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CHAPTER 33.

 RIGHTS OF PHYSICALLY DISABLED PERSONS

ARTICLE 1.

 IN GENERAL

**SECTION 43‑33‑10.** Declaration of policy.

 It is the policy of this State to encourage and enable the blind, the visually handicapped, and the otherwise physically disabled to participate fully in the social and economic life of the State and to engage in remunerative employment.

HISTORY: 1962 Code Section 71‑300.51; 1972 (57) 2617.

**SECTION 43‑33‑20.** Right of use of public facilities and accommodations of blind, other special need persons, and guide dog trainers.

 (a) The blind, the visually handicapped, and the otherwise physically disabled have the same right as the able‑bodied to the full and free use of the streets, highways, sidewalks, walkways, public facilities, and other public places;

 (b) The blind, the visually handicapped, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons;

 (c) Every handicapped person has the right to be accompanied by an assistance dog, especially trained for the purpose, in any of the places listed in item (b) of this section without being required to pay an extra charge for the assistance dog. Each handicapped person is liable for any damage done to the premises or facilities by the dog.

 (d) Every person who is a trainer of an assistance or guide dog, while engaged in the training of an assistance or guide dog, has the same rights and privileges with respect to access to public facilities and accommodations as blind and disabled persons, including the right to be accompanied by an assistance or guide dog or assistance or guide dog in training, in any of the places listed in item (b) of this section without being required to pay an extra charge for the assistance dog. A person who uses premises or facilities accommodations accompanied by a dog under the authority of this item is liable for any damage done to the premises or facilities by the dog.

HISTORY: 1962 Code Section 71‑300.52; 1972 (57) 2617; 1983 Act No. 57 Section 1; 1987 Act No. 147 Section 1, eff June 4, 1987; 2002 Act No. 204, Section 1, eff April 10, 2002.

**SECTION 43‑33‑25.** Use of motorized chairs or carts by handicapped on beaches.

 For reasons set forth in Section 43‑33‑20, persons who are handicapped and who customarily use motorized wheelchairs or motorized carts for locomotion shall not be prohibited from using such wheelchairs or carts on the strand of the seacoast of this State.

HISTORY: 1980 Act No. 315.

**SECTION 43‑33‑30.** Duty of driver approaching blind pedestrian; failure of blind pedestrian to carry white cane or use guide dog.

 The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color (with or without a red tip) or approaching a handicapped pedestrian using an assistance dog shall take all necessary precautions to avoid injury to the pedestrian. Any driver who fails to take these precautions is liable in damages for any injury caused the pedestrian. A totally or partially blind pedestrian not carrying a cane or a handicapped pedestrian not using an assistance dog in any of the places, accommodations, or conveyances listed in Section 43‑33‑20, has all the rights and privileges conferred by law upon other persons. The failure of a totally or partially blind pedestrian to carry a cane or the failure of a handicapped pedestrian to use an assistance dog in any of these places, accommodations, or conveyances does not constitute negligence.

HISTORY: 1962 Code Section 71‑300.53; 1972 (57) 2617; 1983 Act No. 57 Section 2; 1987 Act No. 147 Section 2, eff June 4, 1987.

**SECTION 43‑33‑40.** Unlawful interference with rights of blind or other physically disabled person.

 (A) It is unlawful for a person or his agent to:

 (1) deny or interfere with admittance to or enjoyment of the public facilities enumerated in Section 43‑33‑20; or

 (2) interfere with the rights of a totally or partially blind or disabled person under Section 43‑33‑20.

 (B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 71‑300.54; 1972 (57) 2617; 1993 Act No. 184 Section 234, eff January 1, 1994.

**SECTION 43‑33‑50.** White Cane Safety Day.

 Each year, the Governor shall take suitable public notice of October fifteenth as White Cane Safety Day. He shall issue a proclamation in which:

 (a) He comments upon the significance of the white cane;

 (b) He calls upon the citizens of the State to observe the provisions of the White Cane Law and to take precautions necessary to the safety of the disabled;

 (c) He reminds the citizens of the State of the policies with respect to the disabled herein declared and urges the citizens to cooperate in giving effect to them;

 (d) He emphasizes the need of the citizens to be aware of the presence of disabled persons in the community and to keep safe and functional for the disabled the streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort, and other places to which the public is invited, and to offer assistance to disabled persons upon appropriate occasions.

