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Disability Rights and Public Accommodations: State-by-State

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Introduction

Many states have their own disability rights laws that complement the Americans with Disabilities Act (ADA). Some states have different definitions of who is protected or what entities are required to comply, as well as different requirements or prohibitions. Some states provide an agency, either mandatory or voluntary, to assist with investigation and enforcement. States may provide different remedies, such as damages or criminal penalties for violations.

To the extent that a state law conflicts with the ADA, the state law is preempted by the federal law. Thus, for example, if a state law allows a public accommodation to charge a person with a disability extra for bringing a service animal or if it allows a public accommodation to charge a person with a disability for the cost of an auxiliary aid, such as a sign language interpreter, that portion of the state law is overridden by the federal law and is not enforceable. However, if a state law provides nondiscrimination requirements or remedies that are similar or additional to the ADA requirements, a person with a disability may use the state law in addition to the ADA. Thus, for example, if a state law includes the same requirement as the ADA but also allows an individual who has encountered discrimination to get compensation, the individual may pursue both the ADA claim and the state law claim.

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Therefore, in determining compliance, it is important for people with disabilities and businesses to understand their state's disability rights laws. This document provides summaries of state disability rights laws covering commercial entities in the eight southeast states (Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee) and compares them to Title III of the ADA. Focus areas of the comparison include who is protected, who is covered, general nondiscrimination requirements, rules regarding service animals, and enforcement schemes and remedies.

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The information, materials, and/or technical assistance provided are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA. The Southeast ADA Center does not warrant the accuracy of any information contained herein. Any links to non-Southeast ADA Center information are provided as a courtesy and are not intended to nor do they constitute an endorsement of the linked materials.

Title III of the ADA¹

Title III of the federal ADA prohibits discrimination against people with disabilities by places of public accommodation. A person with a disability is someone with a physical or mental impairment that substantially limits one or more major life activities. (28 CFR § 36.104) There are 12 categories of public accommodations covered under Title III (28 CFR § 36.104):

- Inns, hotels, motels and other places of lodging²
- Restaurants, bars and other places serving food or drink
- Movie theaters, playhouses, concert halls, stadiums and other places for exhibitions or entertainment
- Auditoriums, convention centers, lecture halls and other gathering places
- Bakeries, grocery, clothing and hardware stores, shopping centers and other sales or rental establishments
- Laundromats, dry-cleaners, banks, barber and beauty shops travel and shoe-repair services, funeral parlors, gas stations, pharmacies, professional offices (lawyer, accountant, insurance, health care provider) and other service establishments
- Terminals, depots and other public transportation stations
- Museums, libraries, galleries and other places for public displays or collections
- Parks, zoos, amusement parks and other places of recreation
- Schools (nursery, elementary, secondary, undergraduate and private postgraduate) & other places of education
- Day care and senior centers, homeless shelters, food banks, adoption agencies and other social service centers
- Gyms, health spas, bowling alleys, golf courses & other places for exercise or recreation.

¹ Title III of the ADA is at 42 United States Code (USC) §12181-84. The ADA Title III regulations (28 Code of Federal Regulations (CFR) Part 36) and the ADA Standards for Accessible Design, as amended, are available on the [Department of Justice ADA website – www.ADA.gov](http://www.ADA.gov). Citations to the relevant sections are given for ease of reference.

² Except for lodging places located within a building containing five or fewer rooms for rent or payment, which is also occupied by the owner and is his or her residence. 28 CFR § 36.104.

Title III prohibits exclusion and other forms of discrimination on the basis of disability, and requires covered entities to reasonably modify their policies, practices and procedures to allow people with disabilities to participate. One type of required policy modification is to allow service animals entry to public accommodations. (28 CFR § 36.302(c)) The ADA, as amended, states that a service animal is any dog (or miniature horse) that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. (28 CFR § 36.104) A service animal is not required to be licensed or certified by a government or other entity or to wear identification or equipment (e.g., vest or harness). A public accommodation may not charge a person with a disability extra for bringing a service animal. (28 CFR § 36.302(c)(6) & (8))

Title III also requires covered entities to ensure their communication with people with disabilities is as effective as their communication with others, by providing auxiliary aids and services. (28 CFR § 36.303) Covered entities are required to make their physical facilities accessible according to the ADA Standards for Accessible Design, with the required level of accessibility depending on whether the facility was built or altered before or after the effective date of the law (March 15, 2012 for new construction and alterations). (28 CFR §§ 36.304-305, 36.401-406)

Title III is enforceable by private individuals with disabilities in court (there is a "private right of action"). Individuals can file complaints with the U.S. Department of Justice, but they are not required to do so. In court, individuals can get "injunctive relief" (a court order to fix the problem, stop discriminating, or take affirmative steps), but cannot get compensation, or damages, for discrimination under Title III. There are no criminal penalties or punitive damages available under Title III. The Department of Justice can impose civil penalties. Individuals who file lawsuits under Title III can recover their attorney's fees if they win.

