

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2306

Introduced by

Senators Mathern, Thane, Bercier

Representatives Gulleason, Maragos, Winrich

1 A BILL for an Act to provide for a state policy against discrimination; to create and enact
2 chapters 14-02.7, 14-02.8, 14-02.9, and 14-02.10 of the North Dakota Century Code, relating to
3 human rights and the establishment of a commission on human rights; to repeal chapters
4 14-02.4 and 14-02.5 of the North Dakota Century Code, relating to human rights and housing
5 discrimination; and to provide a penalty.

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

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

15 **SECTION 2.** Chapter 14-02.7 of the North Dakota Century Code is created and
16 enacted as follows:

17 **14-02.7-01. Definitions.** As used in this chapter and chapters 14-02.8, 14-02.9,
18 14-02.10, and 14-02.11, unless the context otherwise requires:

- 19 1. "Age" insofar as it refers to any prohibited unfair employment or other practice
20 means at least forty years of age.
- 21 2. "Commission" means the North Dakota commission on human rights.
- 22 3. "Commissioner" means a member of the commission.
- 23 4. "Court" means the district court in the judicial district in which the alleged
24 discriminatory practice occurred.

- 1 5. "Director" means the director of the division.
- 2 6. "Disability" means a physical impairment that substantially limits one or more major
- 3 life activities, a record of the impairment, or being regarded as having the
- 4 impairment.
- 5 7. "Discriminatory practice" means an act or attempted act which because of race,
- 6 color, religion, sex, national origin, age, physical or mental disability, status with
- 7 regard to marriage or public assistance, or participation in lawful activity off the
- 8 employer's premises during nonworking hours results in the unequal treatment or
- 9 separation or segregation of any individual, or denies, prevents, limits, or otherwise
- 10 adversely affects, or if accomplished would deny, prevent, limit, or otherwise
- 11 adversely affect, the benefit of enjoyment by any individual of employment, labor
- 12 union membership, public accommodations, public services, or credit transactions.
- 13 The term "discriminate" includes segregate or separate and for purposes of
- 14 discrimination based on sex, includes sexual harassment. Sexual harassment
- 15 includes unwelcome sexual advances, requests for sexual favors, sexually
- 16 motivated physical conduct, or other verbal or physical conduct or communication
- 17 of a sexual nature when:
- 18 a. Submission to that conduct or communication is made a term or condition,
- 19 either explicitly or implicitly, of obtaining employment, public accommodations
- 20 or public services, or education;
- 21 b. Submission to or rejection of that conduct or communication by an individual
- 22 is used as a factor in decisions affecting that individual's employment, public
- 23 accommodations or public services, education, or housing; or
- 24 c. That conduct or communication has the purpose or effect of substantially
- 25 interfering with an individual's employment, public accommodations, public
- 26 services, or educational environment; and in the case of employment, the
- 27 employer is responsible for its acts and those of its supervisory employees if it
- 28 knows or should know of the existence of the harassment and fails to take
- 29 timely and appropriate action.
- 30 8. "Division" means the North Dakota division of human rights.

- 1 9. "National origin" means the place of birth of an individual or any of the individual's
2 lineal ancestors.
- 3 10. "Otherwise qualified person" means an individual who is capable of performing the
4 essential functions of the particular employment in question.
- 5 11. "Person" means an individual, partnership, association, corporation, limited liability
6 company, unincorporated organization, mutual company, joint stock company,
7 trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor
8 organization, public body, public corporation, and the state and a political
9 subdivision and agency thereof.
- 10 12. "Reasonable accommodations" means accommodations by an employer that do
11 not:
12 a. Unduly disrupt or interfere with the employer's normal operations;
13 b. Threaten the health or safety of the individual with a disability or others;
14 c. Contradict a business necessity of the employer; or
15 d. Impose undue hardship on the employer, based on the size of the employer's
16 business, the type of business, the financial resources of the employer, and
17 the estimated cost and extent of the accommodation.
- 18 13. "Respondent" means any person, agency, organization, or other entity against
19 whom a charge is filed pursuant to chapters 14-02.8, 14-02.9, 14-02.10, and
20 14-02.11.
- 21 14. "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or
22 childbirth.
- 23 15. "Status with regard to public assistance" means the condition of being a recipient
24 of federal, state, or local assistance, including medical assistance, or of being a
25 tenant receiving federal, state, or local subsidies, including rental assistance or
26 rent supplements.

27 **14-02.7-02. North Dakota human rights division - Director.** The division is created
28 within the department of labor. The labor commissioner shall appoint the director of the
29 division. In appointing the director, the labor commissioner shall give good-faith consideration
30 to the recommendations of the commission before making the appointment. The director shall

1 appoint those investigators and other personnel as may be necessary to carry out the functions
2 and duties of the division.