HISTORY: 1962 Code Section 71‑300.55; 1972 (57) 2617.

**SECTION 43‑33‑60.** Policy regarding employment of blind and other physically disabled persons.

 It is the policy of this State that the blind, the visually handicapped, and the otherwise physically disabled shall be employed in the State service, the service of the political subdivisions of the State, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able‑bodied, unless it is shown that the particular disability prevents the performance of the work involved.

HISTORY: 1962 Code Section 71‑300.56; 1972 (57) 2617.

**SECTION 43‑33‑70.** Right of blind and other physically disabled persons to equal access to housing accommodations.

 (a) Blind persons, visually handicapped persons, and other physically disabled persons shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this State, subject to the conditions and limitations established by law and applicable alike to all persons.

 (b) "Housing accommodations" means any real property, or portion thereof, which is used or occupied or is intended, arranged, or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings, but shall not include any accommodations, included within subsection (a) or any single‑family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

 (c) Nothing in this section shall require any person renting, leasing, or providing for compensation real property to modify his property in any way or provide a higher degree of care for a blind person, visually handicapped person, or other physically disabled person than for a person who is not physically disabled.

 (d) Every handicapped person who has an assistance dog, or who obtains an assistance dog, is entitled to full and equal access to all housing accommodations provided for in this section. Each handicapped person is not required to pay extra compensation for the dog but is liable for any damage done to the premises by the dog.

HISTORY: 1962 Code Section 71‑300.57; 1972 (57) 2617; 1983 Act No. 57 Section 3; 1987 Act No. 147 Section 3, eff June 4, 1987.

ARTICLE 3.

 DISCRIMINATION AGAINST THE HANDICAPPED IN PSYCHOMETRIC TESTING PROCEDURES

**SECTION 43‑33‑210.** Definitions.

 For the purposes of this article:

 "Handicapped" shall mean any person who is visually impaired, legally blind, deaf or hearing‑impaired, has a disability of incoordination or palsy resulting from brain, spinal or peripheral nerve damage, has an amputation of upper extremities, or is otherwise disabled in such a way as to interfere with his ability to use written or visual material.

 "Visually impaired" shall mean any person with a visual acuity not exceeding 20/70 to 20/200 in his better eye with correcting lenses.

 "Legally blind" shall mean any person with a visual acuity not exceeding 20/200 in his better eye with correcting lenses, or with a limitation in the field of vision such that the widest diameter of his visual field subtends an angle not greater than twenty degrees.

 "Test" shall mean any written psychometric instrument designed to measure the aptitude, achievement or intelligence of a person being screened for employment or promotion.

 "Agency" shall mean any State agency, department or institution.

HISTORY: 1976 Act No. 662 Section 1.

**SECTION 43‑33‑220.** Non‑discrimination in psychometric testing by State agencies; technical assistance to agencies; special assistance or procedures for handicapped persons.

 The provisions of this article shall apply to any State agency which utilizes psychometric tests in its personnel procedures. Any such agency shall administer test materials in such manner, form and procedure as will prevent discrimination to persons with physical handicaps as provided for in this article.

 In all instances where needed, agencies shall secure appropriate technical assistance to administer their test materials. Technical assistance shall be provided, where possible, by appropriate State agencies, professional organizations who work with the physically handicapped and other interested private or public groups and organizations.

 It shall be the responsibility of the handicapped person to make known his needs for special assistance or procedures to the agency in advance of his test.

HISTORY: 1976 Act No. 662 Section 2.

**SECTION 43‑33‑230.** Complaints.

 Any applicant for employment or promotion may personally, or by his representative, file a written complaint of alleged violations of the provisions of this article with the agency concerned within ninety days of the alleged violations. The agency shall make a decision concerning the complaint and shall take such action as may be warranted within thirty days. If the agency and the complainant are unable to reach a satisfactory agreement, the complainant shall be informed of his right to appeal. The appeal shall be through the established grievance procedures in the case of permanent employees or to the State Personnel Division in the case of applicants for employment or those employees not on permanent status.

HISTORY: 1976 Act No. 662 Section 3.

