

Fifty-fifth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2332**

Introduced by

Senators LaFountain, Mathern, Watne

Representatives Christenson, Kretschmar, Oban

1 A BILL for an Act to create and enact a new chapter to title 14 of the North Dakota Century  
2 Code, relating to a North Dakota human rights commission; to amend and reenact sections  
3 14-02.4-19 and 14-02.4-21 of the North Dakota Century Code, relating to actions, limitations,  
4 and mediation for discriminatory practices; to provide a penalty; and to provide an  
5 appropriation.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** A new chapter to title 14 of the North Dakota Century Code is created and  
8 enacted as follows:

9 **Definitions.** In this chapter, unless the context otherwise requires:

10 1. "Commission" means the human rights commission.

11 2. "Staff" means the staff of the human rights commission.

12 **Human rights commission - Qualifications of commissioners - Selection process.**

13 1. The human rights commission is an independent commission within the executive  
14 branch of state government.

15 2. The commission consists of five members. The governor shall appoint each  
16 member to the commission, one from each of five slates of candidates. After the  
17 first commission has been appointed, all later terms are for five years.

18 3. Each commissioner must be eighteen years of age or older and a resident of this  
19 state. A commissioner may not have been convicted of a felony or found in an  
20 administrative or judicial proceeding to have committed an act of illegal  
21 discrimination. Each commissioner must possess the special sensitivity required of  
22 the commissioner appointed to that position:

23 a. For position A, the commissioner must possess a special sensitivity to laws  
24 concerning discrimination from the perspectives of employers and employees;

management and labor; providers and users of public accommodations;  
landlords and tenants; real estate sellers, buyers, and sales people; providers  
and users of state and local government services; and borrowers and  
commercial lenders;

b. For position B, the commissioner must possess a special sensitivity to issues  
of discrimination based upon race, color, or national origin;

c. For position C, the commissioner must possess a special sensitivity to issues  
of discrimination based upon religion and status with regard to receipt of  
public assistance;

d. For position D, the commissioner must possess a special sensitivity to issues  
of discrimination based upon sex, age, and marital status; and

e. For position E, the commissioner must possess a special sensitivity to issues  
of discrimination based upon the perception of a physical or mental disability.

4. A slate of candidates for each seat must be established from nominations  
submitted from any resident of this state to the office of the governor, or the  
governor's designee. Each nomination must be supported by a letter of interest  
from the nominee and a statement of qualifications, which may include volunteer  
activities, education, work, and employment history, and an explanation of the  
special sensitivities required of the commissioner for that position as set forth in  
subsection 3.

5. Before October 1, 1997, the governor shall publish notice calling for nominations,  
separately designated, for positions on the commission. Nominations must be  
submitted in final form before November 1, 1997, and the governor shall make the  
appointments before December 1, 1997. These terms will begin January 1, 1998.

6. In all subsequent years, the commission shall publish notice before May first,  
calling for nominations, separately designated, for any open or expiring position on  
the commission. Nominations must be submitted in final form before June first,  
and the governor shall make these appointments before July first. These terms will  
begin September first.

**Appointment of commissioners.** In 1997, when the first nominees are submitted to  
the governor:

1. The candidate appointed by the governor for position A will be appointed to a term ending on August 31, 1999.
2. The candidate appointed by the governor for position B will be appointed to a term ending on August 31, 2000.
3. The candidate appointed by the governor for position C will be appointed to a term ending on August 31, 2001.
4. The candidate appointed by the governor for position D will be appointed to a term ending on August 31, 2002.
5. The candidate appointed by the governor for position E will be appointed to a term ending on August 31, 2003.

**Commission staff.**

1. The commission shall be responsible for the hiring of its staff. The commission shall hire a director and may delegate all decisions concerning the hiring, promotion, or termination of other staff to the director.
2. The staff may include an attorney licensed to practice in this state as general legal counsel. The commission or its designee may fill this position independently or with an assistant attorney general.
3. The commission or its designee may hire other staff, including attorneys, investigators, and support staff as funds permit.
4. The commission may appoint hearing officers to hear contested cases and petitions for declaratory rulings. In the alternative, the commission may contract with a private provider of dispute resolution services, including the American arbitration association, to provide these services.

