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10/22/03

Date

2003 SENATE JUDICIARY

SB 2306

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2306

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 02/05/03

Tape Number	Side A	Side B	Meter #
1	X		35.0 - End
2	X		0.0 - 53.1
p.m. meet 5	X		40 - end
Committee Clerk Signature <i>Maria L. Hallberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Testimony Support of SB 2306

Sen. Mathern introduced the bill. (tape 1, side 1, meter 34.6) Read Testimony - Attachment #1a and Amendments Attachment 1b.

Rep Pam Gulleason (meter 40.1) Discussed how we need to create a climate of growth in ND and as we grow, we grow in human capital we will have a workforce shortage. New economy initiative that is needed is a human rights commission. Quoted Chinese proverb (meter 41) Discussed survey.

Rep Winrich- Grand Forks (meter 43) Discussed the many accredit places that have requested this and show its support.

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Senate Judiciary Committee
Bill/Resolution Number SB 2306
Hearing Date 02/05/03

Cheryl Bergian - Director of ND Human Rights Coalition (meter 45.9) Read Testimony

Attachment 2A.

Senator Dick Dever asked with what the current process is what can you do that is not done now?

(meter 11.9) Have more time to focus on human rights.

Vinod K. Seth - MD, (meter 14.2) Hand Out Attachment #3, and showed his support.

Referenced the town of Oaks, ND. Discussed the physical differences of race.

Allan Peterson - Fargo Chair Human Rights Coalitions. (meter 17.6) Read Testimony

Attachment #4. We need a commission free from unwarranted political influences

Robert Uebel - Fargo resident (meter 23.2) Voice from the Gay, Lesbian, Bisexual and

Transgender (GLBT) Read Testimony Attachment #5.

June Renville - St. Mary's Collage Student, Bismarck ND (meter 26.4) Read Felix A. Renville

Jr's Testimony Attachment 2b, ND Department of Labors response, Attachment 2c

Other Attachments from C. Bergain - Misc. correspondence and Testimony Attachment 2e and

ND Dept. of Labor and Human Rights Division 2001 Public Perception Study of Discrimination

in ND - Attachment 2d (book)

Arona Seth - Came from India 28 years ago (meter 33.8) Sited two cases of discrimination one

with food stamps at a grocery store the other at a recreational site.

Wes Longfeather - United tribes Technical College (meter 38) Read Attachment #6, Read

testimony from David M. Gipp.

Senator Dennis Bercier - (meter 39) Read Testimony Attachment #7, Sited his personal cases of discrimination.

Tex G Hall - Three Affiliated Tribes, (meter 46.8) Read Testimony Attachment #8.

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Other Testimony Submitted

Amy Schauer Nelson - ND Fair Housing Council, Inc.

St. Clair Mellard

Carol Two Eagle

Testimony in opposition of SB 2306

None

Testimony Neutral to SB 2306

De Joyce Kitsin-- (meter 50.8)

Motion made by Sen. Trenbeath to adopt seventeen (17) pages of amendments for ease of reading them clearly in the bill. Sen. Lyson seconded the motion.

Roll Call Vote: 6 Yes 0 No 0 Absent

Motion Carried

Senator John T. Traynor, Chairman closed the hearing

Meeting will reopen in p.m.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2306

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 02/05/03

Tape Number	Side A	Side B	Meter #
5	X		45.6 - End

Committee Clerk Signature

Maria L. Selberg

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill:

Discussion on trying to get the 17 pages of amendments incorporated into the 39 page bill. This could not be done so the senators took the time to review. Discussion of conversation with Tom D. (meter 45) Amendments incorporate the ND law from the Colorado Law. The bill does not change the creating a commission of seven people and the broad judicial powers of the group; i.e., size and desist, in conjunction with other matters. Discussion of Fiscal note. (meter 46.7) by Senator Carolyn Nelson. Over 50,000 in fiscal. Wanted to address the high amount. Senator John T. Traynor, Chairman discussed that we as a committee could not change a fiscal note.

