



Senate

General Assembly

File No. 194

January Session, 2001

Substitute Senate Bill No. 1053

Senate, April 10, 2001

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE DEFINITION OF MENTAL DISABILITY
AND THE CODE OF FAIR PRACTICES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46a-51 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 As used in section 4a-60a and this chapter:

4 (1) "Blind" refers to an individual whose central visual acuity does
5 not exceed 20/200 in the better eye with correcting lenses, or whose
6 visual acuity is greater than 20/200 but is accompanied by a limitation
7 in the fields of vision such that the widest diameter of the visual field
8 subtends an angle no greater than twenty degrees;

9 (2) "Commission" means the Commission on Human Rights and
10 Opportunities created by section 46a-52;

11 (3) "Commission counsel" means the counsel employed by the

12 commission pursuant to section 46a-54;

13 (4) "Commissioner" means a member of the commission;

14 (5) "Court" means the Superior Court or any judge of said court;

15 (6) "Discrimination" includes segregation and separation;

16 (7) "Discriminatory employment practice" means any discriminatory
17 practice specified in section 46a-60 or 46a-81c;

18 (8) "Discriminatory practice" means a violation of section 4a-60, 4a-
19 60a, 46a-58, 46a-59, 46a-60, 46a-64, 46a-64c, 46a-66, 46a-68, sections 46a-
20 70 to 46a-78, inclusive, subsection (a) of section 46a-80, or sections 46a-
21 81b to 46a-81o, inclusive;

22 (9) "Employee" means any person employed by an employer but
23 shall not include any individual employed by [his] such individual's
24 parents, spouse or child, or in the domestic service of any person;

25 (10) "Employer" includes the state and all political subdivisions
26 thereof and means any person or employer with three or more persons
27 in [his] such person's or employer's employ;

28 (11) "Employment agency" means any person undertaking with or
29 without compensation to procure employees or opportunities to work;

30 (12) "Labor organization" means any organization which exists for
31 the purpose, in whole or in part, of collective bargaining or of dealing
32 with employers concerning grievances, terms or conditions of
33 employment, or of other mutual aid or protection in connection with
34 employment;

35 (13) "Mental retardation" means mental retardation as defined in
36 section 1-1g;

37 (14) "Person" means one or more individuals, partnerships,

38 associations, corporations, limited liability companies, legal
39 representatives, trustees, trustees in bankruptcy, receivers and the state
40 and all political subdivisions and agencies thereof;

41 (15) "Physically disabled" refers to any individual who has any
42 chronic physical handicap, infirmity or impairment, whether
43 congenital or resulting from bodily injury, organic processes or
44 changes or from illness, including, but not limited to, epilepsy,
45 deafness or hearing impairment or reliance on a wheelchair or other
46 remedial appliance or device;

47 (16) "Respondent" means any person alleged in a complaint filed
48 pursuant to section 46a-82 to have committed a discriminatory
49 practice;

50 (17) "Discrimination on the basis of sex" includes but is not limited
51 to discrimination related to pregnancy, child-bearing capacity,
52 sterilization, fertility or related medical conditions;

53 (18) "Discrimination on the basis of religious creed" includes but is
54 not limited to discrimination related to all aspects of religious
55 observances and practice as well as belief, unless an employer
56 demonstrates that [he] the employer is unable to reasonably
57 accommodate to an employee's or prospective employee's religious
58 observance or practice without undue hardship on the conduct of the
59 employer's business;

60 (19) "Learning disability" refers to an individual who exhibits a
61 severe discrepancy between educational performance and measured
62 intellectual ability and who exhibits a disorder in one or more of the
63 basic psychological processes involved in understanding or in using
64 language, spoken or written, which may manifest itself in a diminished
65 ability to listen, speak, read, write, spell or to do mathematical
66 calculations;

67 (20) "Mental disability" refers to an individual who has a record of,
68 or is regarded as having one or more mental disorders, as defined in
69 the most recent edition of the American Psychiatric Association's
70 "Diagnostic and Statistical Manual of Mental Disorders".

71 Sec. 2. Section 46a-70 of the general statutes is repealed and the
72 following is substituted in lieu thereof:

73 (a) State officials and supervisory personnel shall recruit, appoint,
74 assign, train, evaluate and promote state personnel on the basis of
75 merit and qualifications, without regard for race, color, religious creed,
76 sex, marital status, age, national origin, ancestry, mental retardation,
77 mental disability, learning disability or physical disability, including
78 but not limited to, blindness, unless it is shown by such state officials
79 or supervisory personnel that such disability prevents performance of
80 the work involved.

