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.

CROSS REFERENCES

Construction of public buildings to insure access by persons with disabilities, see Section 10‑5‑210 et seq.

Free parking for handicapped persons, see Section 56‑3‑1960.

Homestead exemption for totally and permanently disabled taxpayers, see Section 12‑37‑250.

Operation of vending facilities by blind persons, see Section 43‑26‑10 et seq.

South Carolina Protection and Advocacy System for the Handicapped, see Section 43‑33‑310.

State aid for education of physically and mentally handicapped children, see Section 59‑21‑510 et seq.

RESEARCH REFERENCES

Encyclopedias

144 Am. Jur. Trials 85, Litigating Claims for Discrimination Against Disabled on Website as “Place of Public Accommodation” for Purposes of Federal and State Civil Rights Statutes.

LAW REVIEW AND JOURNAL COMMENTARIES

Rehabilitation Act of 1973 ‑ Application to Postsecondary Educational Programs. Southeastern Community College v Davis, 99 S Ct 2361 (1979). 31 S.C. L. Rev. 394.

NOTES OF DECISIONS

In general 1

1. In general

The South Carolina Commission For the Blind had no duty pursuant to Section 43‑25‑30 or Section 43‑33‑10 to protect a resident of a center operated by the commission, from sexual assault by a fellow resident. Burns v. South Carolina Com’n for Blind (S.C.App. 1994) 323 S.C. 77, 448 S.E.2d 589.

**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.

CROSS REFERENCES

Operation of vending facilities by blind persons, see Section 43‑26‑10.

Provisions regarding guaranteed opportunities for handicapped persons, see Section 43‑33‑520.

Provisions relating to the duty of a driver approaching blind or deaf pedestrians, see Section 43‑33‑30.

Library References

Civil Rights 1021, 1043 to 1054, 1083.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 63, 69 to 105, 121 to 122, 132, 303 to 304.

C.J.S. Right to Die Sections 26, 53.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Architects and Engineers Section 14, Code Compliance and Other Standards.

S.C. Jur. Hotels, Motels and Other Lodgings Section 12, Availability of Services.

S.C. Jur. Hotels, Motels and Other Lodgings Section 21, Handicapped Persons.

Attorney General’s Opinions

Whether a person with post traumatic stress disorder is a handicapped person, and whether a restaurant is included in places of public accommodation. S.C. Op.Atty.Gen. (February 9, 2015) 2015 WL 731710.

For any vehicle to be operated on State highways, including motorized carts and wheelchairs operated by the handicapped, it must meet the various requirements imposed on vehicles operating on State highways generally, such as being properly registered, licensed, equipped, and inspected. Inasmuch as municipalities are not authorized to enact provisions in conflict with State requirements pertaining to vehicles on highways, this Office is unable to construe the provisions of Section 43‑33‑25 and 43‑33‑20 concerning the handicapped as authorizing avoidance of State law requirements for vehicles operated on highways in this State. 1987 Op.Atty.Gen., No. 87‑59, p 150, 1987 WL 245468.

**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.

Library References

Civil Rights 1054.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 70, 105.

Attorney General’s Opinions

For any vehicle to be operated on State highways, including motorized carts and wheelchairs operated by the handicapped, it must meet the various requirements imposed on vehicles operating on State highways generally, such as being properly registered, licensed, equipped, and inspected. Inasmuch as municipalities are not authorized to enact provisions in conflict with State requirements pertaining to vehicles on highways, this Office is unable to construe the provisions of Section 43‑33‑25 and 43‑33‑20 concerning the handicapped as authorizing avoidance of State law requirements for vehicles operated on highways in this State. 1987 Op.Atty.Gen., No. 87‑59, p 150, 1987 WL 245468.

**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.

CROSS REFERENCES

Provisions relating to the rights of blind and other physically disabled persons to use public facilities, places of public accommodation and the like, see Section 43‑33‑20.

Library References

Automobiles 161.

Civil Rights 1043, 1054.

Westlaw Topic Nos. 48A, 78.

C.J.S. Civil Rights Sections 63, 70, 76 to 98, 103 to 105.

C.J.S. Motor Vehicles Sections 885 to 886.

C.J.S. Right to Die Sections 26, 53.

RESEARCH REFERENCES

Treatises and Practice Aids

44 Causes of Action 2d 211, Cause of Action in Intentional Tort for Loss of or Injury to Animal by Human.

**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.

Library References

Automobiles 161.

Civil Rights 1807, 1808.

Westlaw Topic Nos. 48A, 78.

