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Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1391

Introduced by

Representatives Rohr, K. Anderson, Hendrix, M. Ruby, Toman, Holle, Frelich

Senators Boehm, Clemens, Schaible, Van Oosting, Weston

A BILL for an Act to amend and reenact sections 14-02.4-01, 14-02.4-02, 14-02.4-03, 14-02.4-04, 14-02.4-05, 14-02.4-06, 14-02.4-08, and 14-02.4-09, subsection 1 of section 14-02.4-14, subsection 1 of section 14-02.4-15, and sections 14-02.4-16 and 14-02.4-17 of the North Dakota Century Code, relating to creating a new status related to human rights and antidiscrimination policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

14-02.4-01. State policy against discrimination.

It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, health status, 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; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate.

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

14-02.4-02. Definitions.

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

1. "Age" insofar as it refers to any prohibited unfair employment or other practice 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 department of labor and human rights.
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, 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

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.

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 adviser 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.

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

9. "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.

10. "Health status" means an individual's medical records or preferences relating to the right to refuse a medical procedure, treatment, injection, device, vaccine, or prophylactic.

11. "Labor organization" means 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.

~~11.~~12. "National origin" means the place of birth of an individual or any of the individual's lineal ancestors.

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

~~13.~~14. "Person" means an individual, partnership, association, corporation, limited liability company, unincorporated organization, mutual company, joint stock company, 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.~~15. "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.~~16. "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.~~17. "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.~~18. "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.~~19. "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

~~19.~~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.

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 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, health status, 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 individual with a physical or mental disability, because that individual is pregnant, ~~or~~ because of that individual's religion, or because of that individual's health status. An employer is not required to provide an accommodation that would disrupt or interfere with the employer's normal business operations; threaten an individual's health or safety; contradict a business necessity of the employer; or impose an undue hardship on the employer, taking into consideration 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. For purposes of this subsection, "pregnant" includes pregnancy, childbirth, and related medical conditions.
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.

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

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

14-02.4-08. Qualification based on religion, sex, national origin, physical or mental disability, or marital status.

Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, to discharge an

individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment, on the basis of religion, sex, national origin, physical or mental disability, health status, or marital status in those circumstances where religion, sex, national origin, physical or mental disability, health status, or marital status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; nor is it a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, or to discharge an individual from a position on the basis of that individual's participation in a lawful activity that is off the employer's premises and that takes place during nonworking hours and which is not in direct conflict with the essential business-related interests of the employer, if that participation is contrary to a bona fide occupational qualification that reasonably and rationally relates to employment activities and the responsibilities of a particular employee or group of employees, rather than to all employees of that employer.

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

14-02.4-09. Seniority, merit, or other measuring systems and ability tests not discriminatory.

Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations provided that the differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, age, physical or mental disability, health status, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours; or for an employer to give and to act upon the results of any professionally developed ability test; provided, that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, age, physical or mental disability, health status, status with respect to marriage or public assistance, or participation in a lawful activity off the employer's premises during nonworking hours.

SECTION 9. AMENDMENT. Subsection 1 of section 14-02.4-14 of the North Dakota Century Code is amended and reenacted as follows:

1. It is a discriminatory practice for a person engaged in the provision of public accommodations to fail to provide to a person 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 a person 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 person's race, color, religion, sex, national origin, age, physical or mental disability, health status, or status with respect to marriage or public assistance.

SECTION 10. AMENDMENT. Subsection 1 of section 14-02.4-15 of the North Dakota Century Code is amended and reenacted as follows:

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

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

14-02.4-16. Advertising public accommodations or services - Discriminatory practices - Exceptions.

It is a discriminatory practice for a person to advertise or in any other manner indicate or publicize that the patronage of persons of a particular race, color, religion, sex, national origin, age, physical or mental disability, health status, or status with respect to marriage or public assistance is unwelcome, objectionable, not acceptable, or not solicited. This section does not prohibit a notice or advertisement banning minors from places where alcoholic beverages are being served.

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

14-02.4-17. 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, health status, or status with respect to marriage or public assistance. This section does not prohibit a party to a credit transaction from considering the credit history of a person or from taking reasonable action thereon.