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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO CRIMINAL OFFENSES - PERSONS WITH DISABILITIES

Introduced By: Representative Donald J. Lally

Date Introduced: March 05, 2009

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 11-24-2.1 of the General Laws in Chapter 11-24 entitled "Hotels  
2 And Public Places" is hereby amended to read as follows:

3 **11-24-2.1. Discrimination based on disability, age, or sex prohibited.** -- (a) Whenever  
4 in this chapter there shall appear the words "ancestral origin" there shall be inserted immediately  
5 thereafter the words "disability, age, or sex".

6 (b) "Disability" means a disability as defined in section 42-87-1. ~~any person who: (1) has~~  
7 ~~a physical or mental impairment which substantially limits one or more major life activities; (2)~~  
8 ~~has a record of such an impairment; or (3) is regarded as having such an impairment; and (4) is~~  
9 ~~otherwise qualified; provided, that whether a person has a disability shall be determined without~~  
10 ~~regard to the availability or use of mitigating measures, such as reasonable accommodations,~~  
11 ~~prosthetic devices, medications or auxiliary aids.~~

12 (c) The terms, as used regarding persons with disabilities, "auxiliary aids and services"  
13 and "reasonable accommodation" have the same meaning as those terms are defined in section  
14 42-87-1.1. ~~"Physical or mental impairment" means any physiological disorder or condition,~~  
15 ~~cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:~~  
16 ~~neurological; musculoskeletal; special sense organs; respiratory, including speech organs;~~  
17 ~~cardiovascular; reproductive; digestive; genito urinary; hemic and lymphatic; skin; and~~  
18 ~~endocrine; or any mental psychological disorder, such as mental retardation, organic brain~~  
19 ~~syndrome, emotional, or mental illness; and specific learning disabilities.~~

1 (d) ~~"Major life activities" means functions such as caring for one's self, performing~~  
2 ~~manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~

3 (e) ~~"Has a record of an impairment" means has a history of, or has been misclassified as~~  
4 ~~having, a mental or physical impairment that substantially limits one or more major life activities.~~

5 (f) ~~"Regarded as having an impairment" means has a physical or mental impairment that~~  
6 ~~does not substantially limit major life activities but that is treated as constituting a limitation, has~~  
7 ~~a physical or mental impairment that substantially limits major life activities only as a result of~~  
8 ~~the attitudes of those toward the impairment, or has none of the impairments but is treated as~~  
9 ~~having an impairment.~~

10 (g) "Otherwise qualified" means a ~~disabled~~ person with a disability who meets the  
11 essential eligibility requirements for participation in or receipt of benefits from the program or  
12 activity.

13 (h) Any ~~disabled persons~~ person with a disability shall be entitled to full and equal  
14 access, as other members of the general public to all public accommodations, subject to the  
15 conditions and limitations established by law and applicable alike to all persons.

16 (i) Every ~~disabled~~ person with a disability who has a personal assistive animal or who  
17 obtains a personal assistive animal, shall be entitled to full and equal access to all public  
18 accommodations provided for in this chapter, and shall not be required to pay extra compensation  
19 for a personal assistive animal, but shall be liable for any damage done to the premises by a  
20 personal assistive animal.

21 (j) Nothing in this section shall require any person providing a place of public  
22 accommodation to, in any way, incur any greater liability or obligation, or provide a higher  
23 degree of care for a ~~disabled~~ person with a disability than for a person who is not disabled.

24 (k) "Sexual orientation" means having or being perceived as having an orientation for  
25 heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the status of  
26 persons and does not render lawful any conduct prohibited by the criminal laws of this state nor  
27 impose any duty on a religious organization. This definition does not confer legislative approval  
28 of that status, but is intended to assure the basic human rights of persons to partake of public  
29 accommodations, regardless of that status.

30 (l) "Gender identity or expression" includes a person's actual or perceived gender, as  
31 well as a person's gender identity, gender-related self image, gender-related appearance, or  
32 gender-related expression, whether or not that gender identity, gender-related self image, gender-  
33 related appearance, or gender-related expression is different from that traditionally associated  
34 with the person's sex at birth.

1 SECTION 2. Section 23-27.3-100.1.4 of the General Laws in Chapter 23-27.3 entitled  
2 "State Building Code" is hereby amended to read as follows:

