

Introduced by

Senators Luick, Meyer

Representatives Cory, Karls

1 A BILL for an Act to create and enact sections 14-02.4-03.1 and 15.1-06-21 of the North Dakota
2 Century Code, relating to preferred pronoun discriminatory practices and school policies on
3 expressed gender; and to amend and reenact section 14-02.4-02 of the North Dakota Century
4 Code, relating to preferred pronoun and discriminatory practice definitions.

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

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

8 ~~14-02.4-02. Definitions.~~

9 ~~In this chapter, unless the context or subject matter otherwise requires:~~

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

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

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

16 ~~4. "Department" means the division of human rights within the department of labor and~~
17 ~~human rights.~~

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

21 ~~6. "Discriminatory practice" means an:~~

22 ~~a. An act or attempted act which because of race, color, religion, sex, national~~
23 ~~origin, age, physical or mental disability, status with regard to marriage or public~~
24 ~~assistance, or participation in lawful activity off the employer's premises during~~

1 nonworking hours which is not in direct conflict with the essential
2 business-related interests of the employer results in the unequal treatment or
3 separation or segregation of any persons, or denies, prevents, limits, or
4 otherwise adversely affects, or if accomplished would deny, prevent, limit, or
5 otherwise adversely affect, the benefit of enjoyment by any person of
6 employment, labor union membership, public accommodations, public services,
7 or credit transactions. The term "discriminate" includes segregate or separate
8 and for purposes of discrimination based on sex, it includes sexual harassment.
9 Sexual harassment includes unwelcome sexual advances, requests for sexual
10 favors, sexually motivated physical conduct or other verbal or physical conduct or
11 communication of a sexual nature when:

12 ~~a. (1) Submission to that conduct or communication is made a term or condition,~~
13 ~~either explicitly or implicitly, of obtaining employment, public~~
14 ~~accommodations or public services, or education;~~

15 ~~b. (2) Submission to or rejection of that conduct or communication by an individual~~
16 ~~is used as a factor in decisions affecting that individual's employment, public~~
17 ~~accommodations or public services, education, or housing; or~~

18 ~~c. (3) That conduct or communication has the purpose or effect of substantially~~
19 ~~interfering with an individual's employment, public accommodations, public~~
20 ~~services, or educational environment; and in the case of employment, the~~
21 ~~employer is responsible for its acts and those of its supervisory employees if~~
22 ~~it knows or should know of the existence of the harassment and fails to take~~
23 ~~timely and appropriate action; or~~

24 ~~b. A violation of section 2 of this Act.~~

25 ~~7. "Employee" means a person who performs services for an employer, who employs~~
26 ~~one or more individuals, for compensation, whether in the form of wages, salaries,~~
27 ~~commission, or otherwise. "Employee" does not include a person elected to public~~
28 ~~office in the state or political subdivision by the qualified voters thereof, or a person~~
29 ~~chosen by the officer to be on the officer's political staff, or an appointee on the~~
30 ~~policy-making level or an immediate adviser with respect to the exercise of the~~
31 ~~constitutional or legal powers of the office. Provided, "employee" does include a~~

- 1 ~~person subject to the civil service or merit system or civil service laws of the state~~
2 ~~government, governmental agency, or a political subdivision.~~
- 3 ~~8. "Employer" means a person within the state who employs one or more employees for~~
4 ~~more than one quarter of the year and a person wherever situated who employs one~~
5 ~~or more employees whose services are to be partially or wholly performed in the state.~~
- 6 ~~9. "Employment agency" means a person regularly undertaking, with or without~~
7 ~~compensation, to procure employees for an employer or to procure for employees~~
8 ~~opportunity to work for an employer and includes any agent of the person.~~
- 9 ~~10. "Labor organization" means a person, employee representation committee, plan in~~
10 ~~which employees participate, or other organization which exists solely or in part for the~~
11 ~~purpose of dealing with employers concerning grievances, labor disputes, wages,~~
12 ~~rates of pay, hours, or other terms or conditions of employment.~~
- 13 ~~11. "National origin" means the place of birth of an individual or any of the individual's~~
14 ~~lineal ancestors.~~
- 15 ~~12. "Otherwise qualified person" means a person who is capable of performing the~~
16 ~~essential functions of the particular employment in question.~~
- 17 ~~13. "Person" means an individual, partnership, association, corporation, limited liability~~
18 ~~company, unincorporated organization, mutual company, joint stock company, trust,~~
19 ~~agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization,~~
20 ~~public body, public corporation, and the state and a political subdivision and agency~~
21 ~~thereof.~~
- 22 ~~14. "Preferred pronoun" means a pronoun that does not conform to the individual's~~
23 ~~assigned sex at birth.~~
- 24 ~~15. "Public accommodation" means every place, establishment, or facility of whatever~~
25 ~~kind, nature, or class that caters or offers services, facilities, or goods to the general~~
26 ~~public for a fee, charge, or gratuity. "Public accommodation" does not include a bona~~
27 ~~fade private club or other place, establishment, or facility which is by its nature distinctly~~
28 ~~private; provided, however, the distinctly private place, establishment, or facility is a~~
29 ~~"public accommodation" during the period it caters or offers services, facilities, or~~
30 ~~goods to the general public for a fee, charge, or gratuity.~~