**Duties of commission.** The commission shall:

1. Educate employers, providers of public accommodations or services, landlords, real estate sellers, providers of state and local government services, and commercial lenders about ways to respect rights protected by laws that prohibit discrimination;
2. Educate the general public about rights and responsibilities provided for by laws that prohibit discrimination;

3. Investigate the extent and nature of discriminatory practices in this state, and report all findings to the governor at least annually;
4. Report to the governor on initiatives that may improve compliance with laws that prohibit illegal discrimination and proposals for making the operation of the commission more effective and efficient;
5. Receive and investigate complaints of illegal discrimination under state or federal law;
6. Resolve conflicts between parties to a complaint through conference, conciliation, or persuasion;
7. Conduct hearings, issue subpoenas, accept recommendations from its hearing officers, issue orders, award actual damages, and assess civil penalties; and
8. Otherwise enforce laws that prohibit illegal discrimination.

**Commission powers.** The commission may adopt rules to implement its authority.

1. The commission has full authority to enforce chapter 14-02.4. In addition, the commission has authority to enforce all federal antidiscrimination laws.
2. The commission may contract with the federal government or any federal agency to coordinate and fund any of the commission's activities.
3. The commission may seek other contracts or grants to help fund the commission's activities.

**Subpoena power.**

1. The commission may subpoena witnesses, take testimony of any person under oath, administer oaths, subpoena books, papers, or other tangible evidence, and order that property or other things be made available for inspection, when investigating or hearing a complaint.
2. These powers may be delegated to staff for purposes of investigating a complaint.
3. Any hearing officer conducting a hearing for the commission may exercise these powers and any other powers authorized under chapter 28-32.
4. Subpoenas and orders, whether issued for an investigation or a hearing, may be enforced as provided in section 28-32-09.

**Filing complaints.**

- 1        1. A complaint may be filed by or on behalf of any person claiming to be aggrieved by  
2        any discrimination prohibited by law. The complaint must be in the form of a  
3        verified complaint stating the name and address of the person alleged to have  
4        engaged in discrimination and the particulars of the alleged discrimination. The  
5        staff may file a complaint when discrimination comes to the staff's attention.
- 6        2. A complaint must be filed with the commission within three hundred days after the  
7        alleged discrimination occurred or was discovered, whichever is later. Except as  
8        provided for below, relating to a person's private right of action, a complaint may  
9        not be filed more than one hundred eighty days after the alleged discrimination  
10       occurred or was discovered, whichever is later, if the victim of an alleged  
11       discriminatory act has not attempted to resolve the dispute by filing a grievance  
12       under any applicable grievance procedure, contract, written rule, or policy.
- 13       3. The commission may not consider a complaint that is not timely filed.

14       **Resolution of complaints.**

- 15       1. Staff shall informally investigate all complaints promptly and impartially. If the  
16       allegations are supported by substantial evidence, staff shall immediately try to  
17       eliminate the discriminatory practice by conference, conciliation, or persuasion.
- 18       2. If the informal efforts to resolve a complaint are unsuccessful, staff shall issue  
19       notice to the alleged perpetrator of a hearing to be held on the matter.
- 20       3. Each hearing must be conducted in the county in which the discrimination is  
21       alleged to have occurred. A hearing officer may grant a change of venue based on  
22       good cause.
- 23       4. All hearings must be conducted in accordance with chapter 28-32. The case in  
24       support of the complaint may be presented by staff, the complainant, or an attorney  
25       representing the complainant.
- 26       5. Staff must notify the commission in writing of all complaints filed. The commission  
27       shall meet at least four times annually to hear and act upon any recommendations  
28       submitted by the hearing officers.
- 29       6. The commission may make provisions to defray the expenses of an indigent party  
30       in a contested case.

- 1           7.   The prevailing party may bring an action against the opposing party in district court  
2               for reasonable attorney's fees. A court is guided by its discretion and fairness in  
3               deciding the issues about attorney's fees.