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Alabama

The Alabama legislature adopted a building code in 1965 with the intent to make all public buildings and facilities “accessible to, and functional for, the physically handicapped to, through and within their doors...” Ala. Code § 21-4-1 (West’s 2010). A decade later, it approved a Handicapped Persons Code, declaring “the policy of this state [is] to encourage and enable the blind, the visually handicapped and the otherwise physically disabled to participate fully in the social and economic life of the state...” Ala. Code § 21-7-1.

Protected Class:

For purposes of building accessibility, the statute protects persons who are blind, “visually handicapped” and “otherwise physically disabled,” including those who have “nonambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of incoordination and aging.” Ala. Code § 21-4-1. For purposes of other rights, the Handicapped Persons Code protects people with vision disabilities and other physical disabilities. Ala. Code § 21-7-1.

Rights:

Persons who are blind, visually and otherwise physically disabled have the right to full and free use³ of streets, highways, sidewalks, walkways, public buildings, public facilities and other public places. They are also entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers and public modes of transportation and places “to which the general public is invited.” Ala. Code §§ 21-7-2 to 21-7-3.

Covered Entities:

A public accommodation or place includes streets, highways, sidewalks, walkways; common carriers and public transit; public buildings and facilities; hotels, motels, lodging places and places of amusement or resort. Ala. Code §§ 21-7-2 to 21-7-3.

³ “...[T]he same right as the able-bodied...” Ala. Code § 21-7-2

Service Animals:

Every “totally or partially blind” person and every hearing-impaired person shall have the right to be accompanied by an “especially trained” “guide dog” or “hearing ear dog” in any of the places of public accommodation or transportation, without charge. The dog’s user/owner is liable for any damage done to the premises or facilities. Ala. Code § 21-7-4.

Enforcement and Remedies:

A person, firm or corporation who denies or interferes with admission to, or enjoyment of, full and free use of public facilities, public accommodations and transportation by “[t]he blind, the visually handicapped, and the otherwise physically disabled” is guilty of a misdemeanor. A person who interferes with the rights of a blind or disabled person to full and free use of public facilities, public places and thoroughfares and to full and equal accommodations and transportation (including the right to be accompanied by a guide dog) is also guilty of a misdemeanor.

No fine or term of imprisonment is specified. Ala. Code § 21-7-5.

There is no private right of action to sue for money damages or equitable relief (an order declaring rights or an order to stop, repair or to take affirmative steps) under the Alabama disability anti-discrimination statutes. *Hardesty v. CPRM*, 391 Fed.Supp. 2d 1067, 1071 (M.D.Ala. 2005): a misdemeanor may constitute a legitimate civil cause of action, such as a claim under the ADA or a claim of negligence or other duty owed to plaintiff.

Comparison with the ADA

Alabama protects a smaller group of people than the ADA (people with cognitive and psychiatric disabilities do not appear to be protected). Service animals are only covered under Alabama law if they are for people with vision or hearing disabilities. Alabama law does not permit individuals to sue to challenge discrimination, but does provide for criminal penalties.

Florida

The Florida Civil Rights Act of 1992 is intended to “secure freedom” from disability-based discrimination, among other forms of discrimination, for all Floridians. It seeks to protect individuals’ “interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.” Fla. Stat. Ann. §760.01 (West’s 2009).

The legislature later adopted a separate statute declaring that an individual with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges in all public accommodations. Fla. Stat. Ann. § 413.08(2).

Protected Class:

“Individual[s] with a disability” are defined as persons who are deaf, hard-of-hearing, blind, visually impaired, or otherwise physically disabled. Fla. Stat. Ann. § 413.08(1)(b).