3 **14-02.7-03. Commission on human rights - Membership.** The North Dakota
4 commission on human rights is created within the division. The commission consists of seven
5 members appointed by the governor, with the consent of the senate, for terms of four years.
6 However, of the first members appointed, two must be appointed for terms of two years and
7 two must be appointed for terms of three years. In making the first two appointments to the
8 commission, the governor shall appoint one member to represent the business community and
9 one member to represent state or local government entities. The governor shall make all
10 subsequent appointments in such a manner that there is at all times one member of the
11 commission representing the business community, one member of the commission
12 representing state or local government entities, and five members of the commission from the
13 community at large. The membership of the commission must at all times be composed of at
14 least four members who are members of groups of people who have been or who might be
15 discriminated against because of race, color, religion, sex, national origin, age, physical or
16 mental disability, or status with respect to marriage or public assistance. Appointments must
17 be made to provide geographical area representation insofar as may be practicable, and no
18 more than four members may belong to the same political party. Vacancies must be filled by
19 the governor by appointment, with the consent of the senate, and the term of a commissioner
20 appointed must be for the unexpired part of the term for which the commissioner is appointed.
21 Any commissioner may be removed from office by the governor for misconduct, incompetence,
22 or neglect of duty. Members of the commission who are not state employees are entitled to be
23 compensated at a rate of sixty-two dollars and fifty cents per day and entitled to mileage and
24 expenses as provided by law for state officers and employees. A state employee who is a
25 member of the commission must receive that employee's regular salary and is entitled to
26 mileage and expenses, to paid by the employing agency.

27 **14-02.7-04. Powers and duties of commission.** The commission may:

- 28 1. Adopt rules that are consistent with and for the implementation of chapters
29 14-02.8, 14-02.9, 14-0.10, and 14-02.11.
- 30 2. Receive, investigate, and pass upon charges alleging unfair or discriminatory
31 practices in violation of chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11.

- 1 3. Investigate and study the existence, character, causes, and extent of unfair or
2 discriminatory practices as defined in chapters 14-02.8, 14-02.9, 14-02.10, and
3 14-02.11 and formulate plans for the elimination of discriminatory practices by
4 educational or other means.
- 5 4. Hold hearings upon any complaint issued against a respondent pursuant to section
6 14-02.7-06.
 - 7 a. The hearings may be held by the commission itself, by any commissioner, or
8 by any administrative law judge appointed by the commission, subject to
9 appropriations for administrative law judges made to the office of
10 administrative hearings. If no administrative law judge is made available
11 within the time limitations set forth in subsection 12 of section 14-02.7-06, the
12 governor shall appoint an administrative law judge at the request of the
13 commission, and the administrative law judge must be paid out of moneys
14 appropriated to the division.
 - 15 b. No person may be excused from attending and testifying or from producing
16 records, correspondence, documents, or other evidence in obedience to a
17 subpoena in any matter on the ground that the evidence or the testimony
18 required of that person may tend to incriminate the person or subject the
19 person to any penalty or forfeiture. However, no testimony or other
20 information compelled under order from the commission, or other information
21 directly or indirectly derived from the testimony or other information, may be
22 used against the witness in any criminal case, except a prosecution and
23 punishment for perjury or false statement committed in so testifying.
- 24 5. Issue publications and reports of investigations and research as in the
25 commission's judgment will tend to promote goodwill among the various racial,
26 religious, age, and ethnic groups of the state and which will tend to minimize or
27 eliminate discriminatory or unfair practices as specified by chapters 14-02.8,
28 14-02.9, 14-02.10, and 14-02.11.
- 29 6. Prepare and transmit annually a report accounting to the governor for the efficient
30 discharge of all responsibilities assigned by law or directive to the commission.

7. Recommend policies to the governor and to submit recommendations to persons, agencies, organizations, and other entities in the private sector to effectuate those policies.
8. Make recommendations to the legislative assembly for legislative action concerning discrimination as it may determine necessary and desirable.
9. Cooperate within the limits of any appropriations made for its operation, with other agencies or organizations whose purposes are consistent with those of chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11, in the planning and conducting of educational programs designed to eliminate racial, religious, cultural, age, and intergroup tensions.
10. Intervene in racial, religious, cultural, age, and intergroup tensions or conflicts for the purpose of informal mediation using alternative dispute resolution techniques. The intervention may be made in cooperation with other agencies or organizations whose purposes are consistent with chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11.

14-02.7-05. Limitations on acts of commission.

1. Notwithstanding any other provision of law, a person may not be required to alter, modify, or purchase any building, structure, or equipment or incur any additional expense that would not otherwise be incurred to comply with chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11.
2. In exercising the powers and performing the duties and functions under chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11, the commission, the division, and the director shall presume that the conduct of any respondent is not unfair or discriminatory until proven otherwise.
3. Whether by rule or other action or whether as a remedy for violation of any provision of chapter 14-02.8, 14-02.9, 14-02.10, or 14-02.11, or otherwise, the commission may not prescribe or require the implementation of a quota system.

14-02.7-06. Charge - Complaint - Hearing - Procedure - Exhaustion of administrative remedies.

1. Any individual claiming to be aggrieved by a discriminatory or unfair practice as defined by chapter 14-02.8, 14-02.9, 14-02.10, or 14-02.11 may make, sign, and

1 file with the commission a written charge that states the name and address of the
2 respondent alleged to have committed the discriminatory or unfair practice and
3 which sets forth the particulars and contains any other information as may be
4 required by the commission. The commission, a commissioner, or the attorney
5 general may in like manner make, sign, and file the charge. Before any other
6 action by the commission, the respondent must be notified of the charges.

- 7 2. After the filing of a charge, the director, with the assistance of the staff, shall make
8 a prompt investigation of the charge. If the charge alleges an unfair employment
9 practice as defined in chapter 14-02.8, 14-02.9, 14-02.10, or 14-02.11, the director
10 may subpoena witnesses and compel the testimony of witnesses and the
11 production of books, papers, and records, if the testimony, books, papers, and
12 records sought are limited to matters directly related to the charge. Any subpoena
13 issued pursuant to this subsection may be issued only if the person to be
14 subpoenaed has refused or failed, after a request from the director, to provide to
15 the director the information sought by the subpoena.

