

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 negligence; specifying that entities as well as  
6           individuals are liable for damages; amending s.  
7           509.092, F.S.; prohibiting the operator of a public  
8           lodging or food establishment from discriminating on  
9           the basis of disability; amending s. 760.01, F.S.;  
10          conforming provisions to changes made by the act;  
11          substituting the term "disability" for the term  
12          "handicap"; reordering and amending s. 760.02, F.S.;  
13          conforming provisions to changes made by the act;  
14          redefining the term "public accommodations"; amending  
15          ss. 760.05, 760.07, 760.08, and 760.10, F.S.;  
16          conforming provisions to changes made by the act;  
17          substituting the term "disability" for the term  
18          "handicap"; amending s. 760.11, F.S.; applying  
19          administrative and civil remedies available under the  
20          Florida Civil Rights Act of 1992 to certain violations  
21          against persons with disabilities; creating s. 760.15,  
22          F.S.; creating the "Floridians with Disabilities Act";  
23          providing legislative intent; adopting the federal  
24          Americans with Disabilities Act into state law and  
25          making it part of the Florida Civil Rights Act of  
26          1992; providing an effective date.

27  
28   Be It Enacted by the Legislature of the State of Florida:  
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30 Section 1. Paragraph (g) of subsection (3) and subsection  
31 (5) of section 393.13, Florida Statutes, are amended to read:

32 393.13 Treatment of persons with developmental  
33 disabilities.—

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

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

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

55 Section 2. Section 509.092, Florida Statutes, is amended to  
56 read:

57 509.092 Public lodging establishments and public food  
58 service establishments; rights as private enterprises.—Public

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

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

69 760.01 Purposes; construction; title.—

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

72 (2) The general purposes of the Florida Civil Rights Act of  
73 1992 are to secure for all individuals within the state freedom  
74 from discrimination because of race, color, religion, sex,  
75 national origin, age, disability ~~handicap~~, or marital status and  
76 thereby to protect their interest in personal dignity, to make  
77 available to the state their full productive capacities, to  
78 secure the state against domestic strife and unrest, to preserve  
79 the public safety, health, and general welfare, and to promote  
80 the interests, rights, and privileges of individuals within the  
81 state.

82 Section 4. Section 760.02, Florida Statutes, is reordered  
83 and amended to read:

84 760.02 Definitions.—For the purposes of this part ~~ss.~~  
85 ~~760.01-760.11~~ and s. 509.092, the term:

86 (7) ~~(1)~~ "Florida Civil Rights Act of 1992" means the  
87 provisions of this part and s. ~~ss. 760.01-760.11~~ and 509.092.

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

90 (3) "Commissioner" or "member" means a member of the  
91 commission.

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

94 (9)~~(5)~~ "National origin" includes ancestry.

95 (10)~~(6)~~ "Person" includes an individual, association,  
96 corporation, joint apprenticeship committee, joint-stock  
97 company, labor union, legal representative, mutual company,  
98 partnership, receiver, trust, trustee in bankruptcy, or  
99 unincorporated organization; any other legal or commercial  
100 entity; the state; or any governmental entity or agency.

101 (5)~~(7)~~ "Employer" means any person employing 15 or more  
102 employees for each working day in each of 20 or more calendar  
103 weeks in the current or preceding calendar year, and any agent  
104 of such a person.

105 (6)~~(8)~~ "Employment agency" means any person regularly  
106 undertaking, with or without compensation, to procure employees  
107 for an employer or to procure for employees opportunities to  
108 work for an employer, and includes an agent of such a person.

109 (8)~~(9)~~ "Labor organization" means any organization that  
110 ~~which~~ exists for the purpose, in whole or in part, of collective  
111 bargaining or of dealing with employers concerning grievances,  
112 terms or conditions of employment, or other mutual aid or  
113 protection in connection with employment.

114 (1)~~(10)~~ "Aggrieved person" means any person who files a  
115 complaint with the ~~Human Relations~~ commission.

