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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Children, Families, and Elder Affairs (Rich) recommended the following:

2

Senate Amendment (with title amendment)

3

4 Delete everything after the enacting clause
5 and insert:

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

8 393.13 Treatment of persons with developmental
9 disabilities.—

10 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL DISABILITIES.—

11 The rights described in this subsection shall apply to all
12 persons with developmental disabilities, whether or not such
13 persons are clients of the agency.



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

18 (5) LIABILITY FOR VIOLATIONS.—An individual or entity that
19 ~~Any person who~~ violates or abuses any rights or privileges of
20 persons with developmental disabilities as provided by this
21 chapter is liable for damages as determined by law. An
22 individual or entity acting ~~Any person who acts~~ in good faith
23 compliance with ~~the provisions of~~ this chapter is immune from
24 civil or criminal liability for actions in connection with the
25 evaluation, admission, habilitative programming, education,
26 treatment, or discharge of a client. However, this subsection
27 ~~section~~ does not relieve an individual or entity ~~any person~~ from
28 liability if the individual or entity ~~person is~~ commits an act
29 of ~~guilty of~~ negligence, misfeasance, nonfeasance, or
30 malfeasance.

31 Section 2. Subsection (9) is added to section 413.08,
32 Florida Statutes, to read:

33 413.08 Rights of an individual with a disability; use of a
34 service animal; discrimination in public employment or housing
35 accommodations; penalties.—

36 (9) A person aggrieved by a violation of this section has a
37 right of action pursuant to s. 760.11.

38 Section 3. Section 509.092, Florida Statutes, is amended to
39 read:

40 509.092 Public lodging establishments and public food
41 service establishments; rights as private enterprises.—Public
42 lodging establishments and public food service establishments



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43 are private enterprises, and the operator has the right to
44 refuse accommodations or service to any person who is
45 objectionable or undesirable to the operator, but such refusal
46 may not be based upon race, creed, color, sex, ~~physical~~
47 disability, or national origin. A person aggrieved by a
48 violation of this section or a violation of a rule adopted under
49 this section has a right of action pursuant to s. 760.11.

50 Section 4. Section 553.513, Florida Statutes, is amended to
51 read:

52 553.513 Enforcement.—

53 (a) It shall be the responsibility of each local government
54 and each code enforcement agency established pursuant to s.
55 553.80 to enforce the provisions of this part. This act
56 expressly preempts the establishment of handicapped
57 accessibility standards to the state and supersedes any county
58 or municipal ordinance on the subject. However, nothing in this
59 section shall prohibit municipalities and counties from
60 enforcing the provisions of this act.

61 (b) A person aggrieved by a violation of this part or a
62 violation of a rule adopted under this part has a right of
63 action pursuant to s. 760.11.

64 Section 5. Subsections (1) and (2) of section 760.01,
65 Florida Statutes, are amended to read:

66 760.01 Purposes; construction; title.—

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

69 (2) The general purposes of the Florida Civil Rights Act of
70 1992 are to secure for all individuals within the state freedom
71 from discrimination because of race, color, religion, sex,



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72 national origin, age, disability handicap, or marital status and
73 thereby to protect their interest in personal dignity, to make
74 available to the state their full productive capacities, to
75 secure the state against domestic strife and unrest, to preserve
76 the public safety, health, and general welfare, and to promote
77 the interests, rights, and privileges of individuals within the
78 state.

79 Section 6. Section 760.02, Florida Statutes, is reordered
80 and amended to read:

81 760.02 Definitions.—For the purposes of this part ~~ss.~~
82 ~~760.01-760.11~~ and s. 509.092, the term:

83 (8)(1) “Florida Civil Rights Act of 1992” means the
84 provisions of this part and s. ~~ss. 760.01-760.11 and~~ 509.092.

85 (2) “Commission” means the Florida Commission on Human
86 Relations created by s. 760.03.

87 (3) “Commissioner” or “member” means a member of the
88 commission.

89 (4) “Disability” means:

90 (a) A person has a physical or mental impairment which
91 substantially limits one or more major life activities, or he or
92 she has a record of having, or is regarded as having, such
93 physical or mental impairment; or

94 (b) A person has a developmental disability as defined in
95 s. 393.063.

96 (5)(4) “Discriminatory practice” means any practice made
97 unlawful by the Florida Civil Rights Act of 1992.

98 (10)(5) “National origin” includes ancestry.

99 (11)(6) “Person” includes an individual, association,
100 corporation, joint apprenticeship committee, joint-stock



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101 company, labor union, legal representative, mutual company,
102 partnership, receiver, trust, trustee in bankruptcy, or
103 unincorporated organization; any other legal or commercial
104 entity; the state; or any governmental entity or agency.

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

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

113 (9) "Labor organization" means any organization that ~~which~~
114 exists for the purpose, in whole or in part, of collective
115 bargaining or of dealing with employers concerning grievances,
116 terms or conditions of employment, or other mutual aid or
117 protection in connection with employment.

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

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

127 (a) An ~~Any~~ inn, hotel, motel, or other establishment which
128 provides lodging to transient guests, other than an
129 establishment located within a building which contains not more



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130 than four rooms for rent or hire and which is actually occupied
131 by the proprietor of such establishment as his or her residence.

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

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

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

145 For the purposes of the Floridians with Disabilities Act
146 under s. 760.15, the term also includes a facility or entity
147 included in the definition of the term "place of public
148 accommodation" under Title III of the federal Americans with
149 Disabilities Act, whichever is more inclusive.

150 Section 7. Section 760.05, Florida Statutes, is amended to
151 read:

152 760.05 Functions of the commission.—The commission shall
153 promote and encourage fair treatment and equal opportunity for
154 all persons regardless of race, color, religion, sex, national
155 origin, age, disability ~~handicap~~, or marital status and mutual
156 understanding and respect among all members of all economic,
157 social, racial, religious, and ethnic groups; and shall endeavor
158 to eliminate discrimination against, and antagonism between,



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159 religious, racial, and ethnic groups and their members.

