

Introduced by

Senators Fiebiger, Bakke, Warner

Representatives Hawken, N. Johnson, Mock

1 A BILL for an Act to amend and reenact sections 14-02.4-01, 14-02.4-02, 14-02.4-03,
2 14-02.4-04, 14-02.4-05, 14-02.4-06, 14-02.4-08, 14-02.4-09, 14-02.4-14, 14-02.4-15,
3 14-02.4-16, 14-02.4-17, 14-02.5-02, 14-02.5-03, 14-02.5-04, 14-02.5-05, 14-02.5-07,
4 14-02.5-08, 14-02.5-10, subsection 11 of section 26.1-04-03, subsection 1 of section
5 26.1-30.1-01.1, subsection 1 of section 26.1-39-17, and sections 26.1-40-11, 26.1-47-04, and
6 27-09.1-02 of the North Dakota Century Code, relating to discrimination on the basis of sexual
7 orientation.

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

9 **SECTION 1. AMENDMENT.** Section 14-02.4-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **14-02.4-01. State policy against discrimination.** It is the policy of this state to
12 prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the
13 presence of any mental or physical disability, sexual orientation, status with regard to marriage
14 or public assistance, or participation in lawful activity off the employer's premises during
15 nonworking hours which is not in direct conflict with the essential business-related interests of
16 the employer; to prevent and eliminate discrimination in employment relations, public
17 accommodations, housing, state and local government services, and credit transactions; and to
18 deter those who aid, abet, or induce discrimination or coerce others to discriminate.

19 **SECTION 2. AMENDMENT.** Section 14-02.4-02 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **14-02.4-02. Definitions.** In this chapter, unless the context or subject matter otherwise
22 requires:

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

2. "Aggrieved person" includes any person who claims to have been injured by a discriminatory practice.
3. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
4. "Department" means the division of human rights within the labor department.
5. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment.
6. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental disability, sexual orientation, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any 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

1 employer is responsible for its acts and those of its supervisory employees if it
2 knows or should know of the existence of the harassment and fails to take
3 timely and appropriate action.

4 7. "Employee" means a person who performs services for an employer, who employs
5 one or more individuals, for compensation, whether in the form of wages, salaries,
6 commission, or otherwise. "Employee" does not include a person elected to public
7 office in the state or political subdivision by the qualified voters thereof, or a person
8 chosen by the officer to be on the officer's political staff, or an appointee on the
9 policymaking level or an immediate advisor with respect to the exercise of the
10 constitutional or legal powers of the office. Provided, "employee" does include a
11 person subject to the civil service or merit system or civil service laws of the state
12 government, governmental agency, or a political subdivision.

13 8. "Employer" means a person within the state who employs one or more employees
14 for more than one quarter of the year and a person wherever situated who
15 employs one or more employees whose services are to be partially or wholly
16 performed in the state.

17 9. "Employment agency" means a person regularly undertaking, with or without
18 compensation, to procure employees for an employer or to procure for employees
19 opportunity to work for an employer and includes any agent of the person.

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

24 11. "National origin" means the place of birth of an individual or any of the individual's
25 lineal ancestors.

26 12. "Otherwise qualified person" means a person who is capable of performing the
27 essential functions of the particular employment in question.

28 13. "Person" means an individual, partnership, association, corporation, limited liability
29 company, unincorporated organization, mutual company, joint stock company,
30 trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor

organization, public body, public corporation, and the state and a political subdivision and agency thereof.

14. "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.

15. "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.

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

17. "Reasonable accommodations" means accommodations by an employer that do not:

- a. Unduly disrupt or interfere with the employer's normal operations;
- b. Threaten the health or safety of the individual with a disability or others;
- c. Contradict a business necessity of the employer; or
- d. Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.

18. "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

19. "Sexual orientation" means heterosexuality, bisexuality, homosexuality, or transgender.

20. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a

tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

21. "Transgender" means identification with a gender different than that assigned at birth.

SECTION 3. AMENDMENT. Section 14-02.4-03 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-03. Employer's discriminatory practices.

1. It is a discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse or unequal treatment to a person 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, sexual orientation, 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.

2. It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental disability or because of that person's religion.

3. 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 policymaking 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.

4. a. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from establishing any qualifications or hiring criteria for employees and volunteers in religious positions.

b. This chapter does not prohibit a religious organization, association, or society from limiting employment and volunteers in nonreligious positions to individuals who are of the same religion or who adhere to the religion's tenets unless membership is restricted because of race, color, or national origin.

c. This chapter does not prohibit a religious organization, association, or society from limiting access or admission to its places of worship or its parochial schools to individuals of the same religion or who adhere to the religion's tenets.