Motion Made to DO PASS SB 2306 as amended by Senator Carolyn Nelson and seconded by Senator Dennis Bercier

Roll Call Vote: 3 Yes. 3 No. 0 Absent

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Dennis Bercier

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Page 2
Senate Judiciary Committee
Bill/Resolution Number SB 2306
Hearing Date 02/05/03 pm
Motion Fails

**Motion Made to DO NOT PASS SB 2306 as amended by Senator Dick Dever and
seconded by Sen. Trenbeath.**

Roll Call Vote: 3 Yes. 3 No. 0 Absent

Motion Fails.

**Motion Made with no Recommendation on SB 2306 with one amendment by Sen. Dever
and seconded by Senator Thomas L. Trenbeath.**

Roll Call Vote: 3 Yes. 3 No. 0 Absent

Motion Passes.

Floor Assignment: Sen. Dever

Senator John T. Traynor, Chairman closed the hearing

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FISCAL NOTE
Requested by Legislative Council
01/23/2003

Bill/Resolution No.: SB 2306

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$66,746	\$0	\$67,882	\$0
Appropriations	\$0	\$0	\$66,746	\$0	\$67,882	\$0

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

SB 2306 proposes to create a seven-member human rights commission with authority to hold hearings on human rights complaints, issue publications and reports, adopt rules, investigate and study discrimination in the state, and formulate plans for the elimination of discrimination through education and other means. Under the proposal, commissioners would be entitled to compensation for their time and reimbursement for expenses. The primary fiscal impact of the bill relates to these costs plus administrative support for the operation of the commission. The fiscal estimates provided in this note are based on the following assumptions:

--The commissioners would hold hearings or meetings once every other month (six times per year);

--Including travel time, each meeting would encompass compensation and expenses for two days for each commissioner;

--Administrative support functions for the commission would require 1/2 FTE; and

--All estimated costs relating to the commission would be in addition to the current budget proposal for the Department of Labor (SB 2007).

The fiscal estimates provided here do not include any estimated costs for contract services for studies or educational activities.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

No revenues are projected for SB 2306.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

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Estimated expenses itemized here relating to SB 2306 are for the first fiscal year of the 2003-05 biennium. Subsequent years are estimated as the total first year expenses minus \$1,500 for one-time, first-year equipment expenses plus two percent each year for estimated cost increases.

Compensation to commissioners @ \$62.50 per day = \$5,250

Meal reimbursements to commissioners @ \$20.00 per day = \$1,680

Mileage reimbursements to commissioners @ \$0.32 per mile = \$2,688

Lodging reimbursements to commissioners @ \$45.00 per day plus taxes = \$1,782

Salaries and Benefits for 1/2 FTE (new) @ \$1,450 per month = \$17,400

Estimated administrative costs, including IT and office equipment, telephone and data connections, printing, postage, copy costs, office supplies, and other miscellaneous operating expenses = \$5,000

Total estimated expenses for first year: \$33,800

Total estimated expenses for second year: \$32,946

Total estimated expenses for 2003-05 biennium: \$66,746

Total estimated expenses for 2005-07 biennium: \$67,882

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

None of the expenses estimate here for SB 2306 are presently accounted for in the executive budget. All estimated expenditures would require new general fund appropriation.

Name:	Mark D. Bachmeler	Agency:	Department of Labor
Phone Number:	328-2660	Date Prepared:	01/28/2003

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30263.0301
Title.

Prepared by the Legislative Council staff for
Senator Mathern
February 4, 2003

AT # 16

PROPOSED AMENDMENTS TO SENATE BILL NO. 2306

Page 1, line 1, after "Act" insert "to provide for a state policy against discrimination;"

Page 1, after line 5, insert:

"SECTION 1. 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, 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."

Page 1, line 10, replace "means a chronological age of at least eighteen years" with "insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age"

Page 1, line 16, remove "of an"

Page 1, line 17, remove "individual's", replace "and includes" with a comma, and replace the second "and" with ", or"

Page 1, line 18, remove "The term also means a mental impairment or"

Page 1, remove lines 19 and 20

Page 1, line 21, after "7." insert "'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 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, 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.

8."

Page 1, line 22, replace "8." with "9."