Rights:

An individual with a disability “is entitled to full and equal accommodations, advantages, facilities, and privileges in all public accommodations.” Fla. Stat. Ann. § 413.08(2). In almost identical language, the Florida Civil Rights Act, to be liberally construed “according to the fair import of its terms,” states that individuals are entitled to “the full and equal enjoyment of...goods, services, facilities, privileges, advantages, and public accommodations” without regard to disability and other bases of discrimination (race, ethnicity, sex, etc.). Fla. Stat. Ann. § 760.08.

Covered Entities:

The enumerated public accommodations include: common carriers and public modes of transportation; hotels, motels and other lodgings;⁴ restaurants and food retailers;⁵ gas stations; theaters, concert halls, sports arenas and other places of exhibition or entertainment. Fla. Stat. Ann. §§ 413.08(1)(c) & 760.02(11).

Service Animals:

An individual with a disability has the right to be accompanied by a service animal in all areas of a public accommodation that the public or customers are normally permitted (or “invited”) to occupy, with no additional surcharge or deposit. The individual must supervise and care for the animal and is liable for any damage it causes, if the non-disabled owner of a pet would be similarly charged by the entity. Fla. Stat. Ann. §§ 413.08(3) & (8).

Documentation that the service animal is trained is not a precondition for providing service or accompaniment, but a public accommodation may ask if an animal is a service animal or what tasks it has been trained to perform, in order to determine if it is a service animal or a pet. A service animal may be excluded or removed from the premises if its behavior poses a “direct threat to the health and safety of others”—but not due to allergies or fear of animals. Fla. Stat. Ann. §§ 413.08(3)(a) & (e).

Enforcement and Remedies:

Individuals must file a discrimination complaint with the Florida Human Relations Commission. They may file a civil action in court for compensatory and punitive damages (up to \$100,000) and/or injunctive relief (an order to stop or to take affirmative steps), if not satisfied by the Commission. Fla. Stat. Ann. §§ 760.06 & 760.11.

⁴ A lodging that has four or fewer rooms for rent (or other payment), and is occupied by the owner as her residence, is exempt from coverage as a public accommodation. Fla. Stat. Ann. § 760.02 (11)(a).

⁵ The legislation covers a facility where the sale of food for on-site consumption is the principal business. This includes gas stations and retail establishments that sell food. Fla. Stat. Ann. § 760.021. The right of public lodging or food establishments to refuse accommodations or service to anyone considered objectionable or undesirable may not be based upon “physical disability.” Fla. Stat. Ann. § 509.092.

The state Attorney General may file a complaint in circuit court for damages, injunctive relief and/or civil penalties (up to \$10,000 per violation) and other appropriate relief, if there is a pattern or practice of discrimination, or discrimination that raises “an issue of great public interest.” Fla. Stat. Ann. § 760.021.

Any person, firm or corporation “who denies or interferes with admittance to, or enjoyment of, a public accommodation, or otherwise interferes with the rights of an individual with a disability” commits a second degree misdemeanor, punishable by a maximum fine of \$500 or imprisonment up to 60 days. Fla. Stat. Ann. § 413.08(4).

Comparison with the ADA

Florida’s protected class is narrower than federal law (people with cognitive and mental disabilities do not appear to be covered) and its definition of public accommodations appears narrower as well. However, state courts may order compensatory and punitive damages for discriminatory practices, in addition to injunctive relief. Individuals must first file with the Florida Human Relations Commission, which can investigate complaints and order various forms of relief. State law provides criminal penalties for denial of access to public accommodations or interference with rights under the Florida Civil Rights Act.

Georgia

The Georgia legislature adopted a statute in 1981 to further a policy of full participation of persons with disabilities and elderly persons in the state's social and economic life, to promote their education and rehabilitation and to eliminate physical barriers to facilities open to the public. Off. Code Ga. Ann. § 30-3-1 (2011).

Protected Class:

Persons who are blind, deaf or have visual or physical disabilities, persons engaged in training or raising a guide dog or service dog (and elderly persons). Off. Code Ga. Ann. § 30-4-4. "Physically disabled person' means any person, regardless of age, who is subject to a physiological defect or deficiency regardless of its cause, nature, or extent that renders the person unable to move about without the aid of crutches, a wheelchair, or any other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or to perform any related function." Off. Code Ga. Ann. § 30-4-1.

Rights:

Persons who are blind, deaf or have visual or physical disabilities are entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, public modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort. Off. Code Ga. Ann. § 30-4-2(a).

