



**Governor's Advisory Council for Exceptional Citizens (GACEC)**  
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### **MEMORANDUM**

**DATE:** March 21, 2022

**TO:** The Honorable Members of the Delaware General Assembly

**FROM:** Terri Hancharick, Vice Chairperson  
GACEC

**RE:** **House Bill No. 311 Amendment to the Delaware Equal Accommodations Statute (DEAL)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **House Bill No. 311**, which amends Title 6 Chapter 45, the Delaware Equal Accommodations Statute (DEAL). The Act clarifies the scope and protections for individuals with disabilities and further aligns definitions and the scope of DEAL with federal law, including the Americans with Disabilities Act (ADA). Council **strongly endorses** this legislation, as it will prevent the Division of Human Relations (DHR) from continuing to exclude claims by people with disabilities under DEAL.

Currently, most disability discrimination cases are not being heard by DHR and this avenue for relief, which is quick, inexpensive for both sides, and which offers conciliation, is not available to Delawareans with disabilities. HB 311 will prevent DHR from continuing to exclude (without legal justification) claims by people with disabilities under DEAL.

DEAL was originally enacted in 1953. Over time, the legislature has added protected classes to the statute, including disability in 1986. It has been amended a number of times. Over many years, the state agency that enforces the law, the Division of Human Relations (DHR), housed within the Department of State, has taken an increasingly narrow view of what types of discrimination against people with disabilities are illegal under DEAL. Specifically, it unilaterally decided that DEAL does not cover cases in which a person is asking for a reasonable modification (or reasonable "accommodation", which is often used interchangeably) of a policy or practice, or for a physical alteration of a structure. DHR has often said it "doesn't enforce the ADA" and has generally, though not always, refused to take any case where the person might also have an ADA claim, even though there is nothing in the statute to support this. DHR dismisses these cases for lack of jurisdiction without doing any investigation whatsoever.

This interpretation has essentially cut off access to DEAL for people with disabilities in the state, who, most of the time, do not encounter direct discrimination (i.e., I won't serve you because I don't like

people with disabilities, and I don't want you here) but encounter barriers to access. These barriers are sometimes physical but are often intangible- such as policies and practices that must be altered to allow access.

HB 311 makes it abundantly clear that the scope of the law is inclusive of all discrimination based on disability in the following ways:

1. Using the same terms and definitions for those terms as in the ADA.
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 (done without much expense).
5. Clarifying that state investigations of complaints must apply the requirements under state law in a manner consistent with equivalent requirements under federal laws.
6. Clarifying 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
7. Extending the time to file a complaint under DEAL to 1 year.
8. Allowing the Commission to waive the cost of transcript, upon application by a party.
9. Making 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.

As mentioned earlier, most disability discrimination cases are not being heard by DHR currently and this avenue for relief, which is quick, inexpensive for both sides, and which offers conciliation, is not available to Delawareans with disabilities. HB 311 will prevent DHR from continuing to exclude (without legal justification) claims by people with disabilities under DEAL.

Thank you for your time and consideration of our support of this proposed legislation. Please feel free to contact Pam Weir or me at the GACEC office should you have any questions on our comments.