116 (11) "Public accommodations" means places of public

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117 accommodation, lodgings, facilities principally engaged in  
118 selling food for consumption on the premises, gasoline stations,  
119 places of exhibition or entertainment, and other covered  
120 establishments. The term includes ~~Each of the following~~  
121 ~~establishments which serves the public is a place of public~~  
122 ~~accommodation within the meaning of this section:~~

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

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

133 (c) A ~~Any~~ motion picture theater, theater, concert hall,  
134 sports arena, stadium, or other place of exhibition or  
135 entertainment.

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

141  
142 For the purposes of the Floridians with Disabilities Act under  
143 s. 760.15, the term also includes a facility or entity included  
144 in the definition of the term "place of public accommodation"  
145 under Title III of the federal Americans with Disabilities Act,

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146 whichever is more inclusive.

147 Section 5. Section 760.05, Florida Statutes, is amended to  
148 read:

149 760.05 Functions of the commission.—The commission shall  
150 promote and encourage fair treatment and equal opportunity for  
151 all persons regardless of race, color, religion, sex, national  
152 origin, age, disability ~~handicap~~, or marital status and mutual  
153 understanding and respect among all members of all economic,  
154 social, racial, religious, and ethnic groups; and shall endeavor  
155 to eliminate discrimination against, and antagonism between,  
156 religious, racial, and ethnic groups and their members.

157 Section 6. Section 760.07, Florida Statutes, is amended to  
158 read:

159 760.07 Remedies for unlawful discrimination.—Any violation  
160 of any state law ~~Florida statute~~ making unlawful discrimination  
161 because of race, color, religion, gender, national origin, age,  
162 disability ~~handicap~~, or marital status in the areas of  
163 education, employment, housing, or public accommodations gives  
164 rise to a cause of action for all relief and damages described  
165 in s. 760.11(5), unless greater damages are expressly provided  
166 ~~for~~. If the law ~~statute~~ prohibiting unlawful discrimination  
167 provides an administrative remedy, the action for equitable  
168 relief and damages provided ~~for~~ in this section may be initiated  
169 only after the plaintiff has exhausted his or her administrative  
170 remedy. The term "public accommodations" does not include lodge  
171 halls or other similar facilities of private organizations which  
172 are made available for public use occasionally or periodically.  
173 The right to trial by jury is preserved in any case in which the  
174 plaintiff is seeking actual or punitive damages.

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175 Section 7. Section 760.08, Florida Statutes, is amended to  
176 read:

177 760.08 Discrimination in places of public accommodation.-  
178 All persons are ~~shall be~~ entitled to the full and equal  
179 enjoyment of the goods, services, facilities, privileges,  
180 advantages, and accommodations of any place of public  
181 accommodation, ~~as defined in this chapter,~~ without  
182 discrimination or segregation on the ground of race, color,  
183 national origin, sex, disability ~~handicap~~, familial status, or  
184 religion.

185 Section 8. Section 760.10, Florida Statutes, is amended to  
186 read:

187 760.10 Unlawful employment practices.-

188 (1) It is an unlawful employment practice for an employer  
189 to:

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

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

203 (2) It is an unlawful employment practice for an employment

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204 agency to fail ~~or refuse~~ to refer for employment, or otherwise  
205 to discriminate against, any individual because of race, color,  
206 religion, sex, national origin, age, disability handicap, or  
207 marital status or to classify or refer for employment any  
208 individual on the basis of race, color, religion, sex, national  
209 origin, age, disability handicap, or marital status.

210 (3) It is an unlawful employment practice for a labor  
211 organization to:

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

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

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

227 (4) It is an unlawful employment practice for an any  
228 employer, labor organization, or joint labor-management  
229 committee controlling apprenticeship or other training or  
230 retraining, including on-the-job training programs, to  
231 discriminate against any individual because of race, color,  
232 religion, sex, national origin, age, disability handicap, or



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233 marital status in admission to, or employment in, any program  
234 established to provide apprenticeship or other training.

