

By Senator Fasano

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1                   A bill to be entitled  
2           An act relating to persons with disabilities; amending  
3           s. 393.13, F.S.; providing that persons with  
4           developmental disabilities have a right to be free  
5           from abuse, regardless of the setting, and from  
6           negligence; specifying that entities as well as  
7           individuals are liable for damages; amending s.  
8           509.092, F.S.; providing that the operator of a public  
9           lodging or food establishment may not discriminate on  
10          the basis of disability; amending s. 760.01, F.S.;  
11          conforming provisions to changes made by the act;  
12          substituting the term "disability" for the term  
13          "handicap"; reordering and amending s. 760.02, F.S.;  
14          conforming provisions to changes made by the act;  
15          redefining the term "public accommodation"; amending  
16          ss. 760.05, 760.07, 760.08, and 760.10, F.S.;  
17          conforming provisions to changes made by the act;  
18          substituting the term "disability" for the term  
19          "handicap"; amending s. 760.11, F.S.; applying  
20          administrative and civil remedies available under the  
21          Florida Civil Rights Act of 1992 to certain violations  
22          against persons with disabilities; creating s. 760.15,  
23          F.S.; creating the "Floridians with Disabilities Act";  
24          providing legislative intent; adopting the federal  
25          Americans with Disabilities Act into state law and  
26          making it part of the Florida Civil Rights Act of  
27          1992; providing an effective date.

28  
29   Be It Enacted by the Legislature of the State of Florida:

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30  
31 Section 1. Paragraphs (a) and (g) of subsection (3) and  
32 subsection (5) of section 393.13, Florida Statutes, are amended  
33 to read:

34 393.13 Treatment of persons with developmental  
35 disabilities.—

36 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL DISABILITIES.—  
37 The rights described in this subsection shall apply to all  
38 persons with developmental disabilities, whether or not such  
39 persons are clients of the agency.

40 (a) Persons with developmental disabilities ~~shall~~ have a  
41 right to dignity, privacy, and humane care, including the right  
42 to be free from abuse, including sexual abuse, neglect, and  
43 exploitation in residential facilities.

44 (g) Persons with developmental disabilities ~~shall~~ have a  
45 right to be free from harm, including unnecessary physical,  
46 chemical, or mechanical restraint, isolation, excessive  
47 medication, abuse, or negligence ~~neglect~~.

48 (5) LIABILITY FOR VIOLATIONS.—An individual or entity that  
49 ~~Any person who~~ violates or abuses any rights or privileges of  
50 persons with developmental disabilities provided by this chapter  
51 is liable for damages as determined by law. An individual or  
52 entity acting ~~Any person who acts~~ in good faith compliance with  
53 the provisions of this chapter is immune from civil or criminal  
54 liability for actions in connection with evaluation, admission,  
55 habilitative programming, education, treatment, or discharge of  
56 a client. However, this section does not relieve an individual  
57 or entity ~~any person~~ from liability if the individual or entity  
58 person is liable for or guilty of negligence, misfeasance,

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59 nonfeasance, or malfeasance.

60 Section 2. Section 509.092, Florida Statutes, is amended to  
61 read:

62 509.092 Public lodging establishments and public food  
63 service establishments; rights as private enterprises.—Public  
64 lodging establishments and public food service establishments  
65 are private enterprises, and the operator has the right to  
66 refuse accommodations or service to any person who is  
67 objectionable or undesirable to the operator, but such refusal  
68 may not be based upon race, creed, color, sex, ~~physical~~  
69 disability, or national origin. A person aggrieved by a  
70 violation of this section or a violation of a rule adopted under  
71 this section has a right of action pursuant to s. 760.11.

72 Section 3. Subsections (1) and (2) of section 760.01,  
73 Florida Statutes, are amended to read:

74 760.01 Purposes; construction; title.—

75 (1) This part may ~~Sections 760.01-760.11 and 509.092 shall~~  
76 be cited as the "Florida Civil Rights Act of 1992."

77 (2) The general purposes of the Florida Civil Rights Act of  
78 1992 are to secure for all individuals within the state freedom  
79 from discrimination because of race, color, religion, sex,  
80 national origin, age, disability ~~handicap~~, or marital status and  
81 thereby to protect their interest in personal dignity, to make  
82 available to the state their full productive capacities, to  
83 secure the state against domestic strife and unrest, to preserve  
84 the public safety, health, and general welfare, and to promote  
85 the interests, rights, and privileges of individuals within the  
86 state.