C.J.S. Civil Rights Section 780.

C.J.S. Motor Vehicles Sections 885 to 886.

**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.

Library References

Automobiles 161.

States 73.

Westlaw Topic Nos. 48A, 360.

C.J.S. Motor Vehicles Sections 885 to 886.

C.J.S. States Sections 229, 240 to 249, 253.

**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.

CROSS REFERENCES

Provisions regarding guaranteed opportunities for handicapped persons, see Section 43‑33‑520.

Library References

Civil Rights 1215.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 236 to 237, 239, 279 to 301.

**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.

CROSS REFERENCES

Provisions regarding guaranteed opportunities for handicapped persons, see Section 43‑33‑520.

Library References

Civil Rights 1083.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 121 to 122, 132.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Architects and Engineers Section 14, Code Compliance and Other Standards.

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.

CROSS REFERENCES

Rights of physically disabled persons, see Section 43‑33‑10 et seq.

**SECTION 43‑33‑220.** Nondiscrimination 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.

Library References

Civil Rights 1118, 1124.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 216, 219, 224, 231, 246 to 247.

**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.

Library References

Civil Rights 1121, 1135, 1705.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 724 to 748.

ARTICLE 5

Protection and Advocacy for People with Disabilities, Inc.

Code Commissioner’s Note

At the direction of the Code Commissioner, the title of this article was changed from “South Carolina Protection and Advocacy System for the Handicapped” to “Protection and Advocacy for People with Disabilities, Inc.” to conform the title with amendments made by 2017 Act No. 52.

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

 The General Assembly finds that by executive order in 1977 the Governor designated an eleemosynary corporation now known as “Protection and Advocacy for People with Disabilities, Inc.”, as the organization to perform the function of advocate for citizens with developmental disabilities as required by Section 113 of Public Law 94‑103, as amended, and that organization has been performing that function and has qualified for certain assistance under Section 113 of Public Law 94‑103, as amended.

 It is the purpose of this act to permanently establish as advocate under Section 113 of Public Law 94‑103, as amended, an eleemosynary corporation now known as “Protection and Advocacy for People with Disabilities, Inc.” It is the further purpose of this act to express the desire of the General Assembly that Protection and Advocacy for People with Disabilities, Inc. exercise protection and advocacy functions not only for the citizens of South Carolina with developmental disabilities but also for all other citizens of the State with disabilities.

HISTORY: 1979 Act No. 48 Section 1; 2017 Act No. 52 (S.325), Section 1, eff May 19, 2017.

Editor’s Note

The 1993 Act No. 181 Section 1612, eff July 1, 1993, provides as follows:

“SECTION 1612. Nothing in this act shall affect the independent status or location of the South Carolina Protection and Advocacy System for the Handicapped established pursuant to Article 5, Chapter 33 of Title 43.”

2017 Act No. 52, Sections 10 to 12, provide as follows:

“SECTION 10. The Governor shall take all actions necessary pursuant to 29 U.S.C. Section 732 to designate Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., as the South Carolina administrator of the Client Assistance Program.

“SECTION 11. Authorized appropriations and the assets and liabilities of the Client Assistance Program are transferred to and become part of Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc.

“SECTION 12. This act takes effect upon approval by the Governor. Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., shall administer the Client Assistance Program upon the completion of all necessary filings with the federal government.”

Effect of Amendment

2017 Act No. 52, Section 1, rewrote the section, revising the legislative findings to reflect the change of Advocacy for Handicapped Citizens, Inc.’s name to Protection and Advocacy for People with Disabilities, Inc.

**SECTION 43‑33‑320.** Repealed.

HISTORY: Former Section, titled Transfer of functions from Advocacy for the Handicapped Citizens, Inc. to South Carolina Protection and Advocacy System for the Handicapped, Inc., had the following history: 1979 Act No. 48 Section 2; 2005 Act No. 164, Section 21, eff June 10, 2005. Repealed by 2017 Act No. 52, Section 9, eff May 19, 2017.

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

 Protection and Advocacy for People with Disabilities, 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 disabilities. 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 Protection and Advocacy for People with Disabilities, 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; 2017 Act No. 52 (S.325), Section 2, eff May 19, 2017.

Editor’s Note

2017 Act No. 52, Sections 10 to 12, provide as follows:

“SECTION 10. The Governor shall take all actions necessary pursuant to 29 U.S.C. Section 732 to designate Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., as the South Carolina administrator of the Client Assistance Program.