- 16 3. The director shall determine as promptly as possible whether probable cause
17 exists for crediting the allegations of the charge and shall follow one of the
18 following courses of action:

- 19 a. If the director determines that probable cause does not exist, the director shall
20 dismiss the charge and shall notify the individual filing the charge and the
21 respondent of the dismissal. In addition, in the notice the director shall advise
22 both parties:

- 23 (1) That the charging party has the right to file an appeal of the dismissal
24 with the commission within ten days of the date of mailing of the
25 notification of the dismissal;
26 (2) That if the charging party wishes to file a civil action in a district court in
27 this state, which action is based on the alleged discriminatory or unfair
28 practice that was the subject of the charge filed with the commission,
29 the charging party must do so within ninety days of the date of mailing
30 of the notice specified in this paragraph if the charging party does not
31 file an appeal with the commission pursuant to paragraph 1 or within

ninety days of the date of mailing of notice that the commission has dismissed the appeal specified in paragraph 1; and

(3) That, if the charging party does not file an action within the time limits specified in paragraph 2, the action will be barred and no district court will have jurisdiction to hear the action.

b. If the director determines that probable cause exists, the respondent must be served with written notice that states with specificity the legal authority and jurisdiction of the commission and the matters of fact and law asserted and the director shall order the charging party and the respondent to participate in compulsory mediation. Immediately after the notice has been given, the director shall attempt to eliminate the discriminatory or unfair practices by conference, conciliation, and persuasion and by means of the compulsory mediation required by this section.

4. A complaint received by the commission under this chapter is an open record. Information obtained during any investigation conducted under this chapter is exempt from section 44-04-18 before the institution of any judicial proceedings or administrative hearing relating to the complaint under this chapter or before the administrative closure of a complaint by the commission. The commission may disclose to the complainant or the respondent information obtained during an investigation if determined necessary by the commission for securing an appropriate resolution of a complaint. The commission may disclose to federal officials information obtained under this chapter if necessary for the processing of complaints under an agreement with the agency. The commission may not disclose anything said or done as part of the informal negotiation or conciliation efforts relating to a complaint under this chapter except to the federal equal employment opportunity commission as needed for proper processing and closure.
5. When the director is satisfied that further efforts to settle the matter by conference, conciliation, and persuasion will be futile, the director shall report that finding to the commission. If the commission determines that the circumstances warrant, the commission shall issue and cause to be served a written notice and complaint requiring the respondent to answer the charges at a formal hearing before the

commission, a commissioner, or an administrative law judge. The hearing must be commenced within one hundred twenty days after the service of the written notice and complaint. The notice and complaint must state the time, place, and nature of the hearing, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted.

6. In accordance with rules adopted by the commission, discovery procedures may be used by the commission and the parties under the same circumstances and in the same manner as is provided by the North Dakota Rules of Civil Procedure after the notice of hearing under subsection 5 has been given.

7. The respondent may file a written answer before the date of the hearing. When a respondent has failed to answer at a hearing, the commission, a commissioner, or the administrative law judge, as the case may be, may enter the respondent's default. For good cause shown, the entry of default may be set aside within ten days after the date of the entry. If the respondent is in default, testimony may be heard on behalf of the complainant. After hearing the testimony, the commission, a commissioner, or the administrative law judge, as the case may be, may enter the order as the evidence warrants.

8. The commission or the complainant may reasonably and fairly amend any complaint and the respondent may amend the respondent's answer.

9. The decision reached as a result of the hearing must include a statement of the reasons why the findings of fact lead to the conclusions. The case in support of the complaint must be presented at the hearing by one of the commissioner's attorneys or agents, but no one presenting the case in support of the complaint may counsel or advise the commission, a commissioner, or the administrative law judge who hears the case. The director and the staff may not participate in the hearing except as a witness, nor may the director and the staff participate in the deliberations of, or counsel or advise, the commission, a commissioner, or the administrative law judge in the case. At the hearing, the person presenting the case in support of the complaint has the burden of showing that the respondent has engaged or is engaging in an unfair or discriminatory practice, and the

respondent's conduct must be presumed not to be unfair or discriminatory until proven otherwise.

10. If, upon all the evidence at a hearing, there is a statement of findings and conclusions together with a statement of reasons for the conclusions showing that a respondent has engaged in or is engaging in any discriminatory or unfair practice, the commission shall issue and cause to be served upon the respondent an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take any action as it may order in accordance with chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11.

11. If, upon all of the evidence at a hearing, there is a statement of findings and conclusions, together with a statement of reasons for the conclusions, showing that a respondent has not engaged in any discriminatory or unfair practice, the commission shall issue and cause to be served an order dismissing the complaint on the individual alleging the discriminatory or unfair practice. 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.