Page 1, after line 23, insert:

- "10. "Otherwise qualified person" means an individual who is capable of performing the essential functions of the particular employment in question.
11. "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.
12. "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."

Page 2, line 1, replace "9." with "13."

Page 2, line 4, replace "10." with "14."

Page 2, line 6, replace "11." with "15."

Page 8, line 27, after the period insert "If the commission finds that the complainant's allegation of a discriminatory practice is false and not made in good faith, the commission shall order the complainant to pay costs and reasonable attorney's fees incurred by the respondent in responding to the allegation."

Page 12, replace lines 5 through 30 with:

- "1. "Employee" means an individual 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 an individual elected to public office in the state or political subdivision by the qualified voters thereof, or an individual chosen by the officer to be on the officer's political staff, or an appointee on the

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polycymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. "Employee" does include an individual subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.

2. "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.
3. "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.
4. "Labor organization" mean 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."

Page 13, remove lines 1 and 2

Page 13, line 3, remove "or unfair"

Page 13, replace lines 4 through 31 with:

- "1. It is a discriminatory practice for:
 - a. 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, 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. 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 or because of that individual's religion. 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 policy making 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.
 - b. An employment agency to accord adverse or unequal treatment to an individual 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, or status with respect to marriage or public assistance; or to accept a listing of employment on that basis.

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- c. 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 an individual with respect to the individual'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, or status with respect to marriage or public assistance.
 - d. A person to conceal unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or by means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the making of a record or inquiry, or by use of any device to bring about or facilitate discrimination, or to engage in or threaten to engage in a reprisal, economic or otherwise, against a person by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purpose and provisions of this chapter because of race, color, religion, sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours.
 - e. 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, 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.
 - f. An employer to fail or refuse to hire and employ an individual for a position, for an employer 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 in a position if the occupancy of the position, or access to the premises upon which the duties of the position are performed, is subject to a requirement imposed in the interest of the national security of the United States under a security program administered under a statute of the United States or an executive order of the president and the individual has not fulfilled or has ceased to fulfill that requirement.
2. Notwithstanding subdivisions a, b, and c of subsection 1, 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, 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, status with respect to marriage or public assistance, or participation in a lawful activity off the employer's premises during nonworking hours.

3. Subsection 1 does not apply to business policies or practices relating to the employment of an individual by the individual's parent, grandparent, spouse, child, or grandchild, or in the domestic service of a person.
4. The employment of one person in place of another, standing by itself, is not evidence of a discriminatory practice.
5. After a conditional offer of employment, it is not discriminatory practice for an employer, employment agency, or labor organization to:
 - a. Require a person to undergo physical examination for the purpose of determining the person's capability to perform the essential functions of the job with or without reasonable accommodations if every entering employee in the same job category is subjected to the examination; or
 - b. Conduct an investigation as to the person's medical history for the purpose of determining the person's capability to perform available employment if every entering employee in the same job category is subjected to the investigation.
6. Medical history obtained under this section must be collected and maintained separate from nonmedical information and must be kept confidential.
7. The provisions of subsection 1 do not repeal or modify a federal, state, or local statute, regulation, or ordinance creating special rights or preference for veterans."

Page 14, remove lines 1 through 31

Page 15, remove lines 1 through 31

Page 16, remove lines 1 through 30

Page 17, remove lines 1 through 19

Page 17, line 21, remove "or unfair"

Page 18, line 2, remove "or unfair"

Page 18, line 5, remove "or unfair"

Page 18, line 11, replace "six months" with "three hundred days"

Page 18, line 12, remove "or unfair"

Page 18, replace lines 14 through 27 with:

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"14-02.8-05. Relief. If the commission, 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 commission 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 commission or the court. Interim earnings or amounts earnable with reasonable diligence by the individual 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 cost. 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."

Page 19, after line 3, insert:

- "2. "Complainant" means a person, including the commission, that files a complaint under this chapter.
3. "Conciliation agreement" means a written agreement resolving the issues in conciliation."

Page 19, line 4, replace "2." with "4."

Page 19, after line 4, insert:

- "5. "Discriminatory housing practice" means an act prohibited by section 14-02.9-02 or conduct that is an offense under section 14-02.9-04."

