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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4895

1.1 A bill for an act

1.2 relating to human rights; modifying processes for determining reasonable

1.3 accommodations for public accommodation and public services; modifying criteria

1.4 for determining undue hardship for public accommodation and public services;

1.5 providing for disparate impact discrimination claims for public accommodation

1.6 and public services; updating terms; amending Minnesota Statutes 2022, sections

1.7 363A.03, subdivisions 12, 31, 33, 36; 363A.08, subdivision 6; 363A.28, subdivision

1.8 10; Minnesota Statutes 2023 Supplement, sections 363A.11, subdivision 1;

1.9 363A.12, subdivision 1.

1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. Minnesota Statutes 2022, section 363A.03, subdivision 12, is amended to read:

1.12 Subd. 12. **Disability.** "Disability" means any condition or characteristic that renders a

1.13 ~~person a disabled person~~ an individual with a disability. ~~A disabled person~~ An individual

1.14 with a disability is any person who (1) has a physical, sensory, or mental impairment which

1.15 materially limits one or more major life activities; (2) has a record of such an impairment;

1.16 or (3) is regarded as having such an impairment.

1.17 Sec. 2. Minnesota Statutes 2022, section 363A.03, subdivision 31, is amended to read:

1.18 Subd. 31. **Physical access.** "Physical access" means (1) the absence of physical obstacles

1.19 that limit ~~a disabled person's~~ the opportunity for full and equal use of or benefit from goods,

1.20 services, and privileges by an individual with a disability; or, when necessary, (2) the use

1.21 of methods to overcome the discriminatory effect of physical obstacles. The methods may

1.22 include redesign of equipment, assignment of aides, or use of alternate accessible locations.

2.1 Sec. 3. Minnesota Statutes 2022, section 363A.03, subdivision 33, is amended to read:

2.2 Subd. 33. **Program access.** "Program access" means (1) the use of auxiliary aids or
 2.3 services to ensure full and equal use of or benefit from goods, services, and privileges by
 2.4 an individual with a disability; and (2) the absence of criteria or methods of administration
 2.5 that directly, indirectly, or through contractual or other arrangements, have the effect of
 2.6 subjecting qualified ~~disabled persons~~ individuals with disabilities to discrimination on the
 2.7 basis of disability, or have the effect of defeating or impairing the accomplishment of the
 2.8 objectives of the program.

2.9 Sec. 4. Minnesota Statutes 2022, section 363A.03, subdivision 36, is amended to read:

2.10 Subd. 36. **Qualified ~~disabled person~~ individual with a disability.** "Qualified ~~disabled~~
 2.11 ~~person~~ individual with a disability" means:

2.12 (1) with respect to employment, ~~a disabled person~~ an individual with a disability who,
 2.13 with reasonable accommodation, can perform the essential functions required of all applicants
 2.14 for the job in question; and

2.15 (2) with respect to public services, ~~a person~~ an individual with a disability who, with or
 2.16 without reasonable modifications to rules, policies, or practices, removal of architectural,
 2.17 communications, or transportation barriers, or the provision of auxiliary aids and services,
 2.18 meets the essential eligibility requirements for receipt of services and for participation in
 2.19 programs and activities provided by the public service.

2.20 For the purposes of this subdivision, "disability" excludes any condition resulting from
 2.21 alcohol or drug abuse which prevents a person from performing the essential functions of
 2.22 the job in question or constitutes a direct threat to property or the safety of others.

2.23 If a respondent contends that the person is not a qualified ~~disabled person~~ individual
 2.24 with a disability, the burden is on the respondent to prove that it was reasonable to conclude
 2.25 the ~~disabled person~~ individual with a disability, with reasonable accommodation, could not
 2.26 have met the requirements of the job or that the selected person was demonstrably better
 2.27 able to perform the job.

