

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-450
HOUSE BILL 686**

AN ACT TO UPDATE THE LANGUAGE OF CHAPTER 168 OF THE GENERAL STATUTES REGARDING PERSONS WITH DISABILITIES AND TO CLARIFY THE LAW ALLOWING SERVICE ANIMALS IN TRAINING TO ACCESS PUBLIC FACILITIES AND CONVEYANCES WHEN ACCOMPANIED BY A PERSON WHO TRAINS SERVICE ANIMALS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 168 of the General Statutes reads as rewritten:

"Chapter 168.

"Handicapped Persons. Persons with Disabilities.

"Article 1.

"Rights.

"§ 168-1. Purpose and definition.

The State shall encourage and enable ~~handicapped persons~~ persons with disabilities to participate fully in the social and economic life of the State and to engage in remunerative employment. ~~The definition of "handicapped persons" shall include those individuals with physical, mental and visual disabilities. For the purposes of this Article the definition of "visually impaired" in G.S. 111-11 shall apply. For purposes of this Article, the term "person with a disability" shall have the same meaning as set forth in G.S. 168A-3(7a).~~

"§ 168-2. Right of access to and use of public places.

~~Handicapped persons~~ Persons with disabilities have the same right as ~~the able-bodied persons without disabilities~~ to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and all other buildings and facilities, both publicly and privately owned, which serve the public. The Department of Health and Human Services shall develop, print, and promote the publication ACCESS NORTH CAROLINA. It shall make copies of the publication available to the Department of Commerce for its use in Welcome Centers and other appropriate Department of Commerce offices. The Department of Commerce shall promote ACCESS NORTH CAROLINA in its publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Health and Human Services on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Commerce shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Health and Human Services.

"§ 168-3. Right to use of public conveyances, accommodations, etc.

~~The handicapped and physically disabled~~ Persons with disabilities are entitled to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation; hotels, lodging places, places of public accommodation, amusement or resort to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

~~"§§ 168-4, 168-4.1:~~ Repealed by Session Laws 1985, c. 514, s. 1.

"§ 168-4.2. May be accompanied by service animal.

~~(a) Every mobility impaired person, as defined in this section, visually impaired person, as broadly defined to include visual disability, hearing impaired person, as defined in G.S. 8B-1(2), or person with a seizure disorder has the right to be accompanied by a service animal especially trained for the purpose of providing assistance to a person with the same impairing condition as the person wishing to be accompanied.~~ Every person with a disability has the right to be accompanied by a service animal trained to assist the person with his or her specific disability in any of the places listed in G.S. 168-3, and has the right to keep the service animal on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the Department of Health and Human Services, under G.S. 168-4.3, stamped "NORTH CAROLINA SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the animal is being trained or has been trained as a service animal. The service animal may accompany a person in any of the places listed in G.S. 168-3 but may not occupy a seat in any of these places. G.S. 168-3. The service animal may accompany that animal's trainer during training sessions in any of the places listed in G.S. 168-3.

~~A mobility impaired person is a person with a physiological deficiency, regardless of its cause, nature, or extent, that renders the individual unable to move about without the aid of crutches, a wheelchair, or other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any other related function.~~

~~(b) An animal in training to become a service animal may be taken into any of the places listed in G.S. 168-3 for the purpose of training when the animal is accompanied by a person who is training the service animal and the animal wears a collar and leash, harness, or cape that identifies the animal as a service animal in training. The trainer shall be liable for any damage caused by the animal while using a public conveyance or on the premises of a public facility or other place listed in G.S. 168-3.~~

"§ 168-4.3. Training and registration of service animal.

The Department of Health and Human Services, shall adopt rules for the registration of service animals and shall issue registrations to a ~~visually impaired person, a hearing impaired person, a mobility impaired person, or a person with a seizure disorder~~ person with a disability who makes application for registration of an animal that serves as a service animal, animal or to a person who is training an animal as a service animal.

The rules adopted regarding registration shall require that the animal be trained or be in training as a service animal by an appropriate agency, animal, and that the ~~The rules shall provide that the certification and registration be permanent need not be renewed while the animal is serving or training with the person applying for the registration. for the particular animal and need not be renewed while that particular animal serves the person applying for registration as a service animal.~~ No fee may be charged the person for the application, registration, tag, or replacement in the event the original is lost. The Department of Health and Human Services may, by rule, issue a certification or accept the certification issued by the appropriate training facilities.

"§ 168-4.4. Responsibility for service animal.

~~The visually impaired person, hearing impaired person, mobility impaired person, or person with a seizure disorder.~~ Neither a person with a disability who is accompanied by a service animal animal, nor a person who is training a service animal, may ~~not~~ be required to pay any extra compensation for the animal. The person has all the responsibilities and liabilities placed on any person by any applicable law when that person owns or uses any animal, including liability for any damage done by the animal.

"§ 168-4.5. Penalty.

It is unlawful to ~~disguise a dog as an assistance dog, or to deprive a visually impaired person, a hearing impaired person, or a mobility impaired person~~ an animal as a service animal or service animal in training. It is unlawful to ~~deprive a person with a disability or a person training a service animal~~ of any rights granted the person pursuant to G.S. 168-4.2 through G.S. 168-4.4, or of any rights or privileges granted the general public with respect to being accompanied by ~~dogs,~~ animals or to charge any fee for the use of the ~~assistance dog.~~ service animal. Violation of this section shall be a Class 3 misdemeanor.