4           **Orders.**

- 5           1.   If the commission determines that illegal discrimination has occurred, the  
6               commission may order the offending party:  
7               a.   To conform all future conduct to certain conditions relative to the type of  
8               discriminatory practice involved;  
9               b.   To implement all reasonable measures to correct the discrimination and to  
10              rectify any harm, pecuniary or otherwise, to the victim or victims of the  
11              discrimination;  
12              c.   To report on the manner and progress of compliance; and  
13              d.   To permit commission staff to investigate and monitor compliance for no more  
14              than three years.  
15           2.   If the commission cannot determine that illegal discrimination has occurred, the  
16               commission shall order the complaint dismissed.  
17           3.   The commission may not issue any order for the payment of punitive damages to  
18               the alleged victim.  
19           4.   Upon a determination of illegal discrimination, the commission may assess the  
20               offending party with a civil penalty, payable to the commission, in an amount not to  
21               exceed five thousand dollars.  
22           5.   If the commissioner's order is not obeyed, the order may be enforced in district  
23               court in a proceeding initiated by the victim of the discrimination or by staff.

24           **Private right of action.** Any person claiming to be aggrieved by a discriminatory  
25           practice in violation of chapter 14-02.4 may bring an action in the district court in any district in  
26           the state in which the unlawful practice is alleged to have been committed within three hundred  
27           days of the alleged act of wrongdoing without first filing a complaint with the commission or, if  
28           the commission has not resolved the complaint within one year of receiving the complaint.  
29           However, the alleged victim may not proceed directly to district court to pursue a private action  
30           during the first sixty days after a hearing on the merits of the case by the commission. If the  
31           commission has issued its final decision within that sixty-day time period, judicial review may be

pursued at any time subject to chapter 28-32. Deadlines for filing a complaint before the commission do not apply to an action brought in district court which is governed by applicable statutes of limitation. The running of the statute of limitations is tolled for up to three hundred days while the claimant, after having filed a grievance under any applicable grievance procedure, contract, written rule, or policy, is attempting in good faith to resolve the dispute through that grievance procedure, and so long as the complaint is pending before the commission. If a complaint is properly filed in district court, the commission is immediately divested of jurisdiction in the matter.

**Records.**

1. All information discovered by the commission in the course of an investigation is not subject to disclosure under the open records laws.
2. Except for the victim's address, all information presented at a hearing is public information and is subject to the open records laws.

**Criminal conduct - Penalty.** It is a class B misdemeanor for any person to willfully resist, prevent, impede, or interfere with the commission or its staff in the performance of an official duty. It is a class B misdemeanor for a person to willfully violate an order of the commission.

**SECTION 2. AMENDMENT.** Section 14-02.4-19 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-19. Actions - Limitations.** Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed; or in the district in which the records relevant to such practice are maintained and administered; or in the judicial district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three years of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter ~~with regard to an employer's discriminatory practice~~ may bring a complaint of ~~discriminating employment practices~~ the discriminatory practice under this chapter to the ~~department of labor~~ human rights commission within three hundred days of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter ~~with regard to housing or public accommodations or services~~ may bring an action in the district court in any district in the

state in which the unlawful practice is alleged to have been committed, ~~or in the judicial district in which the person would have obtained housing or public accommodations or services were it not for the alleged discriminatory act~~ or in the district in which the records relevant to such practice are maintained and administered within ~~one hundred eighty days~~ three hundred days of the alleged act of wrongdoing, or, if the human rights commission has not resolved the complaint within one year. However, the alleged victim may not proceed to district court if the commission has held a hearing within the preceding sixty days. The running of the statute of limitations is tolled while the complaint is pending before the commission. If a complaint is properly filed with the district court, the commission is immediately divested of jurisdiction in the matter.

**SECTION 3. AMENDMENT.** Section 14-02.4-21 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-21. Optional mediation by ~~department of labor~~ human rights commission**  
**- Relief - Appeals.** The ~~department of labor~~ human rights commission may receive complaints of ~~discriminating employment~~ discriminatory practices under this chapter and attempt to obtain voluntary compliance with this chapter's ~~employment~~ requirements through ~~informal advice, negotiation conference, or conciliation, or persuasion.~~ This chapter does not prohibit a person from filing, or require a person to file, a complaint with the ~~department of labor~~ commission before using the provisions of this chapter.

**SECTION 4. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the human rights commission for the purpose of defraying the expenses of that office, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$ 350,000
Operating expenses	150,000
Data processing	50,000
Equipment	<u>10,000</u>
Total all funds	\$ 560,000



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1	Less estimated income	<u>370,000</u>
2	Total general fund appropriation	\$ 190,000