2.28 Sec. 5. Minnesota Statutes 2022, section 363A.08, subdivision 6, is amended to read:

2.29 Subd. 6. **Reasonable accommodation.** (a) Except when based on a bona fide occupational
 2.30 qualification, it is an unfair employment practice for an employer with a number of part-time
 2.31 or full-time employees for each working day in each of 20 or more calendar weeks in the
 2.32 current or preceding calendar year equal to or greater than ~~25 effective July 1, 1992, and~~

3.1 ~~equal to or greater than 15 effective July 1, 1994~~, an employment agency, or a labor
 3.2 organization, not to provide a reasonable accommodation for a job applicant or qualified
 3.3 employee with a disability unless the employer, agency, or organization can demonstrate
 3.4 that the accommodation would impose an undue hardship on the operations of the business,
 3.5 agency, or organization. "Reasonable accommodation" means steps which must be taken
 3.6 to accommodate the known physical, sensory, or mental limitations of a qualified individual
 3.7 with a disability. To determine the appropriate reasonable accommodation the employer,
 3.8 agency, or organization shall initiate an informal, interactive process with the individual
 3.9 with a disability in need of the accommodation. This process ~~should~~ must identify the
 3.10 limitations resulting from the disability and any potential reasonable accommodations that
 3.11 could overcome those limitations. "Reasonable accommodation" may include but is not
 3.12 limited to, nor does it necessarily require: (1) making facilities readily accessible to and
 3.13 usable by individuals with disabilities; and (2) job restructuring, modified work schedules,
 3.14 reassignment to a vacant position, acquisition or modification of equipment or devices, and
 3.15 the provision of aides on a temporary or periodic basis.

3.16 (b) In determining whether an accommodation would impose an undue hardship on the
 3.17 operation of a business or organization, factors to be considered include:

3.18 (1) the overall size of the business or organization with respect to number of employees
 3.19 or members and the number and type of facilities;

3.20 (2) the type of the operation, including the composition and structure of the work force,
 3.21 and the number of employees at the location where the employment would occur;

3.22 (3) the nature and cost of the needed accommodation;

3.23 (4) the reasonable ability to finance the accommodation at each site of business; and

3.24 (5) documented good faith efforts to explore less restrictive or less expensive alternatives,
 3.25 including consultation with the ~~disabled person~~ individual with a disability or with
 3.26 knowledgeable ~~disabled persons or organizations~~ or individuals with disabilities.

3.27 A prospective employer need not pay for an accommodation for a job applicant if it is
 3.28 available from an alternative source without cost to the employer or applicant.

3.29 Sec. 6. Minnesota Statutes 2023 Supplement, section 363A.11, subdivision 1, is amended
 3.30 to read:

3.31 Subdivision 1. **Full and equal enjoyment of public accommodations.** (a) It is an unfair
 3.32 discriminatory practice:

4.1 (1) to deny any person the full and equal enjoyment of the goods, services, facilities,
 4.2 privileges, advantages, and accommodations of a place of public accommodation because
 4.3 of race, color, creed, religion, disability, national origin, marital status, sexual orientation,
 4.4 sex, or gender identity, or for a taxicab company to discriminate in the access to, full
 4.5 utilization of, or benefit from service because of a person's disability; or

4.6 (2) for a place of public accommodation not to make reasonable accommodation ~~to the~~
 4.7 ~~known physical, sensory, or mental disability of a disabled person, as defined in section~~
 4.8 363A.08, subdivision 6, for an individual with a disability unless the public accommodation
 4.9 can demonstrate that the accommodation would impose an undue hardship on the operations
 4.10 of the public accommodation. A place of public accommodation may not ignore a request
 4.11 for a reasonable accommodation for physical or program access from an individual with a
 4.12 disability.

4.13 (b) In determining whether an accommodation is reasonable, the ~~the~~ would impose an undue
 4.14 hardship on the operations of the public accommodation, factors to be considered may
 4.15 include:

4.16 ~~(i) the frequency and predictability with which members of the public will be served by~~
 4.17 ~~the accommodation at that location;~~

4.18 ~~(ii) the size of the business or organization at that location with respect to physical size,~~
 4.19 ~~annual gross revenues, and the number of employees;~~

4.20 ~~(iii) the extent to which disabled persons will be further served from the accommodation;~~

4.21 ~~(iv)~~ (i) the type and purpose of the public accommodation's operation;

4.22 ~~(v)~~ (ii) the nature and amount of both direct costs and legitimate indirect costs of making
 4.23 the accommodation and the reasonableness for that location to finance the cost of the needed
 4.24 accommodation; and

4.25 ~~(vi) the extent to which any persons may be adversely affected by the accommodation.~~

4.26 (iii) documented good faith efforts to explore less restrictive or less expensive alternatives;
 4.27 and

4.28 (iv) the extent of consultation with knowledgeable organizations and individuals with
 4.29 disabilities.