87 Section 4. Section 760.02, Florida Statutes, is reordered

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88 and amended to read:

89 760.02 Definitions.—For the purposes of this part ~~ss.~~  
90 ~~760.01-760.11~~ and s. 509.092, the term:

91 (7)~~(1)~~ "Florida Civil Rights Act of 1992" means the  
92 provisions of this part and s. ~~ss. 760.01-760.11 and~~ 509.092.

93 (2) "Commission" means the Florida Commission on Human  
94 Relations created by s. 760.03.

95 (3) "Commissioner" or "member" means a member of the  
96 commission.

97 (4) "Discriminatory practice" means any practice made  
98 unlawful by the Florida Civil Rights Act of 1992.

99 (9)~~(5)~~ "National origin" includes ancestry.

100 (10)~~(6)~~ "Person" includes an individual, association,  
101 corporation, joint apprenticeship committee, joint-stock  
102 company, labor union, legal representative, mutual company,  
103 partnership, receiver, trust, trustee in bankruptcy, or  
104 unincorporated organization; any other legal or commercial  
105 entity; the state; or any governmental entity or agency.

106 (5)~~(7)~~ "Employer" means any person employing 15 or more  
107 employees for each working day in each of 20 or more calendar  
108 weeks in the current or preceding calendar year, and any agent  
109 of such a person.

110 (6)~~(8)~~ "Employment agency" means any person regularly  
111 undertaking, with or without compensation, to procure employees  
112 for an employer or to procure for employees opportunities to  
113 work for an employer, and includes an agent of such a person.

114 (8)~~(9)~~ "Labor organization" means any organization that  
115 ~~which~~ exists for the purpose, in whole or in part, of collective  
116 bargaining or of dealing with employers concerning grievances,

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117 terms or conditions of employment, or other mutual aid or  
118 protection in connection with employment.

119 (1)~~(10)~~ "Aggrieved person" means any person who files a  
120 complaint with the ~~Human Relations~~ commission.

121 (11) "Public accommodations" means places of public  
122 accommodation, lodgings, facilities principally engaged in  
123 selling food for consumption on the premises, gasoline stations,  
124 places of exhibition or entertainment, and other covered  
125 establishments. The term includes ~~Each of the following~~  
126 ~~establishments which serves the public is a place of public~~  
127 ~~accommodation within the meaning of this section:~~

128 (a) An ~~Any~~ inn, hotel, motel, or other establishment which  
129 provides lodging to transient guests, other than an  
130 establishment located within a building which contains not more  
131 than four rooms for rent or hire and which is actually occupied  
132 by the proprietor of such establishment as his or her residence.

133 (b) A ~~Any~~ restaurant, cafeteria, lunchroom, lunch counter,  
134 soda fountain, or other facility principally engaged in selling  
135 food for consumption on the premises, including, but not limited  
136 to, any such facility located on the premises of any retail  
137 establishment, or any gasoline station.

138 (c) A ~~Any~~ motion picture theater, theater, concert hall,  
139 sports arena, stadium, or other place of exhibition or  
140 entertainment.

141 (d) An ~~Any~~ establishment that ~~which~~ is physically located  
142 within the premises of an ~~any~~ establishment otherwise covered by  
143 this subsection, or within the premises of which is physically  
144 located any such covered establishment, and which holds itself  
145 out as serving patrons of such covered establishment.

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146  
147 For the purposes of the Floridians with Disabilities Act under  
148 s. 790.15, the term also includes a facility or entity included  
149 in the definition of the term "place of public accommodation"  
150 under Title III of the federal Americans with Disabilities Act,  
151 whichever is more inclusive.

152 Section 5. Section 760.05, Florida Statutes, is amended to  
153 read:

154 760.05 Functions of the commission.—The commission shall  
155 promote and encourage fair treatment and equal opportunity for  
156 all persons regardless of race, color, religion, sex, national  
157 origin, age, disability ~~handicap~~, or marital status and mutual  
158 understanding and respect among all members of all economic,  
159 social, racial, religious, and ethnic groups; and shall endeavor  
160 to eliminate discrimination against, and antagonism between,  
161 religious, racial, and ethnic groups and their members.