Page 19, line 5, replace "3." with "6."

Page 19, after line 11, insert:

- "7. "Family" includes a single individual."

Page 19, line 12, replace "4." with "8." and replace "building, structure, vacant land, or part thereof offered for" with "structure or part of a structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families or vacant land that is offered for sale or lease for the construction or location of a structure or part of a structure as previously described."

Page 19, remove lines 13 through 15

Page 19, line 16, replace "5." with "9."

Page 19, replace lines 22 through 27 with:

- "10. "To rent" includes to lease, sublease, or let, or to grant in any other manner, for a consideration, the right to occupy premises not owned by the occupant."

Page 19, replace lines 28 through 31 with:

"14-02.9-02. Discriminatory housing practices prohibited.

1. It is a discriminatory housing practice:

- a. For any person to refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to an individual because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.
- b. For any person to 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, or status with respect to marriage or public assistance.

Page 20, remove lines 1 through 31

Page 21, remove lines 1 through 6

Page 21, line 7, replace "d." with "c."

Page 21, remove lines 13 through 30

Page 22, line 1, replace "g." with "d."

Page 22, line 10, replace "h." with "e."

Page 22, line 17, replace "i." with "f."

Page 22, line 22, replace "j." with "g."

Page 22, remove lines 27 and 28

Page 22, line 29, replace "3." with "2."

Page 23, remove lines 9 through 11

Page 23, line 12, replace "5." with "3."

Page 23, replace lines 16 through 31 with:

- *4. This chapter does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or a restriction relating to health or safety standards. This chapter does not affect a requirement of nondiscrimination in any other state or federal law.
5. a. 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 commission determines is specifically designed and operated to assist elderly individuals under a 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

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each unit as determined by commission rules. In determining whether housing qualifies as housing for elderly because it is intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit, the commission shall adopt rules that require at least the following factors:

- (1) 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
 - (2) 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.
- b. Housing may not be considered to be in violation of the requirements for housing for the elderly under this section by reason of:
- (1) 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
 - (2) Unoccupied units, provided that the units are reserved for occupancy by individuals who meet the age requirements of this section.
6. This section does 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 any such broker, agent, realtor, or person; or the publication, posting, or mailing of a notice, statement, or advertisement prohibited by this chapter. 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;
 - 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.
7. This section does 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.

8. 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.
9. 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."

Page 24, remove lines 1 through 31

Page 25, remove lines 1 through 30

Page 26, remove lines 1 through 9

Page 26, line 10, replace "Unfair or discriminatory" with "Discriminatory"

Page 26, line 12, replace "It is an unfair or discriminatory housing practice and prohibited:" with "A person may not"

Page 26, line 13, remove "a. For any person to" and remove the second "to"

Page 26, line 18, replace "b. For any person to" with:

"2. A person may not"

Page 26, line 24, replace "2." with "3."

Page 27, line 18, replace "3." with "4."

Page 27, line 22, replace "4." with "5."

Page 27, line 24, replace "5." with "6."

Page 27, line 28, replace "6." with "7."

Page 28, replace lines 1 through 30 with:

"14-02.9-04. Intimidation or Interference - Penalty.

1. A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force, intentionally intimidates or interferes with an individual:
 - a. Because of the individual's race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance and because the individual is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

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b. Because the individual is or has been or to intimidate the individual from participating, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in an activity, service, organization, or facility described by subdivision a; affording another individual opportunity or protection to so participate; or lawfully aiding or encouraging other individuals to participate, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in any activity, service, organization, or facility described in subdivision a.

2. It is a discriminatory practice to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of the individual having exercised or enjoyed, or on account of the individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

3. An offense under subsection 1 is a class A misdemeanor.

14-02.9-05. Reports and studies. The commission shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The commission shall make studies relating to the nature and extent of discriminatory housing practices in this state.

14-02.9-06. Cooperation with other entities. The commission shall cooperate with and may provide technical and other assistance to federal, state, local, and other public or private entities that are designing or operating programs to prevent or eliminate discriminatory housing practices.

