

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Labor)

1 A BILL for an Act to amend and reenact sections 14-02.4-02, 14-02.4-14, 14-02.4-19,
2 14-02.4-20, and 14-02.4-23 of the North Dakota Century Code, relating to department of labor
3 discriminatory practices proceedings.

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

5 **SECTION 1. AMENDMENT.** Section 14-02.4-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-02.4-02. Definitions.** In this chapter, unless the context or subject matter otherwise
8 requires:

9 1. "Age" insofar as it refers to any prohibited unfair employment or other practice
10 means at least forty years of age.

11 2. "Aggrieved person" includes any person who claims to have been injured by a
12 discriminatory practice.

13 3. "Court" means the district court in the judicial district in which the alleged
14 discriminatory practice occurred.

15 ~~3.~~ 4. "Department" means the division of human rights within the labor department.

16 ~~4.~~ 5. "Disability" means a physical or mental impairment that substantially limits one or
17 more major life activities, a record of this impairment, or being regarded as having
18 this impairment.

19 ~~5.~~ 6. "Discriminatory practice" means an act or attempted act which because of race,
20 color, religion, sex, national origin, age, physical or mental disability, status with
21 regard to marriage or public assistance, or participation in lawful activity off the
22 employer's premises during nonworking hours results in the unequal treatment or
23 separation or segregation of any persons, or denies, prevents, limits, or otherwise
24 adversely affects, or if accomplished would deny, prevent, limit, or otherwise

adversely affect, the benefit of enjoyment by any person 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, it 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.

~~6.~~ 7. "Employee" means a person 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 a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person 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. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.

~~7.~~ 8. "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

1 employs one or more employees whose services are to be partially or wholly
2 performed in the state.

3 ~~8-~~ 9. "Employment agency" means a person regularly undertaking, with or without
4 compensation, to procure employees for an employer or to procure for employees
5 opportunity to work for an employer and includes any agent of the person.

6 ~~9-~~ 10. "Labor organization" means a person, employee representation committee, plan in
7 which employees participate, or other organization which exists solely or in part for
8 the purpose of dealing with employers concerning grievances, labor disputes,
9 wages, rates of pay, hours, or other terms or conditions of employment.

10 ~~10-~~ 11. "National origin" means the place of birth of an individual or any of the individual's
11 lineal ancestors.

12 ~~11-~~ 12. "Otherwise qualified person" means a person who is capable of performing the
13 essential functions of the particular employment in question.

14 ~~12-~~ 13. "Person" means an individual, partnership, association, corporation, limited liability
15 company, unincorporated organization, mutual company, joint stock company,
16 trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor
17 organization, public body, public corporation, and the state and a political
18 subdivision and agency thereof.

19 ~~13-~~ 14. "Public accommodation" means every place, establishment, or facility of whatever
20 kind, nature, or class that caters or offers services, facilities, or goods to the
21 general public for a fee, charge, or gratuity. "Public accommodation" does not
22 include a bona fide private club or other place, establishment, or facility which is by
23 its nature distinctly private; provided, however, the distinctly private place,
24 establishment, or facility is a "public accommodation" during the period it caters or
25 offers services, facilities, or goods to the general public for a fee, charge, or
26 gratuity.

27 ~~14-~~ 15. "Public service" means a public facility, department, agency, board, or commission
28 owned, operated, or managed by or on behalf of this state, a political subdivision
29 thereof, or a public corporation.

1 16. "Readily achievable" means easily accomplishable and able to be carried out
2 without much difficulty or expense by a person engaged in the provision of public
3 accommodations.

4 ~~45.~~ 17. "Reasonable accommodations" means accommodations by an employer that do
5 not:
6 a. Unduly disrupt or interfere with the employer's normal operations;
7 b. Threaten the health or safety of the individual with a disability or others;
8 c. Contradict a business necessity of the employer; or
9 d. Impose undue hardship on the employer, based on the size of the employer's
10 business, the type of business, the financial resources of the employer, and
11 the estimated cost and extent of the accommodation.

12 ~~46.~~ 18. "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or
13 childbirth.