162 Section 6. Section 760.07, Florida Statutes, is amended to  
163 read:

164 760.07 Remedies for unlawful discrimination.—Any violation  
165 of any state ~~Florida~~ statute making unlawful discrimination  
166 because of race, color, religion, gender, national origin, age,  
167 disability ~~handicap~~, or marital status in the areas of  
168 education, employment, housing, or public accommodations gives  
169 rise to a cause of action for all relief and damages described  
170 in s. 760.11(5), unless greater damages are expressly provided  
171 for. If the statute prohibiting unlawful discrimination provides  
172 an administrative remedy, the action for equitable relief and  
173 damages provided for in this section may be initiated only after  
174 the plaintiff has exhausted his or her administrative remedy.

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175 The term "public accommodations" does not include lodge halls or  
176 other similar facilities of private organizations which are made  
177 available for public use occasionally or periodically. The right  
178 to trial by jury is preserved in any case in which the plaintiff  
179 is seeking actual or punitive damages.

180 Section 7. Section 760.08, Florida Statutes, is amended to  
181 read:

182 760.08 Discrimination in places of public accommodation.-  
183 All persons are ~~shall be~~ entitled to the full and equal  
184 enjoyment of the goods, services, facilities, privileges,  
185 advantages, and accommodations of any place of public  
186 accommodation, ~~as defined in this chapter,~~ without  
187 discrimination or segregation on the ground of race, color,  
188 national origin, sex, disability ~~handicap~~, familial status, or  
189 religion.

190 Section 8. Section 760.10, Florida Statutes, is amended to  
191 read:

192 760.10 Unlawful employment practices.-

193 (1) It is an unlawful employment practice for an employer  
194 to:

195 (a) ~~To~~ Discharge or ~~to~~ fail ~~or refuse~~ to hire any  
196 individual, or otherwise to discriminate against any individual  
197 with respect to compensation, terms, conditions, or privileges  
198 of employment, because of such individual's race, color,  
199 religion, sex, national origin, age, disability ~~handicap~~, or  
200 marital status.

201 (b) ~~To~~ Limit, segregate, or classify employees or  
202 applicants for employment in any way that ~~which~~ would deprive or  
203 tend to deprive any individual of employment opportunities, or

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204 adversely affect any individual's status as an employee, because  
205 of such individual's race, color, religion, sex, national  
206 origin, age, disability handicap, or marital status.

207 (2) It is an unlawful employment practice for an employment  
208 agency to fail ~~or refuse~~ to refer for employment, or otherwise  
209 to discriminate against, any individual because of race, color,  
210 religion, sex, national origin, age, disability handicap, or  
211 marital status or to classify or refer for employment any  
212 individual on the basis of race, color, religion, sex, national  
213 origin, age, disability handicap, or marital status.

214 (3) It is an unlawful employment practice for a labor  
215 organization to:

216 (a) ~~To~~ Exclude or to expel from its membership, or  
217 otherwise to discriminate against, any individual because of  
218 race, color, religion, sex, national origin, age, disability  
219 handicap, or marital status.

220 (b) ~~To~~ Limit, segregate, or classify its membership or  
221 applicants for membership, or to classify or fail ~~or refuse~~ to  
222 refer for employment any individual, in any way that ~~which~~ would  
223 deprive or tend to deprive any individual of employment  
224 opportunities, or adversely affect any individual's status as an  
225 employee or as an applicant for employment, because of such  
226 individual's race, color, religion, sex, national origin, age,  
227 disability handicap, or marital status.

228 (c) ~~To~~ Cause or attempt to cause an employer to  
229 discriminate against an individual in violation of this section.

230 (4) It is an unlawful employment practice for an ~~any~~  
231 employer, labor organization, or joint labor-management  
232 committee controlling apprenticeship or other training or



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233 retraining, including on-the-job training programs, to  
234 discriminate against any individual because of race, color,  
235 religion, sex, national origin, age, disability handicap, or  
236 marital status in admission to, or employment in, any program  
237 established to provide apprenticeship or other training.

238 (5) ~~If Whenever~~, in order to engage in a profession,  
239 occupation, or trade, ~~it is required that~~ a person must receive  
240 a license, certification, or other credential;; become a member  
241 or an associate of any club, association, or other  
242 organization;; or pass an ~~any~~ examination, it is an unlawful  
243 employment practice for any person to discriminate against any  
244 other person seeking such license, certification, or other  
245 credential;; seeking to become a member or associate of such  
246 club, association, or other organization;; or seeking to take or  
247 pass such examination~~;~~ because of such ~~other~~ person's race,  
248 color, religion, sex, national origin, age, disability handicap,  
249 or marital status.

