

PROPOSED AMENDMENTS TO SENATE BILL NO. 2306

Page 1, line 1, after "Act" insert "to provide for a state policy against discrimination;"; after the third comma insert "and", and remove ", and"

Page 1, line 2, remove "14-02.11"

Page 1, after line 5, insert:

**"SECTION 1. State policy against discrimination.** It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate."

Page 1, line 10, replace "means a chronological age of at least eighteen years" with "insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age"

Page 1, line 16, remove "of an"

Page 1, line 17, remove "individual's", replace "and includes" with a comma, and replace the second "and" with ", or"

Page 1, line 18, remove "The term also means a mental impairment or"

Page 1, remove lines 19 and 20

Page 1, line 21, after "7." insert "'Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours results in the unequal treatment or separation or segregation of any individual, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any individual of employment, labor union membership, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, includes sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:

- a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, or education;
- b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or

- c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, or educational environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.

8."

Page 1, line 22, replace "8." with "9."

Page 1, after line 23, insert:

- "10. "Otherwise qualified person" means an individual who is capable of performing the essential functions of the particular employment in question.
- 11. "Person" means an individual, partnership, association, corporation, limited liability company, unincorporated organization, mutual company, joint stock company, trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization, public body, public corporation, and the state and a political subdivision and agency thereof.
- 12. "Reasonable accommodations" means accommodations by an employer that do not:
  - a. Unduly disrupt or interfere with the employer's normal operations;
  - b. Threaten the health or safety of the individual with a disability or others;
  - c. Contradict a business necessity of the employer; or
  - d. Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation."

Page 2, line 1, replace "9." with "13."

Page 2, line 4, replace "10." with "14."

Page 2, line 6, replace "11." with "15."

Page 8, line 27, after the period insert "If the commission finds that the complainant's allegation of a discriminatory practice is false and not made in good faith, the commission shall order the complainant to pay costs and reasonable attorney's fees incurred by the respondent in responding to the allegation."

Page 12, replace lines 5 through 30 with:

- "1. "Employee" means an individual who performs services for an employer who employs one or more individuals for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not

include an individual elected to public office in the state or political subdivision by the qualified voters thereof, or an individual chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. "Employee" does include an individual subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.

2. "Employer" means a person within the state who employs one or more employees for more than one quarter of the year and a person wherever situated who employs one or more employees whose services are to be partially or wholly performed in the state.
3. "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunity to work for an employer and includes any agent of the person.
4. "Labor organization" mean a person, employee representation committee, plan in which employees participate, or other organization which exists solely or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment."

Page 13, remove lines 1 and 2

Page 13, line 3, remove "**or unfair**"

Page 13, replace lines 4 through 31 with:

- "1. It is a discriminatory practice for:
  - a. An employer to fail or refuse to hire an individual; to discharge an employee; or to accord adverse or unequal treatment to an individual or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer. It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified individual with a physical or mental disability or because of that individual's religion. This chapter does not prohibit compulsory retirement of any employee who has attained sixty-five years of age, but not seventy years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy making position, if the employee is entitled to an immediate nonforfeiture annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equal, in the aggregate, at least forty-four thousand dollars.
  - b. An employment agency to accord adverse or unequal treatment to an individual in connection with an application for employment, referral, or request for assistance in procurement of employees because of race, color, religion, sex, national origin, age, physical or mental

disability, or status with respect to marriage or public assistance; or to accept a listing of employment on that basis.