"§ 168-4.6. Donation of dogs for training.

Dogs impounded by a local dog warden that are not redeemed shall be donated to a nonprofit agency engaged in the training of ~~assistance-service~~ dogs, upon the agency's request.

~~"§ 168-5. Traffic and other rights of persons using certain canes.~~

~~The driver of a vehicle approaching a visually impaired pedestrian who is carrying a cane predominantly white or silver in color (with or without a red tip) or using a guide dog shall take all necessary precautions to avoid injury to such pedestrian.~~

"§ 168-6: Repealed by Session Laws 1985, c. 571, s. 3.

"§§ 168-7, 168-7.1: Repealed by Session Laws 1985, c. 514, s. 1.

"§ 168-8. Right to habilitation and rehabilitation services.

~~Handicapped persons~~ A person with a disability shall be entitled to such habilitation and rehabilitation services as available and needed for the development or restoration of their capabilities to the fullest extent possible. Such services shall include, but not be limited to, education, training, treatment and other services to provide for adequate food, clothing, housing and transportation during the course of education, training and treatment. ~~Handicapped persons~~ A person with a disability shall be entitled to these rights subject only to the conditions and limitations established by law and applicable alike to all persons.

"§ 168.9. Right to housing.

Each ~~handicapped~~ person with a disability who is a citizen shall have the same right as any other citizen to live and reside in residential communities, homes, and group homes, and no person or group of persons, including governmental bodies or political subdivisions of the State, shall be permitted, or have the authority, to prevent any ~~handicapped~~ person with a disability who is a citizen, ~~on the basis of his or her handicap,~~ citizen from living and residing in residential communities, homes, and group homes on the same basis and conditions as any other citizen. Nothing herein shall be construed to conflict with provisions of Chapter 122C of the General Statutes.

"§ 168-10. Eliminate discrimination in treatment of ~~handicapped and disabled~~ persons with disabilities.

Each ~~handicapped person~~ person with a disability shall have the same consideration as any other person for individual accident and health insurance coverage, and no insurer, service corporation, multiple employer welfare arrangement, or health maintenance organization subject to Chapter 58 of the General Statutes solely on the basis of the person's ~~handicap,~~ disability, shall deny such coverage or benefits. The availability of coverage or benefits shall not be denied solely because of the ~~handicap;~~ disability; however, any such insurer may charge the appropriate premiums or fees for the risk insured on the same basis and conditions as insurance issued to other persons, in accordance with actuarial and underwriting principles and other coverage provisions prescribed in Chapter 58 of the General Statutes. No insurer, service corporation, multiple employer welfare arrangement, or health maintenance organization subject to Chapter 58 of the General Statutes shall be prohibited from excluding by waiver or otherwise, any preexisting conditions from coverage as prescribed in G.S. 58-51-15(a)(2)b.

"§§ 168-11 through 168-13: Reserved for future codification purposes.

"Article 2.

"Vocational Rehabilitation.

"§ 168-14. Vocational rehabilitation services for deaf persons.

The Department of Health and Human Services shall promote the employment of deaf persons in this State. The Department shall assist deaf persons whose disability limits employment opportunities in obtaining gainful employment commensurate with their abilities and in maintaining such employment.

The Department, in furtherance of these objectives, shall maintain statistics regarding trades and occupations in which deaf persons are employed.

The Department shall attempt to employ deaf persons in its vocational rehabilitation services for deaf persons and shall have at least one deaf person so employed.

"§§ 168-15 through 168-19: Reserved for future codification purposes.

"Article 3.

"Family Care Homes.

"§ 168-20. Public policy.

The General Assembly has declared in Article 1 of this Chapter that it is the public policy of this State to provide ~~handicapped~~ persons with disabilities with the opportunity to live in a normal residential environment.

"§ 168-21. Definitions.

As used in this Article:

- (1) "Family care home" means a home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident ~~handicapped persons.~~ persons with disabilities.
- (2) ~~"Handicapped person"~~ "Person with disabilities" means a person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b.

"§ 168-22. Family care home; zoning and other purposes.

(a) A family care home shall be deemed a residential use of property for zoning purposes and shall be a permissible use in all residential districts of all political subdivisions. No political subdivision may require that a family care home, its owner, or operator obtain, because of the use, a conditional use permit, special use permit, special exception or variance from any such zoning ordinance or plan; provided, however, that a political subdivision may prohibit a family care home from being located within a one-half mile radius of an existing family care home.

(b) A family care home shall be deemed a residential use of property for the purposes of determining charges or assessments imposed by political subdivisions or businesses for water, sewer, power, telephone service, cable television, garbage and trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and improvements.

"§ 168-23. Certain private agreements void.

Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property which would permit residential use of property but prohibit the use of such property as a family care home shall, to the extent of such prohibition, be void as against public policy and shall be given no legal or equitable force or effect."

SECTION 2. This act becomes effective September 1, 2005.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

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

s/ Michael F. Easley
Governor

Approved 12:50 p.m. this 29th day of September, 2005