ARTICLE 5.

 SOUTH CAROLINA PROTECTION AND ADVOCACY SYSTEM FOR THE HANDICAPPED

**SECTION 43‑33‑310.** Legislative findings.

 The General Assembly finds that by executive order in 1977 the Governor designated an eleemosynary corporation known as Advocacy for Handicapped Citizens, Inc., and located in Charleston, as the organization to perform the function of advocate for developmentally disabled citizens as required by Section 113 of Public Law 94‑103, as amended by 95‑602, and that organization has been adequately performing that function and has qualified for certain assistance under Section 113 of Public Law 94‑103, as amended by 95‑602, of the United States Congress.

 It further finds that the Joint Legislative Committee created to study problems of the handicapped, pursuant to the mandate of the resolution which created the committee, proposed a concurrent resolution in 1978, which was adopted, to continue the designation of that organization as advocate for the developmentally disabled and such resolution included an expression of the desire of the General Assembly that the principal office be moved to Columbia by October 1, 1978. It further finds that the joint committee has determined, based on numerous hearings, that without intended criticism to the designated organization, the functions of protection and advocacy can be better performed by an organization with a statewide Board of Directors which can monitor and supervise the four regional offices in Charleston, Greenville, Columbia and Florence from a central office in Columbia. It is the purpose of this act to permanently establish as advocate under Section 113 of Public Law 94‑103, as amended by 95‑602, an eleemosynary corporation already formed under the corporate name, South Carolina Protection and Advocacy System for the Handicapped, Inc. It is the further purpose of this act to express the desire of the General Assembly that South Carolina Protection and Advocacy System for the Handicapped, Inc., exercise protection and advocacy functions not only for the developmentally disabled citizens of South Carolina but also for all other handicapped citizens of the State.

HISTORY: 1979 Act No. 48 Section 1.

**SECTION 43‑33‑320.** Transfer of functions from Advocacy for the Handicapped Citizens, Inc. to South Carolina Protection and Advocacy System for the Handicapped, Inc.

 Effective April 1, 1979, all authority and state funds provided by law to the organization bearing the corporate name Advocacy for the Handicapped Citizens, Inc. must be transferred to the eleemosynary corporation bearing the corporate name South Carolina Protection and Advocacy System for the Handicapped, Inc. All records relating to the operations of the Advocacy for Handicapped Citizens, Inc., which involve responsibilities pursuant to Section 113 of Public Law 94‑103, as amended by 95‑602, also must be transferred.

HISTORY: 1979 Act No. 48 Section 2; 2005 Act No. 164, Section 21, eff June 10, 2005.

**SECTION 43‑33‑330.** Appointment of board.

 The South Carolina Protection and Advocacy System for the Handicapped, Inc., is governed by a board consisting of a minimum of twelve members and a maximum of sixteen members. Four members must be appointed by the Governor, one member from each of the system's four regions. Eight members must be elected by the board upon recommendation by the system's nominating committee which shall consult with advocacy groups of the State representing persons with handicaps. Members shall serve for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the original manner for the unexpired portion of the term. A vacancy must be filled not later than sixty days after the date on which the vacancy occurs. Up to four members who serve as chair of advisory councils or committees to the system may be elected by the board to serve ex officio as considered appropriate to the needs of the system or as mandated by law. No appointed board member may serve more than two successive four‑year terms.

 The board may change its corporate name in the same manner as any other nonprofit corporation, and if the board changes its corporate name, the powers and duties of the South Carolina Protection and Advocacy System for the Handicapped, Inc., are considered to be the powers and duties of the successor nonprofit corporation.

HISTORY: 1979 Act No. 48 Section 3; 1989 Act No. 145, Section 1, eff June 5, 1989; 1991 Act No. 52, Section 1, eff May 27, 1991; 1996 Act No. 251, Section 1, eff April 1, 1996.

**SECTION 43‑33‑340.** Definitions.

 As used in this article, unless the context requires otherwise

 (1) "System" means the South Carolina Protection and Advocacy System for the Handicapped, Inc.