- c. A labor organization to deny full and equal membership rights to an applicant for membership or to a member; to expel, suspend, or otherwise discipline a member; or to accord adverse, unlawful, or unequal treatment to an individual with respect to the individual's hiring, apprenticeship, training, tenure, compensation, upgrading, layoff, or a term or condition of employment because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.
  - d. A person to conceal unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or by means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the making of a record or inquiry, or by use of any device to bring about or facilitate discrimination, or to engage in or threaten to engage in a reprisal, economic or otherwise, against an individual by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purpose and provisions of this chapter because of race, color, religion, sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours.
  - e. An employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals of a particular race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance, or who participate in lawful activity off the employer's premises during nonworking hours which activity is not in direct conflict with the essential business-related interests of the employer, are unwelcome, objectionable, not acceptable, or not solicited.
  - f. An employer to fail or refuse to hire and employ an individual for a position, for an employer to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment in a position if the occupancy of the position, or access to the premises upon which the duties of the position are performed, is subject to a requirement imposed in the interest of the national security of the United States under a security program administered under a statute of the United States or an executive order of the president and the individual has not fulfilled or has ceased to fulfill that requirement.
2. Notwithstanding subdivisions a, b, and c of subsection 1, it is not a discriminatory practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations provided that the differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours; or for an employer to give and to act upon the results of any professionally developed ability test; provided, that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion,

sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in a lawful activity off the employer's premises during nonworking hours.

3. Subsection 1 does not apply to business policies or practices relating to the employment of an individual by the individual's parent, grandparent, spouse, child, or grandchild, or in the domestic service of an individual.
4. The employment of one individual in place of another, standing by itself, is not evidence of a discriminatory practice.
5. After a conditional offer of employment, it is not discriminatory practice for an employer, employment agency, or labor organization to:
  - a. Require an individual to undergo physical examination for the purpose of determining the individual's capability to perform the essential functions of the job with or without reasonable accommodations if every entering employee in the same job category is subjected to the examination; or
  - b. Conduct an investigation as to the individual's medical history for the purpose of determining the individual's capability to perform available employment if every entering employee in the same job category is subjected to the investigation.
6. Medical history obtained under this section must be collected and maintained separate from nonmedical information and must be kept confidential.
7. The provisions of subsection 1 do not repeal or modify a federal, state, or local statute, regulation, or ordinance creating special rights or preference for veterans."

Page 14, remove lines 1 through 31

Page 15, remove lines 1 through 31

Page 16, remove lines 1 through 30

Page 17, remove lines 1 through 19

Page 17, line 21, remove "or unfair"

Page 18, line 2, remove "or unfair"

Page 18, line 5, remove "or unfair"

Page 18, line 11, replace "six months" with "three hundred days"

Page 18, line 12, remove "or unfair"

Page 18, replace lines 14 through 27 with:

**"14-02.8-05. Relief.** If the commission, as the result of an administrative hearing, or the court determines that the respondent has engaged in or is engaging in a discriminatory practice, the commission or the court may enjoin the respondent from engaging in the unlawful practice and order appropriate relief, which may include temporary or permanent injunctions, equitable relief, and backpay limited to no more than two years from the date a minimally sufficient complaint was filed with the commission or the court. Interim earnings or amounts earnable with reasonable diligence by the individual discriminated against reduce the backpay otherwise allowable. In any action or proceeding under this chapter, the court may grant the prevailing party a reasonable attorney's fee as part of the cost. If the court finds that the complainant's allegation of a discriminatory practice is false and not made in good faith, the court shall order the complainant to pay court costs and reasonable attorney's fees incurred by the respondent in responding to the allegation."

Page 19, after line 3, insert:

- "2. "Complainant" means a person, including the commission, that files a complaint under this chapter.
3. "Conciliation agreement" means a written agreement resolving the issues in conciliation."

Page 19, line 4, replace "2." with "4."

Page 19, after line 4, insert:

- "5. "Discriminatory housing practice" means an act prohibited by section 14-02.9-02 or conduct that is an offense under section 14-02.9-04."

Page 19, line 5, replace "3." with "6."

Page 19, after line 11, insert:

- "7. "Family" includes a single individual."

Page 19, line 12, replace "4." with "8." and replace "building, structure, vacant land, or part thereof offered for" with "structure or part of a structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families or vacant land that is offered for sale or lease for the construction or location of a structure or part of a structure as previously described."

Page 19, remove lines 13 through 15

Page 19, line 16, replace "5." with "9."

Page 19, replace lines 22 through 31 with:

- "10. "To rent" includes to lease, sublease, or let, or to grant in any other manner, for a consideration, the right to occupy premises not owned by the occupant.