3 **23-27.3-100.1.4. Appointment and qualifications of the committee.** -- (a) The building  
4 code standards committee shall be composed of twenty-three (23) members, residents of the state  
5 who shall be appointed by the governor with the advice and consent of the senate. Eight (8)  
6 members are to be appointed for terms of one year each, seven (7) for a term of two (2) years  
7 each, and eight (8) for terms of three (3) years each. Annually, thereafter, the governor, with the  
8 advice and consent of the senate, shall appoint members to the committee to succeed those whose  
9 terms expired; the members to serve for terms of three (3) years each and until their successors  
10 are appointed and qualified. Two (2) members shall be architects registered in the state; three (3)  
11 shall be professional engineers registered in the state, one specializing in mechanical, one  
12 specializing in structural, and one specializing in electrical engineering; one landscape architect,  
13 registered in the state, one full-time certified electrical inspector; two (2) shall be builders or  
14 superintendents of building construction; one shall be a public health official; one shall be a  
15 qualified fire code official; two (2) shall be from the Rhode Island building trades council; one  
16 shall be a holder of Class "A" electrician's license; one shall be a master plumber; two (2) shall be  
17 from the general public; three (3) shall be building officials in office, one from a municipality  
18 with a population of sixty thousand (60,000) persons or more, one from a municipality with a  
19 population of over twenty thousand (20,000) persons but less than sixty thousand (60,000), and  
20 one from a municipality with a population of less than twenty thousand (20,000) persons; one  
21 shall be a minimum housing official in office from one of the local municipalities; and two (2)  
22 residents of the state who shall be persons with disabilities as defined in section ~~28-5-6(4)~~ [42-87-](#)  
23 [1](#).

24 (b) All members shall have no less than five (5) years practical experience in his or her  
25 profession or business. The committee shall elect its own chairperson and may elect from among  
26 its members such other officers as it deems necessary. Twelve (12) members of the board shall  
27 constitute a quorum and the vote of a majority vote of those present shall be required for action.  
28 The committee shall adopt rules and regulations for procedure. The state building commissioner  
29 shall serve as the executive secretary to the committee. The committee shall have the power,  
30 within the limits of appropriations provided therefor, to employ such assistance as may be  
31 necessary to conduct business.

32 (c) Members of the commission shall be removable by the governor pursuant to section  
33 36-1-7 of the general laws and for cause only, and removal solely for partisan or personal reasons  
34 unrelated to capacity or fitness for the office shall be unlawful.

1 (d) The state housing and property maintenance code subcommittee shall be composed  
2 of nine (9) members, residents of the state. Five (5) of these members are to be current members  
3 of the state building code standards committee and are to be appointed by that committee. The  
4 four (4) remaining members are to be appointed by the governor, with the advice and consent of  
5 the senate. The four (4) appointed by the governor, with the advice and consent of the senate,  
6 shall initially be appointed on a staggered term basis, one for one year, one for two (2) years, and  
7 two (2) for three (3) years. Annually thereafter, the building code standards committee, and the  
8 governor, with the advice and consent of the senate, shall appoint the subcommittee members, for  
9 which they are respectively responsible, to succeed those whose terms have expired; the members  
10 to serve for terms of three (3) years each and until their successors are appointed and qualified. Of  
11 the members appointed by the committee one shall be a full-time certified electrical inspector;  
12 one shall be a master plumber and mechanical equipment expert, one shall be a builder or  
13 superintendent of building construction, one member shall be a qualified state fire code official,  
14 one shall be a property manager, and one shall be a current minimum housing official from a  
15 local municipality. The four (4) members to be appointed by the governor, with the advice and  
16 consent of the senate, shall all be current minimum housing officials from local municipalities.  
17 One shall be from a municipality with a population of sixty thousand (60,000) persons or more,  
18 two (2) from municipalities with a population of over twenty thousand (20,000) persons but less  
19 than sixty thousand (60,000), and one from a municipality with a population of less than twenty  
20 thousand (20,000) persons.

21 SECTION 3. Section 28-5-6 of the General Laws in Chapter 28-5 entitled "Fair  
22 Employment Practices" is hereby amended to read as follows:

23 **28-5-6. Definitions.** -- When used in this chapter:

24 (1) "Age" means anyone who is at least forty (40) years of age.

25 (2) "Because of sex" or "on the basis of sex" include, but are not limited to, because of or  
26 on the basis of pregnancy, childbirth, or related medical conditions, and women affected by  
27 pregnancy, childbirth, or related medical conditions shall be treated the same for all employment  
28 related purposes, including receipt of benefits under fringe benefit programs, as other persons not  
29 so affected but similar in their ability or inability to work, and nothing in this chapter shall be  
30 interpreted to permit otherwise.

31 (3) "Commission" means the Rhode Island commission against discrimination created by  
32 this chapter.

