

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL 866  
Judiciary II Committee Substitute Adopted 4/24/01  
Third Edition Engrossed 4/25/01  
House Committee Substitute Favorable 7/26/01

Short Title: Persons with Disabilities Changes-AB.

(Public)

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Sponsors:

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Referred to:

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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 (5) Recodified as § 168A-3(1).

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

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

1 expenses and resources at the facility, and any other impact on  
2 the operation of the facility.

3 c. The overall effect on the financial resources of the covered  
4 entity, the number of persons employed by the covered entity,  
5 and the number, type, and location of the covered entity's  
6 facilities.

7 d. The type of operations of the covered entity, including the  
8 composition, structure, and functions of the workforce of the  
9 entity; the geographic separateness of the particular facility to  
10 the covered entity, and the administrative or fiscal relationship  
11 of the particular facility to the covered entity."

12 **SECTION 3.** G.S. 168A-3 as amended by Section 2 of this act reads as  
13 rewritten:

14 **"§ 168A-3. Definitions.**

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

- 16 (1) 'Disabling condition' means any condition or characteristic that renders  
17 a person a person with a disability.
- 18 (1a) 'Discriminatory practice' means any practice prohibited by this  
19 Chapter.
- 20 (2) 'Employer' means any person employing 15 or more full-time  
21 employees within the State, but excluding a person whose only  
22 employees are hired to work as domestic or farm workers at that  
23 person's home or farm.
- 24 (3) 'Employment agency' means a person regularly undertaking with or  
25 without compensation to procure for employees opportunities to work  
26 for an employer and includes an agent of such a person.
- 27 (4) Recodified as § 168A-3(7).
- 28 (4a) 'Information technology' has the same meaning as in G.S. 147-33.81.  
29 The term also specifically includes information transaction machines.
- 30 (5) Recodified as § 168A-3(1).
- 31 (6) 'Labor organization' means an organization of any kind, an agency or  
32 employee representation committee, a group association, or a plan, in  
33 which employees participate and which exists for the purpose, in  
34 whole or in part, of dealing with employers concerning grievances,  
35 labor disputes, wages, rates of pay, hours, or other terms or conditions  
36 of employment.
- 37 (7) 'Person' includes any individual, partnership, association, corporation,  
38 labor organization, legal representative, trustee, receiver, and the State  
39 and its departments, agencies, and political subdivisions.
- 40 (7a) 'Person with a disability' means any person who (i) has a physical or  
41 mental impairment which substantially limits one or more major life

1 activities; (ii) has a record of such an impairment; or (iii) is regarded as  
2 having such an impairment. As used in this subdivision, the term:

3 a. 'Physical or mental impairment' means (i) any physiological  
4 disorder or abnormal condition, cosmetic disfigurement, or  
5 anatomical loss, caused by bodily injury, birth defect or illness,  
6 affecting one or more of the following body systems:  
7 neurological; musculoskeletal; special sense organs; respiratory,  
8 including speech organs; cardiovascular; reproductive;  
9 digestive; genitourinary; hemic and lymphatic; skin; and  
10 endocrine; or (ii) any mental disorder, such as mental  
11 retardation, organic brain syndrome, mental illness, specific  
12 learning disabilities, and other developmental disabilities, but  
13 (iii) excludes (A) sexual preferences; (B) active alcoholism or  
14 drug addiction or abuse; and (C) any disorder, condition or  
15 disfigurement which is temporary in nature leaving no residual  
16 impairment.

17 b. 'Major life activities' means functions such as caring for one's  
18 self, performing manual tasks, walking, seeing, hearing,  
19 speaking, breathing, learning, and working.

20 c. 'Has a record of such an impairment' means has a history of, or  
21 has been misclassified as having, a mental or physical  
22 impairment that substantially limits major life activities.

23 d. 'Is regarded as having an impairment' means (i) has a physical  
24 or mental impairment that does not substantially limit major life  
25 activities but that is treated as constituting such a limitation; (ii)  
26 has a physical or mental impairment that substantially limits  
27 major life activities because of the attitudes of others; or (iii)  
28 has none of the impairments defined in paragraph a. of this  
29 subdivision but is treated as having such an impairment.

30 (8) 'Place of public accommodations' includes, but is not limited to, any  
31 place, facility, store, other establishment, hotel, or motel, which  
32 supplies goods or services on the premises to the public or which  
33 solicits or accepts the patronage or trade of any person. This includes  
34 equivalent services provided via information technology.