**14-02.9-02. Discriminatory housing practices prohibited.**

1. It is a discriminatory housing practice:

- a. For any person to refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to an individual because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance;
- b. For any person to discriminate against an individual in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with a sale or rental of a dwelling because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance;"

Page 20, remove lines 1 through 31

Page 21, remove lines 1 through 6

Page 21, line 7, replace "d." with "c."

Page 21, remove lines 13 through 30

Page 22, line 1, replace "g." with "d."

Page 22, line 10, replace "h." with "e."

Page 22, line 17, replace "i." with "f."

Page 22, line 22, replace "j." with "g."

Page 22, remove lines 27 and 28

Page 22, line 29, replace "3." with "2."

Page 23, remove lines 9 through 11

Page 23, line 12, replace "5." with "3."

Page 23, replace lines 16 through 31 with:

- "4. This chapter does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or a restriction relating to health or safety standards. This chapter does not affect a requirement of nondiscrimination in any other state or federal law.
5. a. The provisions of this chapter relating to familial status and age do not apply to housing that the secretary of housing and urban development determines is specifically designed and operated to assist elderly individuals under a federal program; the commission determines is specifically designed and operated to assist elderly individuals under a state program; is intended for, and solely occupied by, individuals sixty-two years of age or older; or is intended and operated for occupancy by at least one individual fifty-five years of age or older for

each unit as determined by commission rules. In determining whether housing qualifies as housing for elderly because it is intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit, the commission shall adopt rules that require at least the following factors:

- (1) That at least eighty percent of the units are occupied by at least one individual fifty-five years of age or older per unit; and
    - (2) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for individuals fifty-five years of age or older.
  - b. Housing may not be considered to be in violation of the requirements for housing for the elderly under this section by reason of:
    - (1) Individuals residing in the housing as of October 1, 1999, who do not meet the age requirements of this section, provided that new occupants of the housing meet the age requirements; or
    - (2) Unoccupied units, provided that the units are reserved for occupancy by individuals who meet the age requirements of this section.
6. This section does not apply to the sale or rental of a single-family house sold or rented by the owner if the owner does not own more than three single-family houses at any one time or own any interest in, nor is there owned or reserved on the person's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time. In addition, the house must be sold or rented without the use of the sales or rental facilities or services of a licensed real estate broker, agent, or realtor, or of a person in the business of selling or renting dwellings, or of an employee or agent of any such broker, agent, realtor, or person; or the publication, posting, or mailing of a notice, statement, or advertisement prohibited by this chapter. The exemption provided in this subsection applies only to one sale or rental in a twenty-four-month period, if the owner was not the most recent resident of the house at the time of the sale or rental. For the purposes of this subsection, a person is in the business of selling or renting dwellings if the person:
- a. Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest in a dwelling;
  - b. Within the preceding twelve months, has participated as agent, other than in the sale of the person's own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest in a dwelling; or
  - c. Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.
7. This section does not apply to the sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other, if the owner maintains and occupies one of the living quarters as the owner's residence.



8. This section does not prohibit discrimination against an individual because the individual has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.
9. Nothing in this chapter prevents a person from refusing to rent a dwelling to two unrelated individuals of opposite gender who are not married to each other."

Page 24, remove lines 1 through 31

Page 25, remove lines 1 through 30

Page 26, remove lines 1 through 9

Page 26, line 10, replace "**Unfair or discriminatory**" with "**Discriminatory**"

Page 26, line 12, replace "It is an unfair or discriminatory housing practice and prohibited:" with  
"A person may not"

Page 26, line 13, remove "a. For any person to" and remove the second "to"

Page 26, line 18, replace "b. For any person to" with:

"2. A person may not"

Page 26, line 24, replace "2." with "3."

Page 27, line 18, replace "3." with "4."

Page 27, line 21, replace "2" with "3"

Page 27, line 22, replace "4." with "5." and replace "2" with "3"

Page 27, line 24, replace "5." with "6."

Page 27, line 28, replace "6." with "7."