33 (4) "Disability" means [a disability as defined in section 42-87-1](#). ~~any physical or mental~~  
34 ~~impairment which substantially limits one or more major life activities, has a record of an~~

1 ~~impairment, or is regarded as having an impairment by any person, employer, labor organization~~  
2 ~~or employment agency subject to this chapter, and includes any disability which is provided~~  
3 ~~protection under the Americans with Disabilities Act, 42 U.S.C. section 12101 et seq. and federal~~  
4 ~~regulations pertaining to the act, 28 CFR 35 and 29 CFR 1630; provided, that whether a person~~  
5 ~~has a disability shall be determined without regard to the availability or use of mitigating~~  
6 ~~measures, such as reasonable accommodations, prosthetic devices, medications or auxiliary aids.~~  
7 ~~As used in this subdivision, the phrase:~~

8 ~~(i) "Has a record of an impairment" means has a history of, or has been misclassified as~~  
9 ~~having, a mental or physical impairment that substantially limits one or more major life activities.~~

10 ~~(ii) "Major life activities" means functions such as caring for one's self, performing~~  
11 ~~manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~

12 ~~(iii) "Physical or mental impairment" means any physiological disorder or condition,~~  
13 ~~cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:~~  
14 ~~neurological; musculoskeletal; special sense organs; respiratory, including speech organs;~~  
15 ~~cardiovascular; reproductive; digestive; genito urinary; hemic and lymphatic; skin; and~~  
16 ~~endocrine; or any mental or psychological disorder, such as mental retardation, organic brain~~  
17 ~~syndrome, emotional or mental illness, and specific learning disabilities.~~

18 ~~(iv) "Regarded as having an impairment" means has a physical or mental impairment~~  
19 ~~that does not substantially limit major life activities but that is treated as constituting a limitation;~~  
20 ~~has a physical or mental impairment that substantially limits major life activities only as a result~~  
21 ~~of the attitudes of others toward the impairment; or has none of the impairments but is treated as~~  
22 ~~having such an impairment.~~

23 (5) "Discriminate" includes segregate or separate.

24 (6) "Employee" does not include any individual employed by his or her parents, spouse,  
25 or child, or in the domestic service of any person.

26 (7) (i) "Employer" includes the state and all political subdivisions of the state and any  
27 person in this state employing four (4) or more individuals, and any person acting in the interest  
28 of an employer directly or indirectly.

29 (ii) Nothing in this subdivision shall be construed to apply to a religious corporation,  
30 association, educational institution, or society with respect to the employment of individuals of its  
31 religion to perform work connected with the carrying on of its activities.

32 (8) "Employment agency" includes any person undertaking with or without  
33 compensation to procure opportunities to work, or to procure, recruit, refer, or place employees.

34 (9) "Firefighter" means an employee the duties of whose position includes work

1 connected with the control and extinguishment of fires or the maintenance and use of firefighting  
2 apparatus and equipment, including an employee engaged in this activity who is transferred or  
3 promoted to a supervisory or administrative position.

4 (10) "Gender identity or expression" includes a person's actual or perceived gender, as  
5 well as a person's gender identity, gender-related self image, gender-related appearance, or  
6 gender-related expression; whether or not that gender identity, gender-related self image, gender-  
7 related appearance, or gender-related expression is different from that traditionally associated  
8 with the person's sex at birth.

9 (11) "Labor organization" includes any organization which exists for the purpose, in  
10 whole or in part, of collective bargaining or of dealing with employers concerning grievances,  
11 terms or conditions of employment, or of other mutual aid or protection in relation to  
12 employment.

13 (12) "Law enforcement officer" means an employee the duties of whose position include  
14 investigation, apprehension, or detention of individuals suspected or convicted of offenses against  
15 the criminal laws of the state, including an employee engaged in such activity who is transferred  
16 or promoted to a supervisory or administrative position. For the purpose of this subdivision,  
17 "detention" includes the duties of employees assigned to guard individuals incarcerated in any  
18 penal institution.

19 (13) "Person" includes one or more individuals, partnerships, associations, organizations,  
20 corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

21 (14) "Religion" includes all aspects of religious observance and practice, as well as  
22 belief, unless an employer, union or employment agency demonstrates that it is unable to  
23 reasonably accommodate to an employee's or prospective employee's or union member's religious  
24 observance or practice without undue hardship on the conduct of its business.

25 (15) "Sexual orientation" means having or being perceived as having an orientation for  
26 heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the status of  
27 persons and does not render lawful any conduct prohibited by the criminal laws of this state nor  
28 impose any duty on a religious organization. This definition does not confer legislative approval  
29 of that status, but is intended to assure the basic human rights of persons to obtain and hold  
30 employment, regardless of that status.

31 (16) The terms, as used regarding persons with disabilities:

32 (i) "Auxiliary aids and services" and "reasonable accommodation" shall have the same  
33 meaning as those items are defined in section 42-87-1.1; and

34 (ii) "Hardship" means an "undue hardship" as defined in section 42-87-1.1.

1 SECTION 4. Section 34-37-3 of the General Laws in Chapter 34-37 entitled "Rhode  
2 Island Fair Housing Practices Act" is hereby amended to read as follows:

3 **34-37-3. Definitions.** -- When used in this chapter:

4 (1) "Age" means anyone over the age of eighteen (18).

5 (2) "Commission" means the Rhode Island commission for human rights created by  
6 section 28-5-8.