Covered Entities:

Facilities used by the public (to which the public is invited), including but not limited to, walkways, sidewalks, curbsings, parking lots, parks, stadiums, coliseums, and "any other manmade or developed area used by the public." Government buildings, public buildings, hotels, lodging places, places of public accommodation, amusement or resort are also covered, as is public transit. Off. Code Ga. Ann. §§ 30-3-2 & 30-4-2(a).

All government buildings, public buildings, and facilities are also required to meet state standards for accessibility, based on federal Americans with Disabilities Act Accessibility Guidelines (ADAAG). Off. Code Ga. Ann. §§ 30-3-2 & 30-3-3.

Service Animals:

Every “totally or partially blind” person and every deaf or physically disabled person shall have the right to be accompanied by an “especially trained” “guide dog” or “service dog,” respectively, in any of the places of public accommodation or transportation, or a private or public school, without charge. The dog’s user/owner is liable for any damage done to the premises or facilities. The service dog must be identified as having been trained by a school for seeing eye, hearing, service, or guide dogs. Off. Code Ga. Ann. § 30-4-2 (b))

Enforcement and Remedies:

Any person, firm or corporation who denies or interferes with access to public facilities or buildings by members of the protected class, or otherwise interferes with the rights granted them under these statutes, is guilty of a (high and aggravated) misdemeanor subject to a maximum fine of \$2000 and/or up to 30 days in jail. Off. Code Ga. Ann. § 30-4-4.

The Safety Fire Commissioner, Board of Regents, local building code officials and local fire departments have joint authority to enforce the access and building code requirements by issuing warnings and, if necessary, prosecuting cases in superior court. Off. Code Ga. Ann. § 30-3-7.

A federal Court of Appeals has held that there is no private right to sue under Georgia state law for failure to provide full and equal public accommodations or access to public facilities. *Smith v. Wal-Mart Stores, Inc.* 167 F.3d 286, 294-95 (6th Cir. 1999) (although there is no private right of action, individual may sue entity for negligence and failure to implement ADA-mandated requirements). However, a federal district court later ruled that an innkeeper has a legal duty under Georgia law to receive a blind guest who uses a service dog and not to do so is a denial of an accommodation. *Amick v. BM & KM, Inc.*, 275 F.Supp.2d 1378, 1383 (N.D. Ga. 2003).

Comparison with the ADA

Georgia protects a smaller group of people than the ADA, and has a narrower category of covered entities, except perhaps for certain forms of public transportation. Service animals are only covered under Georgia law if it can be shown they were trained by a specialized school. It is unclear whether Georgia allows individuals to sue for denial of public accommodations, other than for negligence. Criminal penalties may be imposed for denial of access to public places.

State law preempts federal law if it “affords...greater access...”
Off. Code Ga. Ann. § 30-3-9(a).

Kentucky

The Kentucky Civil Rights Act was enacted to implement the policies embodied in federal civil rights legislation, including the Americans with Disabilities Act. Its general purpose is to “safeguard all individuals within the state from discrimination because of...the person's status as a qualified individual with a disability...to protect their interest in personal dignity and freedom from humiliation, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest which would menace its democratic institutions, to preserve the public safety, health, and general welfare, and to further the interest, rights, and privileges of individuals within the state.” First adopted in 1966, the Act is not meant to repeal any other Kentucky disability anti-discrimination law. Ky. Rev. Stat. Ann. § 344.020 (West’s 2010).

Protected Class:

“Individuals with a disability” are defined, as under the ADA, as those who (1) have a physical or mental impairment that substantially limits one or more major life activity; (2) have a record of such an impairment; or (3) are regarded as having such an impairment. Ky. Rev. Stat. Ann. § 344.010(4).

Rights:

Persons with a disability are protected against “any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment” based on their disability. They are also protected against “the aiding, abetting, inciting, coercing, or compelling” of those practices. Ky. Rev. Stat. Ann. § 344.010(5).

It is an “unlawful practice” to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort, or amusement, on the ground of disability, among other grounds. Ky. Rev. Stat. Ann. § 344.120.

Covered Entities:

A “place of public accommodation, resort, or amusement” includes any place, store, or other establishment which supplies goods or services to the general public or which solicits or accepts the patronage of the general public⁶ or which is supported directly or indirectly by government funds. Ky. Rev. Stat. Ann. § 344.130 .