81 (b) All state agencies shall promulgate written directives to carry
82 out this policy and to guarantee equal employment opportunities at all
83 levels of state government. They shall regularly review their personnel
84 practices to assure compliance.

85 (c) All state agencies shall conduct continuing orientation and
86 training programs with emphasis on human relations and
87 nondiscriminatory employment practices.

88 (d) The Commissioner of Administrative Services shall insure that
89 the entire examination process, including qualifications appraisal, is
90 free from bias.

91 (e) Appointing authorities shall exercise care to insure utilization of
92 minority group persons.

93 Sec. 3. Section 46a-71 of the general statutes is repealed and the
94 following is substituted in lieu thereof:

95 (a) All services of every state agency shall be performed without
96 discrimination based upon race, color, religious creed, sex, marital
97 status, age, national origin, ancestry, mental retardation, mental
98 disability, learning disability or physical disability, including, but not
99 limited to, blindness.

100 (b) No state facility may be used in the furtherance of any
101 discrimination, nor may any state agency become a party to any
102 agreement, arrangement or plan which has the effect of sanctioning
103 discrimination.

104 (c) Each state agency shall analyze all of its operations to ascertain
105 possible instances of noncompliance with the policy of sections 46a-70
106 to 46a-78, inclusive, and shall initiate comprehensive programs to
107 remedy any defect found to exist.

108 (d) Every state contract or subcontract for construction on public
109 buildings or for other public work or for goods and services shall
110 conform to the intent of section 4a-60.

111 Sec. 4. Section 46a-72 of the general statutes is repealed and the
112 following is substituted in lieu thereof:

113 (a) All state agencies, including educational institutions, which
114 provide employment referrals or placement services to public or
115 private employers, shall accept job orders on a nondiscriminatory
116 basis.

117 (b) Any job request indicating an intention to exclude any person
118 because of race, color, religious creed, sex, marital status, age, national
119 origin, ancestry, mental retardation, mental disability, learning
120 disability or physical disability, including, but not limited to, blindness
121 shall be rejected, unless it is shown by such public or private
122 employers that such disability prevents performance of the work
123 involved.

124 (c) All state agencies shall cooperate in programs developed by the
125 Commission on Human Rights and Opportunities initiated for the
126 purpose of broadening the base for job recruitment and shall further
127 cooperate with all employers and unions providing such programs.

128 (d) The Labor Department shall encourage and enforce employers
129 and labor unions to comply with the policy of sections 46a-70 to 46a-
130 78, inclusive, and promote equal employment opportunities.

131 Sec. 5. Section 46a-73 of the general statutes is repealed and the
132 following is substituted in lieu thereof:

133 (a) No state department, board or agency may grant, deny or revoke
134 the license or charter of any person on the grounds of race, color,
135 religious creed, sex, marital status, age, national origin, ancestry,
136 mental retardation, mental disability, learning disability or physical
137 disability, including, but not limited to, blindness, unless it is shown
138 by such state department, board or agency that such disability
139 prevents performance of the work involved.

140 (b) Each state agency shall take such appropriate action in the
141 exercise of its licensing or regulatory power as will assure equal
142 treatment of all persons and eliminate discrimination and enforce
143 compliance with the policy of sections 46a-70 to 46a-78, inclusive.

144 Sec. 6. Section 46a-75 of the general statutes is repealed and the
145 following is substituted in lieu thereof:

146 (a) All educational, counseling, and vocational guidance programs
147 and all apprenticeship and on-the-job training programs of state
148 agencies, or in which state agencies participate, shall be open to all
149 qualified persons, without regard to race, color, religious creed, sex,
150 marital status, age, national origin, ancestry, mental retardation,
151 mental disability, learning disability or physical disability, including,
152 but not limited to, blindness.

153 (b) Such programs shall be conducted to encourage the fullest
154 development of the interests, aptitudes, skills, and capacities of all
155 students and trainees, with special attention to the problems of
156 culturally deprived, educationally handicapped, learning disabled,
157 economically disadvantaged, or physically disabled, including, but not
158 limited to, blind persons.

159 (c) Expansion of training opportunities under these programs shall
160 be encouraged so as to involve larger numbers of participants from
161 those segments of the labor force where the need for upgrading levels
162 of skill is greatest.

163 Sec. 7. Section 46a-76 of the general statutes is repealed and the
164 following is substituted in lieu thereof:

165 (a) Race, color, religious creed, sex, marital status, age, national
166 origin, ancestry, mental retardation, mental disability, learning
167 disability or physical disability, including, but not limited to, blindness
168 shall not be considered as limiting factors in state-administered
169 programs involving the distribution of funds to qualify applicants for
170 benefits authorized by law.