SECTION 4. AMENDMENT. Section 14-02.4-04 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-04. Employment agency's discriminatory practices. It is a discriminatory practice for an employment agency to accord adverse or unequal treatment to a person 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, sexual orientation, or status with respect to marriage or public assistance; or to accept a listing of employment on that basis.

SECTION 5. AMENDMENT. Section 14-02.4-05 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-05. Labor organization's discriminatory practices. It is a discriminatory practice for 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 a person with respect to the person'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, sexual orientation, or status with respect to marriage or public assistance.

SECTION 6. AMENDMENT. Section 14-02.4-06 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-06. Certain employment advertising deemed discriminatory. It is a discriminatory practice for an employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals of a particular race, color, religion, sex, national

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

5 **SECTION 7. AMENDMENT.** Section 14-02.4-08 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-02.4-08. Qualification based on religion, sex, national origin, physical or**
8 **mental disability, or marital status.** Notwithstanding sections 14-02.4-03 through 14-02.4-06,
9 it is not a discriminatory practice for an employer to fail or refuse to hire and employ an
10 individual for a position, to discharge an individual from a position, or for an employment
11 agency to fail or refuse to refer an individual for employment in a position, or for a labor
12 organization to fail or refuse to refer an individual for employment, on the basis of religion, sex,
13 national origin, physical or mental disability, sexual orientation, or marital status in those
14 circumstances ~~where~~ in which religion, sex, national origin, physical or mental disability, sexual
15 orientation, or marital status is a bona fide occupational qualification reasonably necessary to
16 the normal operation of that particular business or enterprise; nor is it a discriminatory practice
17 for an employer to fail or refuse to hire and employ an individual for a position, or to discharge
18 an individual from a position on the basis of that individual's participation in a lawful activity that
19 is off the employer's premises and that takes place during nonworking hours and which is not in
20 direct conflict with the essential business-related interests of the employer, if that participation
21 is contrary to a bona fide occupational qualification that reasonably and rationally relates to
22 employment activities and the responsibilities of a particular employee or group of employees,
23 rather than to all employees of that employer.

24 **SECTION 8. AMENDMENT.** Section 14-02.4-09 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **14-02.4-09. Seniority, merit, or other measuring systems and ability tests not**
27 **discriminatory.** Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a
28 discriminatory practice for an employer to apply different standards of compensation, or
29 different terms, conditions, or privileges of employment pursuant to a bona fide seniority or
30 merit system, or a system which measures earnings by quantity or quality of production or to
31 employees who work in different locations provided that the differences are not the result of an

1 intention to discriminate because of race, color, religion, sex, national origin, age, physical or
2 mental disability, sexual orientation, status with respect to marriage or public assistance, or
3 participation in lawful activity off the employer's premises during nonworking hours; or for an
4 employer to give and to act upon the results of any professionally developed ability test;
5 provided, that the test, its administration, or action upon the results is not designed, intended,
6 or used to discriminate because of race, color, religion, sex, national origin, age, physical or
7 mental disability, sexual orientation, status with respect to marriage or public assistance, or
8 participation in a lawful activity off the employer's premises during nonworking hours.

9 **SECTION 9. AMENDMENT.** Section 14-02.4-14 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **14-02.4-14. Public accommodations - Discriminatory practices.**

- 12 1. It is a discriminatory practice for a person engaged in the provision of public
13 accommodations to fail to provide to a person access to the use of any benefit
14 from the services and facilities of the public accommodations; or to give adverse,
15 unlawful, or unequal treatment to a person with respect to the availability to the
16 services and facilities, the price or other consideration therefor, the scope and
17 equality thereof, or the terms and conditions under which the same are made
18 available because of the person's race, color, religion, sex, national origin, age,
19 physical or mental disability, sexual orientation, or status with respect to marriage
20 or public assistance.
- 21 2. If a place of public accommodation has an architectural or communication barrier,
22 the person engaged in the provision of public accommodations shall remove the
23 barrier, if removal is readily achievable. If a public accommodation can
24 demonstrate that barrier removal is not readily achievable, the public
25 accommodation shall make that person's goods, services, facilities, privileges,
26 advantages, or accommodations available through alternative methods, if those
27 alternative methods are readily achievable.