Service Animals:

Persons accompanied by an assistance dog cannot be denied entry to (or full and equal use of) any hotel, motel or eating establishment, or to full and equal accommodations, facilities, and privileges of all public buildings, “places of amusement, theater, or resort” and (if the dog does not occupy a seat or endanger public safety) on all public transportation. There shall be no licensing fees, additional charges or fare for the dog, but the dog owner/user must comply with state animal licensing and vaccination requirements. No person shall willfully or maliciously interfere with an assistance dog or the dog's user.⁷ Ky. Rev. Stat. Ann. § 258.500.

Enforcement and Remedies:

The Kentucky Commission on Human Rights was established to “encourage fair treatment for, to foster mutual understanding and respect among and to discourage discrimination against any racial or ethnic group or its members.” It has the power to investigate, or initiate, complaints (filed by individuals or the state Attorney General), reach a conciliation agreement between the parties, or to conduct hearings. The Commission can order injunctive relief (to stop a practice or order admission or entry) and, if necessary, can file a complaint in the state circuit court seeking injunctive relief or enforcement of an order or agreement.

⁶ Exceptions are: (1) a private club if its policies are determined by its members and its facilities or services are available only to members and their authentic guests; and (2) a rooming or boarding house with one or fewer rooms for rent, located in an owner-occupied residence. Ky. Rev. Stat. Ann. § 344.130(1) & (2).

⁷ Emergency medical treatment shall not be denied to an assistance dog, regardless of the owner/user's ability to pay before treatment. Ky. Rev. Stat. Ann. § 258.500(11).

Although its mission under the statute is limited to racial and ethnic discrimination, the Commission appears to accept complaints filed on other discriminatory grounds, such as disability. Ky. Rev. Stat. Ann. §§ 344.170 - 344.220.

A person injured by any violation of the Civil Rights Act may sue in circuit court to stop further violations, and to recover actual damages (including humiliation, personal indignity, mental or emotional injury or other intangible injuries), the costs of the lawsuit and reasonable attorneys' fees, and "any other remedies" contained in the statute. Ky. Rev. Stat. Ann. § 344.450; *Mitchell v. Seaboard System R.R.*, 883 F.2d 451, 454 (6th Cir. 1989). Punitive damages are not available under the Act. *Steinhoff v. Upriver Restaurant Jt. Venture*, 117 F.Supp. 598, 606 (E.D. Ky. 2000); *Brooks v. Lexington-Fayette Urban Co. Housing Auth.*, 132 S.W. 3d 790, 808 (2004). There is no requirement to file a complaint with the Commission on Human Rights before going to court.

A person who is convicted for denying entry or full and equal use under the assistance dog statute must pay a fine ranging from \$250 to \$1000 or serve from 10 to 30 days in jail, or both. Ky. Rev. Stat. Ann. § 258.991.

Comparison with the ADA

Kentucky's protected class is identical to the ADA's. However, the definition of public accommodations appears narrower than under federal law. Actual damages for discriminatory practices may be awarded by a court (including for emotional injury). The Kentucky Human Relations Commission can most likely receive complaints of *disability*-based discrimination and order various forms of relief, and file cases in court. State law provides mandatory criminal penalties for violations of the service animal statute.

Disability discrimination claims brought under the Kentucky Civil Rights Act are interpreted consistently with standards developed under the ADA. *Bryson v. Regis Corp.*, 498 F.3d 561 (6th Cir. 2007).

Mississippi

The Mississippi legislature amended the Public Welfare Code in the 1970s to require equal access for persons with visual, hearing and other physical disabilities to public facilities and places “to which the general public is invited.” Ms. Code Ann. §§ 43-6-1 to 43-6-9 (West’s 2009). It also adopted accessibility specifications for public buildings and facilities, ranging from ramps, elevators and stairways to restrooms, parking spaces, water foundations, elimination of hazards and signage. Ms. Code Ann. §§ 43-6-101 to 43-6-125

Protected Class:

Persons who are blind, “visually handicapped,” deaf or physically disabled. Ms. Code Ann. §§ 43-6-1 & 43-6-3.

Rights:

The “same right as the able-bodied” to full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places and full and equal access to public accommodations (and all accompanying rights and privileges). Failure to carry a white cane or use a service dog on a leash shall not constitute negligence in and of itself (negligence per se). Ms. Code Ann. §§ 43-6-3, 43-6-5 & 43-6-9.

Covered Entities:

A public accommodation or place includes streets, highways, sidewalks, walkways; common carriers and public transit; public buildings and facilities; hotels, motels, lodging places and places of amusement or resort or places to which the public is invited. Ms. Code Ann. §§ 43-6-3 & 43-6-5.