12. If written notice that a formal hearing will be held is not served within two hundred seventy days after the filing of the charge, if the complainant has requested and received a notice of right to sue pursuant to subsection 16 of this section, or if the hearing is not commenced within the one hundred twenty-day period prescribed by subsection 5 of this section, the jurisdiction of the commission over the complaint ceases, and the complainant may seek the relief authorized under this chapter and chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11 against the respondent by filing a civil action in the district court for the district in which the alleged discriminatory or unfair practice occurred. The action must be filed within ninety days of the date upon which the jurisdiction of the commission ceased, and if not so filed, the action barred and the district court has no jurisdiction to hear the action. If any party requests the extension of any time period prescribed by this subsection, the extension may be granted for good cause by the commission, a commissioner, or

the administrative law judge, as the case may be, but the total period of all extensions to either the respondent or the complainant may not exceed ninety days each, and, in the case of multiple parties, the total period of all extensions may not exceed one hundred eighty days.

13. The division shall maintain a central file of decisions rendered under chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11, and the file is open to the public for inspection during regular business hours.

14. Any member of the commission and any person participating in good faith in the making of a complaint or a report or in any investigative or administrative proceeding authorized by chapter 14-02.8, 14-02.9, 14-02.10, or 14-02.11 is immune from liability in any civil action brought against the persons for acts occurring while acting in the person's capacity as a commission member or participant, respectively, if the person was acting in good faith within the scope of his respective capacity, made a reasonable effort to obtain the facts of the matter as to which the individual acted, and acted in the reasonable belief that the action taken by the person was warranted by the facts.

15. No individual may file a civil action in a district court in this state based on an alleged discriminatory or unfair practice prohibited in chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11 without first exhausting the proceedings and remedies available to that individual under this chapter unless the individual shows, in an action filed in the appropriate district court, by clear and convincing evidence the individual's ill health is of such a nature that pursuing administrative remedies would not provide timely and reasonable relief and would cause irreparable harm.

16. The charging party in any action may request a written notice of right to sue at any time before service of a notice and complaint pursuant to subsection 5. Any request for notice of right to sue must be in writing. A claimant's request for notice of right to sue made after the expiration of one hundred eighty days following the filing of the charge must be granted promptly. If a claimant makes a request for a notice of right to sue before the expiration of one hundred eighty days following the filing of the charge, the request must be granted upon a determination by the commission, a commissioner, or the administrative law judge that the investigation

of the charge will not be completed within one hundred eighty days following the filing of the charge. A notice of right to sue constitutes final agency action and exhaustion of administrative remedies and proceedings pursuant to this chapter.

14-02.7-07. Judicial review and enforcement.

1. Any complainant or respondent claiming to be aggrieved by a final order of the commission, including a refusal to issue an order, may obtain judicial review of the order, and the commission may obtain an order of court for enforcement in a proceeding as provided in this section.
2. The proceeding must be brought in the district court.
3. The proceeding must be initiated by the filing of a petition in the court and the service of a copy of the petition upon the commission and upon parties who appeared before the commission, and thereafter the proceeding must be processed under the North Dakota Rule of Civil Procedure. The district court has jurisdiction of the proceeding and the questions determined therein and has power to grant the temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in the transcript an order enforcing, modifying, and enforcing as so modified or settings aside the order of the commission in whole or in part.
4. An objection that has not been urged before the commission may not be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances.
5. Any party may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereof if the party shows reasonable grounds for the failure to adduce the evidence before the commission.
6. The findings of the commission as to the facts must be conclusive if supported by substantial evidence.
7. The jurisdiction of the court is exclusive and the court's judgment and order are final, subject to review as provided by law and the North Dakota Rules of Civil Procedure.

8. The commission's copy of the testimony must be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the commission's orders.
9. The commission may appear in court by its own attorney.
10. Upon application by a person alleging a discriminatory housing practice under chapter 14-02.9 or a person against whom the practice is alleged, the court may appoint an attorney for the person or may authorize the commencement or continuation of a civil action without the payment of fees, costs, or security, if in the opinion of the court, the person is financially unable to bear the costs of the action.
11. The commission or court upon motion may grant a stay of the commission order pending appeal.
12. Appeals filed under this section must be heard expeditiously and determined upon the transcript filed, without requirement for printing. Hearings in the district court under this chapter take precedence over all other matters, except matters of the same character.
13. If no proceeding to obtain judicial review is instituted by a complainant or respondent within forty-five days from the service of an order of the commission pursuant to section 14-02.7-06, the commission may obtain a decree of the district court for the enforcement of the order upon showing that such respondent is subject to the jurisdiction of the commission and resides or transacts business within the county in which the petition for enforcement is brought.

SECTION 3. Chapter 14-02.8 of the North Dakota Century Code is created and enacted as follows:

14-02.8-01. Definitions. As used in this chapter, unless the context otherwise requires:

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.

14-02.8-02. Discriminatory employment practices.

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,

1 religion, sex, national origin, age, physical or mental disability, or status with
2 respect to marriage or public assistance, or who participate in lawful activity
3 off the employer's premises during nonworking hours which activity is not in
4 direct conflict with the essential business-related interests of the employer,
5 are unwelcome, objectionable, not acceptable, or not solicited.

6 f. An employer to fail or refuse to hire and employ an individual for a position,
7 for an employer to discharge an individual from a position, or for an
8 employment agency to fail or refuse to refer an individual for employment in a
9 position, or for a labor organization to fail or refuse to refer an individual for
10 employment in a position if the occupancy of the position, or access to the
11 premises upon which the duties of the position are performed, is subject to a
12 requirement imposed in the interest of the national security of the United
13 States under a security program administered under a statute of the United
14 States or an executive order of the president and the individual has not
15 fulfilled or has ceased to fulfill that requirement.