Page 28, replace lines 1 through 30 with:

**"14-02.9-04. Intimidation or interference - Penalty.**

1. A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force, intentionally intimidates or interferes with an individual:
  - a. Because of the individual's race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance and because the individual is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling

or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

- b. Because the individual is or has been or to intimidate the individual from participating, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in an activity, service, organization, or facility described by subdivision a; affording another individual opportunity or protection to so participate; or lawfully aiding or encouraging other individuals to participate, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in any activity, service, organization, or facility described in subdivision a.
2. It is a discriminatory practice to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of the individual having exercised or enjoyed, or on account of the individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.
3. An offense under subsection 1 is a class A misdemeanor.

**14-02.9-05. Reports and studies.** The commission shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The commission shall make studies relating to the nature and extent of discriminatory housing practices in this state.

**14-02.9-06. Cooperation with other entities.** The commission shall cooperate with and may provide technical and other assistance to federal, state, local, and other public or private entities that are designing or operating programs to prevent or eliminate discriminatory housing practices.

**14-02.9-07. Gifts and grants - Fair housing fund - Continuing appropriation.** The commission may accept grants from the federal government for administering this chapter. Grants received must be deposited to the credit of the fair housing fund in the state treasury. Moneys deposited to the credit of the fund are appropriated to the commission on a continuing basis for the purposes of administering this chapter.

**14-02.9-08. Complaint and answer.**

1. The commission shall investigate complaints of alleged discriminatory housing practices. An aggrieved person may file a complaint with the commission alleging the discriminatory housing practice. The commission may file a complaint. A complaint must be in writing and must contain such information and be in such form as prescribed by the commission. A complaint must be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later. A complaint may be amended at any time.
2. On the filing of a complaint, the commission shall give the aggrieved person notice that the complaint has been received, advise the aggrieved person of the time limits and choice of forums under this chapter, and not later than the tenth day after the date of filing of the complaint or the identification of an additional or substitute respondent under section 14-02.9-10, serve on each respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this chapter and a copy of the original complaint.

3. Not later than the tenth day after the date of receipt of the notice and copy of the complaint under subsection 2, a respondent may file an answer to the complaint. An answer must be in writing, under oath, and in the form prescribed by the commission.
4. An answer may be amended at any time. An answer does not inhibit the investigation of a complaint.

**14-02.9-09. Investigation.**

1. If the federal government has referred a complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the commission shall investigate the allegations set forth in the complaint.
2. The commission shall investigate all complaints and, except as provided by subsection 3, shall complete an investigation not later than the hundredth day after the date the complaint is filed or, if it is impracticable to complete the investigation within the hundred-day period, shall dispose of all administrative proceedings related to the investigation not later than the first anniversary after the date the complaint is filed.
3. If the commission is unable to complete an investigation within the time periods prescribed by subsection 2, the commission shall notify the complainant and the respondent in writing of the reasons for the delay.

**14-02.9-10. Additional or substitute respondent.** The commission may join a person not named in the complaint as an additional or substitute respondent if during the investigation the commission determines that the person is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based. In addition to the information required in the notice under subsection 2 of section 14-02.9-08, the commission shall include in a notice to a respondent joined under this section the reasons for the determination that the person is properly joined as a respondent.

**14-02.9-11. Temporary or preliminary relief.** The commission may authorize a claim for relief for temporary or preliminary relief pending the final disposition of a complaint if the commission concludes after the filing of the complaint that prompt judicial action is necessary to carry out the purposes of this chapter. On receipt of the commission's authorization, the attorney general shall promptly file the claim. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable statutes and the North Dakota Rules of Civil Procedure. The filing of a claim for relief under this section does not affect the initiation or continuation of administrative proceedings under section 14-02.9-19.

**14-02.9-12. Investigative report.** The commission shall prepare a final investigative report, including the names of and dates of contacts with witnesses, a summary of correspondence and other contacts with the aggrieved person and the respondent showing the dates of the correspondence and contacts, a summary description of other pertinent records, a summary of witness statements, and answers to interrogatories. A final report under this section may be amended if additional evidence is discovered.

**14-02.9-13. Reasonable cause determination.**

1. The commission shall determine from the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The commission shall make this determination not later than the hundredth day after the date a complaint is filed unless making the

determination is impracticable, or the commission approves a conciliation agreement relating to the complaint.