28 **SECTION 10. AMENDMENT.** Section 14-02.4-15 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **14-02.4-15. Public services - Discriminatory practices.** It is a discriminatory
31 practice for a person engaged in the provision of public services to fail to provide to a person

1 access to the use of and benefit thereof, or to give adverse or unequal treatment to a person in
2 connection therewith because of the person's race, color, religion, sex, national origin, age,
3 physical or mental disability, sexual orientation, or status with respect to marriage or public
4 assistance.

5 **SECTION 11. AMENDMENT.** Section 14-02.4-16 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-02.4-16. Advertising public accommodations or services - Discriminatory**
8 **practices - Exceptions.** It is a discriminatory practice for a person to advertise or in any other
9 manner indicate or publicize that the patronage of persons of a particular race, color, religion,
10 sex, national origin, age, physical or mental disability, sexual orientation, or status with respect
11 to marriage or public assistance is unwelcome, objectionable, not acceptable, or not solicited.
12 This section does not prohibit a notice or advertisement banning minors from places where
13 alcoholic beverages are being served.

14 **SECTION 12. AMENDMENT.** Section 14-02.4-17 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **14-02.4-17. Credit transactions - Discriminatory practices.** It is a discriminatory
17 practice, except as permitted or required by the Equal Credit Opportunity Act [15 U.S.C. 1691],
18 for a person, whether acting as an individual or for another, to deny credit, increase the charges
19 or fees for or collateral required to secure credit, restrict the amount or use of credit extended,
20 impose different terms or conditions with respect to the credit extended to a person, or item or
21 service related thereto because of race, color, religion, sex, national origin, age, physical or
22 mental disability, sexual orientation, or status with respect to marriage or public assistance.
23 This section does not prohibit a party to a credit transaction from considering the credit history
24 of a person or from taking reasonable action thereon.

25 **SECTION 13. AMENDMENT.** Section 14-02.5-02 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **14-02.5-02. Sale or rental.**

- 28 1. A person may not refuse to sell or rent, after the making of a bona fide offer, refuse
29 to negotiate for the sale or rental of, or in any other manner make unavailable or
30 deny a dwelling to an individual because of race, color, religion, sex, disability,

age, familial status, national origin, sexual orientation, or status with respect to marriage or public assistance.

2. A person may not discriminate against an individual in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with a sale or rental of a dwelling because of race, color, religion, sex, disability, age, familial status, national origin, sexual orientation, or status with respect to marriage or public assistance.
3. 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.
4. 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.

SECTION 14. AMENDMENT. Section 14-02.5-03 of the North Dakota Century Code is amended and reenacted as follows:

14-02.5-03. Publication. A person may not make, print, or publish or effect the making, printing, or publishing of a notice, statement, or advertisement that is about the sale or rental of a dwelling and that indicates any preference, limitation, or discrimination or the intention to make a preference, limitation, or discrimination because of race, color, religion, sex, disability, age, familial status, national origin, sexual orientation, or status with respect to marriage or public assistance.

SECTION 15. AMENDMENT. Section 14-02.5-04 of the North Dakota Century Code is amended and reenacted as follows:

14-02.5-04. Inspection. A person may not represent to an individual because of race, color, religion, sex, disability, age, familial status, national origin, sexual orientation, or status with respect to marriage or public assistance that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection.

SECTION 16. AMENDMENT. Section 14-02.5-05 of the North Dakota Century Code is amended and reenacted as follows:

14-02.5-05. Entry into neighborhood. A person may not, for profit, induce or attempt to induce another to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of an individual of a particular race, color, religion, sex, disability,

age, familial status, national origin, sexual orientation, or status with respect to marriage or public assistance.

SECTION 17. AMENDMENT. Section 14-02.5-07 of the North Dakota Century Code is amended and reenacted as follows:

14-02.5-07. Residential real estate-related transaction. A person whose business includes engaging in residential real estate-related transactions may not discriminate against an individual in making a real estate-related transaction available or in the terms or conditions of a real estate-related transaction because of race, color, religion, sex, disability, age, familial status, national origin, sexual orientation, or status with respect to marriage or public assistance. A residential real estate-related transaction is the selling, brokering, or appraising of residential real property or the making or purchasing of loans or the provision of other financial assistance to purchase, construct, improve, repair, maintain a dwelling, or to secure residential real estate. Nothing in this section prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, disability, age, familial status, national origin, sexual orientation, or status with respect to marriage.