16 2. Notwithstanding subdivisions a, b, and c of subsection 1, it is not a discriminatory
17 practice for an employer to apply different standards of compensation, or different
18 terms, conditions, or privileges of employment pursuant to a bona fide seniority or
19 merit system, or a system which measures earnings by quantity or quality of
20 production or to employees who work in different locations provided that the
21 differences are not the result of an intention to discriminate because of race, color,
22 religion, sex, national origin, age, physical or mental disability, status with respect
23 to marriage or public assistance, or participation in lawful activity off the employer's
24 premises during nonworking hours; or for an employer to give and to act upon the
25 results of any professionally developed ability test; provided, that the test, its
26 administration, or action upon the results is not designed, intended, or used to
27 discriminate because of race, color, religion, sex, national origin, age, physical or
28 mental disability, status with respect to marriage or public assistance, or
29 participation in a lawful activity off the employer's premises during nonworking
30 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 a 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.

14-02.8-03. Unlawful prohibition of legal activities as a condition of employment.

1. It is discriminatory employment practice for an employer to terminate the employment of any employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking hours unless the restriction:
 - a. Relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer; or
 - b. Is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest.
2. Notwithstanding any other provision of this chapter:

- a. The sole remedy for any individual claiming to be aggrieved by a discriminatory employment practice as defined in this section is to bring a civil suit for damages in any district court of competent jurisdiction and sue for all wages and benefits which would have been due the individual up to and including the date of the judgment had the discriminatory employment practice not occurred. This section does not relieve that individual from the obligation to mitigate the individual's damages.
- b. The court shall award the prevailing party in the action court costs and reasonable attorney fees.

14-02.8-04. Time limits of filing of charges. Any charge alleging a violation of this chapter must be filed with the commission pursuant to section 14-02.7-06 within three hundred days after the alleged discriminatory employment practice occurred, and if not so filed, the action is barred.

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.

SECTION 4. Chapter 14-02.9 of the North Dakota Century Code is created and enacted as follows:

14-02.9-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Aggrieved individual" means any individual who claims to have been injured by a discriminatory housing practice or believes that the individual will be injured by a discriminatory housing practice that is about to occur.
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.
4. "Discriminate" includes both segregate and separate.
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.
6. "Familial status" means one or more individuals, who have not attained eighteen years of age, being domiciled with a parent or another person having legal custody of or parental responsibilities for the individual or individuals or the designee of the parent or other persons having custody or parental responsibilities with the written permission of the parent or other person. Familial status applies to any individual who is pregnant or is in the process of securing legal custody of parental responsibilities of any individual who has not attained eighteen years of age.
7. "Family" includes a single individual.
8. "Housing" means any 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.
9. "Person" does not include any private club not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purposes unless the club has the purpose of promoting discrimination in the matter of housing against any person because of race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance.
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 1. It is a discriminatory housing practice:
 - 2 a. For any person to refuse to sell or rent, after the making of a bona fide offer,
3 refuse to negotiate for the sale or rental of, or in any other manner make
4 unavailable or deny a dwelling to an individual because of race, color,
5 religion, sex, disability, age, familial status, national origin, or status with
6 respect to marriage or public assistance;
 - 7 b. For any person to discriminate against an individual in the terms, conditions,
8 or privileges of sale or rental of a dwelling or in providing services or facilities
9 in connection with a sale or rental of a dwelling because of race, color,
10 religion, sex, disability, age, familial status, national origin, or status with
11 respect to marriage or public assistance;
 - 12 c. For any person to make, print, or publish or cause to be made, printed, or
13 published any notice or advertisement relating to the sale, transfer, rental, or
14 lease of any housing which indicates any preference, limitation, specification,
15 or discrimination based on race, color, sex, national origin, age, familial
16 status, physical or mental disability, or status with regard to marriage or public
17 assistance;
 - 18 d. For any person whose business includes residential real estate-related
19 transactions, which transactions involve the making or purchasing of loans
20 secured by residential real estate or the revisions of other financial
21 assistance for purchasing, construction, improving, repairing, or maintaining a
22 dwelling or the selling, brokering, or appraising of residential real property, to
23 discriminate against any individual in making available the transaction or in
24 fixing the terms or conditions of the transaction because of race, color,
25 religion, sex, national origin, age, familial status, physical or mental disability,
26 or status with regard to marriage or public assistance;
 - 27 e. For any person to deny an individual access to or membership or participation
28 in any multiple-listing service, real estate broker's organization or other
29 service, organization, or facility related to the business of selling or renting
30 dwellings or to discriminate against the individual in the terms or conditions of
31 the access, membership, or participation on account of race, color, religion,