7 (3) "Discriminate" includes segregate, separate, or otherwise differentiate between or  
8 among individuals because of race, color, religion, sex, sexual orientation, gender identity or  
9 expression, marital status, country of ancestral origin, disability, age, or familial status or because  
10 of the race, color, religion, sex, sexual orientation, gender identity or expression, marital status,  
11 country of ancestral origin, disability, age or familial status of any person with whom they are or  
12 may wish to be associated.

13 (4) (i) "Familial status" means one or more individuals who have not attained the age of  
14 eighteen (18) years being domiciled with:

15 (A) A parent or another person having legal custody of the individual or individuals; or

16 (B) The designee of the parent or other person having the custody, with the written  
17 permission of the parent or other person provided that if the individual is not a relative or legal  
18 dependent of the designee, that the individual shall have been domiciled with the designee for at  
19 least six (6) months.

20 (ii) The protections afforded against discrimination on the basis of familial status shall  
21 apply to any person who is pregnant or is in the process of securing legal custody of any  
22 individual who has not attained the age of eighteen (18) years.

23 (5) ~~(i)~~ "Disability" means [a disability as defined in section 42-87-1](#). ~~any person who:~~

24 ~~(A) Has a physical or mental impairment which substantially limits one or more major~~  
25 ~~life activities,~~

26 ~~(B) Has a record of such an impairment, or~~

27 ~~(C) Is regarded as having such an impairment, and~~

28 ~~(D) Is otherwise qualified;~~

29 ~~(ii) Provided, however, that whether a person has a disability shall be determined without~~  
30 ~~regard to the availability or use of mitigating measures, such as reasonable accommodations,~~  
31 ~~prosthetic devices, medications or auxiliary aids;~~

32 ~~(iii)~~ Provided further that the term "disability" does not include current, illegal use of or  
33 addiction to a controlled substance, as defined in 21 U.S.C. section 802.

34 (6) ~~"Has a record of an impairment" means has a history of, or has been misclassified as~~

1 ~~having, a mental or physical impairment that substantially limits one or more major life activities.~~  
2 The terms, as used regarding persons with disabilities, "auxiliary aids and services," "reasonable  
3 accommodation," and "reasonable modifications" have the same meaning as those terms are  
4 defined in section 42-87-1.1.

5 (7) "Housing accommodation" includes any building or structure or portion of any  
6 building or structure, or any parcel of land, developed or undeveloped, which is occupied or is  
7 intended, designed, or arranged to be occupied, or to be developed for occupancy, as the home or  
8 residence of one or more persons.

9 (8) [Deleted by P.L. 1997, ch. 150, section 8.]

10 (9) ~~"Major life activities" means functions such as caring for one's self, performing~~  
11 ~~manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~

12 (10) "Otherwise qualified" includes any person with a disability who with respect to the  
13 rental of property, personally or with assistance arranged by the person with a disability, is  
14 capable of performing all the responsibilities of a tenant as contained in section 34-18-24.

15 (11) "Owner" includes any person having the right to sell, rent, lease, or manage a  
16 housing accommodation.

17 (12) "Person" includes one or more individuals, partnerships, associations, organizations,  
18 corporations, labor organizations, mutual companies, joint stock companies, trusts, receivers,  
19 legal representatives, trustees, other fiduciaries, or real estate brokers or real estate salespersons  
20 as defined in chapter 20.5 of title 5.

21 (13) ~~"Physical or mental impairment" means any physiological disorder or condition,~~  
22 ~~cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:~~  
23 ~~neurological; musculoskeletal; special sense organs; respiratory, including speech organs;~~  
24 ~~cardiovascular; reproductive, digestive; genito urinary; hemic and lymphatic; skin; and~~  
25 ~~endocrine; or any mental or psychological disorder, such as mental retardation, organic brain~~  
26 ~~syndrome, emotional or mental illness, and specific learning disabilities.~~

27 (14) ~~"Regarded as having an impairment" means has a physical or mental impairment~~  
28 ~~that does not substantially limit major life activities but that is treated as constituting a limitation;~~  
29 ~~has a physical or mental impairment that substantially limits major life activities only as a result~~  
30 ~~of the attitudes of those toward the impairment; or has none of the impairments but is treated as~~  
31 ~~having an impairment.~~

32 (15) "Senior citizen" means a person sixty-two (62) years of age or older.

33 (16) The term "sexual orientation" means having or being perceived as having an  
34 orientation for heterosexuality, bisexuality, or homosexuality. This definition is intended to



1 describe the status of persons and does not render lawful any conduct prohibited by the criminal  
2 laws of this state nor impose any duty on a religious organization. This definition does not confer  
3 legislative approval of said status, but is intended to assure the basic human rights of persons to  
4 hold and convey property and to give and obtain credit, regardless of such status.