14-02.9-07. Gifts and grants - Fair housing fund - Continuing appropriation. The commission may accept grants from the federal government for administering this chapter. Grants received must be deposited to the credit of the fair housing fund in the state treasury. Moneys deposited to the credit of the fund are appropriated to the commission on a continuing basis for the purposes of administering this chapter.

14-02.9-08. Complaint and answer.

1. The commission shall investigate complaints of alleged discriminatory housing practices. An aggrieved person may file a complaint with the commission alleging the discriminatory housing practice. The commission may file a complaint. A complaint must be in writing and must contain such information and be in such form as prescribed by the commission. 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 commission shall give the aggrieved person notice that the complaint has been received, advise the aggrieved person of the time limits and choice of forums under this chapter, and not later than the tenth day after the date of filing of the complaint or the identification of an additional or substitute respondent under section 14-02.9-10, 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.

3. Not later than the tenth day after the date of receipt of the notice and copy of the complaint under subsection 2, a respondent may file an answer to

the complaint. An answer must be in writing, under oath, and in the form prescribed by the commission.

4. An answer may be amended at any time. An answer does not inhibit the investigation of a complaint.

14-02.9-09. Investigation.

1. If the federal government has referred a complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the commission shall investigate the allegations set forth in the complaint.
2. The commission shall investigate all complaints and, except as provided by subsection 3, shall complete an investigation not later than the hundredth day after the date the complaint is filed or, if it is impracticable to complete the investigation within the hundred-day period, shall dispose of all administrative proceedings related to the investigation not later than the first anniversary after the date the complaint is filed.
3. If the commission is unable to complete an investigation within the time periods prescribed by subsection 2, the commission shall notify the complainant and the respondent in writing of the reasons for the delay.

14-02.9-10. Additional or substitute respondent. The commission may join a person not named in the complaint as an additional or substitute respondent if during the investigation the commission determines that the person is alleged to be engaged, 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 14-02.9-08, the commission 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.

14-02.9-11. Temporary or preliminary relief. The commission may authorize a claim for relief for temporary or preliminary relief pending the final disposition of a complaint if the commission concludes after the filing of the complaint that prompt judicial action is necessary to carry out the purposes of this chapter. On receipt of the commission's authorization, the attorney general shall promptly file the claim. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable statutes and the North Dakota Rules of Civil Procedure. The filing of a claim for relief under this section does not affect the initiation or continuation of administrative proceedings under section 14-02.9-19.

14-02.9-12. Investigative report. The commission 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 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.

14-02.9-13. Reasonable cause determination.

1. The commission shall determine from the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The commission shall make this determination not later than the hundredth day after the date a complaint is filed unless making the determination is impracticable, or the commission approves a conciliation agreement relating to the complaint.

2. If making the determination within the period is impracticable, the commission shall give in writing to the complainant and the respondent the reasons for the delay. If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided by section 14-02.9-15, immediately issue a charge on behalf of the aggrieved person.

14-02.9-14. Charge.

1. A charge issued under section 14-02.9-13 must consist of a short and plain statement of the facts on which the commission finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, must be based on the final investigative report, and is not limited to the facts or grounds alleged in the complaint.
2. Within three days after issuing a charge, the commission shall send a copy of the charge with information about the election under section 14-02.9-18 to each respondent and each aggrieved person on whose behalf the complaint was filed.

14-02.9-15. Land-use law. If the commission determines that the matter involves the legality of a state or local zoning or other land-use law or ordinance, the commission may not issue a charge and shall immediately refer the matter to the attorney general for appropriate action.

14-02.9-16. Dismissal. If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice that is the subject of a complaint has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each dismissal.

14-02.9-17. Pending civil trial. The commission may not issue a charge alleging a discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

14-02.9-18. Election of judicial determination. A complainant, a respondent, or an aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted in the charge decided in a civil action as provided by section 14-02.9-24. The election must be made not later than the twentieth day after the date the person having the election receives service under subsection 2 of section 14-02.9-14 or, in the case of the commission, not later than the twentieth day after the date the charge is issued. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the charge relates.

