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Public Accommodations: State-by-State Enforcement and Remedies

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Introduction

Many states have their own disability rights laws that complement the “public accommodations” provisions of the Americans with Disabilities Act (ADA), Title III. Some states have different definitions of who is protected or what entities are required to comply, as well as different requirements or prohibitions. Some states provide an agency, either mandatory or voluntary, to assist with investigation and enforcement. States may provide different remedies, such as damages or criminal penalties for violations. *See the paper*, Disability Rights and Public Accommodations: State-by-State.

This paper compares the enforcement mechanisms and remedies under Title III of the ADA with those available under state disability rights laws applicable to public accommodations in the eight Southeast states.

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

Title III of the ADA

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

42 USC §§12188, 2000a-3(a).

Alabama

Private Lawsuits

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

Criminal Penalties

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

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

Florida

State Agency Enforcement

An individual with a disability who has been discriminated against in the full and equal enjoyment of public facilities and accommodations must first file a complaint with the Florida Human Relations Commission. The Commission has the power to receive, initiate, investigate, seek conciliation agreements for, hold hearings on, and act upon, complaints alleging any discriminatory practice in violation of the Florida Civil Rights Act. It also has the power to subpoena witnesses and documents, and to refer a complaint to another agency for investigation. The complaint must be filed within one year of the alleged act.

If the Commission determines there is “reasonable cause” to believe a discriminatory practice has occurred, the complainant may either bring a civil action in court against the person named in the complaint, or request an administrative hearing. Fla. Stat. Ann. §§ 760.06 & 760.11 (West’s 2009).

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

Private Lawsuits

Individuals must first “exhaust” the available administrative remedies by filing with the Commission, and get a determination of reasonable cause before filing a case in court. They can also appeal to a final Commission ruling to a court. Fla. Stat. Ann. §760.11. The court action can be filed for compensatory and punitive damages (up to \$100,000) and/or injunctive relief (an order to stop discriminating or an affirmative order). Cases for actual or punitive damages may be heard by a jury.

Note: A federal court of appeals has ruled that the right of an individual to file a lawsuit is limited to the definition of “lodging, food and entertainment” public accommodations enumerated in the Civil Rights Act above (§ 760.02), and not the broader definition under the service animal statute. *Sheely v. MRI Radiology Network*, 505 F.3d 1173, 1204-05 (11th Cir. 2007): individual with a service dog barred from portions of a medical facility has no private right of action under Florida Civil Rights Act.

Criminal Penalties

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

Georgia

State Agency Enforcement

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

Private Lawsuits

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

Criminal Penalties

Any person, firm or corporation who denies or interferes with access to public facilities or buildings by persons who are blind, deaf or have visual or physical disabilities, or otherwise interferes with the rights granted under these statutes, is guilty of a (high and aggravated) misdemeanor subject to a maximum fine of \$2000 and/or up to 30 days in jail. Off. Code Ga. Ann. § 30-4-4 (2011).

Kentucky

State Agency Enforcement

The Kentucky Commission on Human Rights was established to “encourage fair treatment for, to foster mutual understanding and respect among and to discourage discrimination against any racial or ethnic group or its members.”¹ Ky. Rev. Stat. Ann. § 344.170.

Although its mission under the statute is limited to *racial and ethnic* discrimination, the Commission appears to accept complaints filed on other discriminatory grounds, such as disability.

The Commission may initiate complaints or receive sworn written complaints of unlawful discriminatory practices filed by individuals, Commission members, or the Attorney General. Commission staff have the power to investigate, reach a conciliation agreement between the parties, or to conduct hearings. They have the power to subpoena witnesses, to examine witnesses under oath in person or by deposition or compel answers to written questions, and they may subpoena documents.

The Commission can order temporary or permanent injunctive relief (to stop a practice or order admission or entry) and, if necessary, it can file a complaint in the state circuit court seeking injunctive relief or enforcement of an order or agreement. Ky. Rev. Stat. Ann. §§ 344.190 - 344.220.

¹ Local human rights commissions may also be established by a city, county or a combination of local entities. Ky. Rev. Stat. Ann. § 344.310.

If the Commission determines that the respondent has engaged in an unlawful practice, it shall issue a final order requiring the respondent to “cease and desist” from the unlawful practice and to take the necessary affirmative steps. Ky. Rev. Stat. Ann. §344.230(3). These include:

- Admitting individuals to a place of public accommodation.
- Extending to all individuals the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent.
- Reporting on its manner of compliance.
- Posting notices in conspicuous places in the respondent's place of business in a form determined by the Commission.
- Paying damages to the complainant, including compensation for humiliation and embarrassment, and for costs actually incurred by the complainant as a direct result of an unlawful practice.