- 1 sex, national origin, age, familial status, physical or mental disability, or status
2 with regard to marriage or public assistance;
- 3 f. For any person, for profit, to induce or attempt to induce any person to sell or
4 rent any dwelling by representations regarding the entry or prospective entry
5 into the neighborhood of an individual of a particular race, color, religion, sex,
6 national origin, age, familial status, physical or mental disability, or status with
7 regard to marriage or public assistance; or
- 8 g. For any person to represent to any other person that any dwelling is not
9 available for inspection, sale, or rental, when the dwelling is in fact available,
10 for the purpose of discriminating against an individual on the basis of race,
11 color, religion, sex, national origin, age, familial status, physical or mental
12 disability, or status with regard to marriage or public assistance.
- 13 2. This chapter does not bar any religious or denominational institution or
14 organization that is operated or supervised or controlled by or is operated in
15 connection with a religious or denominational organization from limiting the sale,
16 rental, or occupancy of dwellings which it owns or operates for other than a
17 commercial purpose to persons of the same religion, or from giving preference to
18 those individuals, unless membership in the religion is restricted on account of
19 race, color, or national origin, nor does anything in this chapter prohibit a private
20 club not in fact open to the public which, as an incident to its primary purpose or
21 purposes provides lodgings that it owns or operates for other than a commercial
22 purpose, from limiting the rental or occupancy of the lodgings to its members or
23 from giving preference to its members.
- 24 3. This chapter does not prohibit a person engaged in the business of furnishing
25 appraisals of real property from taking into consideration factors other than race,
26 color, religion, sex, national origin, age, familial status, physical or mental disability,
27 or status with regard to marriage or public assistance.
- 28 4. This chapter does not affect a reasonable local or state restriction on the maximum
29 number of occupants permitted to occupy a dwelling or a restriction relating to
30 health or safety standards. This chapter does not affect a requirement of
31 nondiscrimination in any other state or federal law.

- 1 5. a. The provisions of this chapter relating to familial status and age do not apply
2 to housing that the secretary of housing and urban development determines
3 is specifically designed and operated to assist elderly individuals under a
4 federal program; the commission determines is specifically designed and
5 operated to assist elderly individuals under a state program; is intended for,
6 and solely occupied by, individuals sixty-two years of age or older; or is
7 intended and operated for occupancy by at least one individual fifty-five years
8 of age or older for each unit as determined by commission rules. In
9 determining whether housing qualifies as housing for elderly because it is
10 intended and operated for occupancy by at least one individual fifty-five years
11 of age or older for each unit, the commission shall adopt rules that require at
12 least the following factors:
- 13 (1) That at least eighty percent of the units are occupied by at least one
14 individual fifty-five years of age or older per unit; and
- 15 (2) The publication of, and adherence to, policies and procedures which
16 demonstrate an intent by the owner or manager to provide housing for
17 individuals fifty-five years of age or older.
- 18 b. Housing may not be considered to be in violation of the requirements for
19 housing for the elderly under this section by reason of:
- 20 (1) Individuals residing in the housing as of October 1, 1999, who do not
21 meet the age requirements of this section, provided that new occupants
22 of the housing meet the age requirements; or
- 23 (2) Unoccupied units, provided that the units are reserved for occupancy
24 by individuals who meet the age requirements of this section.
- 25 6. This section does not apply to the sale or rental of a single-family house sold or
26 rented by the owner if the owner does not own more than three single-family
27 houses at any one time or own any interest in, nor is there owned or reserved on
28 the person's behalf, under any express or voluntary agreement, title to or any right
29 to any part of the proceeds from the sale or rental of more than three single-family
30 houses at any one time. In addition, the house must be sold or rented without the
31 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.

14-02.9-03. Discriminatory housing practices against individuals with disabilities prohibited.

1. A person may not discriminate in the sale or rental of, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter, or of any individual who will reside in the dwelling after it is sold, rented, or made available, or of any person associated with the buyer or renter;

- 1 2. A person may not discriminate against another individual in the terms, conditions,
2 or privileges of sale or rental of a dwelling or in the provision of services or facilities
3 in connection with the dwelling because of a disability of that individual, of any
4 person residing in or intending to reside in that dwelling after it is so sold, rented,
5 or made available, or of any person associated with that person.
- 6 3. For purposes of this section, "discrimination" includes:
 - 7 a. A refusal to permit, at the expense of the individual having a disability, a
8 reasonable modification of existing premises occupied or to be occupied by
9 the individual if the modification may be necessary to afford the individual full
10 enjoyment of the premises. However, in the case of a rental, the landlord
11 may condition, when it is reasonable to do so, permission for a modification
12 on the renter agreeing to restore the interior of the premises to the condition
13 that existed before the modification, reasonable wear and tear excepted;
 - 14 b. A refusal to make a reasonable accommodation in rules, policies, practices,
15 or services if the accommodation may be necessary to afford the individual
16 equal opportunity to use and enjoy a dwelling; or
 - 17 c. The failure to design and construct a covered multifamily dwelling in a manner
18 that allows the public use and common use portions of the dwellings to be
19 readily accessible to and usable by individuals having a disability; that allows
20 all doors designed to allow passage into and within all premises within the
21 dwellings to be sufficiently wide to allow passage by an individual who has
22 disability and who is in a wheelchair; and that provides all premises within the
23 dwellings contain the following features of adaptive design:
 - 24 (1) An accessible route into and throughout the dwelling;
 - 25 (2) Light switches, electrical outlets, thermostats, and other environmental
26 controls in accessible locations;
 - 27 (3) Reinforcements in bathroom walls to allow later installation of grab
28 bars; and
 - 29 (4) Kitchens and bathrooms that are usable and have sufficient space in
30 which an individual in a wheelchair can maneuver.