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

36 a. With regard to employment, a person with a disability who can  
37 satisfactorily perform the duties of the job in question, with or  
38 without reasonable accommodation, (i) provided that the person  
39 with a disability shall not be held to standards of performance  
40 different from other employees similarly employed, and (ii)  
41 further provided that the disabling condition does not create an  
42 unreasonable risk to the safety or health of the person with a

- 1 disability, other employees, the employer's customers, or the  
2 public;
- 3 b. With regard to places of public accommodation a person with a  
4 disability who can benefit from the goods or services provided  
5 by the place of public accommodation; and
- 6 c. With regard to public services and public transportation a  
7 person with a disability who meets prerequisites for  
8 participation that are uniformly applied to all participants, such  
9 as income or residence, and that do not have the effect of  
10 discriminating against persons with a disability.
- 11 (10) 'Reasonable accommodations' means:
- 12 a. With regard to employment, making reasonable physical  
13 changes in the workplace, including, but not limited to, making  
14 facilities accessible, modifying equipment and providing  
15 mechanical aids to assist in operating equipment, or making  
16 reasonable changes in the duties of the job in question that  
17 would accommodate the known disabling conditions of the  
18 person with a disability seeking the job in question by enabling  
19 him or her to satisfactorily perform the duties of that job;  
20 provided that 'reasonable accommodation' does not require that  
21 an employer:
- 22 1. Hire one or more employees, other than the person with  
23 a disability, for the purpose, in whole or in part, of  
24 enabling the person with a disability to be employed; or
  - 25 2. Reassign duties of the job in question to other employees  
26 without assigning to the employee with a disability  
27 duties that would compensate for those reassigned; or
  - 28 3. Reassign duties of the job in question to one or more  
29 other employees where such reassignment would  
30 increase the skill, effort or responsibility required of such  
31 other employee or employees from that required prior to  
32 the change in duties; or
  - 33 4. Alter, modify, change or deviate from bona fide seniority  
34 policies or practices; or
  - 35 5. Provide accommodations of a personal nature, including,  
36 but not limited to, eyeglasses, hearing aids, or  
37 prostheses, except under the same terms and conditions  
38 as such items are provided to the employer's employees  
39 generally; or
  - 40 6. Make any changes that would impose on the employer  
41 an undue hardship.

- 1                   b. With regard to a place of public accommodations, making  
2 reasonable efforts to accommodate the disabling conditions of a  
3 person with a disability, including, but not limited to, making  
4 facilities accessible to and usable by persons with a disability,  
5 redesigning equipment, provide mechanical aids or other  
6 assistance, or using alternative accessible locations, provided  
7 that reasonable accommodations does not require efforts which  
8 would impose an undue hardship on the entity involved.
- 9           (11) 'Undue hardship' means a significant difficulty or expense. The  
10 following factors shall be considered in determining whether an  
11 accommodation would impose an undue hardship:
- 12           a. The nature and cost of the accommodations needed under this  
13 Chapter.
- 14           b. The overall financial resources of the particular facility or  
15 facilities involved in the provision of the accommodation, the  
16 number of persons employed at the facility, the effect on  
17 expenses and resources at the facility, and any other impact on  
18 the operation of the facility.
- 19           c. The overall effect on the financial resources of the covered  
20 entity, the number of persons employed by the covered entity,  
21 and the number, type, and location of the covered entity's  
22 facilities.
- 23           d. The type of operations of the covered entity, including the  
24 composition, structure, and functions of the workforce of the  
25 entity; the geographic separateness of the particular facility to  
26 the covered entity, and the administrative or fiscal relationship  
27 of the particular facility to the covered entity."

28           **SECTION 4.** G.S. 168A-7 reads as rewritten:

29   "**§ 168A-7. Discrimination in public service.**

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

37       (b) The North Carolina Office on the Americans with Disabilities Act is  
38 responsible for coordinating technical assistance and determining the standards of  
39 review for accessibility of information technology.

40       (c) A State department, institution, or agency, any political subdivision of the  
41 State, and any person that contracts with these entities for the delivery of public services



1 shall administer its services, programs, and activities in the most integrated setting  
2 appropriate to the needs of persons with disabilities."

3         **SECTION 5.** Chapter 168A of the General Statutes is amended by adding a  
4 new section to read:

5 **"§ 168A-10.1. Dispute resolution in public services discrimination cases.**

6         The North Carolina Office on the Americans with Disabilities Act shall adopt rules  
7 for dispute resolution processes to govern public services' responsiveness and to  
8 provide a consistent and comprehensive mechanism for accommodating accessibility  
9 requests."

10         **SECTION 6.** Section 3 of this act becomes effective July 1, 2002, and  
11 applies to information technology placed into service on or after that date. The  
12 remainder of this act becomes effective October 1, 2001.