Service Animals:

Any blind, mobility-impaired or hearing-impaired person who uses a dog or other animal specifically trained as a guide, leader, listener or for any other assistance necessary in day-to-day activities shall be entitled to the full and equal accommodations of hotels, lodging places, businesses open to the public for the sale of any goods or services and all places of public accommodation, amusement, or resort and other places to which the general public is invited and (if the animal does not occupy a seat and is on a leash or sufficiently restrained) on all public transportation. No person shall be deprived of any of the above advantages or privileges or charged a fee for use of the animal. Ms. Code Ann. § 43-6-155.⁸

Enforcement and Remedies:

Any person, firm or corporation who denies or interferes with access by members of the protected class to the public facilities or places, public accommodations, or otherwise interferes with their rights granted under the above statutes, is subject to a fine of \$100 or 60-day jail time or both. Ms. Code Ann. § 43-6-11.

Comparison with the ADA

The federal law offers greater protection than Mississippi state law in all respects—the classes of persons with disabilities who are protected, the rights and prohibited practices (including service animal restrictions), covered entities, the means of enforcement and the remedies. However, state law does have criminal penalties for denial of (or interference with) access to public accommodations.

⁸ In 2000, the legislature adopted the Mississippi Support Animal Act, the terms of which are spelled out above. However, it failed to repeal a narrower statute that states: Every “totally or partially blind person” and deaf person shall have the right to be accompanied by a “guide dog or hearing ear dog” on a “blaze orange leash, especially trained for the purpose,” in any of the places of public accommodation or transportation, without charge. The dog’s user/owner is liable for any damage done to the premises or facilities. Ms. Code Ann. § 43-6-7.

North Carolina

North Carolina adopted the Persons with Disabilities Protection Act in 1985. Its purpose is “to ensure equality of opportunity, to promote independent living, self-determination, and economic self-sufficiency, and to encourage and enable all persons with disabilities to participate fully to the maximum extent of their abilities in the social and economic life of the State, to engage in remunerative employment, to use available public accommodations and public services, and to otherwise pursue their rights and privileges as inhabitants of this State.”

The General Assembly found that disability-based discrimination “is contrary to the public interest and to the principles of freedom and equality of opportunity [and] threatens the rights and proper privileges of the inhabitants of th[e] State; and such discrimination results in a failure to realize the productive capacity of individuals to their fullest extent.” N.C. General Stat. §§ 168A-1 & 168A-2 (2010).

Protected Class:

“Qualified” persons with a disability. That is, persons with a disability “who can benefit from the goods or services provided by the place of public accommodation...” As under the ADA, “person with a disability” means someone who (1) has a physical or mental impairment which substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. N.C. General Stat. § 168A-3(7) & (9).⁹

Rights:

Full and equal accommodations, advantages, facilities and privileges of all common carriers, public modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort to which the general public is invited. N.C. General Stat. § 168-3.¹⁰

⁹ In a 1990 case, persons with communicable diseases or who tested positive for HIV were not considered by the North Carolina Supreme Court to be persons with a disability. *Burgess v. Your House of Raleigh, Inc.*, 388 S.E.2d 134(1990).

¹⁰ This statute was adopted in 1973 before enactment of the Persons with Disabilities Protection Act.

In addition, it is a discriminatory practice to deny a qualified person with a disability the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, or public transportation, on the basis of a disabling condition.¹¹ N.C. General Stat. §§ 168A-6 & 168A-8.

Covered Entities:

A "place of public accommodations" includes any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage of any person. Also included are common carriers and modes of public transportation, with the exception of interstate air carriers and certain local, private transit systems in existence on October 1, 1985. N.C. General Stat. §§ 168A-3(8) & 168A-8.

Service Animals:

Every person with a disability has the right to be accompanied by a trained service animal (or animal in training) in any place of public accommodation, on any common carrier or public transportation, or on any premises the person leases, rents, or uses. The person cannot be charged any extra fees, but is liable for property damage caused by the animal. To qualify, a person must show a tag or show that the animal is being trained (or has been trained) as a service animal. N.C. General Stat. §§ 168-4.2 & 168-4.4.

Enforcement and Remedies:

A person who requests a reasonable accommodation must inform the place of public accommodation of their disabling condition and submit any necessary medical documentation. Once an accommodation has been requested (or if a potential accommodation is obvious), the place of public accommodation shall discuss possible and feasible options with the qualifying person who requests it, investigate, and make the accommodation if reasonable. N.C. General Stat. §168A-4.

