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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 311

AN ACT TO AMEND TITLE 6 AND TITLE 29 OF THE DELAWARE CODE RELATING TO EQUAL ACCOMMODATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 4501, Title 6 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and redesignating accordingly:

3 § 4501. Purpose and construction.

4 This chapter is intended to prevent, in places of public accommodations, practices of discrimination against any
5 person because of race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or
6 national origin. This chapter shall be liberally construed to the end that the rights herein provided for all people, without
7 regard to race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or national
8 origin, may be effectively safeguarded. Furthermore, ~~in defining the scope or extent of any duty imposed by this chapter, it~~
9 is appropriate for the Commission to consult with, consider, and apply higher or more comprehensive obligations
10 established by otherwise applicable federal, state, or local ~~enactments may be considered.~~ law in defining the scope or
11 extent of any duty imposed by this chapter.

12 Section 2. Amend § 4502, Title 6 of the Delaware Code by making deletions as shown by strike through and
13 insertions as shown by underline as follows and redesignating accordingly:

14 § 4502. Definitions.

15 For purposes of this chapter:

16 (2) "Auxiliary aid or service" means a device or service that enables effective communication. Appropriate
17 auxiliary aids and services may include services and devices such as qualified interpreters, assistive listening devices,
18 notetakers, or written materials for individuals with hearing impairments; and qualified readers, taped texts, or brailled or
19 large print materials for individuals with vision impairments.

20 (7) "Disability" means any condition or characteristic that renders a person a person with a disability as defined in
21 this section.

22 (17) "Person with a disability" means any person who satisfies any 1 of the following:

- 23 a. Has a physical or mental impairment which substantially limits 1 or more major life activities.
- 24 b. Has a record of such impairment.
- 25 c. Is regarded as having such an impairment.

26 (18) "Place of public accommodation" means any establishment which caters to or offers ~~goods or services or~~
27 ~~facilities~~ goods, services, facilities, privileges, advantages, or accommodations to, or solicits patronage from, the general
28 public. ~~This definition includes public, including state agencies, local government agencies, and state-funded agencies~~
29 ~~performing public functions. This definition includes functions, and~~ hotels and motels catering to the transient public, ~~but it~~
30 ~~does not apply to the public.~~ "Place of public accommodation" does not include any of the following:

31 a. The sale or rental of houses, housing units, apartments, rooming houses, or other dwellings, nor to tourist
32 homes with less than 10 rental units catering to the transient public.

33 b. Religious organizations, unless the goods, services, or facilities are being provided to the general public.

34 () "Readily achievable" means easily accomplishable without much difficulty or expense. "Readily achievable"
35 means that an action is not an undue burden as defined in this section.

36 () "Reasonable modification" means a change in policies, practices, or procedures when the modification is
37 necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the
38 modifications would fundamentally alter the nature of the service, program, or activity.

39 (23) "Service animal" means a dog individually trained to do work or perform tasks for the benefit of a person
40 with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

41 () "Undue burden" means an action requiring significant difficulty or expense, when considered in light of all of
42 the following factors:

43 a. The nature and cost of the action needed under this chapter.

44 b. The overall financial resources of the place of public accommodation involved in the action; the
45 number of persons employed at the place of public accommodation; the effect on expenses and resources;
46 legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the
47 impact otherwise of the action upon the operation of the place of public accommodation.

48 c. The geographic separateness, and the administrative or fiscal relationship of the place of public
49 accommodation in question to any parent corporation or ownership entity.

50 d. If applicable, the overall financial resources of any parent corporation or ownership entity; the overall
51 size of the parent corporation or ownership entity with respect to the number of its employees; the number, type,
52 and location of its facilities.

53 e. If applicable, the type of operation or operations of any parent corporation or ownership entity,
54 including the composition, structure, and functions of the workforce of the parent corporation or ownership entity.

55 Section 3. Amend § 4503, Title 6 of the Delaware Code by making deletions as shown by strike through and
56 insertions as shown by underline as follows:

57 § 4503. Persons entitled to protection.

58 All persons within the jurisdiction of this State are entitled to the full and equal accommodations, facilities,
59 advantages and privileges of any place of public accommodation regardless of the race, age, marital status, creed, religion,
60 color, sex, ~~handicap~~, disability, sexual orientation, gender identity, or national origin of such persons.

