

By the Committee on Governmental Oversight and Accountability;
and Senator Fasano

585-04241-10

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

393.13 Treatment of persons with developmental disabilities.—

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

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

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

(5) LIABILITY FOR VIOLATIONS.—An individual or entity that ~~Any person who~~ violates or abuses any rights or privileges of persons with developmental disabilities provided by this chapter is liable for damages as determined by law. An individual or entity acting ~~Any person who acts~~ in good faith compliance with the provisions of this chapter is immune from civil or criminal liability for actions in connection with evaluation, admission, habilitative programming, education, treatment, or discharge of a client. However, this section does not relieve an individual or entity ~~any person~~ from liability if the individual or entity 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 ~~Sections 760.01-760.11~~ and s. 509.092 may
76 ~~shall~~ 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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147 For the purposes of the Floridians with Disabilities Act under
148 s. 760.15, 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.