“SECTION 11. Authorized appropriations and the assets and liabilities of the Client Assistance Program are transferred to and become part of Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc.

“SECTION 12. This act takes effect upon approval by the Governor. Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., shall administer the Client Assistance Program upon the completion of all necessary filings with the federal government.”

Effect of Amendment

2017 Act No. 52, Section 2, substituted “Protection and Advocacy for People with Disabilities, Inc.” for “South Carolina Protection and Advocacy System for the Handicapped, Inc.” in two places; in the third sentence, substituted “disabilities” for “handicaps”; and made nonsubstantive changes.

CROSS REFERENCES

General state policy regarding handicapped, see Section 43‑33‑10 et seq.

Attorney General’s Opinions

This section provides a limit to two successive four‑year terms for appointed Board members only. S.C. Op.Atty.Gen. (April 29, 1992) 1992 WL 682805.

**SECTION 43‑33‑340.** Definitions.

 As used in this article, unless the context requires otherwise:

 (1) “System” means Protection and Advocacy for People with Disabilities, 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 services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

 (3) “Person with a developmental disability” means a person who has a developmental disability and who receives or is entitled to receive a combination and sequence of special, interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated within the State.

 (4) “Person with a disability” means a person defined by Section 2‑7‑35.

 (5) “Complaint” means an oral or written allegation by a person with a developmental or other disability, the parent or legal guardian of such person, a state agency or any other responsible person to the effect that the person with a developmental or other disability 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; 2017 Act No. 52 (S.325), Section 3, eff May 19, 2017.

Editor’s Note

2017 Act No. 52, Sections 10 to 12, provide as follows:

“SECTION 10. The Governor shall take all actions necessary pursuant to 29 U.S.C. Section 732 to designate Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., as the South Carolina administrator of the Client Assistance Program.

“SECTION 11. Authorized appropriations and the assets and liabilities of the Client Assistance Program are transferred to and become part of Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc.

“SECTION 12. This act takes effect upon approval by the Governor. Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., shall administer the Client Assistance Program upon the completion of all necessary filings with the federal government.”

Effect of Amendment

2017 Act No. 52, Section 3, in (1), substituted “Protection and Advocacy for People with Disabilities, Inc.” for “the South Carolina Protection and Advocacy System for the Handicapped, Inc.”; in (2)(e), substituted “services, individualized supports, or other forms of assistance that” for “care, treatment or other services which”; in (3), substituted “Person with a developmental disability” for “Developmentally disabled person” and “a combination and sequence of special, interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated” for “treatment. services or habilitation”; in (4), substituted “Person with a disability” for “Handicapped person”; in (5), substituted “person with a developmental or other disability” for “developmentally disabled or handicapped person” twice; and made nonsubstantive changes.

**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 persons with a developmental or other disability, 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 persons with disabilities 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 person with a developmental or other disability.

 (3) It may establish a priority for the delivery of protection and advocacy services according to the type, severity, and number of disabilities 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 person with a developmental or other disability. 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 system shall prepare a report based on the inspection which must be submitted to the South Carolina Department of Health and Environmental Control and State Department of Mental Health.

 (5) It shall administer the Client Assistance Program, as established pursuant to 29 U.S.C. Section 732.

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; 2017 Act No. 52 (S.325), Section 4, eff May 19, 2017.

Editor’s Note

2017 Act No. 52, Sections 10 to 12, provide as follows:

“SECTION 10. The Governor shall take all actions necessary pursuant to 29 U.S.C. Section 732 to designate Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., as the South Carolina administrator of the Client Assistance Program.

“SECTION 11. Authorized appropriations and the assets and liabilities of the Client Assistance Program are transferred to and become part of Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc.

“SECTION 12. This act takes effect upon approval by the Governor. Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., shall administer the Client Assistance Program upon the completion of all necessary filings with the federal government.”

Effect of Amendment

2017 Act No. 52, Section 4, in (1), substituted “persons with a developmental or other disability” for “developmentally disabled person” and “with disabilities” for “handicapped”; in (2), substituted “person with a developmental or other disability” for “developmentally disabled or handicapped person”; in (3), substituted “disabilities” for “handicapping conditions”; in (4), substituted “person with a developmental or other disability” for “developmentally disabled or handicapped person”, deleted the fifth sentence, which had provided that a designee must meet criteria developed by the Joint Legislative Committee on Mental Health and Mental Retardation, and deleted reference to the Joint Legislative Committee on Mental Health and Mental Retardation in the last sentence; added (5); and made nonsubstantive changes.