171 (b) No state agency may provide grants, loans or other financial
172 assistance to public agencies, private institutions or organizations
173 which discriminate.

174 Sec. 8. Section 46a-60 of the general statutes is repealed and the
175 following is substituted in lieu thereof:

176 (a) It shall be a discriminatory practice in violation of this section:

177 (1) For an employer, by [himself] the employer or [his] the
178 employer's agent, except in the case of a bona fide occupational
179 qualification or need, to refuse to hire or employ or to bar or to
180 discharge from employment any individual or to discriminate against
181 [him] such individual in compensation or in terms, conditions or

182 privileges of employment because of the individual's race, color,
183 religious creed, age, sex, marital status, national origin, ancestry,
184 present or past history of mental [disorder] disability, mental
185 retardation, learning disability or physical disability, including, but not
186 limited to, blindness;

187 (2) For any employment agency, except in the case of a bona fide
188 occupational qualification or need, to fail or refuse to classify properly
189 or refer for employment or otherwise to discriminate against any
190 individual because of [his] such individual's race, color, religious
191 creed, age, sex, marital status, national origin, ancestry, present or past
192 history of mental [disorder] disability, mental retardation, learning
193 disability or physical disability, including, but not limited to,
194 blindness;

195 (3) For a labor organization, because of the race, color, religious
196 creed, age, sex, marital status, national origin, ancestry, present or past
197 history of mental [disorder] disability, mental retardation, learning
198 disability or physical disability, including, but not limited to, blindness
199 of any individual to exclude from full membership rights or to expel
200 from its membership such individual or to discriminate in any way
201 against any of its members or against any employer or any individual
202 employed by an employer, unless such action is based on a bona fide
203 occupational qualification;

204 (4) For any person, employer, labor organization or employment
205 agency to discharge, expel or otherwise discriminate against any
206 person because [he] such person has opposed any discriminatory
207 employment practice or because [he] such person has filed a complaint
208 or testified or assisted in any proceeding under section 46a-82, 46a-83
209 or 46a-84;

210 (5) For any person, whether an employer or an employee or not, to
211 aid, abet, incite, compel or coerce the doing of any act declared to be a
212 discriminatory employment practice or to attempt to do so;

213 (6) For any person, employer, employment agency or labor
214 organization, except in the case of a bona fide occupational
215 qualification or need, to advertise employment opportunities in such a
216 manner as to restrict such employment so as to discriminate against
217 individuals because of their race, color, religious creed, age, sex,
218 marital status, national origin, ancestry, present or past history of
219 mental [disorder] disability, mental retardation, learning disability or
220 physical disability, including, but not limited to, blindness;

221 (7) For an employer, by [himself] the employer or [his] the
222 employer's agent: (A) To terminate a woman's employment because of
223 her pregnancy; (B) to refuse to grant to that employee a reasonable
224 leave of absence for disability resulting from her pregnancy; (C) to
225 deny to that employee, who is disabled as a result of pregnancy, any
226 compensation to which she is entitled as a result of the accumulation of
227 disability or leave benefits accrued pursuant to plans maintained by
228 the employer; (D) to fail or refuse to reinstate the employee to her
229 original job or to an equivalent position with equivalent pay and
230 accumulated seniority, retirement, fringe benefits and other service
231 credits upon her signifying her intent to return unless, in the case of a
232 private employer, the employer's circumstances have so changed as to
233 make it impossible or unreasonable to do so; (E) to fail or refuse to
234 make a reasonable effort to transfer a pregnant employee to any
235 suitable temporary position which may be available in any case in
236 which an employee gives written notice of her pregnancy to her
237 employer and the employer or pregnant employee reasonably believes
238 that continued employment in the position held by the pregnant
239 employee may cause injury to the employee or fetus; (F) to fail or
240 refuse to inform the pregnant employee that a transfer pursuant to
241 subparagraph (E) of this subdivision may be appealed under the
242 provisions of this chapter; or (G) to fail or refuse to inform [his]
243 employees of the employer, by any reasonable means, that they must
244 give written notice of their pregnancy in order to be eligible for
245 transfer to a temporary position;

246 (8) For an employer, by [himself] the employer or [his] the
247 employer's agent, for an employment agency, by itself or its agent, or
248 for any labor organization, by itself or its agent, to harass any
249 employee, person seeking employment or member on the basis of sex.
250 "Sexual harassment" shall, for the purposes of this section, be defined
251 as any unwelcome sexual advances or requests for sexual favors or any
252 conduct of a sexual nature when (A) submission to such conduct is
253 made either explicitly or implicitly a term or condition of an
254 individual's employment, (B) submission to or rejection of such
255 conduct by an individual is used as the basis for employment decisions
256 affecting such individual, or (C) such conduct has the purpose or effect
257 of substantially interfering with an individual's work performance or
258 creating an intimidating, hostile or offensive working environment;