2. If making the determination within the period is impracticable, the commission shall give in writing to the complainant and the respondent the reasons for the delay. If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided by section 14-02.9-15, immediately issue a charge on behalf of the aggrieved person.

**14-02.9-14. Charge.**

1. A charge issued under section 14-02.9-13 must consist of a short and plain statement of the facts on which the commission finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, must be based on the final investigative report, and is not limited to the facts or grounds alleged in the complaint.
2. Within three days after issuing a charge, the commission shall send a copy of the charge with information about the election under section 14-02.9-18 to each respondent and each aggrieved person on whose behalf the complaint was filed.

**14-02.9-15. Land-use law.** If the commission determines that the matter involves the legality of a state or local zoning or other land-use law or ordinance, the commission may not issue a charge and shall immediately refer the matter to the attorney general for appropriate action.

**14-02.9-16. Dismissal.** If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice that is the subject of a complaint has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each dismissal.

**14-02.9-17. Pending civil trial.** The commission may not issue a charge alleging a discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

**14-02.9-18. Election of judicial determination.** A complainant, a respondent, or an aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted in the charge decided in a civil action as provided by section 14-02.9-24. The election must be made not later than the twentieth day after the date the person having the election receives service under subsection 2 of section 14-02.9-14 or, in the case of the commission, not later than the twentieth day after the date the charge is issued. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the charge relates.

**14-02.9-19. Administrative hearing.** If a timely election is not made under section 14-02.9-18, the commission shall provide for a hearing on the charge. Except as provided in this section, chapter 28-32 governs a hearing and an appeal of a hearing. A hearing under this section on an alleged discriminatory housing practice may not continue after the beginning of the trial of a claim for relief commenced by the aggrieved person under federal or state law seeking relief with respect to the discriminatory housing practice.

**14-02.9-20. Administrative penalties.**

1. If the commission determines at a hearing under section 14-02.9-19 that a respondent has engaged in or is about to engage in a discriminatory housing practice, the commission may order the appropriate relief,

including actual damages, reasonable attorney's fees, court costs, and other injunctive or equitable relief.

2. To vindicate the public's interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed:
  - a. Eleven thousand dollars if the respondent has been found by order of the commission or a court to have committed a prior discriminatory housing practice; or
  - b. Except as provided by subsection 3, twenty-seven thousand dollars if the respondent has been found by order of the commission or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charges and fifty-five thousand dollars if the respondent has been found by the commission or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of filing of the charge.
3. If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has previously been found to have committed acts constituting a discriminatory housing practice, the civil penalties in subdivision b of subsection 2 may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.
4. At the request of the commission, the attorney general shall sue to recover a civil penalty due under this section. Funds collected under this section must be paid to the state treasurer for deposit in the general fund.

**14-02.9-21. Effect of commission order.** A commission order under section 14-02.9-20 does not affect a contract, sale, encumbrance, or lease that is consummated before the commission issues the order and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under this chapter.

**14-02.9-22. Licensed or regulated business.** If the commission issues an order with respect to a discriminatory housing practice that occurs in the course of a business subject to a licensing or regulation by a governmental agency, the commission, not later than the thirtieth day after the date the order is issued, shall send copies of the findings and the order to the governmental agency and recommend to the governmental agency appropriate disciplinary action.

**14-02.9-23. Order in preceding five years.** If the commission issues an order against a respondent against whom another order was issued within the preceding five years under section 14-02.5-33, the commission shall send a copy of each order to the attorney general.

**14-02.9-24. Attorney general action for enforcement.** If a timely election is made under section 14-02.9-18, the commission shall authorize and the attorney general shall file not later than the thirtieth day after the date of the election a claim for relief seeking relief on behalf of the aggrieved person in a district court. Venue for an action is in the county in which the alleged discriminatory housing practice occurred or is about to occur. An aggrieved person may intervene in the action. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under sections 14-02.9-27 through 14-02.9-32. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with the discovery orders entered by the court.