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

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

256 (7) It is an unlawful employment practice for an employer,  
257 an employment agency, a joint labor-management committee, or a  
258 labor organization to discriminate against any person because  
259 that person has opposed any practice that ~~which~~ is an unlawful  
260 employment practice under this section, or because that person  
261 has made a charge, testified, assisted, or participated in any

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262 manner in an investigation, proceeding, or hearing under this  
 263 section.

264 (8) Notwithstanding any other provision of this section, it  
 265 is not an unlawful employment practice under this part ~~ss.~~  
 266 ~~760.01-760.10~~ for an employer, employment agency, labor  
 267 organization, or joint labor-management committee to:

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

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

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291 individual applicant or employee has failed to meet bona fide  
292 requirements for the job or position sought or held or ~~to~~  
293 require any changes in any bona fide retirement or pension  
294 programs or existing collective bargaining agreements during the  
295 life of the contract, and ~~or for 2 years after October 1, 1981,~~  
296 ~~whichever occurs first, nor shall~~ this part does not ~~act~~  
297 preclude such physical and medical examinations of applicants  
298 and employees as an employer may require of applicants and  
299 employees to determine fitness for the job or position sought or  
300 held.

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

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

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

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

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

327 760.11 Administrative and civil remedies; construction.-

328 (1) Any person aggrieved by a violation of this part,  
329 including the Floridians with Disabilities Act, ss. 760.01-  
330 760.10 may file a complaint with the commission within 365 days  
331 after ~~of~~ the alleged violation, naming the employer, employment  
332 agency, labor organization, ~~or~~ joint labor-management committee,  
333 public accommodation, or, in the case of an alleged violation of  
334 s. 760.10(5), the person responsible for the violation and  
335 describing the violation. Any person aggrieved by a violation of  
336 s. 413.08, s. 509.092, or ss. 553.501-553.513 may file a  
337 complaint with the commission within 365 days after ~~of~~ the  
338 alleged violation naming the person responsible for the  
339 violation and describing the violation. The commission, a  
340 commissioner, or the Attorney General may in like manner file  
341 such a complaint. On the same day the complaint is filed with  
342 the commission, the commission shall clearly stamp ~~on the face~~  
343 ~~of the complaint~~ the date the complaint was filed with the  
344 commission on the face of the complaint. In lieu of filing the  
345 complaint with the commission, a complaint ~~under this section~~  
346 may be filed with the federal Equal Employment Opportunity  
347 Commission or ~~with any unit of government of the state~~ agency  
348 that ~~which~~ is a fair-employment-practice agency under 29 C.F.R.

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

367 Section 10. Section 760.15, Florida Statutes, is created to  
368 read:

369 760.15 Floridians with Disabilities Act.-

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

372 (2) The Legislature finds that, while the federal Americans  
373 with Disabilities Act applies to state and local government  
374 agencies and to many private entities within this state, there  
375 remain many barriers that prevent persons with disabilities from  
376 accessing the full range of public and private programs and  
377 services otherwise available in this state to persons without

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378 disabilities. The Legislature, therefore, intends to promote a  
379 greater awareness by the state's public and private entities of  
380 their obligations under the federal act by enacting the  
381 Americans with Disabilities Act as the law of this state by  
382 making the civil and administrative remedies of the Florida  
383 Civil Rights Act of 1992 available to redress violations of the  
384 federal act.

385 (3) The federal Americans with Disabilities Act of 1990, as  
386 amended by the Americans with Disabilities Amendments Act of  
387 2008, is adopted as the law of this state and made part of the  
388 Florida Civil Rights Act of 1992, to be administered by the  
389 Florida Commission on Human Relations.

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

393 (5) An individual may not seek relief under this section if  
394 he or she has commenced an action in state or federal court  
395 under the federal Americans with Disabilities Act.

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

400 Section 11. This act shall take effect July 1, 2011.