250 (6) It is an unlawful employment practice for an employer,  
251 labor organization, employment agency, or joint labor-management  
252 committee to print, or cause to be printed or published, any  
253 notice or advertisement relating to employment, membership,  
254 classification, referral for employment, or apprenticeship or  
255 other training~~;~~ indicating any preference, limitation,  
256 specification, or discrimination~~;~~ based on race, color,  
257 religion, sex, national origin, age, absence of disability  
258 ~~handicap~~, or marital status.

259 (7) It is an unlawful employment practice for an employer,  
260 an employment agency, a joint labor-management committee, or a  
261 labor organization to discriminate against any person because

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262 that person has opposed any practice that ~~which~~ is an unlawful  
263 employment practice under this section, or because that person  
264 has made a charge, testified, assisted, or participated in any  
265 manner in an investigation, proceeding, or hearing under this  
266 section.

267 (8) Notwithstanding any other provision of this section, it  
268 is not an unlawful employment practice under this part ~~ss.~~  
269 ~~760.01-760.10~~ for an employer, employment agency, labor  
270 organization, or joint labor-management committee to:

271 (a) Take or fail to take any action on the basis of  
272 religion, sex, national origin, age, disability ~~handicap~~, or  
273 marital status in those ~~certain~~ instances in which religion,  
274 sex, national origin, age, absence of a particular disability  
275 ~~handicap~~, or marital status is a bona fide occupational  
276 qualification reasonably necessary for the performance of the  
277 particular employment to which such action or inaction is  
278 related.

279 (b) Observe the terms of a bona fide seniority system, a  
280 bona fide employee benefit plan, such as a retirement, pension,  
281 or insurance plan, or a system that ~~which~~ measures earnings by  
282 quantity or quality of production and, ~~which~~ is not designed,  
283 intended, or used to evade the purposes of this part ~~ss. 760.01-~~  
284 ~~760.10~~. However, ~~no~~ such employee benefit plan or system that  
285 ~~which~~ measures earnings does not ~~shall~~ excuse the failure to  
286 hire, and ~~no~~ such seniority system, employee benefit plan, or  
287 system that ~~which~~ measures earnings does not ~~shall~~ excuse the  
288 involuntary retirement of, any individual on the basis of any  
289 factor not related to the ability of such individual to perform  
290 the particular employment for which the ~~such~~ individual has

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291 applied or in which the ~~such~~ individual is engaged. This  
292 subsection does ~~shall~~ not prohibit ~~be construed to make unlawful~~  
293 the rejection or termination of employment if ~~when~~ the  
294 individual applicant or employee has failed to meet bona fide  
295 requirements for the job or position sought or held or ~~to~~  
296 require any changes in any bona fide retirement or pension  
297 programs or existing collective bargaining agreements during the  
298 life of the contract, and ~~or for 2 years after October 1, 1981,~~  
299 ~~whichever occurs first, nor shall~~ this part does not ~~act~~  
300 preclude such physical and medical examinations of applicants  
301 and employees as an employer may require of applicants and  
302 employees to determine fitness for the job or position sought or  
303 held.

304 (c) Take or fail to take any action on the basis of age,  
305 pursuant to law or regulation governing any employment or  
306 training program designed to benefit persons of a particular age  
307 group.

308 (d) Take or fail to take any action on the basis of marital  
309 status if that status is prohibited under its antinepotism  
310 policy.

311 (9) This section does ~~shall~~ not apply to any religious  
312 corporation, association, educational institution, or society  
313 that ~~which~~ conditions opportunities in the area of employment or  
314 public accommodation to members of that religious corporation,  
315 association, educational institution, or society or to persons  
316 who subscribe to its tenets or beliefs. This section does ~~shall~~  
317 not prohibit a religious corporation, association, educational  
318 institution, or society from giving preference in employment to  
319 individuals of a particular religion to perform work connected

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320 with the carrying on by such corporations, associations,  
321 educational institutions, or societies of its various  
322 activities.

323 (10) Each employer, employment agency, and labor  
324 organization shall post and keep posted in conspicuous places  
325 upon its premises a notice provided by the commission setting  
326 forth such information as the commission deems appropriate to  
327 effectuate the purposes of this part ~~ss. 760.01-760.10~~.

