

## HOUSE BILL NO. 1315

Introduced by

Representatives Ekstrom, Cleary, Niemeier

Senators Bercier, T. Mathern

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 repeal section 14-02.4-12.1 and chapter 14-02.5  
5 of the North Dakota Century Code, relating to housing discrimination; to provide a penalty; to  
6 provide an appropriation; and to provide an effective date.

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

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

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

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

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

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

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

16 2. The commission consists of eleven members: two appointed by the governor; two  
17 selected by the senate majority leader and confirmed by the senate; one appointed  
18 by the association for retarded citizens of North Dakota; one appointed by the  
19 mental health association in North Dakota; one appointed by the North Dakota  
20 society of human resource managers; one appointed by the chairmen of the  
21 Standing Rock, Fort Berthold, Fort Totten, and Turtle Mountain Indian reservations;  
22 one appointed by the North Dakota association of the blind; one appointed by the  
23 state independent living council; and the Americans with Disabilities Act building  
24 codes program manager, who is an ex officio member of the commission. The

term of office of each member is five years; provided, however, that of the members first appointed to the commission, one of the two members appointed by the governor, the member appointed by the association for retarded citizens of North Dakota, and the member appointed by the tribal chairmen must be appointed for terms of two years; one of the two members appointed by the senate, the member appointed by the mental health association in North Dakota, the member appointed by the state independent living council, and the member appointed by the North Dakota society of human resource managers must be appointed for terms of three years; and the remaining three members must be appointed for terms of five years.

3. Each commissioner must be eighteen years of age or older and a resident of this state. A commissioner may not have been convicted of a felony or found in an administrative or judicial proceeding to have committed an act of illegal discrimination.

**Commission staff.**

1. The commission is 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 special assistant attorneys general licensed to practice in this state.
3. The commission or its designee may hire other 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; and
7. Conduct hearings, issue subpoenas, accept recommendations from its hearing officers, issue orders, award actual damages, and assess civil penalties.

**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.

**Filing complaints.**

1. A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discrimination prohibited by law. The complaint must be in the form of a verified complaint stating the name and address of the person alleged to have engaged in discrimination and the particulars of the alleged discrimination. The staff may file a complaint when discrimination comes to the staff's attention.
2. A complaint must be filed with the commission within three hundred days after the alleged discrimination occurred or was discovered, whichever is later. Except as otherwise provided in this chapter with respect to a person's private right of action, a complaint may not be filed more than one hundred eighty days after the alleged discrimination occurred or was discovered, whichever is later, if the victim of an

1           alleged discriminatory act has not attempted to resolve the dispute by filing a  
2           grievance under any applicable grievance procedure, contract, written rule, or  
3           policy.

4           3. The commission may not consider a complaint that is not timely filed.

5           **Resolution of complaints.**

6           1. The staff shall informally investigate all complaints promptly and impartially. If the  
7           allegations are supported by substantial evidence, the staff shall immediately try to  
8           eliminate the discriminatory practice by conference, conciliation, or persuasion.

9           2. If the informal efforts to resolve a complaint are unsuccessful, the staff shall issue  
10          notice to the alleged perpetrator of a hearing to be held on the matter.

11          3. Each hearing must be conducted in the county in which the discrimination is  
12          alleged to have occurred. A hearing officer may grant a change of venue based on  
13          good cause.

14          4. The case in support of the complaint may be presented by the staff, the  
15          complainant, or an attorney representing the complainant.

16          5. The staff must notify the commission in writing of all complaints filed. The  
17          commission shall meet at least four times annually to hear and act upon any  
18          recommendations submitted by the hearing officers.

19          6. The commission may make provisions to defray the expenses of an indigent party  
20          in a contested case.

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

24          **Orders.**

25          1. If the commission determines that illegal discrimination has occurred, the  
26          commission may order the offending party:

27           a. To conform all future conduct to certain conditions relative to the type of  
28           discriminatory practice involved;

29           b. To implement all reasonable measures to correct the discrimination and to  
30           rectify any harm, pecuniary or otherwise, to the victim or victims of the  
31           discrimination;

c. To report on the manner and progress of compliance; and

d. To permit commission staff to investigate and monitor compliance for no more than three years.

2. If the commission cannot determine that illegal discrimination has occurred, the commission shall order the complaint dismissed.

3. The commission may not issue any order for the payment of punitive damages to the alleged victim.

4. Upon a determination of illegal discrimination, the commission may assess the offending party with a civil penalty, payable to the commission, in an amount not to exceed five thousand dollars.

5. If the commissioner's order is not obeyed, the order may be enforced in district court in a proceeding initiated by the victim of the discrimination or by staff.

**Private right of action.** Any person claiming to be aggrieved by a discriminatory practice in violation of chapter 14-02.4 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 within three hundred days of the alleged act of wrongdoing without first filing a complaint with the commission or, if the commission has not resolved the complaint, within one year of receiving the complaint. However, the alleged victim may not proceed directly to district court to pursue a private action during the first sixty days after a hearing on the merits of the case by the commission. If the 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 1999 Supplement to 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 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 public accommodations or services were it not for the alleged discriminatory act~~ records relevant to such practice are maintained and administered within one hundred eighty 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 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 - Records exempt.** The ~~department of labor~~ human rights commission may receive complaints of ~~discriminating employment~~ discriminatory practices under this chapter and may investigate the complaints to determine if there is probable cause to believe the complaint is meritorious and, if so, 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. A complaint received and information obtained during any investigation conducted under this section are exempt from section 44-04-18 before the institution of any judicial proceedings under this chapter. The ~~commissioner~~ commission may disclose to the complainant or the respondent, or attorneys for the complainant or respondent, information obtained under this section if deemed necessary by the ~~commissioner~~ commission for securing an appropriate resolution of a complaint. Any record or information held by the ~~department of labor~~ commission pursuant to an agreement with any federal agency for the enforcement of ~~fair employment~~ nondiscriminatory practices is exempt from section 44-04-18, and the ~~department of labor~~ commission may disclose to federal officials information obtained under this section if appropriate to carry out the enforcement of ~~fair employment~~ nondiscriminatory practices pursuant to the agreement. The ~~department of labor~~ commission may not disclose anything said or done as part of the ~~informal negotiation~~ conference, persuasion, or conciliation efforts under this section.

**SECTION 4. REPEAL.** Section 14-02.4-12.1 and chapter 14-02.5 of the North Dakota Century Code are repealed.

**SECTION 5. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 period beginning January 1, 2002, and ending June 30, 2003, as follows:

Salaries and wages	\$262,500
Operating expenses	112,500
Data processing	37,500

Fifty-seventh  
Legislative Assembly

1	Equipment	<u>10,000</u>
2	Total all funds	\$422,500
3	Less estimated income	<u>370,000</u>
4	Total general fund appropriation	\$52,500

5       **SECTION 6. EFFECTIVE DATE.** This Act becomes effective on January 1, 2002.