61 Section 4. Amend § 4504, Title 6 of the Delaware Code by making deletions as shown by strike through and
62 insertions as shown by underline as follows and redesignating accordingly:

63 § 4504. Unlawful practices.

64 (a)(1)a. No person being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent, or
65 employee of any place of public accommodation, may directly or indirectly refuse, withhold from, or deny to any person,
66 on account of race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or national
67 origin, any of the accommodations, facilities, advantages, or privileges ~~thereof~~. of the public accommodation.

68 b. A person who does not allow parking by a holder of a special license plate or permit for persons with
69 disabilities as allowed under § 2134 through § 2135 of Title 21 is engaged in an unlawful practice under this
70 chapter.

71 (3) A place of public accommodation must permit service animals as follows:

72 a. An individual with a disability accompanied by a service animal in any place of public
73 accommodation.

74 b. An individual training a service animal to be used by persons with disabilities accompanied by a
75 service animal in any place of public accommodation.

76 (4) It is a violation of paragraph (a)(1)a. of this section for a person to do any of the following:

77 a. To impose or apply eligibility criteria that screen out or tend to screen out an individual with a
78 disability or any class of individuals with disabilities from fully and equally enjoying any goods, services,
79 facilities, privileges, advantages, or accommodations of a place of public accommodation, unless the criteria can

80 be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or
81 accommodations being offered.

82 b. To fail to make reasonable modifications in policies, practices, or procedures to afford goods, services,
83 facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the place of public
84 accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods,
85 services, facilities, privileges, advantages, or accommodations.

86 c. To fail to take measures that may be necessary to ensure that no individual with a disability is
87 excluded, denied services, segregated, or otherwise treated differently than other individuals because of the
88 absence of auxiliary aids and services, unless the place of public accommodation can demonstrate that taking the
89 steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or
90 accommodations being offered or would result in an undue burden.

91 d.1. To fail to remove architectural barriers and communication barriers that are structural in nature,
92 where such removal is readily achievable, in existing facilities,

93 2. Where a place of public accommodation can demonstrate that the removal of a barrier under
94 paragraph (a)(4)d.1. of this section is not readily achievable, to fail to make goods, services, facilities,
95 privileges, advantages, or accommodations available through alternative methods if such methods are readily
96 achievable.

97 (5) Nothing in paragraph (a)(4) of this section may be construed to require either of the following:

98 a. An individual with a disability to accept an accommodation, modification, aid, service, opportunity, or
99 benefit that the individual chooses not to accept.

100 b. A place of public accommodation to provide individuals with disabilities with personal devices, such
101 as wheelchairs, eyeglasses, hearing aids, or readers for personal use or study, or personal services to assist with
102 feeding, toileting, or dressing.

103 (c) It shall be ~~is~~ unlawful to assist, induce, ~~incite~~ incite, or coerce another person to commit any discriminatory
104 public accommodations practice prohibited by under subsection (a) or (b) of this section.

105 (e) Nothing in this section shall ~~may~~ be interpreted as an abrogation of any requirements otherwise imposed by
106 applicable federal or state laws or regulations. If federal or state law provide additional rights to members of a protected
107 class or requirements for a place of public accommodation, this section must be interpreted as providing that right or
108 requirement.

109 (f) A person, being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent, or employee
110 of any place of public accommodation, may not engage in an act or practice that is unlawful under subsections (a) through
111 (d) of this section or otherwise retaliate against an individual because the individual has done 1 of the following:

112 (1) Opposed an act or practice that is unlawful under subsections (a) through (d) of this section.

113 (2) Made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing
114 to enforce subsections (a) through (d) of this section.

115 (g) A place of public accommodation may not deny a request by an individual with a disability for a reasonable
116 modification or for auxiliary aids or services solely because the individual did not use the exact terms under this chapter
117 when making the request, such as by requesting a “reasonable accommodation” or for the auxiliary aid or service.

118 Section 5. Amend § 4508, Title 6 of the Delaware Code by making deletions as shown by strike through and
119 insertions as shown by underline as follows and redesignating accordingly:

120 § 4508. Procedure on complaint.