- 1 4. Compliance with the appropriate requirements of the American national standard
- 2 for buildings and facilities providing accessibility and usability for individuals having
- 3 physical disabilities, commonly cited as "ANSI A 117.1 (1986)", satisfies the
- 4 requirements of adaptive design in subdivision c of subsection 3.
- 5 5. The adaptive design requirements of subdivision c of subsection 3 do not apply to
- 6 a building the first occupancy of which occurred before March 14, 1992.
- 7 6. This section does not require a dwelling to be made available to an individual
- 8 whose tenancy would constitute a direct threat to the health or safety of other
- 9 individuals whose tenancy would result in substantial physical damage to the
- 10 property of others.
- 11 7. Covered multifamily dwellings are buildings consisting of four or more units if the
- 12 buildings have one or more elevators and ground floor units in other buildings
- 13 consisting of four or more units.

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

- 15 1. A person commits an offense if the person, without regard to whether the person is
- 16 acting under color of law, by force or threat of force, intentionally intimidates or
- 17 interferes with an individual:
- 18 a. Because of the individual's race, color, religion, sex, disability, age, familial
- 19 status, national origin, or status with respect to marriage or public assistance
- 20 and because the individual is or has been selling, purchasing, renting,
- 21 financing, occupying, or contracting or negotiating for the sale, purchase,
- 22 rental, financing, or occupation of any dwelling or applying for or participating
- 23 in a service, organization, or facility relating to the business of selling or
- 24 renting dwellings; or
- 25 b. Because the individual is or has been or to intimidate the individual from
- 26 participating, without discrimination because of race, color, religion, sex,
- 27 disability, age, familial status, national origin, or status with respect to
- 28 marriage or public assistance, in an activity, service, organization, or facility
- 29 described by subdivision a; affording another individual opportunity or
- 30 protection to so participate; or lawfully aiding or encouraging other individuals
- 31 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

1 addition to the information required in the notice under subsection 2 of section 14-02.9-08, the
2 commission shall include in a notice to a respondent joined under this section the reasons for
3 the determination that the person is properly joined as a respondent.

4 **14-02.9-11. Temporary or preliminary relief.** The commission may authorize a claim
5 for relief for temporary or preliminary relief pending the final disposition of a complaint if the
6 commission concludes after the filing of the complaint that prompt judicial action is necessary to
7 carry out the purposes of this chapter. On receipt of the commission's authorization, the
8 attorney general shall promptly file the claim. A temporary restraining order or other order
9 granting preliminary or temporary relief under this section is governed by the applicable
10 statutes and the North Dakota Rules of Civil Procedure. The filing of a claim for relief under
11 this section does not affect the initiation or continuation of administrative proceedings under
12 section 14-02.9-19.

13 **14-02.9-12. Investigative report.** The commission shall prepare a final investigative
14 report, including the names of and dates of contacts with witnesses, a summary of
15 correspondence and other contacts with the aggrieved person and the respondent showing the
16 dates of the correspondence and contacts, a summary description of other pertinent records, a
17 summary of witness statements, and answers to interrogatories. A final report under this
18 section may be amended if additional evidence is discovered.

19 **14-02.9-13. Reasonable cause determination.**

- 20 1. The commission shall determine from the facts whether reasonable cause exists to
21 believe that a discriminatory housing practice has occurred or is about to occur.
22 The commission shall make this determination not later than the hundredth day
23 after the date a complaint is filed unless making the determination is impracticable,
24 or the commission approves a conciliation agreement relating to the complaint.
- 25 2. If making the determination within the period is impracticable, the commission shall
26 give in writing to the complainant and the respondent the reasons for the delay. If
27 the commission determines that reasonable cause exists to believe that a
28 discriminatory housing practice has occurred or is about to occur, the commission
29 shall, except as provided by section 14-02.9-15, immediately issue a charge on
30 behalf of the aggrieved person.

31 **14-02.9-14. Charge.**

1 1. A charge issued under section 14-02.9-13 must consist of a short and plain
2 statement of the facts on which the commission finds reasonable cause to believe
3 that a discriminatory housing practice has occurred or is about to occur, must be
4 based on the final investigative report, and is not limited to the facts or grounds
5 alleged in the complaint.

6 2. Within three days after issuing a charge, the commission shall send a copy of the
7 charge with information about the election under section 14-02.9-18 to each
8 respondent and each aggrieved person on whose behalf the complaint was filed.

9 **14-02.9-15. Land-use law.** If the commission determines that the matter involves the
10 legality of a state or local zoning or other land-use law or ordinance, the commission may not
11 issue a charge and shall immediately refer the matter to the attorney general for appropriate
12 action.

13 **14-02.9-16. Dismissal.** If the commission determines that no reasonable cause exists
14 to believe that a discriminatory housing practice that is the subject of a complaint has occurred
15 or is about to occur, the commission shall promptly dismiss the complaint. The commission
16 shall make public disclosure of each dismissal.

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

21 **14-02.9-18. Election of judicial determination.** A complainant, a respondent, or an
22 aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted
23 in the charge decided in a civil action as provided by section 14-02.9-24. The election must be
24 made not later than the twentieth day after the date the person having the election receives
25 service under subsection 2 of section 14-02.9-14 or, in the case of the commission, not later
26 than the twentieth day after the date the charge is issued. The person making the election shall
27 give notice to the commission and to all other complainants and respondents to whom the
28 charge relates.

29 **14-02.9-19. Administrative hearing.** If a timely election is not made under section
30 14-02.9-18, the commission shall provide for a hearing on the charge. Except as provided in
31 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

1 person responsible for a violation of this chapter as necessary to assure the full
2 enjoyment of the rights granted by this chapter; award other appropriate relief,
3 including monetary damages, reasonable attorney's fees, and court costs; and to
4 vindicate the public interest, assess a civil penalty against the respondent in an
5 amount that does not exceed fifty thousand dollars for a first violation and one
6 hundred thousand dollars for a second or subsequent violation.