 (2) "Developmental disability" means a severe, chronic disability of a person which:

 (a) is attributable to a mental or physical impairment or combination of mental and physical impairments;

 (b) is manifested before the person attains age twenty‑two;

 (c) is likely to continue indefinitely;

 (d) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self‑care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self‑direction, (vi) capacity for independent living and (vii) economic sufficiency;

 (e) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

 (3) "Developmentally disabled person" means a person who has a developmental disability and who receives or is entitled to receive treatment. services or habilitation within the State.

 (4) "Handicapped person" means a person defined by Section 2‑7‑35.

 (5) "Complaint" means an oral or written allegation by a developmentally disabled or handicapped person, the parent or legal guardian of such person, a state agency or any other responsible person to the effect that the developmentally disabled or handicapped person is being subjected to injury or deprivation with regard to his health, safety, welfare, rights or level of care.

 (6) "Abuse" means the definition defined by Section 43‑30‑20.

 (7) "Threatened abuse" means the definition defined by Section 43‑30‑20.

 (8) "Ombudsman" means the office provided for pursuant to Section 43‑38‑10 et seq.

HISTORY: 1979 Act No. 48, Section 4; 1980 Act No. 465; 1993 Act No. 110, Section 7, eff three months after June 11, 1993.

**SECTION 43‑33‑350.** Powers and duties of System.

 The system has the following powers and duties:

 (1) It shall protect and advocate for the rights of all developmentally disabled persons, including the requirements of Section 113 of Public Law 94‑103, Section 105 of Public Law 99‑319, and Section 112 of Public Law 98‑221, all as amended, and for the rights of other handicapped persons by pursuing legal, administrative, and other appropriate remedies to insure the protection of the rights of these persons.

 (2) It may investigate complaints by or on behalf of any developmentally disabled or handicapped person.

 (3) It may establish a priority for the delivery of protection and advocacy services according to the type, severity, and number of handicapping conditions of the person making a complaint or on whose behalf a complaint has been made.

 (4) It may conduct team advocacy inspections of a facility providing residence to a developmentally disabled or handicapped person. Inspections must be completed by the system's staff and trained volunteers. Team advocacy inspections are unannounced visits to review the living conditions of a residential facility, including the plans of care for individuals in a residential care facility and a community mental health center day program. Only the coordinator of the team advocacy project or the coordinator's designee is authorized to perform reviews of plans of care. The designee must meet criteria developed by the Joint Legislative Committee on Mental Health and Mental Retardation, after consultation with the system and the South Carolina Association of Residential Care Homes. The system shall prepare a report based on the inspection which must be submitted to the Joint Legislative Committee on Mental Health and Mental Retardation, South Carolina Department of Health and Environmental Control, and State Department of Mental Health.

HISTORY: 1979 Act No. 48, Section 5; 1980 Act No. 465; 1988 Act No. 631, eff June 2, 1988; 1990 Act No. 381, Section 1, eff March 19, 1990; 1993 Act No. 133, Section 1, eff June 14, 1993.

**SECTION 43‑33‑360.** Interview of complainant.

 Upon the receipt of a complaint, the System may interview the person making the complaint or the person on whose behalf the complaint is made.

HISTORY: 1979 Act No. 48, Section 6; 1980 Act No. 465.

**SECTION 43‑33‑370.** Authority of System upon receipt of written request to investigate complaint.

 Upon (A) the receipt of a written request to investigate a complaint that has been signed by a developmentally disabled or handicapped person, his parent, legal guardian, any relative or a state agency; or upon (B) the receipt of a complaint of abuse or threatened abuse to a developmentally disabled or handicapped person who is not capable of giving informed consent for the System to investigate the complaint and who does not have a parent or legal guardian to sign a written request to investigate the complaint, the System may:

 (1) Interview any member of the staff of the program or facility which is providing or did provide treatment, services or habilitation to the person making the complaint or on whose behalf the complaint is made.

 (2) Inspect and copy any documents, records, files, books, charts or other writings which are maintained in the regular course of business by the program or facility and which bear upon the subject matter of the individual complaint, except for the individual medical, treatment or other personal records of other persons in the program or facility.

 (3) Request the assistance of any rights protection or advocacy services provided by the program or facility.

 (4) Refer a complaint to the ombudsman, law enforcement agencies or any other public or private programs or facilities, as it deems appropriate.

HISTORY: 1979 Act No. 48, Section 7; 1980 Act No. 465.