121 (a) ~~A person believing himself or herself~~ An individual who believes they have been aggrieved by a discriminatory
122 public accommodation practice ~~proscribed by~~ prohibited under § 4504 of this title ~~may, by himself or herself or by his or~~
123 ~~her attorney at law, file with the Division a complaint in writing stating:~~ may file a written complaint with the Division. A
124 complaint under this chapter may be filed by the individual or by the individual’s attorney and must include all of the
125 following:

126 (1) ~~His or her~~ The individual’s name and address; address.

127 (2) The name and location of the place of public accommodation at which the discriminatory public
128 accommodation practice occurred, and the date, ~~time~~ time, and an explanation ~~thereof;~~ of the discriminatory practice.

129 (3) If known, the name and address of each respondent and, if different, the name of the owner, lessee,
130 proprietor, ~~manager~~ manager, or superintendent of the place of public ~~accommodation;~~ and accommodation.

131 (4) ~~Such~~ All other information as the Division requires.

132 (b) ~~No~~ A complaint ~~shall~~ must be filed with the Division ~~no~~ more than ~~90 days~~ 1 year after the occurrence of the
133 alleged discriminatory public accommodation practice.

134 (c)(1) Within 120 days after the complaint is filed, the Division shall investigate the complaint and endeavor to
135 eliminate any unlawful discriminatory practice discovered ~~through~~ during the investigation, using conciliation.

136 a. When investigating a complaint, the Division shall apply the requirements of this chapter in a manner
137 consistent with equivalent requirements under federal laws.

138 b. Insofar as possible, conciliation meetings shall be held in the county where the alleged discriminatory
139 public accommodations practice occurred.

140 (2) If the matter is resolved through conciliation, the parties shall enter a conciliation agreement stating the
141 terms of the resolution of the matter.

142 (3) If the Division determines that the allegations in the complaint do not state a claim for which relief is
143 available under this chapter or that the claim is not within the scope of the Division's jurisdiction, it may petition the
144 Commission, with notice to the complainant, to dismiss the complaint. A notice under this paragraph (c)(3) must
145 include, with specificity, the reasons for the Division's determination.

146 (d) Whenever the Division has reasonable cause to believe that a respondent has breached a conciliation
147 agreement, the Division shall refer the matter to the Attorney General with a recommendation that a civil action be filed
148 under § 4512 of this title for the enforcement of such agreement.

149 (e) If a complaint cannot be resolved through conciliation as ~~provided in~~ under subsection (c) of this section, the
150 Commission shall appoint a panel to hold a public hearing within 60 days after the expiration of 120-day period for
151 investigation and conciliation. The deadlines ~~provided in~~ under subsection (c) of this section and this subsection may be
152 extended by the Chairperson or the Panel Chair at the request of any party or an employee of the Commission of Human
153 Relations upon a showing of good cause.

154 (f)(1) Public hearings ~~shall~~ must be conducted in accordance with rules prescribed by the Commission. Each party
155 may appear in person, be represented by counsel, present evidence, cross-examine ~~witnesses~~ witnesses, and obtain the
156 issuance of subpoenas under § 4510 of this title. The Delaware Rules of Evidence ~~shall~~ apply to the presentation of
157 evidence in a public hearing as they would in an administrative hearing conducted in accordance with subchapter III of the
158 Administrative Procedures Act in Title 29 [subchapter III of Chapter 101 of Title 29]. ~~A record shall be kept~~

159 (2)a. The Commission shall keep a record of all public hearings, hearings and shall provide a transcript of
160 ~~which shall be provided a hearing,~~ at cost upon request of a party.

161 b. A party may apply to the Commission to waive the cost of a transcript. The Commission may waive all
162 or part of the cost of the transcript if the party meets the criteria to proceed *in forma pauperis* in the Superior
163 Court.

164 (3) Decisions of the panel ~~shall~~ must be made by a majority of the members of the panel.

165 (g) If the panel determines that a violation of § 4504 of this title has not occurred, it shall issue an order dismissing
166 the complaint. The panel may award reasonable attorneys' fees, ~~costs~~ costs, and expenses to the respondent ~~pursuant to~~

167 under this subsection if ~~it~~ the panel determines that the complaint was brought for an improper purpose, such as to harass or
168 embarrass the respondent.