SECTION 18. AMENDMENT. Section 14-02.5-08 of the North Dakota Century Code is amended and reenacted as follows:

14-02.5-08. Brokerage services. A person may not deny an individual access to, or membership or participation in, a multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against an individual in the terms or conditions of access, membership, or participation in the organization, service, or facility because of race, color, religion, sex, disability, age, familial status, national origin, sexual orientation, or status with respect to marriage or public assistance.

SECTION 19. AMENDMENT. Section 14-02.5-10 of the North Dakota Century Code is amended and reenacted as follows:

14-02.5-10. Religious organization, private club, and appraisal exemption.

1. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the

1 sale, rental, or occupancy of dwellings that it owns or operates for other than a
2 commercial purpose to individuals of the same religion or giving preference to
3 persons of the same religion, unless membership in the religion is restricted
4 because of race, color, or national origin.

5 2. This chapter does not prohibit a private club that is not in fact open to the public
6 and that, as an incident to its primary purpose, provides lodging that it owns or
7 operates for other than a commercial purpose from limiting the rental or occupancy
8 of the lodging to its members or from giving preference to its members, unless
9 membership in the club is restricted because of race, color, or national origin.

10 3. This chapter does not prohibit a person engaged in the business of furnishing
11 appraisals of real property from considering in those appraisals factors other than
12 race, color, religion, sex, disability, age, familial status, national origin, sexual
13 orientation, or status with respect to marriage or public assistance.

14 **SECTION 20. AMENDMENT.** Subsection 11 of section 26.1-04-03 of the North
15 Dakota Century Code is amended and reenacted as follows:

16 11. Refusing to insure risks. Refusing to insure risks solely because of race, color,
17 creed, sex, sexual orientation, or national origin, or refusing to continue to insure
18 risks solely because an employer chooses to offer a health maintenance
19 organization option to employees in its health benefit plan.

20 **SECTION 21. AMENDMENT.** Subsection 1 of section 26.1-30.1-01.1 of the North
21 Dakota Century Code is amended and reenacted as follows:

22 1. The race, religion, nationality, ethnic group, disability, age, sex, sexual orientation,
23 or marital status of the applicant or named insured, except this subsection does
24 not prohibit rating differentials based upon age, sex, or marital status.

25 **SECTION 22. AMENDMENT.** Subsection 1 of section 26.1-39-17 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 1. The race, religion, nationality, ethnic group, age, sex, sexual orientation, or marital
28 status of the applicant or named insured.

29 **SECTION 23. AMENDMENT.** Section 26.1-40-11 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **26.1-40-11. Terminations - Declinations - Prohibited reasons.** The declination of an
2 application for, or the termination of, a policy by an insurer or insurance producer is prohibited if
3 the declination or termination is:

- 4 1. Based upon the race, religion, nationality, ~~or~~ ethnic group, or sexual orientation as
5 defined in section 14-02.4-02 of the applicant or named insured.
- 6 2. Based solely upon the lawful occupation or profession of the applicant or named
7 insured, except that this provision does not apply to any insurer or insurance
8 producer which limits its market to one lawful occupation or profession or to
9 several related lawful occupations or professions.
- 10 3. Based upon the principal location of the insured motor vehicle unless such
11 decision is for a business purpose which is not mere pretext for unfair
12 discrimination.
- 13 4. Based solely upon the age, sex, or marital status of an applicant or an insured,
14 except that this subsection does not prohibit rating differentials based upon age,
15 sex, or marital status.
- 16 5. Based upon the fact that the applicant or named insured previously obtained
17 insurance coverage through a residual market insurance mechanism or an
18 insurance company that insures substandard risks.
- 19 6. Based upon the fact that another insurer previously declined to insure the applicant
20 or terminated an existing policy in which the applicant was the named insured.

21 **SECTION 24. AMENDMENT.** Section 26.1-47-04 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **26.1-47-04. Preferred provider participation requirements.** Health care insurers
24 may place reasonable limits on the number of classes of preferred providers which satisfy the
25 standards set forth by the health care insurer, provided that there be no discrimination against
26 any providers on the basis of religion, race, color, national origin, age, sex, sexual orientation
27 as defined in section 14-02.4-02, or marital status, and further provided that selection of
28 preferred providers is made on the combined basis of least cost and highest quality of service.

29 **SECTION 25. AMENDMENT.** Section 27-09.1-02 of the North Dakota Century Code is
30 amended and reenacted as follows:

- 1 **27-09.1-02. Discrimination prohibited.** A citizen may not be excluded from jury
2 service in this state on account of race, color, religion, sex, national origin, physical disability,
3 sexual orientation as defined in section 14-02.4-02, or economic status.