328 Section 9. Subsection (1) of section 760.11, Florida  
329 Statutes, is amended to read:

330 760.11 Administrative and civil remedies; construction.-

331 (1) Any person aggrieved by a violation of this part,  
332 including the Floridians with Disabilities Act, ss. 760.01-  
333 760.10 may file a complaint with the commission within 365 days  
334 after ~~of~~ the alleged violation, naming the employer, employment  
335 agency, labor organization, ~~or~~ joint labor-management committee,  
336 public accommodation, or, in the case of an alleged violation of  
337 s. 760.10(5), the person responsible for the violation and  
338 describing the violation. Any person aggrieved by a violation of  
339 s. 413.08, s. 509.092, or ss. 553.501-553.513 may file a  
340 complaint with the commission within 365 days after ~~of~~ the  
341 alleged violation naming the person responsible for the  
342 violation and describing the violation. The commission, a  
343 commissioner, or the Attorney General may in like manner file  
344 such a complaint. On the same day the complaint is filed with  
345 the commission, the commission shall clearly stamp ~~on the face~~  
346 ~~of the complaint~~ the date the complaint was filed with the  
347 commission on the face of the complaint. In lieu of filing the  
348 complaint with the commission, a complaint under this section

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349 may be filed with the federal Equal Employment Opportunity  
 350 Commission or with any unit of government of the state which is  
 351 a fair-employment-practice agency under 29 C.F.R. ss. 1601.70-  
 352 1601.80. If the date the complaint is filed is clearly stamped  
 353 on the face of the complaint, that date is the date of filing.  
 354 The date the complaint is filed with the commission for purposes  
 355 of this section is the earliest date for ~~of~~ filing with the  
 356 Equal Employment Opportunity Commission, the fair-employment-  
 357 practice agency, or the commission. The complaint must ~~shall~~  
 358 contain a short and plain statement of the facts describing the  
 359 violation and the relief sought. The commission may require  
 360 additional information to be in the complaint. ~~The commission,~~  
 361 Within 5 days after ~~of~~ the complaint being filed, the commission  
 362 shall ~~by registered mail~~ send a copy of the complaint by  
 363 registered mail to the person who allegedly committed the  
 364 violation. The person who allegedly committed the violation may  
 365 file an answer to the complaint within 25 days after ~~of~~ the date  
 366 the complaint was filed with the commission. Any answer filed  
 367 must ~~shall~~ be mailed to the aggrieved person by the person  
 368 filing the answer. ~~Both~~ The complaint and the answer must ~~shall~~  
 369 be verified.

370 Section 10. Section 760.15, Florida Statutes, is created to  
 371 read:

372 760.15 Floridians with Disabilities Act.-

373 (1) This section may be cited as the "Floridians with  
 374 Disabilities Act."

375 (2) The Legislature finds that, while the federal Americans  
 376 with Disabilities Act applies to state and local government  
 377 agencies and to many private entities within this state, there

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378 remain many barriers that prevent persons with disabilities from  
379 accessing the full range of public and private programs and  
380 services otherwise available in this state to persons without  
381 disabilities. The Legislature therefore intends to promote a  
382 greater awareness by the state's public and private entities of  
383 their obligations under the federal act by enacting the  
384 Americans with Disabilities Act as the law of this state, and to  
385 thereby make the civil and administrative remedies of the  
386 Florida Civil Rights Act of 1992 available to redress violations  
387 of the federal act.

388 (3) The federal Americans with Disabilities Act of 1990, as  
389 amended by the Americans with Disabilities Amendments Act of  
390 2008, is adopted as the law of this state and made part of the  
391 Florida Civil Rights Act of 1992, to be administered by the  
392 Florida Commission on Human Relations.

393 (4) The provisions of this part, including the civil and  
394 administrative remedies for alleged violations, apply to this  
395 section, unless expressly exempted.

396 (5) An individual may not seek relief under this section if  
397 that individual has commenced an action in state or federal  
398 court under the federal Americans with Disabilities Act.

399 (6) This section does not expand substantive protections  
400 against discrimination based on disability beyond those provided  
401 in the federal Americans with Disabilities Act or in other  
402 sections of state law.

403 Section 11. This act shall take effect July 1, 2010.