

## CHAPTER 72

AN ACT concerning handicapped accessibility of public buildings and multi-family dwellings and amending various parts of the statutory law.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 11 of P.L.1992, c.146 (C.10:5-12.4) is amended to read as follows:

C.10:5-12.4 Failure to use barrier free housing standards, unlawful discrimination.

11. A failure to design and construct any multi-family dwelling of four units or more in accordance with barrier free standards promulgated by the Commissioner of Community Affairs pursuant to section 5 of P.L.1975, c.217 (C.52:27D-123) shall be an unlawful discrimination. The Commissioner of Community Affairs shall ensure that standards established meet or exceed the standards established under the federal "Fair Housing Amendments Act of 1988," Pub. L.100-430. Whenever the Attorney General receives a complaint alleging an unlawful discrimination pursuant to this section, the Attorney General shall refer the complaint to the Commissioner of Community Affairs for a determination and report as to whether there is a violation of such standards. Following receipt of the report, a complaint alleging an unlawful discrimination pursuant to this section shall be investigated and prosecuted in accordance with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.). Nothing in this section shall be construed to limit any enforcement authority of the Commissioner of Community Affairs or the Attorney General otherwise provided by law. Nothing in the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and P.L.1971, c.269 (C.52:32-4 et seq.) shall be deemed to limit the powers of the Attorney General under this act. The Attorney General and the Commissioner of Community Affairs shall adopt regulations to effectuate the purposes of this section.

2. Section 5 of P.L.1975, c.217 (C.52:27D-123) is amended to read as follows:

C.52:27D-123 State Uniform Construction Code; adoption.

5. a. The commissioner shall after public hearing pursuant to section 4 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-4) adopt a State Uniform Construction Code for the purpose of regulating the structural design, construction, maintenance and use of buildings or structures to be erected and alteration, renovation, rehabilitation, repair, maintenance, removal or demolition of buildings or structures already erected. Prior to the adoption of said code, the commissioner shall consult with the code advisory board and other departments, divisions, bureaus, boards, councils or other agencies of State Government heretofore authorized to establish or administer construction regulations.

Such prior consultations with departments, divisions, bureaus, boards, councils, or other agencies of State Government shall include but not be limited to consultation with the Commissioner of Health and Senior Services and the Public Health Council prior to adoption of a plumbing subcode pursuant to paragraph b. of this section. Said code shall include any code, rule or regulation incorporated therein by reference.

b. The code shall be divided into subcodes which may be adopted individually by the commissioner as he may from time to time consider appropriate. These subcodes shall include but not be limited to a building code, a plumbing code, an electrical code, an energy code, a fire prevention code, a manufactured or mobile home code and mechanical code.

These subcodes shall be adoptions of the model codes of the Building Officials and Code Administrators International, Inc., the National Electrical Code, and the National Standard Plumbing Code, provided that for good reasons, the commissioner may adopt as a subcode a model code or standard of some other nationally recognized organization upon a finding that such model code or standard promotes the purposes of this act. The initial adoption of a model code or standard as a subcode shall constitute adoption of subsequent edition year publications of the model code or standard organization, except as provided for in paragraphs (1) through (4) of this subsection. Adoption of publications shall not occur more frequently than once every three years; provided, however, that a revision or amendment may be adopted at any time in the event that the commissioner finds that there exists an imminent peril to the public health, safety or welfare.

(1) Except as otherwise provided in this subsection, the edition of a model code or standard in effect as a subcode as of July 1, 1995 shall continue in effect regardless of any publication of a subsequent edition of that model code or standard. Prior to establishing the effective date for any subsequent revision or amendment of any model code or standard adopted as a subcode, the commissioner shall review, in consultation with the code advisory board, the text of the revised or amended model code or standard and determine whether the amended or revised provisions of the model code are essential to carry out the intent and purpose of this act as viewed in contrast to the corresponding provisions of the subcode then currently in effect.

(2) In the event that the commissioner, pursuant to paragraph (1) of this subsection, determines that any amended or revised provision of a model code is essential to carry out the intent and purpose of this act as viewed in contrast to any corresponding provision of the subcode then currently in effect, the commissioner may then adopt that provision of the amended or revised model code.

(3) The commissioner, in consultation with the code advisory board, shall have the authority to review any model code or standard currently in effect as a subcode of the State Uniform Construction Code and compare it with previously adopted editions of the same model code or standard in order to determine if the subcode currently in effect is at least as consistent with the intent and purpose of this act as were previously adopted editions of the same model code or standard.

(4) In the event that the commissioner, after consultation with the code advisory board, determines pursuant to this subsection that a provision of a model code or standard currently in effect as a subcode of the State Uniform Construction Code is less consistent with the intent and purpose of this act than was the corresponding provision of a previously adopted edition of the same model code or standard, the commissioner may delete the provision in effect and substitute in its place the corresponding provision of the previously adopted edition of the same model code or standard determined to be more consistent with the intent and purpose of this act.