5 (17) The term "gender identity or expression" includes a person's actual or perceived  
6 gender, as well as a person's gender identity, gender-related self image, gender-related  
7 appearance, or gender-related expression; whether or not that gender identity, gender-related self  
8 image, gender-related appearance, or gender-related expression is different from that traditionally  
9 associated with the person's sex at birth.

10 (18) The term "domestic abuse" for the purposes of this chapter shall have the same  
11 meaning as that set forth in section 15-15-1, and include all forms of domestic violence as set  
12 forth in section 12-29-2, except that the domestic abuse need not involve a minor or parties with  
13 minor children.

14 (19) The term "victim" means a family or household member and all other persons  
15 contained within the definition of those terms as defined in section 12-29-2.

16 SECTION 5. Section 40-9.1-1.1 of the General Laws in Chapter 40-9.1 entitled "Equal  
17 Rights of Blind and Deaf Persons to Public Facilities" is hereby amended to read as follows:

18 **40-9.1-1.1. Definitions.** -- (a) "Guide dog" means a dog that has been or is being  
19 specially trained to aid a particular blind or visually impaired person.

20 (b) "Hearing dog" means a dog that has been or is being specially trained to aid a  
21 particular deaf or hard-of-hearing person.

22 (c) "Housing accommodations" means any real property or portion thereof that is used or  
23 occupied, or intended, arranged or designed to be used or occupied, as the home, residence or  
24 sleeping place of one or more human beings, but does not include any single-family residence the  
25 occupants of which rent, lease or furnish for compensation to more than one room therein.

26 (d) "Personal assistance animal" means a dog that has been or is being trained as a guide  
27 dog, hearing dog or service dog.

28 (e) "Service dog" means a dog that has been or is being specially trained to aid a  
29 particular disabled person with a disability other than sight or hearing.

30 (f) "Disabled" means a disability as defined in section 42-87-1.

31 SECTION 6. Section 42-51-9 of the General Laws in Chapter 42-51 entitled "Governor's  
32 Commission on Disabilities" is hereby amended to read as follows:

33 **42-51-9. Definitions.** -- The following words and terms, unless the context clearly  
34 indicates a different meaning, shall have the following meanings:

1 (1) "Disability" means a disability as defined in section 42-87-1. ~~"People with~~  
2 ~~disabilities" or "individuals with disabilities" means any person who:~~

3 ~~(i) Has a physical or mental impairment that substantially limits one or more of the~~  
4 ~~person's major life activities;~~

5 ~~(ii) Has a record of that impairment; or~~

6 ~~(iii) Is regarded as having that impairment.~~

7 (2) "Federal and state laws protecting the rights of individuals with disabilities" means,  
8 but is not limited to, the Americans with Disabilities Act of 1990, 42 U.S.C. section 12101 et  
9 seq.; Title V of the Rehabilitation Act of 1973, 29 U.S.C. section 794; R.I. Const., art. I, section  
10 2; the provisions of chapter 87 of title 42 and sections 23-6-22, 37-8-15, 37-8-15.1 and 42-46-13.

11 (3) "State agency" means any department, division, agency, commission, board, office,  
12 bureau, council, or authority, either branch of the Rhode Island general assembly or any agency  
13 or any committee thereof, or any other agency that is in any branch of Rhode Island state  
14 government and which exercises governmental functions.

15 (4) "Coordinating compliance" means the authority to:

16 (i) Issue guidelines, directives, or instructions that are necessary to effectuate compliance  
17 with federal and state laws protecting the rights of individuals with disabilities;

18 (ii) Establish a grievance procedure to promptly and equitably resolve complaints of  
19 noncompliance with federal and state laws protecting the rights of individuals with disabilities  
20 involving state agencies, including the power to investigate possible discrimination and eliminate  
21 unlawful practices by informal methods of conference, conciliation, and persuasion;

22 (iii) Initiate complaints against any state agency that willfully fails to comply with  
23 federal and state laws protecting the rights of individuals with disabilities to the appropriate state  
24 or federal agency; and

25 (iv) Develop, make periodic revisions to, and oversee the implementation of a transition  
26 plan for the removal of environmental and communication barriers in state-owned facilities.

27 (5) "Providing technical assistance to public and private agencies, businesses, and  
28 citizens on complying with federal and state laws protecting the rights of individuals with  
29 disabilities" means information dissemination and training designed to encourage the voluntary  
30 compliance with laws protecting the rights of individuals with disabilities; conducting disability  
31 accessibility surveys and providing advice on how to overcome any barriers to accessibility; and a  
32 mediation service to assist parties who voluntarily chose to utilize that service to resolve  
33 allegations of discrimination on the basis of disability.

34 (6) "Promoting on behalf of the people with disabilities and assuring, on behalf of the

1 state, that people with disabilities are afforded the opportunities to exercise all of the rights and  
2 responsibilities accorded to citizens of this state" means the authority to act and appear on behalf  
3 of the people with disabilities to present evidence and make arguments before any federal, state or  
4 local agency or public body regarding matters pending before that agency or public body that  
5 may have an adverse effect on persons with disabilities.

