

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2154
(Political Subdivisions Committee)
(At the request of the Labor Commissioner)

AN ACT to create and enact section 14-02.5-46 of the North Dakota Century Code, relating to exempt records in housing discrimination complaints filed with the department of labor; to amend and reenact subsections 1 and 3 of section 14-02.5-01, sections 14-02.5-07, 14-02.5-09, 14-02.5-11, 14-02.5-18, and 14-02.5-21, subsection 2 of section 14-02.5-22, section 14-02.5-24, subsection 2 of section 14-02.5-25, subsection 2 of section 14-02.5-26, section 14-02.5-36, and subsections 3 and 5 of section 14-02.5-39 of the North Dakota Century Code, relating to housing discrimination complaints, investigations, aggrieved parties, and exemptions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 14-02.5-01 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. ~~"Aggrieved individual"~~ "Aggrieved person" includes any ~~individual person~~ who claims to have been injured by a discriminatory housing practice or believes that the ~~individual person~~ person will be injured by a discriminatory housing practice that is about to occur.
3. "Conciliation" means the informal negotiations among an aggrieved ~~individual person~~, the respondent, and the department to resolve issues raised by a complaint or by the investigation of the complaint.

SECTION 2. AMENDMENT. Section 14-02.5-07 of the 1999 Supplement to 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, or status with respect to marriage. 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. ~~For the purposes of this section, a person is in the business of selling residential real property if within the preceding twelve months, the person has participated as principal in three or more transactions involving the sale of any dwelling or any interest in a dwelling or has participated as agent, other than in the sale of the person's own personal residence, in providing sales facilities or sales services in two or more transactions involving the sale of any dwelling or any interest in a dwelling. 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, or status with respect to marriage.~~

SECTION 3. AMENDMENT. Section 14-02.5-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-09. Sales and rentals exempted.

1. Sections 14-02.5-02 through 14-02.5-08 do not apply to the sale or rental of a single-family house sold or rented by the owner if the owner does not own more than three single-family houses at any one time or own any interest in, nor is there owned or reserved on the

person's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time. In addition, the house must be sold or rented without the use of the sales or rental facilities or services of a licensed real estate broker, agent, or realtor, or of a person in the business of selling or renting dwellings, or of an employee or agent of a licensed any such broker, agent, or realtor, or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families person; or the publication, posting, or mailing of a notice, statement, or advertisement prohibited by section 14-02.5-03. 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, or;
 - 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.
2. Sections 14-02.5-02 through 14-02.5-08 do 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.
 3. ~~The exemption in subsection 1 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.~~

SECTION 4. AMENDMENT. Section 14-02.5-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-11. Housing for elderly exempted.

1. The provisions of this chapter relating to familial status and age do not apply to housing that the secretary of housing and urban development determines is specifically designed and operated to assist elderly individuals under a federal program; the department determines is specifically designed and operated to assist elderly individuals under a federal or state program; is intended for, and solely occupied by, individuals sixty-two years of age or older; or is intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit as determined by department rules. In determining whether housing qualifies as housing for elderly under this section because it is intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit, the department shall adopt rules that require at least the following factors:
 - a. ~~The existence of significant facilities and services specifically designed to meet the physical or social needs of older individuals or, if the provision of the facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older individuals;~~
 - b. That at least eighty percent of the units are occupied by at least one individual fifty-five years of age or older per unit; and

- e. b. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for individuals fifty-five years of age or older.
- 2. Housing may not be considered to be in violation of the requirements for housing for elderly under this section by reason of:
 - a. Individuals residing in the housing as of October 1, 1999, who do not meet the age requirements of this section, provided that new occupants of the housing meet the age requirements; or
 - b. Unoccupied units, provided that the units are reserved for occupancy by individuals who meet the age requirements of this section.

SECTION 5. AMENDMENT. Section 14-02.5-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-18. Complaint.