14 ~~47.~~ 19. "Status with regard to public assistance" means the condition of being a recipient
15 of federal, state, or local assistance, including medical assistance, or of being a
16 tenant receiving federal, state, or local subsidies, including rental assistance or
17 rent supplements.

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

20 **14-02.4-14. Public accommodations - Discriminatory practices.**

21 1. It is a discriminatory practice for a person engaged in the provision of public
22 accommodations to fail to provide to a person access to the use of any benefit
23 from the services and facilities of the public accommodations; or to give adverse,
24 unlawful, or unequal treatment to a person with respect to the availability to the
25 services and facilities, the price or other consideration therefor, the scope and
26 equality thereof, or the terms and conditions under which the same are made
27 available because of the person's race, color, religion, sex, national origin, age,
28 physical or mental disability, or status with respect to marriage or public
29 assistance.

30 2. If a place of public accommodation has an architectural or communication barrier,
31 the person engaged in the provision of public accommodations shall remove the

barrier, if removal is readily achievable. If a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation shall make that person's goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those alternative methods are readily achievable.

SECTION 3. AMENDMENT. Section 14-02.4-19 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-19. Actions - Limitations.

1. Any person claiming to be aggrieved by a discriminatory practice with regard to public services or public accommodations in violation of this chapter may file a complaint of discriminatory practices with the department or may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed or in the district in which the person would have obtained public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing.
2. Any person claiming to be aggrieved by any discriminatory practice other than public services or public accommodations in violation of this chapter may file a complaint of discriminatory practice with the department or may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to the practice are maintained and administered, or in the district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three hundred days of the alleged act of wrongdoing.
3. If a complaint of a discriminatory practice is first filed with the department, the period of limitation for bringing an action in the district court is ninety days from the date the department dismisses the complaint or issues a written ~~notice to the complainant that administrative action on the complaint has concluded~~ probable cause determination.
4. If a person elects to bring an action in the district court under this chapter, any pending administrative action based upon the same discriminatory acts must be dismissed immediately.

SECTION 4. AMENDMENT. Section 14-02.4-20 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-20. Relief. If the department, 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 department 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 department or the court. Neither the department nor an administrative hearing officer may order compensatory or punitive damages under this chapter. Interim earnings or amounts earnable with reasonable diligence by the person 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 costs. 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 5. AMENDMENT. Section 14-02.4-23 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-23. Complaints - Probable cause - Administrative hearing.

1. The department shall investigate complaints of alleged discriminatory practices. An aggrieved person may file a complaint with the department alleging the discriminatory practice. The department may file a complaint. A complaint must be in writing and in the form prescribed by the department.
2. ~~The~~ Unless the complaint is resolved through informal negotiations, conciliation, or is otherwise administratively closed, the department shall determine from the facts whether probable cause exists to believe that a discriminatory practice has occurred with regard to one or more of the claims of the aggrieved person's complaint. If the department determines that no probable cause exists to believe that a discriminatory practice has occurred with regard to one or more of the claims of the aggrieved person's complaint, the department shall promptly dismiss all or a portion of the complaint.

- 1 3. If the department determines that probable cause exists to believe that a
2 discriminatory practice has occurred and is unable to resolve the complaint
3 through informal negotiations or conciliation, the department shall issue a probable
4 cause determination and provide for an administrative hearing in the manner
5 provided in chapter 28-32 on the complaint.
- 6 4. A probable cause determination is prima facie evidence of a violation of this
7 chapter.
- 8 5. If a claim filed by an aggrieved person proceeds to a hearing, the aggrieved
9 person is a party in the hearing. The aggrieved person may be accompanied,
10 advised, and represented throughout the proceeding by a representative chosen
11 by the employee, including private counsel. Neither the department nor the
12 attorney general may represent an aggrieved person at a hearing under this
13 chapter. The attorney general, at the request of and on behalf of the department,
14 may participate in the hearing and advocate in favor of the department's finding of
15 probable cause.
- 16 6. If a claim filed by the department proceeds to a hearing, the department is a party
17 in the hearing. The attorney general shall represent the department in any action
18 or proceeding under this chapter.