(5) The commissioner shall be authorized to adopt a barrier free subcode or to supplement or revise any model code adopted hereunder, for the purpose of insuring that adequate and sufficient features are available in buildings or structures so as to make them accessible to and usable by the physically handicapped. Multi-family residential buildings with four or more dwelling units in a single structure shall be constructed in accordance with the barrier free subcode; for the purposes of this subsection the term "multi-family residential buildings with four or more dwelling units in a single structure" shall not include buildings constructed as townhouses, which are single dwelling units with two or more stories of living space, exclusive of basement or attic, with most or all of the sleeping areas on one story and with most of the remaining habitable space, such as kitchen, living and dining areas, on another story, and with an independent entrance at or near grade level.

c. Any municipality through its construction official, and any State agency or political subdivision of the State may submit an application recommending to the commissioner that a State sponsored code change proposal be adopted. Such application shall contain such technical justification and shall be submitted in accordance with such rules of procedure as the commissioner may deem appropriate, except that whenever the State Board of Education shall determine that enhancements to the code are essential to the maintenance of a thorough and efficient system of education, the enhancements shall be made part of the code; provided that the amendments do not result in standards that fall below the adopted subcodes. The Commissioner of the Department of Education shall consult with the Commissioner of the Department of Community Affairs prior to publishing the intent of the State Board to adopt any amendments to the Uniform Construction Code. Upon adoption of any amendments by the State Board of Education they shall be transmitted forthwith to the Commissioner of the Department of Community Affairs who shall publish and incorporate the amendments as part of the Uniform Construction Code and the amendments shall be enforceable as if they had been adopted by the commissioner.

At least 45 days prior to the final date for the submission of amendments or code change proposals to the National Model Code Adoption Agency, the code of which has been adopted as a subcode under this act, the commissioner shall hold a public hearing in accordance with the

"Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), at which testimony on any application recommending a State sponsored code change proposal will be heard.

The commissioner shall maintain a file of such applications, which shall be made available to the public upon request and upon payment of a fee to cover the cost of copying and mailing.

After public hearing, the code advisory board shall review any such applications and testimony and shall within 20 days of such hearing present its own recommendations to the commissioner.

The commissioner may adopt, reject or return such recommendations to the code advisory board for further deliberation. If adopted, any such proposal shall be presented to the subsequent meeting of the National Model Code Agency by the commissioner or by persons designated by the commissioner as a State sponsored code change proposal. Nothing herein, however, shall limit the right of any municipality, the department, or any other person from presenting amendments to the National Model Code Agency on its own initiative.

The commissioner may adopt further rules and regulations pursuant to this subsection and may modify the procedures herein described when a model code change hearing has been scheduled so as not to permit adequate time to meet such procedures.

d. (Deleted by amendment, P.L.1983, c.496.)

3. Section 2 of P.L.1971, c.269 (C.52:32-5) is amended to read as follows:

C.52:32-5 Regulations relative to access for physically handicapped.

2. The Department of Community Affairs shall promulgate regulations which shall prescribe the kinds, types and quality of facilities in public buildings as defined in section 3 of P.L.1975, c.220 (C.52:32-6) required to provide access for the physically handicapped. The regulations shall differentiate between small public buildings, defined as those with a total gross enclosed floor area of less than 10,000 square feet, and large public buildings defined as those with a total gross enclosed floor area of 10,000 square feet or more. Small public buildings shall be required to have accessible entrances servicing the first or ground floor areas and facilities for the physically handicapped on all accessible floors, however, the provisions for small public buildings shall not apply to the conversion of a small public building to another use or to renovations or modifications of a small public building if there is insufficient space between the building and its lot lines or between the building and the public way to allow for the installation of an entrance ramp which meets the criteria of the "State Uniform Construction Code" adopted pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.). Large public buildings shall be required to have accessible entrances, facilities for the physically handicapped on all accessible floors, and elevators or other means of access for the physically handicapped between floors, except floors which contain only mechanical equipment or floors which contain less than 3,000 square feet of total floor area.

4. Section 3 of P.L.1975, c.220 (C.52:32-6) is amended to read as follows:

C.52:32-6 Definitions.

3. As used in this act:

a. "Public building" means any building, structure, facility or complex used by the general public, including, but not limited to, theaters, concert halls, auditoriums, museums, schools, libraries, recreation facilities, public transportation terminals and stations, factories, office buildings, business establishments, passenger vehicle service stations, shopping centers, hotels or motels, and public eating places, constructed by any State, county or municipal government agency or instrumentality or any private individual, partnership, association or corporation, with the following exceptions: warehouse storage areas and all buildings classified as hazardous occupancies. As used herein, "hazardous occupancy" means the occupancy or use of a building or structure or any portion thereof that involves highly combustible, highly flammable, or explosive material, or which has inherent characteristics that constitute a special fire hazard. As used in this act, the term shall not include residential buildings, but shall include hotels and motels. Any handicapped facility requirements for residential buildings shall be governed by the barrier free subcode promulgated pursuant to section 5 of P.L.1975, c.217 (C.52:27D-123).

b. "Physical handicap" means a physical impairment which confines a person to a wheelchair; causes a person to walk with difficulty or insecurity; affects the sight or hearing to the extent that a person functioning in public areas is insecure or exposed to danger; causes faulty coordination; or reduces mobility, flexibility, coordination and perceptiveness to the extent that facilities are needed to provide for the safety of that person.

c. "Remodel" means, with respect to an existing public building as defined in this act, to construct an addition, alter the design or layout of said public building so that a change or modification of the entrance facilities, toilet facilities, or vertical access facilities is achieved, or make substantial repairs or alterations.

d. "Office building" means a building or structure which is used for the transaction of business; for the rendering of professional service; for other services that involve stocks of goods, wares, or merchandise in limited quantities for use incidental to office uses or sample purposes; or for display and sale purposes involving stocks of goods, wares, or merchandise incidental to these purposes. This definition is intended to include those buildings or structures classified in Use Groups "B" and "M" of the State Uniform Construction Code within the scope of section 5:23-3.14 of the New Jersey Administrative Code pertaining to building subcodes.

e. (Deleted by amendment, P.L.1981, c.35.)

f. "Enforcing agency" means the municipal construction official and subcode officials provided for in the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

5. This act shall take effect immediately and be applied retroactively from April 6, 2001.

Approved May 5, 2003.