160 Section 8. Section 760.07, Florida Statutes, is amended to
161 read:

162 760.07 Remedies for unlawful discrimination.—Any violation
163 of any state law ~~Florida statute~~ making unlawful discrimination
164 because of race, color, religion, gender, national origin, age,
165 disability ~~handicap~~, or marital status in the areas of
166 education, employment, housing, or public accommodations gives
167 rise to a cause of action for all relief and damages described
168 in s. 760.11(5), unless greater damages are expressly provided
169 ~~for~~. If the law ~~statute~~ prohibiting unlawful discrimination
170 provides an administrative remedy, the action for equitable
171 relief and damages provided ~~for~~ in this section may be initiated
172 only after the plaintiff has exhausted his or her administrative
173 remedy. The term "public accommodations" does not include lodge
174 halls or other similar facilities of private organizations which
175 are made available for public use occasionally or periodically.
176 The right to trial by jury is preserved in any case in which the
177 plaintiff is seeking actual or punitive damages.

178 Section 9. Section 760.08, Florida Statutes, is amended to
179 read:

180 760.08 Discrimination in places of public accommodation.—
181 All persons are ~~shall be~~ entitled to the full and equal
182 enjoyment of the goods, services, facilities, privileges,
183 advantages, and accommodations of any place of public
184 accommodation, ~~as defined in this chapter~~, without
185 discrimination or segregation on the ground of race, color,
186 national origin, sex, disability ~~handicap~~, familial status, or
187 religion.



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188 Section 10. Section 760.10, Florida Statutes, is amended to
189 read:

190 760.10 Unlawful employment practices.—

191 (1) It is an unlawful employment practice for an employer
192 to:

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

199 (b) ~~To~~ Limit, segregate, or classify employees or
200 applicants for employment in any way that deprives ~~which would~~
201 ~~deprive~~ or tends ~~tend~~ to deprive any individual of employment
202 opportunities, or adversely affects ~~affect~~ any individual's
203 status as an employee, because of his or her ~~such individual's~~
204 race, color, religion, sex, national origin, age, disability
205 ~~handicap~~, or marital status.

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

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

215 (a) ~~To~~ Exclude or ~~to~~ expel from its membership, or
216 otherwise ~~to~~ discriminate against, any individual because of



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217 race, color, religion, sex, national origin, age, disability
218 ~~handicap~~, or marital status.

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



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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
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



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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
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.



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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
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 11. 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-~~



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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~~
349 may be filed with the federal Equal Employment Opportunity
350 Commission or ~~with any unit of government of the state~~ agency
351 that ~~which~~ is a fair-employment-practice agency under 29 C.F.R.
352 ss. 1601.70-1601.80. If the date the complaint is filed is
353 clearly stamped on the face of the complaint, that date is the
354 date of filing. The date the complaint is filed with the
355 commission for purposes of this section is the earliest date of
356 filing with the Equal Employment Opportunity Commission, the
357 fair-employment-practice agency, or the commission. The
358 complaint must ~~shall~~ contain a short and plain statement of the
359 facts describing the violation and the relief sought. The
360 commission may require additional information to be in the
361 complaint. ~~The commission,~~ Within 5 days after ~~of~~ the complaint



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362 is being filed, the commission shall ~~by registered mail~~ send a
363 copy of the complaint by registered mail to the person who
364 allegedly committed the violation. The person who allegedly
365 committed the violation may file an answer to the complaint
366 within 25 days after ~~of~~ the date the complaint was filed with
367 the commission. Any answer filed must ~~shall~~ be mailed to the
368 aggrieved person by the person filing the answer. ~~Both~~ The
369 complaint and the answer must ~~shall~~ be verified.

370 Section 12. 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
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 by
385 making the civil and administrative remedies of the Florida
386 Civil Rights Act of 1992 available to redress violations of the
387 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



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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 he or she has commenced an action in state or federal court
398 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 13. This act shall take effect July 1, 2011.

404
405

406 ===== T I T L E A M E N D M E N T =====

407 And the title is amended as follows:

408 Delete everything before the enacting clause
409 and insert:

410 A bill to be entitled

411 An act relating to persons with disabilities; amending s.
412 393.13, F.S.; providing that persons with developmental
413 disabilities have a right to be free from negligence; specifying
414 that entities as well as individuals are liable for damages;
415 amending s. 413.08, F.S., providing that that persons have a
416 right of action for a violation of the section; amending s.
417 509.092, F.S.; prohibiting the operator of a public lodging or
418 food establishment from discriminating on the basis of
419 disability; amending s. 553.513, F.S., providing that persons



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420 have a right of action for a violation of part I of ch. 553,
421 F.S.; amending s. 760.01, F.S.; conforming provisions to changes
422 made by the act; substituting the term "disability" for the term
423 "handicap"; reordering and amending s. 760.02, F.S.; conforming
424 provisions to changes made by the act; defining the term
425 "disability"; redefining the term "public accommodations";
426 amending ss. 760.05, 760.07, 760.08, and 760.10, F.S.;
427 conforming provisions to changes made by the act; substituting
428 the term "disability" for the term "handicap"; amending s.
429 760.11, F.S.; applying administrative and civil remedies
430 available under the Florida Civil Rights Act of 1992 to certain
431 violations against persons with disabilities; creating s.
432 760.15, F.S.; creating the "Floridians with Disabilities Act";
433 providing legislative intent; adopting the federal Americans
434 with Disabilities Act into state law and making it part of the
435 Florida Civil Rights Act of 1992; providing an effective date.