1 ~~15.16.~~ "Public service" means a public facility, department, agency, board, or commission
2 owned, operated, or managed by or on behalf of this state, a political subdivision
3 thereof, or a public corporation.

4 ~~16.17.~~ "Readily achievable" means easily accomplishable and able to be carried out without
5 much difficulty or expense by a person engaged in the provision of public
6 accommodations.

7 ~~17.18.~~ "Reasonable accommodations" means accommodations by an employer that do not:
8 ~~a.~~ Unduly disrupt or interfere with the employer's normal operations;
9 ~~b.~~ Threaten the health or safety of the individual with a disability or others;
10 ~~c.~~ Contradict a business necessity of the employer; or
11 ~~d.~~ Impose undue hardship on the employer, based on the size of the employer's
12 business, the type of business, the financial resources of the employer, and the
13 estimated cost and extent of the accommodation.

14 ~~18.19.~~ "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

15 ~~19.20.~~ "Status with regard to public assistance" means the condition of being a recipient of
16 federal, state, or local assistance, including medical assistance, or of being a tenant
17 receiving federal, state, or local subsidies, including rental assistance or rent
18 supplements.

19 **SECTION 1.** Section 14-02.4-03.1 of the North Dakota Century Code is created and
20 enacted as follows:

21 **14-02.4-03.1. Preferred pronoun - Discriminatory practice.**

- 22 1. Unless required by law, a government entity may not require an employee to:
23 a. Use an individual's preferred pronoun when addressing or mentioning the
24 individual in work-related communications.
25 b. Designate the employee's preferred pronoun in work-related communications.
26 2. A violation of this section is a discriminatory practice. An individual may assert a
27 violation of this section as a claim or defense in a judicial proceeding and obtain
28 appropriate relief, including costs and reasonable attorney's fees.

29 **SECTION 2.** Section 15.1-06-21 of the North Dakota Century Code is created and enacted
30 as follows:

1 **15.1-06-21. School policy - Expressed gender.**

2 1. As used in this section:

3 a. "Expressed gender" means a gender identity, whether expressed through
4 behavior, clothing, mannerisms, preferred pronoun, or physical characteristics,
5 which does not conform to the student's sex; and

6 b. "Sex" means the biological state of being male or female, based on sex organs,
7 chromosomes, and endogenous hormone profiles existing at the time of birth.

8 2. Unless otherwise required by law, a board of a school district, a public school, or a
9 teacher in a public school may not:

10 a. Adopt a policy or practice regarding expressed gender;

11 b. Provide or authorize classroom instruction recognizing expressed gender; or

12 c. Provide or require professional development recognizing expressed gender.

13 3. When required by federal law, a board of a school district, a public school, or a teacher
14 in a public school may adopt a policy concerning a specific student's expressed
15 gender or preferred pronoun if the policy is made in consultation with, and with the
16 approval of, the student's parents or guardians. Notwithstanding this subsection,
17 unless otherwise required by federal law, a teacher in a public school is not required to
18 use a student's preferred pronoun when referring to the student if the preferred
19 pronoun is inconsistent with the student's sex.

20 4. This section does not prohibit a public school teacher from using a student's preferred
21 pronoun that is inconsistent with the student's sex if the teacher has consulted with,
22 and received approval from, the student's parent or guardian and the school
23 administrator.