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SENATE BILL 866
Judiciary II Committee Substitute Adopted 4/24/01
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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.

4 The General Assembly of North Carolina enacts:

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

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

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

13 "§ 168A-3. Definitions.

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

- 15 (1) 'Disabling condition' means any condition or characteristic that renders
16 a person a person with a disability.
- 17 (1a) 'Discriminatory practice' means any practice prohibited by this
18 Chapter.
- 19 (2) 'Employer' means any person employing 15 or more full-time
20 employees within the State, but excluding a person whose only
21 employees are hired to work as domestic or farm workers at that
22 person's home or farm.
- 23 (3) 'Employment agency' means a person regularly undertaking with or
24 without compensation to procure for employees opportunities to work
25 for an employer and includes an agent of such a person.
- 26 (4) Recodified as § 168A-3(7).
- 27 (4a) Information technology' has the same meaning as in G.S. 147-33.81.
28 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.

- 1 (8) 'Place of public accommodations' includes, but is not limited to, any
2 place, facility, store, other establishment, hotel, or motel, which
3 supplies goods or services on the premises to the public or which
4 solicits or accepts the patronage or trade of any person. This includes
5 equivalent services provided via information technology.
- 6 (9) 'Qualified person with a disability' means:
- 7 a. With regard to employment, a person with a disability who can
8 satisfactorily perform the duties of the job in question, with or
9 without reasonable accommodation, (i) provided that the person
10 with a disability shall not be held to standards of performance
11 different from other employees similarly employed, and (ii)
12 further provided that the disabling condition does not create an
13 unreasonable risk to the safety or health of the person with a
14 disability, other employees, the employer's customers, or the
15 public;
- 16 b. With regard to places of public accommodation a person with a
17 disability who can benefit from the goods or services provided
18 by the place of public accommodation; and
- 19 c. With regard to public services and public transportation a
20 person with a disability who meets prerequisites for
21 participation that are uniformly applied to all participants, such
22 as income or residence, and that do not have the effect of
23 discriminating against persons with a disability.
- 24 (10) 'Reasonable accommodations' means:
- 25 a. With regard to employment, making reasonable physical
26 changes in the workplace, including, but not limited to, making
27 facilities accessible, modifying equipment and providing
28 mechanical aids to assist in operating equipment, or making
29 reasonable changes in the duties of the job in question that
30 would accommodate the known disabling conditions of the
31 person with a disability seeking the job in question by enabling
32 him or her to satisfactorily perform the duties of that job;
33 provided that 'reasonable accommodation' does not require that
34 an employer:
- 35 1. Hire one or more employees, other than the person with
36 a disability, for the purpose, in whole or in part, of
37 enabling the person with a disability to be employed; or
- 38 2. Reassign duties of the job in question to other employees
39 without assigning to the employee with a disability
40 duties that would compensate for those reassigned; or
- 41 3. Reassign duties of the job in question to one or more
42 other employees where such reassignment would

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

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

15 **SECTION 3.** This act becomes effective October 1, 2001. The provisions of
16 G.S. 168A-7(b) apply to information technology placed into service on or after July 1,
17 2002.