¹¹ Note: Compliance with the North Carolina Building Code will satisfy any public accommodations challenges based on structural access. In addition, public transportation systems may use alternative methods to provide transportation, as long as the transport offered is equivalent to that offered non-disabled persons. N.C. General Stat. §§ 168A-6 & 168A-8.

A person may bring a civil action in state court to enforce rights against any person alleged to have committed discriminatory practices concerning full and equal enjoyment of public accommodations, services or transportation. This would involve filing a lawsuit--within two years of the date of the discriminatory practice or conduct. Trial is in front of a judge, not a jury. Relief is limited to declaratory (declaration of rights and responsibilities of the parties) and injunctive (order to stop a practice or take affirmative steps). Reasonable attorneys' fees may also be awarded by the court. N.C. General Stat. §168A-11.¹²

It is a "Class 3" misdemeanor to deprive a person with a disability of any rights or privileges granted under the statute with respect to being accompanied by animals, or to charge any fee. It is also a Class 3 misdemeanor to disguise an animal as a service animal or animal in training. N.C. General Stat. §168-4.5. Currently, the maximum sentence is \$200 and/or 20 days of imprisonment. N.C. General Stat. §15A-1340.23.

Comparison with the ADA

North Carolina's protected class is almost identical to the ADA's, although case law has interpreted it not to cover people with HIV. The definition of public accommodations appears narrower than under federal law. Like the ADA, no damages for discriminatory practices may be awarded by a court. State law does provide minor criminal penalties for violations of the service animal statute, but requires identification that is not required under the ADA.

¹² Persons who have already filed a federal judicial or administrative complaint under the ADA or Section 504 about the same discriminatory practice may not then file suit under the Persons with Disabilities Protection Act .N.C. General Statutes §168A-11(c).

South Carolina

It is the policy of South Carolina to enable persons with disabilities to achieve maximum personal independence; to use and enjoy governmental and public buildings and facilities; and to participate fully in all aspects of society. It is also state policy to “encourage and enable” persons who are blind, visually disabled or physically disabled to “participate fully in the social and economic life of the State....” S.C. Code Laws, §§ 10-5-210 & 43-33-10 (2010).

The State has also adopted the “South Carolina Bill of Rights for Handicapped Persons” which prohibits discrimination with respect to public accommodations and services, and guarantees the opportunity to obtain full and equal use of public accommodations and services. S.C. Code Laws, §§ 43-33-510, 43-33-520 & 4-33-530.

Protected Class:

The statutes alternate between the terms “the blind, the visually handicapped, and the otherwise physically disabled,” “handicapped,” and “other special need persons.” S.C. Code Laws, §§ 43-33-10, 43-33-20, 43-33-530, 43-33-560.

The Bill of Rights defines “handicap” as “a substantial physical or mental impairment, whether congenital or acquired by accident, injury, or disease, where the impairment is verified by medical findings and appears reasonably certain to continue throughout the lifetime of the individual without substantial improvement. This does not include an individual who is an alcohol, drug, narcotic, or other substance abuser or who is only regarded as being handicapped. The term ‘mental impairment’ does not include mental illness.” S.C. Code Laws, § 43-33-560.¹³

¹³ Under a 1989 Attorney General’s Opinion, it is unclear whether the term “handicapped person” includes persons who have diseases or are HIV-positive. 1989 Op Atty Gen, No. 89-34, p 90. To date, the legislature has not adopted a clarifying amendment as recommended by the Attorney General.

Rights:

The right to full and equal use of public accommodations, public services, and educational facilities, without discrimination “because of a handicap,” is guaranteed by law and is a civil right. S.C. Code Laws, § 43-33-520. No person may discriminate against a “handicapped person” with respect to public accommodations or services, without “reasonable justification.” S.C. Code Laws, § 43-33-530.

Under an earlier enacted statute, persons who are blind or visually or otherwise physically disabled are entitled to full and equal use of public facilities and public accommodations, and public transportation, and “have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public facilities, and other public places.” S.C. Code Laws, § 43-33-20(a)-(b). There is a separate statute safeguarding the right to use motorized wheelchairs or carts “on the strand of the seacoast.” S.C. Code Laws, § 43-33-25.

