above shall be presumed not to be an undue hardship.~~
- b. With regard to a place of public accommodations, making reasonable efforts to accommodate the disabling conditions of a person with a disability, including, but not limited to, making facilities accessible to and usable by persons with a disability, redesigning equipment, provide mechanical aids or other assistance, or using alternative accessible locations, provided that reasonable accommodations does not require efforts which would impose an undue hardship on the entity involved.
- (11) 'Undue hardship' means a significant difficulty or expense. The following factors shall be considered in determining whether an accommodation would impose an undue hardship:
- a. The nature and cost of the accommodations needed under this Chapter.
 - b. The overall financial resources of the particular facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on

- expenses and resources at the facility, and any other impact on the operation of the facility.
- c. The overall effect on the financial resources of the covered entity, the number of persons employed by the covered entity, and the number, type, and location of the covered entity's facilities.
- d. The type of operations of the covered entity, including the composition, structure, and functions of the workforce of the entity, the geographic separateness of the particular facility to the covered entity, and the administrative or fiscal relationship of the particular facility to the covered entity."

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

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

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

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

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

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

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

SECTION 5. This act becomes effective January 1, 2003. The provisions of G.S. 168A-7 added by this act apply to information technology placed into service on or after January 1, 2004.

In the General Assembly read three times and ratified this the 3rd day of October, 2002.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:15 a.m. this 17th day of October, 2002