CROSS REFERENCES

General state policy regarding the handicapped, see Section 43‑33‑10 et seq.

Right of advocate of S.C. Protection and Advocacy System for the Handicapped, Inc., to make unrestricted visits to inpatient mental patients, see Section 44‑22‑120.

Library References

Mental Health 20, 37.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 13 to 16, 53, 59 to 66, 68 to 93.

Notes of Decisions

Inspections 2

Justiciability 1

Purpose 3

1. Justiciability

Anonymous guardians and friends of disabled individuals lacked standing to bring action against Department of Disabilities and Special Needs (DDSN) for DDSN’s alleged failure to promulgate statutorily required regulations; guardians and friends were not seeking individual relief for specific alleged harms, and nonprofit corporation established pursuant to federal and state law was authorized to pursue legal, administrative, and other appropriate remedies to insure protection of rights of disabled persons. Protection and Advocacy for People with Disabilities, Inc. v. South Carolina Dept. of Disabilities and Special Needs (S.C.App. 2016) 415 S.C. 526, 783 S.E.2d 835, rehearing denied, certiorari denied. Civil Rights 1332(6)

Nonprofit corporation established pursuant to federal and state law to advocate for rights of people with disabilities had standing to bring action against Department of Disabilities and Special Needs (DDSN) for DDSN’s alleged failure to promulgate statutorily required regulations; nonprofit was entitled under statute to pursue remedies to insure protection of rights of disabled persons, and lack of regulations allegedly caused nonprofit to expend resources and time in attempting to find and analyze directives and standards DDSN had issued as substitution for promulgating regulations. Protection and Advocacy for People with Disabilities, Inc. v. South Carolina Dept. of Disabilities and Special Needs (S.C.App. 2016) 415 S.C. 526, 783 S.E.2d 835, rehearing denied, certiorari denied. Civil Rights 1331(6); Corporations and Business Organizations 3457

2. Inspections

Statutory authority of nonprofit advocate for developmentally disabled persons to make unannounced visits to facilities where such persons were housed to inspect living conditions and plans of care for residents did not authorize inspection of individual medical records of residents, under provision which authorized advocate to inspect and copy documents, records, files, books or charts maintained in facility’s regular course of business, “except for the individual medical, treatment, or other personal records of other persons in the program or facility.” Protection and Advocacy for People with Disabilities, Inc. v. Buscemi (S.C.App. 2016) 417 S.C. 267, 789 S.E.2d 756, rehearing denied, certiorari granted. Asylums and Assisted Living Facilities 18; Asylums and Assisted Living Facilities 26

3. Purpose

The purpose behind enactment of the statutory scheme that authorized a nonprofit advocate for the developmentally disabled to conduct unannounced visits to facilities that housed such persons in order to conduct inspections of the living conditions at the facility and the residents’ plans of care is the protection and advocacy of persons with developmental disabilities and other handicaps. Protection and Advocacy for People with Disabilities, Inc. v. Buscemi (S.C.App. 2016) 417 S.C. 267, 789 S.E.2d 756, rehearing denied, certiorari granted. Asylums and Assisted Living Facilities 18

**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.

Library References

Mental Health 20, 40.1.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 13 to 16.

**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 person with a developmental or other disability, 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 person with a developmental or other disability 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; 2017 Act No. 52 (S.325), Section 5, eff May 19, 2017.

Editor’s Note

2017 Act No. 52, Sections 10 to 12, provide as follows:

“SECTION 10. The Governor shall take all actions necessary pursuant to 29 U.S.C. Section 732 to designate Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., as the South Carolina administrator of the Client Assistance Program.

“SECTION 11. Authorized appropriations and the assets and liabilities of the Client Assistance Program are transferred to and become part of Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc.

“SECTION 12. This act takes effect upon approval by the Governor. Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., shall administer the Client Assistance Program upon the completion of all necessary filings with the federal government.”

Effect of Amendment

2017 Act No. 52, Section 5, in the first paragraph, substituted “person with a developmental or other disability” for “developmentally disabled or handicapped person” twice, and substituted “system” for “System” twice.

Library References

Asylums and Assisted Living Facilities 20, 26.

Mental Health 21, 179.

Westlaw Topic Nos. 43, 257A.

C.J.S. Mental Health Sections 176 to 179.

C.J.S. Public and Private Institutional Care Facilities Section 12.