4.30 ~~(b)~~ (c) State or local building codes control where applicable. Violations of state or local
 4.31 building codes are not violations of this chapter and must be enforced under normal building
 4.32 code procedures.

5.1 Sec. 7. Minnesota Statutes 2023 Supplement, section 363A.12, subdivision 1, is amended
5.2 to read:

5.3 Subdivision 1. **Access to public service.** (a) It is an unfair discriminatory practice to
5.4 discriminate against any person in the access to, admission to, full utilization of or benefit
5.5 from any public service because of race, color, creed, religion, national origin, disability,
5.6 sex, gender identity, sexual orientation, or status with regard to public assistance or to fail
5.7 to ensure physical and program access for ~~disabled persons~~ an individual with a disability
5.8 unless the public service can demonstrate that providing the access would impose an undue
5.9 hardship on its operation. A public service may not ignore a request for a reasonable
5.10 accommodation for physical or program access from an individual with a disability.

5.11 (b) In determining whether providing physical and program access would impose an
5.12 undue hardship on the operations of the public service, factors to be considered include:

5.13 (1) the type and purpose of the public service's operation;

5.14 (2) the nature and cost of the needed accommodation;

5.15 (3) documented good faith efforts to explore less restrictive or less expensive alternatives;
5.16 and

5.17 (4) the extent of consultation with knowledgeable disabled persons and organizations.

5.18 ~~Physical and program access must be accomplished within six months of June 7, 1983,~~
5.19 ~~except for needed architectural modifications, which must be made within two years of June~~
5.20 ~~7, 1983.~~

5.21 Sec. 8. Minnesota Statutes 2022, section 363A.28, subdivision 10, is amended to read:

5.22 Subd. 10. **Disparate impact cases.** If the complaining party has met its burden of showing
5.23 that ~~an employment~~ the respondent's practice is responsible for a statistically significant
5.24 adverse impact on a particular class of persons protected by ~~section 363A.08, subdivision~~
5.25 ~~2, an employer~~ sections 363A.08 to 363A.19, a respondent must justify that practice by
5.26 demonstrating that the practice ~~is manifestly related to the job or~~ significantly furthers an
5.27 important business, governmental, or educational purpose. Upon establishment of this
5.28 justification, the charging party may prevail upon demonstration of the existence of a
5.29 comparably effective practice that the court finds would cause a significantly lesser adverse
5.30 impact on the identified protected class.

6.1 **Sec. 9. REVISOR INSTRUCTION.**

6.2 In Minnesota Statutes, chapter 363A, the revisor of statutes shall change the phrases in
 6.3 column A to the phrases in column B. The revisor shall also make grammatical changes
 6.4 related to the change in terms.

6.5	<u>Column A</u>	<u>Column B</u>
6.6	<u>Disabled person</u>	<u>Individual with a disability</u>
6.7	<u>Disabled persons</u>	<u>Individuals with disabilities</u>
6.8	<u>Disabled people</u>	<u>Individuals with disabilities</u>
6.9	<u>Persons who are disabled</u>	<u>Individuals with disabilities</u>
6.10	<u>Nondisabled persons</u>	<u>Individuals without disabilities</u>
6.11	<u>Nondisabled person</u>	<u>Individual without a disability</u>
6.12	<u>Disabled riders</u>	<u>Riders with disabilities</u>
6.13	<u>Disabled ridership</u>	<u>Ridership of individuals with disabilities</u>
6.14	<u>A person or group of persons who are</u>	<u>An individual with a disability or group of</u>
6.15	<u>disabled</u>	<u>individuals with disabilities</u>
6.16	<u>A disabled family member</u>	<u>A family member with a disability</u>