- 7 3. A person may intervene in an action under this section if the person is a person
8 aggrieved by the discriminatory housing practice or a party to a conciliation
9 agreement concerning the discriminatory housing practice.

10 **14-02.9-26. Subpoena enforcement.** The attorney general, on behalf of the
11 commission or another party at whose request a subpoena is issued under this chapter, may
12 enforce the subpoena in appropriate proceedings in district court.

13 **14-02.9-27. Civil action.**

- 14 1. An aggrieved person may file a civil action in district court not later than the second
15 year after the date of the occurrence or the termination of an alleged discriminatory
16 housing practice or the breach of a conciliation agreement entered under this
17 chapter, whichever occurs last, to obtain appropriate relief with respect to the
18 discriminatory housing practice or breach.
- 19 2. The two-year period does not include any time during which an administrative
20 hearing under this chapter is pending with respect to a complaint or charge under
21 this chapter based on the discriminatory housing practice. This subsection does
22 not apply to actions arising from the breach of a conciliation agreement.
- 23 3. An aggrieved person may file a claim for relief whether a complaint has been filed
24 under section 14-02.9-08 and without regard to the status of any complaint filed
25 under that section.
- 26 4. If the commission has obtained a conciliation agreement with the consent of an
27 aggrieved person, the aggrieved person may not file a claim for relief with respect
28 to the alleged discriminatory housing practice that forms the basis of the complaint
29 except to enforce the terms of the agreement.
- 30 5. An aggrieved person may not file a claim for relief with respect to an alleged
31 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.

14-02.9-32. Enforcement sought by commission. Upon refusal by a person to comply with any order or any regulation of the commission, the commission may immediately seek an order in the district court enforcing the order or regulation of the commission. The proceedings must be brought in the district court in the county in which the respondent resides or transacts business.

SECTION 5. Chapter 14-02.10 of the North Dakota Century Code is created and enacted as follows:

14-02.10-01. Definitions. As used in this chapter:

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.

2. "Public service" means a public facility, department, agency, board, or commission owned, operated, or managed by or on behalf of this state, a political subdivision thereof, or a public corporation.

14-02.10-02. Discrimination in places of public accommodation. It is a discriminatory practice 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.

14-02.10-03. Public services - Discriminatory practices. It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to a person access to the use of and benefit thereof, or to give adverse or unequal treatment to a person in connection therewith because of the person's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.

14-02.10-04. Discrimination in governmental contracts and programs prohibited. A governmental entity may not discriminate against any health care institution or any private agency in any grant, contract, or program because of the institution's or agency's refusal to permit, perform, assist, counsel, or participate in any manner in any health care service that violates the institution's or agency's written religious or moral policies.

14-02.10-05. Credit transactions - Discriminatory practices. It is a discriminatory practice, except as permitted or required by the Equal Credit Opportunity Act [15 U.S.C. 1691], for a person, whether acting as an individual or for another, to deny credit, increase the charges or fees for or collateral required to secure credit, restrict the amount or use of credit extended, impose different terms or conditions with respect to the credit extended to a person, or item or service related thereto because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance. This section does not

1 prohibit a party to a credit transaction from considering the credit history of a person or from
2 taking reasonable action as a result of considering that credit history.

3 **14-02.10-06. Concealing, aiding, compelling, or inducing unlawful**
4 **discrimination - Threats or reprisals.** It is a discriminatory practice for a person to conceal
5 unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to
6 discriminate, or by means of trick, artifice, advertisement, or sign, or by the use of a form of
7 application, or the making of a record or inquiry, or by use of any device to bring about or
8 facilitate discrimination, or to engage in or threaten to engage in a reprisal, economic or
9 otherwise, against a person by reason of the latter's filing a complaint, testifying, or assisting in
10 the observance and support of the purpose and provisions of this chapter because of race,
11 color, religion, sex, national origin, age, physical or mental disability, status with respect to
12 marriage or public assistance, or participation in lawful activity off the employer's premises
13 during nonworking hours.

14 **14-02.10-07. Time limits on filing of charges.** Any charge filed with the commission
15 alleging a violation of this chapter must be filed pursuant to section 14-02.7-06 within one
16 hundred eighty days after the alleged discriminatory act occurred, and if not so filed, the action
17 is barred.

18 **14-02.10-08. Relief authorized.** In addition to the relief authorized by subsection 10 of
19 section 14-02.7-06, the commission may order a respondent who has been found to have
20 engaged in a discriminatory practice as defined in this chapter to rehire, reinstate, and provide
21 back pay to any employee or agent discriminated against because of the respondent's
22 obedience to this chapter; to make reports as to the manner of compliance with the order of the
23 commission; and to take affirmative action, including the posting of notices setting forth the
24 substantive rights of the public under this chapter. Backpay ordered under this section is
25 limited to no more than two years from the date a minimally sufficient complaint was filed with
26 the commission or the court. Interim earnings or amounts earnable with reasonable diligence
27 by the person discriminated against reduce the backpay otherwise allowable.

28 **SECTION 6. REPEAL.** Chapters 14-02.4 and 14-02.5 of the North Dakota Century
29 Code are repealed.