259 (9) For an employer, by [himself] the employer or [his] the
260 employer's agent, for an employment agency, by itself or its agent, or
261 for any labor organization, by itself or its agent, to request or require
262 information from an employee, person seeking employment or
263 member relating to the individual's child bearing age or plans,
264 pregnancy, function of the individual's reproductive system, use of
265 birth control methods, or the individual's familial responsibilities,
266 unless such information is directly related to a bona fide occupational
267 qualification or need, provided an employer, through a physician may
268 request from an employee any such information which is directly
269 related to workplace exposure to substances which may cause birth
270 defects or constitute a hazard to an individual's reproductive system or
271 to a fetus if the employer first informs the employee of the hazards
272 involved in exposure to such substances;

273 (10) For an employer, by [himself] the employer or [his] the
274 employer's agent, after informing an employee, pursuant to
275 subdivision (9) of this subsection, of a workplace exposure to
276 substances which may cause birth defects or constitute a hazard to an
277 employee's reproductive system or to a fetus, to fail or refuse, upon the

278 employee's request, to take reasonable measures to protect the
279 employee from the exposure or hazard identified, or to fail or refuse to
280 inform the employee that the measures taken may be the subject of a
281 complaint filed under the provisions of this chapter. Nothing in this
282 subdivision is intended to prohibit an employer from taking
283 reasonable measures to protect an employee from exposure to such
284 substances. For the purpose of this subdivision, "reasonable measures"
285 shall be those measures which are consistent with business necessity
286 and are least disruptive of the terms and conditions of the employee's
287 employment;

288 (11) For an employer, by [himself] the employer or [his] the
289 employer's agent, for an employment agency, by itself or its agent, or
290 for any labor organization, by itself or its agent: (A) To request or
291 require genetic information from an employee, person seeking
292 employment or member, or (B) to discharge, expel or otherwise
293 discriminate against any person on the basis of genetic information.
294 For the purpose of this subdivision, "genetic information" means the
295 information about genes, gene products or inherited characteristics
296 that may derive from an individual or a family member.

297 (b) (1) The provisions of this section concerning age shall not apply
298 to: (A) The termination of employment of any person with a contract of
299 unlimited tenure at an independent institution of higher education
300 who is mandatorily retired, on or before July 1, 1993, after having
301 attained the age of seventy; (B) the termination of employment of any
302 person who has attained the age of sixty-five and who, for the two
303 years immediately preceding such termination, is employed in a bona
304 fide executive or a high policy-making position, if such person is
305 entitled to an immediate nonforfeitable annual retirement benefit
306 under a pension, profit-sharing, savings or deferred compensation
307 plan, or any combination of such plans, from [his] such person's
308 employer, which equals, in aggregate, at least forty-four thousand
309 dollars; (C) the termination of employment of persons in occupations,

310 including police work and fire-fighting, in which age is a bona fide
311 occupational qualification; (D) the operation of any bona fide
312 apprenticeship system or plan; or (E) the observance of the terms of a
313 bona fide seniority system or any bona fide employee benefit plan for
314 retirement, pensions or insurance which is not adopted for the purpose
315 of evading said provisions, except that no such plan may excuse the
316 failure to hire any individual and no such system or plan may require
317 or permit the termination of employment on the basis of age. No such
318 plan which covers less than twenty employees may reduce the group
319 hospital, surgical or medical insurance coverage provided under the
320 plan to any employee who has reached the age of sixty-five and is
321 eligible for Medicare benefits or any employee's spouse who has
322 reached age sixty-five and is eligible for Medicare benefits except to
323 the extent such coverage is provided by Medicare. The terms of any
324 such plan which covers twenty or more employees shall entitle any
325 employee who has attained the age of sixty-five and any employee's
326 spouse who has attained the age of sixty-five to group hospital,
327 surgical or medical insurance coverage under the same conditions as
328 any covered employee or spouse who is under the age of sixty-five.

329 (2) No employee retirement or pension plan may exclude any
330 employee from membership in such plan or cease or reduce [his] the
331 employee's benefit accruals or allocations under such plan on the basis
332 of age. The provisions of this subdivision shall be applicable to plan
333 years beginning on or after January 1, 1988, except that for any
334 collectively bargained plan this subdivision shall be applicable on the
335 earlier of (A) January 1, 1990, or (B) the later of (i) the expiration date
336 of the collective bargaining agreement, or (ii) January 1, 1988.