14-02.9-19. Administrative hearing. If a timely election is not made under section 14-02.9-18, the commission shall provide for a hearing on the charge. Except as provided in this section, chapter 28-32 governs a hearing and an appeal of a hearing. A hearing under this section on an alleged discriminatory housing practice may not continue after the beginning of the trial of a claim for relief commenced by the aggrieved person under federal or state law seeking relief with respect to the discriminatory housing practice.

14-02.9-20. Administrative penalties.

1. If the commission determines at a hearing under section 14-02.9-19 that a respondent has engaged in or is about to engage in a discriminatory housing practice, the commission may order the appropriate relief, including actual damages, reasonable attorney's fees, court costs, and other injunctive or equitable relief.

2. To vindicate the public's interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed:
 - a. Eleven thousand dollars if the respondent has been found by order of the commission or a court to have committed a prior discriminatory housing practice; or
 - b. Except as provided by subsection 3, twenty-seven thousand dollars if the respondent has been found by order of the commission or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charges and fifty-five thousand dollars if the respondent has been found by the commission or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of filing of the charge.
3. If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has previously been found to have committed acts constituting a discriminatory housing practice, the civil penalties in subdivision b of subsection 2 may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.
4. At the request of the commission, the attorney general shall sue to recover a civil penalty due under this section. Funds collected under this section must be paid to the state treasurer for deposit in the general fund.

14-02.9-21. Effect of commission order. A commission order under section 14-02.9-20 does not affect a contract, sale, encumbrance, or lease that is consummated before the commission issues the order and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under this chapter.

14-02.9-22. Licensed or regulated business. If the commission issues an order with respect to a discriminatory housing practice that occurs in the course of a business subject to a licensing or regulation by a governmental agency, the commission, not later than the thirtieth day after the date the order is issued, shall send copies of the findings and the order to the governmental agency and recommend to the governmental agency appropriate disciplinary action.

14-02.9-23. Order in preceding five years. If the commission issues an order against a respondent against whom another order was issued within the preceding five years under section 14-02.5-33, the commission shall send a copy of each order to the attorney general.

14-02.9-24. Attorney general action for enforcement. If a timely election is made under section 14-02.9-18, the commission 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 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 14-02.9-27 through 14-02.9-32. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with the discovery orders entered by the court.

14-02.9-25. Pattern or practice case - Penalties.

1. On the request of the commission, the attorney general may file a claim for relief in district court for appropriate relief if the commission has reasonable cause to believe that a person is engaged in a pattern or practice of resistance to the full enjoyment of a right granted under this chapter or a person has been denied a right granted by this chapter and that denial raises an issue of general public importance.
2. In an action under this section, the court may award preventative relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as necessary to assure the full enjoyment of the rights granted by this chapter; award other appropriate relief, including monetary damages, reasonable attorney's fees, and court costs; and to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed fifty thousand dollars for a first violation and one hundred thousand dollars for a second or subsequent violation.
3. A person may intervene in an action under this section if the person is a person aggrieved by the discriminatory housing practice or a party to a conciliation agreement concerning the discriminatory housing practice.

14-02.9-26. Subpoena enforcement. The attorney general, on behalf of the commission or another party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in district court.

14-02.9-27. Civil action.

1. An aggrieved person may file a civil action in district court not later than the second year after the date of the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.
2. The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge under this chapter based on the discriminatory housing practice. This subsection does not apply to actions arising from the breach of a conciliation agreement.
3. An aggrieved person may file a claim for relief whether a complaint has been filed under section 14-02.9-08 and without regard to the status of any complaint filed under that section.
4. If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file a claim for relief with respect to the alleged discriminatory housing practice that forms the basis of the complaint except to enforce the terms of the agreement.
5. An aggrieved 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 commission if the commission has begun a hearing on the record under this chapter with respect to the charge.

14-02.9-28. Court-appointed attorney. On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory housing practice is alleged, the court may appoint an attorney for the person.

14-02.9-29. Effect of relief granted. Relief granted under sections 14-02.9-27 through 14-02.9-32 does not affect a contract, sale, encumbrance, or lease that is

consummated before the granting of the relief and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint or civil action under this chapter.

