

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 530*

Short Title: Conforming Changes/Persons W/Disabilities Act. (Public)

Sponsors: Representatives Blackwell, Brisson, Earle, and Hurley (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee A.

March 31, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE NORTH CAROLINA PERSONS WITH DISABILITIES
PROTECTION ACT TO CONFORM WITH FEDERAL CHANGES UNDER THE
AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT OF 2008 (ADAAA).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 168A-3 reads as rewritten:

"§ 168A-3. Definitions.

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

(1) "Covered governmental entity" means any State department, institution, agency, or any political subdivision of the State or any person that contracts with a State department, institution, agency, or political subdivision of the State for the delivery of public services, including, but not limited to, education, health, social services, recreation, and rehabilitation.

~~(1a)~~(1a) "Disabling condition" means any condition or characteristic that renders a person a person with a disability.

~~(1a)~~(1b) "Discriminatory practice" means any practice prohibited by this Chapter.

...
(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:~~ a body system, including, but not limited to, 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-nature, lasting six months or fewer, and leaving no residual impairment. A disorder, condition, or disfigurement that is episodic



or in remission is a physical or mental impairment if it would substantially limit a major life activity when active.

- b. "Major life activities" means ~~functions such as~~ functions, including, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, eating, sleeping, lifting, bending, standing, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- 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.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as (i) medication, medical supplies, equipment, or appliances, low-vision devices, which do not include ordinary eyeglasses or contact lenses, prosthetics, including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; (ii) use of assistive technology; (iii) reasonable accommodations or auxiliary aids or services; or (iv) learned behavioral or adaptive neurological modifications.

...
(10) "Reasonable accommodations" means:

- b. ~~With regard to a place of public accommodations,~~ accommodations and a covered governmental entity, 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 providing auxiliary aids and services needed to make aurally and visually delivered materials available, as needed, to individuals with hearing or sight impairments, providing 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.

...."
SECTION 2. G.S. 168A-4 reads as rewritten:

"§ 168A-4. Reasonable accommodation duties.

(a) A qualified person with a disability requesting a reasonable accommodation must apprise the employer, employment agency, labor organization, ~~or~~ place of public accommodation—accommodation, or covered governmental entity of his or her disabling condition, submit any necessary medical documentation, make suggestions for such possible

1 accommodations as are known to such person with a disability, and cooperate in any ensuing
2 discussion and evaluation aimed at determining possible or feasible accommodations.

3 (b) Once a qualified person with a disability has requested an accommodation, or if a
4 potential accommodation is obvious in the circumstances, an employer, employment agency,
5 ~~labor organization or organization,~~ place of public accommodation, or covered
6 governmental entity shall investigate whether there are reasonable accommodations that can be
7 made and make reasonable accommodations as defined in G.S. 168A-3(10)."

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

9 **"§ 168A-7. Discrimination in public service.**

10 (a) It is a discriminatory practice for a ~~State department, institution, or agency, or any~~
11 ~~political subdivision of the State or any person that contracts with the above for the delivery of~~
12 ~~public services including but not limited to education, health, social services, recreation, and~~
13 ~~rehabilitation,~~ covered governmental entity to exclude a qualified person with a disability from
14 participation in or deny the benefits of services, programs, or activities because of a disability
15 or to refuse to provide reasonable accommodations, including auxiliary aids and adaptations
16 services necessary for a known qualified person with a disability to use or benefit from existing
17 public services operated by such entity; provided that the aids and adaptations accommodations
18 do not impose an undue hardship on the entity involved. This subsection includes equivalent
19 services provided via information technology.

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

24 **SECTION 4.** G.S. 168A-9 reads as rewritten:

25 **"§ 168A-9. Affirmative defenses.**

26 Any employer may assert affirmative defenses in any action brought under this Chapter.
27 This section shall not create any inference that an employment action which is not listed as an
28 affirmative defense is therefore, by implication, a discriminatory practice, so long as the
29 employment action is not otherwise prohibited by this Chapter. The following is a
30 non-exclusive list of affirmative defenses:

- 31 (1) The failure of the qualified person with a disability to comply with or meet
32 the employer's work rules and policies or performance standards, absent a
33 reasonable accommodation excusing noncompliance, provided that ~~such the~~
34 person is not held to rules or standards different from other employees
35 without a disability similarly employed;
- 36 (2) The excessive, willful or habitual tardiness or absence of a qualified person
37 with a disability, absent a reasonable accommodation that allows for flexible
38 working hours, provided that the standard used by the employer in
39 determining whether such tardiness or absence is excessive is the same as
40 that applied by the employer to employees without a disability similarly
41 employed; or
- 42 (3) A bona fide seniority or merit system, or a system which measures earnings
43 by quantity or quality of work or production, or differences in location of
44 employment."

45 **SECTION 5.** G.S. 168A-10 reads as rewritten:

46 **"§ 168A-10. Retaliation prohibited.**

47 (a) No employer shall discharge, expel, refuse to hire, or otherwise discriminate against
48 any person or applicant for employment, nor shall any employment agency discriminate against
49 any person, nor shall a labor organization discriminate against any member or applicant for
50 membership because ~~such the~~ person has opposed any practice made a discriminatory practice

1 by this Chapter or because ~~he~~ the person has testified, assisted or participated in any manner in
2 proceedings under this Chapter.

3 (b) No entity or person covered under this Chapter shall retaliate against or coerce,
4 intimidate, threaten, or interfere with a person who exercises rights under this Chapter or assists
5 a person in exercising the person's rights under this Chapter."

6 **SECTION 6.** This act is effective when it becomes law.