6 SECTION 7. Section 42-87-1 of the General Laws in Chapter 42-87 entitled "Civil  
7 Rights of People with Disabilities" is hereby amended to read as follows:

8 ~~42-87-1. Definitions.~~ **Definitions of disability.** -- As used in this chapter:

9 (1) "Disability" means, with respect to an individual:

10 (i) A physical or mental impairment that substantially limits one or more of the major life  
11 activities of such individual;

12 (ii) A record of such impairment; or

13 (iii) Being regarded as having such an impairment (as described in paragraph (4));

14 (iv) Includes any disability which is provided protection under the Americans with  
15 Disabilities Act, 42 U.S.C. section 12101 et seq. and federal regulations pertaining to the act 28  
16 CFR 35 and 29 CFR 1630; and

17 (v) Nothing in this chapter alters the standards for determining eligibility for benefits  
18 under workers' compensation laws or under state disability benefit programs.

19 ~~any impairment as defined in subdivision (8); provided, however, that whether a person~~  
20 ~~has a disability shall be determined without regard to the availability or use of mitigating~~  
21 ~~measures, such as reasonable accommodations, prosthetic devices, medications or auxiliary aids.~~

22 (2) ~~"Discrimination" includes those acts prohibited on the basis of race by 42 U.S.C.~~  
23 ~~sections 1981, 1983 and those on the basis of disability by 29 U.S.C. section 794, and those on~~  
24 ~~the basis of disability by 42 U.S.C. section 12101 et seq., and those on the basis of disability by~~  
25 ~~chapter 5 of title 28.~~

26 (3) ~~"Has a record of an impairment" means has a history of or has been misclassified as~~  
27 ~~having a physical or mental impairment that substantially limits one or more major life activities.~~

28 (4) ~~"Is regarded~~ "Regarded as having such an impairment" for purposes of paragraph  
29 (1)(iii) means:

30 (i) ~~Has a physical or mental impairment that does not substantially limit major life~~  
31 ~~activities but that is treated as constituting a limitation; or~~ An individual meets the requirement of  
32 "being regarded as having such an impairment" if the individual establishes that he or she has  
33 been subjected to an action prohibited under this chapter because of an actual or perceived  
34 physical or mental impairment, whether or not the impairment limits or is perceived to limit a

1 major life activity.

2 (ii) ~~Has a physical or mental impairment that substantially limits major life activities~~  
3 ~~only as a result of the attitudes of others toward the impairment; or~~ Paragraph (1)(iii) shall not  
4 apply to impairments that are transitory and minor. A transitory impairment is an impairment  
5 with an actual or expected duration of six (6) months or less.

6 (iii) ~~Has none of the impairments defined in subdivision (8) of this section but is treated~~  
7 ~~as having an impairment.~~

8 (5) "Major life activities" ~~means functions such as~~ include, but are not limited to, caring  
9 for ~~one's self~~ oneself, performing manual tasks, ~~walking,~~ seeing, hearing, eating, sleeping,  
10 walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating,  
11 thinking, communicating and working. A major life activity also includes the operation of a major  
12 bodily function, including, but not limited to, functions of the immune system, normal cell  
13 growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and  
14 reproductive functions.

15 (6) ~~"Otherwise qualified"~~ "Qualified individual" means:

16 (i) With respect to employment, a person ~~with a disability~~ who, with or without  
17 reasonable accommodations, can perform the essential functions of the ~~job in question~~  
18 employment position that such individual holds or desires. For the purposes of this chapter, due  
19 consideration shall be given to the employer's judgment as to what functions of a job are  
20 essential, and if an employer has prepared a written description before advertising or interviewing  
21 applicants for the job, this description shall be considered evidence of the essential functions of  
22 the job;

23 (ii) With respect to the rental of property, a person with a disability who, personally or  
24 with assistance arranged by the person with a disability, is capable of performing all of the  
25 responsibilities of a tenant as contained in section 34-18-24;

26 (iii) With respect to any other program or activity, a person with a disability who, with or  
27 without reasonable modifications to rules, policies, or practices, the removal of architectural,  
28 communication, or transportation barriers, or the provision of auxiliary aids and services, meets  
29 the essential eligibility requirements for ~~participation in, or the~~ receipt of; services or benefits  
30 ~~from, or the participation in~~ the program or activity; ~~and~~

31 (iv) The fact that an individual has applied for, received or continues to receive private  
32 insurance or government assistance based upon his or her disability shall not be determinative as  
33 to whether the individual is ~~otherwise~~ qualified as defined herein, nor shall it constitute an  
34 estoppel or otherwise serve as a basis to deny the individual the protections of this chapter; and

1 (v) A qualified individual with a disability shall not include any employee or applicant  
2 who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of  
3 such use.