Covered Entities:

Streets, highways, sidewalks, walkways, the seacoast “strand”; common carriers and public transit; public facilities and places to which the general public is invited, including hotels, lodging places, places of public accommodation, amusement or resort; educational facilities. S.C. Code Laws, §§ 43-33-20, 43-33-25 & 43-33-520.

Service Animals:

Every “handicapped person” has the right to be accompanied by an “especially trained” assistance or guide dog in, at, or on any covered entity, without being required to pay an extra charge for the assistance dog. The person is liable for any damage done to the premises or facilities by the dog. S.C. Code Laws, § 43-33-20(c).

Pedestrians who are “totally or partially blind” are specifically granted the rights and privileges of full and equal use of public facilities and accommodations. Their failure to carry a cane, or the failure of a “handicapped pedestrian” to use an assistance dog, does not constitute negligence. S.C. Code Laws, §43-33-30.

Enforcement and Remedies:

Persons who are discriminated against without “reasonable justification” can sue in the court of common pleas for injunctive relief or damages (maximum \$5000 actual damages), plus attorneys’ fees and costs. Reasonable justification is determined in light of safety, efficiency and cost, among other factors. S.C. Code Laws, §§ 43-33-540 & 43-33-570.

A person who denies or interferes with admission to, or enjoyment of, full and free use of public facilities by “[t]he blind, the visually handicapped, and the otherwise physically disabled” is guilty of a misdemeanor. A person who interferes with the rights of “a totally or partially blind or disabled person” to full and equal accommodations and transportation (including the right to be accompanied by an assistance dog) is also guilty of a misdemeanor. If convicted, the violator must be fined an amount in the judge’s discretion or imprisoned for up to 3 years, or both. S.C. Code Laws, § 43-33-40.

Any driver who fails to take necessary precautions when approaching a blind pedestrian carrying a predominantly white or metallic cane or a pedestrian using an assistance dog is liable in damages for any injury caused the pedestrian. S.C. Code Laws, § 43-33-30.

Comparison with the ADA

South Carolina protects a smaller group of people than the ADA. Service animals are treated similarly under state and federal law. South Carolina does permit individuals to sue for damages to challenge discrimination, but there are more grounds for defense than under the ADA. State law provides for criminal penalties.

Tennessee

The Tennessee Human Rights Act was adopted by the General Assembly in 1978 to “[s]afeguard all individuals within the state from discrimination...in connection with...public accommodations” (and employment and housing). The statute does not include disability as a protected class for public accommodations.

Protected Class:

N/A

Rights:

N/A

Covered Entities:

A “place of public accommodation, resort, or amusement” includes any place, store, or other establishment which supplies goods or services to the general public or which solicits or accepts the patronage of the general public¹⁴ or which is supported directly or indirectly by government funds. Tenn. Code Ann., § 4-21-102(15).

Service Animals:

No owner, employee or other person in charge of any place of “public accommodation, amusement or recreation” (including, but not limited to, a hotel, restaurant, store, theater, public educational institution, elevator or public transportation),¹⁵ shall refuse to permit a “blind, physically disabled or deaf or hard-of-hearing person” to enter or use the place or transportation when the person is being “led or accompanied” by a dog guide.

¹⁴ A private club is not covered if its policies are determined by its members and its facilities or services are available only to members and their authentic guests. Tenn. Code Ann. § 4-21-102(15)(A)-(B).

¹⁵ Also included: any “eating house, barber shop, billiard parlor [or]...motion picture house.” Tenn. Code Ann. § 62-7-112(a).

However, the dog must wear a harness and be held on a leash, and the person must first present credentials issued by an accredited school for training dog guides or by the Tennessee Council for the Deaf and Hard of Hearing. Tenn. Code Ann. § 62-7-112(a).¹⁶

Enforcement and Remedies:

Violations of the dog guide statute are subject to a Class C misdemeanor (\$50 maximum fine or up to 30 days imprisonment or both). Tenn. Code Ann. § 62-7-112(b).

Comparison with the ADA

Tennessee law does not appear to protect people with disabilities from discrimination by public accommodations, other than people with service animals. The service animal statute requires more proof of training and identification than the ADA and provides only criminal penalties (no private right of action or damages).

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¹⁶ According to an Attorney General's Opinion, the statutory requirement that training credentials for service dogs must be presented upon request for admission to places of public accommodation is consistent with the ADA. Op.Atty.Gen. No. 01-156, Oct. 22, 2001.