169 (h) If the panel determines that a violation of § 4504 of this title has occurred, it shall issue an order stating its
170 findings of fact and conclusions of law and containing such relief as may be appropriate, including ~~actual~~ any of the
171 following:

172 (1) ~~Actual~~ damages suffered by the aggrieved ~~person~~ person, including damages caused by
173 humiliation and ~~embarrassment,~~ costs embarrassment.

174 (2) Costs, expenses, reasonable attorneys' fees and injunctive fees.

175 (3) Injunctive or other equitable relief.

176 (4) To vindicate the public interest, the panel may assess a civil penalty against the respondent or respondents,
177 to be paid to the Special Administration ~~Fund~~: Fund, as follows:

178 (1) a. In an amount not exceeding \$5,000 for each discriminatory public accommodations practice if the
179 respondent has not been adjudged to have committed any prior discriminatory public accommodations ~~practice~~;
180 practice.

181 (2) b. In an amount not exceeding \$15,000 for each discriminatory public accommodations practice if the
182 respondent has been adjudged to have committed 1 other discriminatory public accommodations practice during the 5-
183 year period ending on the date of the ~~complaint~~; and complaint.

184 (3) c. In an amount not exceeding \$25,000 for each discriminatory public accommodations practice if the
185 respondent has been adjudged to have committed 2 or more discriminatory public accommodations practices during the
186 7-year period ending on the date of the complaint.

187 (i) ~~Copies~~ The Commission shall serve copies of orders entered ~~pursuant to~~ under subsections (g) and (h) of this
188 section ~~shall be served~~ personally or by registered or certified mail to each party or their counsel.

189 Section 6. Amend § 10006A, Title 29 of the Delaware Code by making deletions as shown by strike through and
190 insertions as shown by underline as follows and redesignating accordingly:

191 § 10006A. Open meetings; virtual meetings; reasonable accommodations for members with a disability.

192 (a) A public body shall allow a member of the public body with a disability to attend a meeting of the public body
193 through the use of an electronic means of communication, instead of being required to attend in-person at a physical
194 location, as a reasonable ~~accommodation~~ modification under § 4504 of Title ~~6~~, 6 or a reasonable accommodation under §
195 723 of Title 19, unless it imposes an undue burden. A member attending a meeting through the use of an electronic means

196 of communication as a reasonable modification or reasonable accommodation is considered present for all purposes as if
197 the member is physically attending, including for quorum and voting.

SYNOPSIS

This Act clarifies the scope and protections for individuals with disabilities under the Delaware Equal Accommodations Law (DEAL) and further aligns definitions and scope of DEAL with federal law protecting individuals with disabilities from discrimination by places of public accommodation, including the Americans with Disabilities Act. This Act is consistent with the Superior Court's decision in *Ray v. State Human Rels. Comm'n*, 2021 Del. Super. LEXIS 668, which held that "[a]ny interpretation to suggest the legislature made a choice to narrow DEAL's protection ignores both the express mandates and comprehensive guidance under DEAL. It takes away the right of a protected class member to be heard. As interpreted, Delaware law would need to reject what has been universally accepted."

This alignment with federal law includes all of the following:

1. Using the same terms and definitions for those terms.
2. Clarifying that places of public accommodation must make reasonable modifications in policies, practices, and procedures, sometimes referred to as "reasonable accommodations", unless doing so would fundamentally alter the program, business, or service.
3. Clarifying that a public accommodation must provide auxiliary aids and services, unless doing so would fundamentally alter the program, business, or service or be an undue burden.
4. Clarifying that places of public accommodation must remove physical barriers if doing so is readily achievable.
5. Clarifying that state investigations of complaints must apply the requirements under state law in a manner consistent with equivalent requirements under federal laws.

This Act also does all of the following

1. Clarifies that an individual does not have to use the exact terms in DEAL to request a reasonable modification or auxiliary aids and services for the request to be covered by DEAL.
2. Extends the time to file a complaint under DEAL to 1 year.
3. Allows the Commission to waive the cost of transcript, upon application by a party.
4. Makes corresponding changes to the requirement under § 10006A of Title 29 that a public body allow a member with a disability to use electronic means of communication to attend a meeting because "reasonable modification" is the term now used under § 4504 of Title 6. The term "reasonable accommodation" is retained because that is the term used under state and federal law in employment contexts, which might apply to a member of public body.
5. Makes technical corrections to clarify existing law and conform existing law to the standards of the Delaware Legislative Drafting Manual.