4 (A) In general. --The term "illegal use of drugs" means the use of drugs, the possession or  
5 distribution of which is unlawful under the controlled substances act (21 U.S.C. 812). Such term  
6 does not include the use of a drug taken under supervision by a licensed health care professional,  
7 or other uses authorized by the controlled substances act or other provisions of federal law.

8 (B) Drugs.--The term "drug" means a controlled substance, as defined in schedules I  
9 through V of section 202 of the controlled substances act.

10 ~~(7) "Person with a disability" means any person who:~~

11 ~~(i) Has a physical or mental impairment which substantially limits one or more major life~~  
12 ~~activities; or~~

13 ~~(ii) Has a record of an impairment; or~~

14 ~~(iii) Is regarded as having an impairment.~~

15 ~~(8) "Physical or mental impairment" means any physiological disorder or condition,~~  
16 ~~cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:~~  
17 ~~neurological; musculoskeletal; special sense organs; respiratory, including speech organs;~~  
18 ~~cardiovascular; reproductive; digestive; genito urinary; hemic and lymphatic; skin; and~~  
19 ~~endocrine; or any mental or psychological disorder such as mental retardation, organic brain~~  
20 ~~syndrome, emotional or mental illness, and specific learning disabilities.~~

21 (7) "Substantially limits" includes:

22 (i) An impairment that substantially limits one major life activity but need not limit other  
23 major life activities in order to be considered a disability.

24 (ii) An impairment that is episodic or in remission is a disability if it would substantially  
25 limit a major life activity when active.

26 (iii)(A) The determination of whether an impairment substantially limits a major life  
27 activity shall be made without regard to the ameliorative effects of mitigating measures such as:

28 (I) Medication, medical supplies, equipment, or appliance, low-vision devices (which do  
29 not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices,  
30 hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or  
31 oxygen therapy equipment and supplies;

32 (II) Use of assistive technology;

33 (III) Reasonable accommodations or auxiliary aids or services; or

34 (IV) Learned behavioral or adaptive neurological modifications.

1 (B) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact  
2 lenses shall be considered in determining whether an impairment substantially limits a major life  
3 activity.

4 (8) As used in subparagraph (7)(iii)(A)(I):

5 (i) The term "ordinary eyeglasses or contact lenses" means lenses that are intended to  
6 fully correct visual acuity or eliminate refractive error; and

7 (ii) The term "low-vision devices" means devices that magnify, enhance, or otherwise  
8 augment a visual image.

9 SECTION 8. Chapter 42-87 of the General Laws entitled "Civil Rights of People with  
10 Disabilities" is hereby amended by adding thereto the following sections:

11 **42-87-1.1. Other definitions. -- As used in this chapter:**

12 (1) "Auxiliary aids and services" includes:

13 (i) Qualified interpreters or other effective methods of making aurally delivered materials  
14 available to individuals with hearing impairments;

15 (ii) Qualified readers, taped texts, or other effective methods of making visually delivered  
16 materials available to individuals with visual impairments;

17 (iii) Acquisition or modification of equipment or devices; and

18 (iv) Other similar services and actions.

19 (2) "Discrimination":

20 (i) Includes those acts prohibited on the basis of race by 42 U.S.C. sections 1981, 1983  
21 and those on the basis of disability by 29 U.S.C. section 794, and those on the basis of disability  
22 by 42 U.S.C. section 12101 et seq., and those on the basis of disability by chapter 5 of title 28.

23 (ii) Nothing in this chapter shall provide the basis for a claim by an individual without a  
24 disability that the individual was subject to discrimination because of the individual's lack of  
25 disability.

26 (3) "Readily achievable" means easily accomplishable and able to be carried out without  
27 much difficulty or expense. In determining whether an action is readily achievable, factors to be  
28 considered include:

29 (i) The nature and cost of the action needed under this chapter;

30 (ii) The overall financial resources of the facility or facilities involved in the action; the  
31 number of persons employed at such facility; the effect on expenses and resources, or the impact  
32 otherwise of such action upon the operation of the facility;

33 (iii) The overall financial resources of the covered entity; the overall size of the business  
34 of a covered entity with respect to the number of its employees; the number, type, and location of

1 its facilities; and

2 (iv) The type of operation or operations of the covered entity, including the composition,  
3 structure, and functions of the workforce of such entity; the geographic separateness,  
4 administrative or fiscal relationship of the facility or facilities in question to the covered entity.

5 (4) "Reasonable accommodation" may include:

6 (i) Making existing facilities used by employees readily accessible to and usable by  
7 individuals with disabilities; and

8 (ii) Job restructuring, part-time or modified work schedules, reassignment to a vacant  
9 position, acquisition or modification of equipment or devices, appropriate adjustment or  
10 modifications of examinations, training materials or policies, the provision of qualified readers or  
11 interpreters, and other similar accommodations for individuals with disabilities.