The Commission may also publish the names of persons who have been determined to have engaged in an unlawful practice. Ky. Rev. Stat. Ann. §344.230(4)

Private Lawsuits

A person who claims a violation of the Civil Rights Act may sue in circuit court to stop further violations, and to recover “actual” damages, the costs of the lawsuit and reasonable attorneys’ fees, and “any other remedies” contained in the statute.² Ky. Rev. Stat. Ann. § 344.450 (West’s 2010). It is an “unlawful practice” to deny individuals with a disability full and equal enjoyment of a place of public accommodation and they are also protected against “any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment” based on their disability.

Ky. Rev. Stat. Ann. §§ 344.120 & 344.010(5).

² However, suits may not be brought under the Kentucky Civil Rights Act against the State itself. *Mosier v. Kentucky*, 640 F.Supp. 875, 879 (E.D. Ky. 2009).

Actual damages may be awarded for humiliation, personal indignity, mental or emotional injury or other intangible injuries. *Mitchell v. Seaboard System R.R.*, 883 F.2d 451, 454 (6th Cir. 1989). Punitive damages, however, are not available. *Steinhoff v. Upriver Restaurant Jt. Venture*, 117 F.Supp. 598, 606 (E.D. Ky. 2000); *Brooks v. Lexington-Fayette Urban Co. Housing Auth.*, 132 S.W. 3d 790, 808 (2004). There is no requirement to file a complaint with the Commission on Human Rights before going to court.

Criminal Penalties

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

Mississippi

Private Lawsuits

There are no civil penalties or private rights of action under the Mississippi public accommodations statutes.

Criminal Penalties

Any person, firm or corporation who interferes with (or denies) access to persons who are blind, “visually handicapped,” deaf or physically disabled to public facilities or places or public accommodations, or otherwise interferes with their rights under the law, is subject to a fine of \$100 or 60-day jail time or both. Ms. Code Ann. § 43-6-11 (West’s 2009).

North Carolina

Private Lawsuits

A person with a disability who requests a reasonable accommodation must inform the place of public accommodation of their disabling condition and submit any necessary medical documentation. Once an accommodation has been requested (or if a potential accommodation is obvious), the place of public accommodation shall discuss possible and feasible options with the qualifying person who requests it, investigate, and make the accommodation if reasonable. N.C. General Stat. §168A-4 (2010).

A person with a disability may bring a civil action in state court to enforce rights against any person alleged to have committed discriminatory practices under the Persons with Disabilities Protection Act concerning full and equal enjoyment of public accommodations, services or transportation. This would involve filing a lawsuit--within two years of the date of the discriminatory practice or conduct. Trial is in front of a judge, not a jury. Relief is limited to declaratory (declaration of rights and responsibilities of the parties) and injunctive (order to stop a practice or take affirmative steps). Reasonable attorneys' fees may also be awarded by the court. N.C. General Stat. §§ 168A-11 & 168A-12³

Criminal Penalties

It is a "Class 3" misdemeanor⁴ to deprive a person with a disability (or a person training a service animal) of any rights or privileges granted under the statute with respect to being accompanied by animals or to charge any fee. It is also a Class 3 misdemeanor to disguise an animal as a service animal or animal in training. N.C. General Stat. §168-4.5.

³Persons who have already filed a federal judicial or administrative complaint under the ADA or Section 504 about the same discriminatory practice may not then file suit under the Persons with Disabilities Protection Act. N.C. General Stat. §168A-11(c); *Bowling v. Margaret R. Pardee Memorial Hosp.*, 635 S.E. 2d 624 (2006).

⁴ Currently, the maximum fine for a Class 3 misdemeanor is \$200 and imprisonment would range from 1-20 days, dependent on prior convictions. N.C. General Stat. §15A-1340.23.

South Carolina

Private Lawsuits

“Handicapped persons” who are discriminated against without “reasonable justification,” with respect to public accommodations or services, can sue in the court of common pleas for injunctive relief (“fix it” order or order to take affirmative steps) or civil damages (maximum \$5000 in actual damages). They may also request attorneys’ fees and costs. Reasonable justification is determined “in light of” safety, efficiency and cost, among other factors. S.C. Code Laws, §§ 43-33-540 & 43-33-570 (2010).

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

Criminal Penalties

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

Tennessee

The Tennessee public accommodation nondiscrimination law does not appear to protect people with disabilities.

Criminal Penalties

Violations of the dog guide statute are subject to a Class C misdemeanor (\$50 maximum fine or up to 30 days imprisonment or both) for refusal of entry to (or use of) a public accommodation or transportation by a “blind, physically disabled or deaf or hard-of-hearing person” accompanied by a dog guide. Tenn. Code Ann. § 62-7-112(b).

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