**SECTION 43‑33‑380.** Information not to be disclosed unless authorized in writing.

 The System shall not disclose the name or identity of any person, complainant, witness or subject of a complaint or any information or writing relating thereto unless the person or his parent or legal guardian authorizes in writing the release of such information but the System may make such disclosures as may be necessary to protect or advocate for the rights of the developmentally disabled or handicapped person concerned.

HISTORY: 1979 Act No. 48 Section 8; 1980 Act No. 465.

**SECTION 43‑33‑390.** Immunity from civil and criminal liability for persons providing information in good faith.

 Any person providing information to the System or who participates in judicial proceedings resulting therefrom, acting in good faith, shall be immune from civil and criminal liability which might otherwise result by reason of such actions. In all such civil or criminal proceedings good faith shall be rebuttably presumed.

HISTORY: 1979 Act No. 48 Section 9; 1980 Act No. 465.

**SECTION 43‑33‑400.** Cooperation with departments, officers, agencies and institutions; requests for System to provide protection and advocacy services; inspection and copying of records.

 All departments, officers, agencies and institutions of the State shall cooperate with the System in carrying out its duties. Notwithstanding any other provision of law, all departments, officers, agencies and institutions of the State may, on the behalf of a developmentally disabled or handicapped person, request the System to provide protection and advocacy services. Notwithstanding any other provision of law, any program or facility shall permit the System to inspect and copy any record or documents provided for in 43‑33‑370(2).

HISTORY: 1979 Act No. 48 Section 10; 1980 Act No. 465.

ARTICLE 7.

 BILL OF RIGHTS FOR HANDICAPPED PERSONS

**SECTION 43‑33‑510.** Short title.

 This article may be cited as the South Carolina Bill of Rights for Handicapped Persons.

HISTORY: 1983 Act No. 124 Section 1.

**SECTION 43‑33‑520.** Guaranteed opportunities.

 The opportunity to obtain housing, full and equal use of public accommodations, public services, and to make use of educational facilities without discrimination because of a handicap is guaranteed by this article and is a civil right.

HISTORY: 1983 Act No. 124 Section 2; 1996 Act No. 426, Section 8, eff June 18, 1996.

**SECTION 43‑33‑530.** Discrimination prohibited without reasonable justification.

 No person may discriminate against a handicapped person with respect to public accommodations, public services, or housing without reasonable justification. No protection or right of access provided by law for handicapped persons is reduced or eliminated by the provisions of this section.

HISTORY: 1983 Act No. 124 Section 3; 1996 Act No. 426, Section 9, eff June 18, 1996.

**SECTION 43‑33‑540.** Injunctive relief or civil damages for persons discriminated against.

 A handicapped person aggrieved by the discrimination prohibited by this article has the right to seek injunctive relief or civil damages, not to exceed five thousand dollars actual damages, plus his attorney's fee and costs, in the court of common pleas.

HISTORY: 1983 Act No. 124 Section 4.

**SECTION 43‑33‑550.** Repealed by 1996 Act No. 426, Section 12, eff June 18, 1996.

**SECTION 43‑33‑560.** Handicap, handicapped, and mental impairment defined.

 Notwithstanding Section 2‑7‑35, "handicap" and "handicapped" as used in this article mean a substantial physical or mental impairment, whether congenital or acquired by accident, injury, or disease, where the impairment is verified by medical findings and appears reasonably certain to continue throughout the lifetime of the individual without substantial improvement. This does not include an individual who is an alcohol, drug, narcotic, or other substance abuser or who is only regarded as being handicapped. The term "mental impairment" does not include mental illness.

HISTORY: 1983 Act No. 124 Section 6; 1996 Act No. 426, Section 10, eff June 18, 1996.

**SECTION 43‑33‑570.** Reasonable justification defined.

 For purposes of this article, "reasonable justification" in the context of housing and public services must be determined in light of the following factors, among others: (1) safety; (2) efficiency; and (3) cost.

HISTORY: 1983 Act No. 124 Section 7; 1996 Act No. 426, Section 11, eff June 18, 1996.

**SECTION 43‑33‑580.** Repealed by 1996 Act No. 426, Section 12, eff June 18, 1996.