337 (3) The provisions of this section concerning age shall not prohibit
338 an employer from requiring medical examinations for employees for
339 the purpose of determining such employees' physical qualification for
340 continued employment.

341 (4) Any employee who continues employment beyond the normal
342 retirement age in the applicable retirement or pension plan shall give
343 notice of intent to retire, in writing, to [his] such employee's employer
344 not less than thirty days prior to the date of such retirement.

345 Sec. 9. Section 46a-77 of the general statutes is repealed and the
346 following is substituted in lieu thereof:

347 (a) All state agencies shall cooperate with the Commission on
348 Human Rights and Opportunities in their enforcement and
349 educational programs.

350 (b) All state agencies shall comply with the commission's request for
351 information concerning practices inconsistent with the state policy
352 against discrimination and shall consider its recommendations for
353 effectuating and implementing that policy.

354 (c) Each state agency shall comply in all of its services, programs
355 and activities with the provisions of the Americans with Disabilities
356 Act (42 USC 12101) to the same extent that it provides rights and
357 protections for persons with physical or mental disabilities beyond
358 those provided for by the laws of this state.

359 [(c)] (d) The commission shall continue to augment its enforcement
360 and education programs which seek to eliminate all discrimination.

JUD JOINT FAVORABLE SUBST.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Commission On Human Rights and Opportunities, Department of Administrative Services

Municipal Impact: None

Explanation

State Impact:

The bill creates uniformity in the statutes prohibiting discrimination prohibiting discrimination in state employment, services, and programs. It makes “marital status” and “ mental disability” prohibited reasons for discrimination in the areas of state employment, state recruitment and job referral programs, state licensing, state education, counseling, vocational guidance, job training apprenticeship and state-administered general assistance.

The Commission on Human Rights and Opportunities (CHRO) states that “marital status” and “mental disability ”are protected classes at the present time and CHRO receives and processes complaints that involve these types of discrimination. They will not have a workload increase as a result of this bill.

There will be no fiscal impact to the Department of Administrative

Services. There will be no impact on state personnel and testing. The bill formalizes current practices of the agency and the state.

OLR Bill Analysis

sSB 1053

***AN ACT CONCERNING THE DEFINITION OF MENTAL DISABILITY
AND THE CODE OF FAIR PRACTICES.*****SUMMARY:**

This bill creates uniformity in the laws prohibiting discrimination in state employment, services, and programs. It adds marital status, mental disability, and in one case learning disability to those provisions that do not currently include them. It defines mental disability, applies the definition to these statutes, and substitutes it for the current definition in the law that prohibits private employers, labor unions, and employment agencies from discriminating.

Finally, the bill specifies that state agencies must accord greater rights and benefits to people with physical or mental disabilities in their services, programs, and activities if the federal Americans with Disabilities Act (ADA) does so. (A recent U.S. Supreme Court decision held that Congress exceeded its power in making the ADA applicable to state employers.)

EFFECTIVE DATE: October 1, 2001

UNIFORMITY IN STATE LAW

The bill makes marital status and mental disability prohibited reasons for discrimination in the following areas: (1) state employment; (2) provision of state services; (3) state recruitment and job referral programs; (4) state licensing; (5) state education, counseling, vocational guidance, job training, and apprenticeship programs; and (6) state-administered assistance programs. It also prohibits state licensing agencies from discriminating against people with learning disabilities.

These laws already prohibit discrimination based on race, color, religion, sex, age, national origin, ancestry, mental retardation, learning disability (in all but licensing), and physical disability.

MENTAL DISABILITY DEFINITION

The bill defines a person having a mental disability as one who has a record of, or is regarded as having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders" (currently referred to as "DSM-IV"). That manual lists approximately 400 disorders of varying degrees of severity.

Current law prohibits discrimination against people with a "present or past history of mental disorder" in provisions relating to employment discrimination. It is unclear whether all of the disorders covered by the DSM-IV (including, for example, pedophilia, drug and alcohol dependence, and gender identity disorders) would be recognized under the existing definition.

BACKGROUND

U.S. Supreme Court Decision

In *Garrett v. Alabama*, the U.S. Supreme Court ruled that Congress exceeded its constitutional authority in permitting ADA lawsuits to be filed against nonconsenting states (121 S.Ct. 955 (2001)). The *Garret* case involved claims of employment discrimination; the Justices left open the question of whether the same rule would apply to lawsuits claiming discrimination in the provision of state services.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 34 Nay 0