- 1. The department shall investigate complaints of alleged discriminatory housing practices. An aggrieved ~~individual~~ person may file a complaint with the department alleging the discriminatory housing practice. The department may file a complaint. A complaint must be in writing, ~~under oath, and in the form~~ and must contain such information and be in such form as prescribed by the department. 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 department shall give the aggrieved ~~individual~~ person notice that the complaint has been received, advise the aggrieved ~~individual~~ person of the time limits and choice of forums under this chapter, and not later than the tenth day after the date of the filing of the complaint or the identification of an additional or substitute respondent under section ~~14-02.5-22~~ 14-02.5-21, 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.

SECTION 6. AMENDMENT. Section 14-02.5-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-21. Additional or substitute respondent. The department may join a person not named in the complaint as an additional or substitute respondent if during the investigation the department determines that the person is alleged to be engaged ~~or, to have engaged, or to be about to engage~~ in the discriminatory housing practice upon which the complaint is based. In addition to the information required in the notice under subsection 2 of section 14-02.5-18, the department shall include in a notice to a respondent joined under this section the reasons for the determination that the person is properly joined as a respondent.

SECTION 7. AMENDMENT. Subsection 2 of section 14-02.5-22 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 2. A conciliation agreement is public information unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Statements made or actions taken in the conciliation may not be made public by the department or used as evidence in a subsequent proceeding under this chapter without the written consent of ~~concerned persons~~ the parties to the conciliation. ~~After completion of the department's investigation, the department shall make available to the aggrieved individual and the respondent, at any time, information derived from the investigation and the final investigative report relating to that investigation.~~

SECTION 8. AMENDMENT. Section 14-02.5-24 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-24. Investigative report. The department shall prepare a final investigative report, including the names of and dates of contacts with witnesses, a summary of correspondence and other contacts with the aggrieved individual person and the respondent showing the dates of the correspondence and contacts, a summary description of other pertinent records, a summary of witness statements, and answers to interrogatories. A final report under this section may be amended if additional evidence is discovered.

SECTION 9. AMENDMENT. Subsection 2 of section 14-02.5-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If making the determination within the period is impracticable, the department shall give in writing to the complainant and the respondent the reasons for the delay. If the department determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the department shall, except as provided by section 14-02.5-27, immediately issue a charge on behalf of the aggrieved individual person.

SECTION 10. AMENDMENT. Subsection 2 of section 14-02.5-26 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~Upon~~ Within three days after issuing a charge, the department shall send a copy of the charge with information about the election under section 14-02.5-30 to each respondent and each aggrieved individual person on whose behalf the complaint was filed.

SECTION 11. AMENDMENT. Section 14-02.5-36 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-36. Attorney general action for enforcement. If a timely election is made under section 14-02.5-30, the department 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 individual 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 14-02.5-39 through 14-02.5-44. If monetary relief is sought for the benefit of an aggrieved individual person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved individual person has not complied with discovery orders entered by the court.

SECTION 12. AMENDMENT. Subsections 3 and 5 of section 14-02.5-39 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. An aggrieved individual person may file a claim for relief whether a complaint has been filed under section 14-02.5-18 and without regard to the status of any complaint filed under that section.
5. An aggrieved individual person may not file a claim for relief with respect to an alleged discriminatory housing practice that forms the basis of a charge issued by the department if the department has begun a hearing on the record under this chapter with respect to the charge.

SECTION 13. Section 14-02.5-46 of the North Dakota Century Code is created and enacted as follows:

14-02.5-46. Records exempt. A complaint filed with the department under section 14-02.5-18 is an open record. Information obtained during an investigation conducted by the department under this chapter is exempt from section 44-04-18 prior to the administrative closure of a complaint by the

department. The commissioner may disclose to the complainant or the respondent, or representatives of the complainant or respondent, information obtained under this section if deemed necessary by the commissioner for securing an appropriate resolution of a complaint. Investigative working papers are exempt from section 44-04-18.

SECTION 14. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2154 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 48 Nays 0 Absent 1

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 96 Nays 0 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at ____ o'clock _____ M.

Secretary of State