#### **14-02.9-25. Pattern or practice case - Penalties.**

1. On the request of the commission, the attorney general may file a claim for relief in district court for appropriate relief if the commission has reasonable cause to believe that a person is engaged in a pattern or practice of resistance to the full enjoyment of a right granted under this chapter or a person has been denied a right granted by this chapter and that denial raises an issue of general public importance.
2. In an action under this section, the court may award preventative relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as necessary to assure the full enjoyment of the rights granted by this chapter; award other appropriate relief, including monetary damages, reasonable attorney's fees, and court costs; and to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed fifty thousand dollars for a first violation and one hundred thousand dollars for a second or subsequent violation.
3. A person may intervene in an action under this section if the person is a person aggrieved by the discriminatory housing practice or a party to a conciliation agreement concerning the discriminatory housing practice.

**14-02.9-26. Subpoena enforcement.** The attorney general, on behalf of the commission or another party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in district court.

#### **14-02.9-27. Civil action.**

1. An aggrieved person may file a civil action in district court not later than the second year after the date of the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.
2. The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge under this chapter based on the discriminatory housing practice. This subsection does not apply to actions arising from the breach of a conciliation agreement.
3. An aggrieved person may file a claim for relief whether a complaint has been filed under section 14-02.9-08 and without regard to the status of any complaint filed under that section.
4. If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file a claim for relief with respect to the alleged discriminatory housing practice that forms the basis of the complaint except to enforce the terms of the agreement.
5. An aggrieved person may not file a claim for relief with respect to an alleged discriminatory housing practice that forms the basis of a charge issued by the commission if the commission has begun a hearing on the record under this chapter with respect to the charge.

**14-02.9-28. Court-appointed attorney.** On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory housing practice is alleged, the court may appoint an attorney for the person.

**14-02.9-29. Effect of relief granted.** Relief granted under sections 14-02.9-27 through 14-02.9-32 does not affect a contract, sale, encumbrance, or lease that is consummated before the granting of the relief and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint or civil action under this chapter.

**14-02.9-30. Intervention by attorney general.** On request of the commission, the attorney general may intervene in an action under sections 14-02.9-27 through 14-02.9-32 if the commission certifies that the case is of general public importance. The attorney general may obtain the same relief as is available to the attorney general under subsection 2 of section 14-02.5-37.

**14-02.9-31. Prevailing party.** A court in an action brought under this chapter or the commission in an administrative hearing under section 14-02.9-19 may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party."

Page 29, remove lines 1 through 31

Page 30, remove lines 1 through 30

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 30

Page 34, remove lines 1 through 12

Page 34, replace "**14-02.9-13**" with "**14-02.9-32**"

Page 34, line 14, remove ", an order pursuant to section 14-02.9-04," and after "or" insert "any"

Page 34, replace lines 21 through 30 with:

- "1. "Public accommodation" means every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity. "Public accommodation" does not include a bona fide private club or other place, establishment, or facility which is by its nature distinctly private; provided, however, the distinctly private place, establishment, or facility is a "public accommodation" during the period it caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity."

Page 35, remove lines 1 and 2

Page 35, line 7, remove "1." and replace "and prohibited for a person, directly or indirectly, to" with "for a person engaged in the provision of public accommodations to fail to provide to an individual access to the use of any benefit from the services and facilities of the public accommodations; or to give adverse, unlawful, or unequal treatment to an individual with respect to the availability to the services and facilities, the price or other consideration therefor, the scope and equality thereof, or the terms and conditions under which the same are made available because of the individual's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance."

Page 35, remove lines 8 through 30

Page 36, remove lines 30 and 31

Page 37, remove lines 1 through 12

Page 37, line 13, replace "**14-02.10-08**" with "**14-02.10-07**"

Page 37, line 14, replace "sixty" with "one hundred eighty"

Page 37, line 16, replace "**14-02.10-09**" with "**14-02.10-08**"

Page 37, line 22, after the period insert "Backpay ordered under this section is limited to no more than two years from the date a minimally sufficient complaint was filed with the commission or the court. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against reduce the backpay otherwise allowable."

Page 37, remove lines 23 through 31

Page 38, remove lines 1 through 31

Page 39, remove lines 1 through 9

Renumber accordingly