12 (iii) Nothing in this chapter shall be construed to require an individual with a disability to  
13 accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not  
14 to accept.

15 (iv) An employer, state or local government agency and any person who owns, leases (or  
16 leases to), or operates a place of public accommodation, need not provide a reasonable  
17 accommodation or a reasonable modification to policies, practices, or procedures to an individual  
18 who meets the definition of disability in subsection 42-87-1(1) solely under subparagraph (4) (iii).

19 (5) "Reasonable modifications": (i) include modifications in policies, practices, or  
20 procedures when the modifications are necessary to avoid discrimination on the basis of  
21 disability, unless the covered entity can demonstrate that making the modifications would  
22 fundamentally alter the nature of the service, program, or activity.

23 (ii) Nothing in this chapter shall be construed to require an individual with a disability to  
24 accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not  
25 to accept.

26 (iii) Any person or entity covered by section 42-87-2, need not provide a reasonable  
27 modification to policies, practices, or procedures to an individual who meets the definition of  
28 disability in subsection 42-87-1(1) solely under subparagraph (ii).

29 (iv) Nothing in this chapter alters the provision, specifying that reasonable modifications  
30 in policies, practices, or procedures shall be required, unless an entity can demonstrate that  
31 making such modifications in policies, practices, or procedures, including academic requirements  
32 in postsecondary education, would fundamentally alter the nature of the goods, services, facilities,  
33 privileges, advantages, or accommodations involved.

34 (6) "Undue hardship" means:

1 (i) An action requiring significant difficulty or expense, when considered in light of the  
2 factors set forth in subparagraph (ii) herein.

3 (ii) In determining whether an accommodation would impose an undue hardship on a  
4 covered entity, factors to be considered include:

5 (A) The nature and cost of the accommodation needed under this chapter;

6 (B) The overall financial resources of the facility or facilities involved in the provision of  
7 the reasonable accommodation; the number of persons employed at such facility; the effect on  
8 expenses and resources, or the impact otherwise of such accommodation upon the operation of  
9 the facility;

10 (C) The overall financial resources of the covered entity; the overall size of the business  
11 of a covered entity with respect to the number of its employees; the number, type, and location of  
12 its facilities; and

13 (D) The type of operation or operations of the covered entity, including the composition,  
14 structure, and functions of the workforce of such entity; the geographic separateness,  
15 administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

16 **42-87-1.2. Qualification standards.** -- A covered entity shall not use qualification  
17 standards, employment tests, or other selection criteria based on an individual's uncorrected  
18 vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown  
19 to be job-related for the position in question and consistent with business necessity.

20 SECTION 9. Section 42-112-1 of the General Laws in Chapter 42-112 entitled "The  
21 Civil Rights Act of 1990" is hereby amended to read as follows:

22 **42-112-1. Discrimination prohibited.** -- (a) All persons within the state, regardless of  
23 race, color, religion, sex, disability, age, or country of ancestral origin, have, except as is  
24 otherwise provided or permitted by law, the same rights to make and enforce contracts, to inherit,  
25 purchase, to lease, sell, hold, and convey real and personal property, to sue, be parties, give  
26 evidence, and to the full and equal benefit of all laws and proceedings for the security of persons  
27 and property, and are subject to like punishment, pains, penalties, taxes, licenses, and exactions of  
28 every kind, and to no other.

29 (b) For the purposes of this section, the right to "make and enforce contracts, to inherit,  
30 purchase, to lease, sell, hold, and convey real and personal property" includes the making,  
31 performance, modification and termination of contracts and rights concerning real or personal  
32 property, and the enjoyment of all benefits, terms, and conditions of the contractual and other  
33 relationships.

34 (c) Nothing contained in this chapter shall be construed to affect chapter 14.1 of title 37,



1 chapter 5.1 of title 28 or any other remedial programs designed to address past societal  
2 discrimination.

3 (d) For the purposes of this section, the terms "sex", "~~disability~~" and "age" have the same  
4 meaning as those terms are defined in section 28-5-6, the state fair employment practices act. The  
5 term "disability" has the same meaning as that term is defined in section 42-87-1, and the terms,  
6 as used regarding persons with disabilities, "auxiliary aids and services," "readily achievable,"  
7 "reasonable accommodation," "reasonable modification," and "undue hardship" shall have the  
8 same meaning as those terms are defined in section 42-87-1.1.

9 SECTION 10. This act shall take effect upon passage.

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LC02085/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO CRIMINAL OFFENSES - PERSONS WITH DISABILITIES

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1           This act would amend the state's civil rights laws so as to incorporate definitions and  
2 other changes made by the federal ADA Amendments Act.

3           This act would take effect upon passage.

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LC02085/SUB A  
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