Notes of Decisions

Inspection of business records 1

1. Inspection of business records

Statutory authority of nonprofit advocate for developmentally disabled persons to make unannounced visits to facilities where such persons were housed to inspect living conditions and plans of care for residents did not authorize inspection of individual medical records of residents, under provision which authorized advocate to inspect and copy documents, records, files, books or charts maintained in facility’s regular course of business, “except for the individual medical, treatment, or other personal records of other persons in the program or facility.” Protection and Advocacy for People with Disabilities, Inc. v. Buscemi (S.C.App. 2016) 417 S.C. 267, 789 S.E.2d 756, rehearing denied, certiorari granted. Asylums and Assisted Living Facilities 18; Asylums and Assisted Living Facilities 26

**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 concerned person with a developmental or other disability.

HISTORY: 1979 Act No. 48 Section 8; 1980 Act No. 465; 2017 Act No. 52 (S.325), Section 6, eff May 19, 2017.

Editor’s Note

2017 Act No. 52, Sections 10 to 12, provide as follows:

“SECTION 10. The Governor shall take all actions necessary pursuant to 29 U.S.C. Section 732 to designate Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., as the South Carolina administrator of the Client Assistance Program.

“SECTION 11. Authorized appropriations and the assets and liabilities of the Client Assistance Program are transferred to and become part of Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc.

“SECTION 12. This act takes effect upon approval by the Governor. Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., shall administer the Client Assistance Program upon the completion of all necessary filings with the federal government.”

Effect of Amendment

2017 Act No. 52, Section 6, substituted “concerned person with a developmental or other disability” for “developmentally disabled or handicapped person concerned” and made nonsubstantive changes.

Library References

Asylums and Assisted Living Facilities 26.

Westlaw Topic No. 43.

**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.

Library References

Asylums and Assisted Living Facilities 18, 26.

Westlaw Topic No. 43.

C.J.S. Public and Private Institutional Care Facilities Sections 4 to 6.

**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 person with a developmental or other disability, 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 Section 43‑33‑370(2).

HISTORY: 1979 Act No. 48 Section 10; 1980 Act No. 465; 2017 Act No. 52 (S.325), Section 7, eff May 19, 2017.

Editor’s Note

2017 Act No. 52, Sections 10 to 12, provide as follows:

“SECTION 10. The Governor shall take all actions necessary pursuant to 29 U.S.C. Section 732 to designate Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., as the South Carolina administrator of the Client Assistance Program.

“SECTION 11. Authorized appropriations and the assets and liabilities of the Client Assistance Program are transferred to and become part of Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc.

“SECTION 12. This act takes effect upon approval by the Governor. Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., shall administer the Client Assistance Program upon the completion of all necessary filings with the federal government.”

Effect of Amendment

2017 Act No. 52, Section 7, substituted “person with a developmental or other disability” for “developmentally disabled or handicapped person”, inserted “Section”, and made nonsubstantive changes.

Library References

Asylums and Assisted Living Facilities 26.

Mental Health 21.

Westlaw Topic Nos. 43, 257A.

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.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 47, Function.

**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.

CROSS REFERENCES

Provisions relating to construction of public buildings for access by persons with disabilities, see Section 10‑5‑210 et seq.

Provisions relating to policy regarding employment of blind and other physically disabled persons, see Section 43‑33‑60.

Provisions relating to right of blind and other physically disabled persons to equal access to housing accommodations, see Section 43‑33‑70.

Provisions relating to rights of blind and other physically disabled persons to use public facilities, places of public accommodation and the like, see Section 43‑33‑20.

Provisions relating to special education for handicapped children, see Section 59‑33‑10 et seq.

Library References

Civil Rights 1019, 1043, 1051, 1069.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 12, 63, 69 to 104, 161 to 163, 303 to 304.

C.J.S. Right to Die Sections 26, 53.

**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.

Library References

Civil Rights 1043, 1053, 1083.

Westlaw Topic No. 78.

C.J.S. Civil Rights Sections 63, 72 to 101, 103 to 104, 121 to 122, 132.

C.J.S. Right to Die Sections 26, 53.

**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.

Library References

Civil Rights 1762, 1766, 1774.

Westlaw Topic No. 78.

**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.

CROSS REFERENCES

Further provisions relating to the definition of handicapped person, see Section 2‑7‑35.

Attorney General’s Opinions

It is unclear whether the term “handicapped person” as defined in Sections 2‑7‑35 and 43‑33‑560 includes persons who suffer from diseases or persons infected with the Human Immunodeficiency Virus; an amendment for clarification is recommended. 1989 Op.Atty.Gen., (March 24, 1989) 1989 WL 509512.

**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.