14-02.9-30. Intervention by attorney general. On request of the commission, the attorney general may intervene in an action under sections 14-02.9-27 through 14-02.9-32 if the commission certifies that the case is of general public importance. The attorney general may obtain the same relief as is available to the attorney general under subsection 2 of section 14-02.5-37.

14-02.9-31. Prevailing party. A court in an action brought under this chapter or the commission in an administrative hearing under section 14-02.9-19 may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party."

Page 29, remove lines 1 through 31

Page 30, remove lines 1 through 30

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 30

Page 34, remove lines 1 through 12

Page 34, replace "14-02.9-13" with "14-02.9-32"

Page 34, line 14, remove ", an order pursuant to section 14-02.9-04," and after "or" insert "any"

Page 34, replace lines 21 through 30 with:

"1. "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."

Page 35, remove lines 1 and 2

Page 35, line 7, remove "1." and replace "and prohibited for a person, directly or indirectly, to" with "for a person engaged in the provision of public accommodations to fail to provide

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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, or status with respect to marriage or public assistance."

Page 35, remove lines 8 through 30

Page 36, remove lines 30 and 31

Page 37, remove lines 1 through 12

Page 37, line 13, replace "14-02.10-08" with "14-02.10-07"

Page 37, line 14, replace "sixty" with "one hundred eighty"

Page 37, line 16, replace "14-02.10-09" with "14-02.10-08"

Page 37, line 22, after the period insert "Backpay ordered under this section is limited to no more than two years from the date a minimally sufficient complaint was filed with the commission or the court. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against reduce the backpay otherwise allowable."

Page 37, remove lines 23 through 31

Page 38, remove lines 1 through 31

Page 39, remove lines 1 through 9

Renumber accordingly

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1.4.14

PROPOSED AMENDMENTS TO SENATE BILL NO. 2306

Page 1, line 1, after "Act" insert "to provide for a state policy against discrimination;" after the third comma insert "and", and remove ", and"

Page 1, line 2, remove "14-02.11"

Page 1, after line 5, insert:

"SECTION 1. 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, 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."

Page 1, line 10, replace "means a chronological age of at least eighteen years" with "insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age"

Page 1, line 16, remove "of an"

Page 1, line 17, remove "individual's", replace "and includes" with a comma, and replace the second "and" with ", or"

Page 1, line 18, remove "The term also means a mental impairment or"

Page 1, remove lines 19 and 20

Page 1, line 21, after "7." insert "'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 results in the unequal treatment or separation or segregation of any individual, 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 individual 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, 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

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- 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.

8."

Page 1, line 22, replace "8." with "9."

Page 1, after line 23, insert:

- "10. "Otherwise qualified person" means an individual who is capable of performing the essential functions of the particular employment in question.
- 11. "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.
- 12. "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."

Page 2, line 1, replace "9." with "13."

Page 2, line 4, replace "10." with "14."

Page 2, line 6, replace "11." with "15."

Page 8, line 27, after the period insert "If the commission finds that the complainant's allegation of a discriminatory practice is false and not made in good faith, the commission shall order the complainant to pay costs and reasonable attorney's fees incurred by the respondent in responding to the allegation."

Page 12, replace lines 5 through 30 with:

- "1. "Employee" means an individual 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

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include an individual elected to public office in the state or political subdivision by the qualified voters thereof, or an individual 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. "Employee" does include an individual subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.

2. "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.
3. "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.
4. "Labor organization" mean 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."

Page 13, remove lines 1 and 2

Page 13, line 3, remove "or unfair"

Page 13, replace lines 4 through 31 with:

- "1. It is a discriminatory practice for:
 - a. 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, 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. 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 or because of that individual's religion. 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 policy making 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.
 - b. An employment agency to accord adverse or unequal treatment to an individual 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

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disability, or status with respect to marriage or public assistance; or to accept a listing of employment on that basis.

- c. 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 an individual with respect to the individual'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, or status with respect to marriage or public assistance.
 - d. A person to conceal unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or by means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the making of a record or inquiry, or by use of any device to bring about or facilitate discrimination, or to engage in or threaten to engage in a reprisal, economic or otherwise, against an individual by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purpose and provisions of this chapter because of race, color, religion, sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours.
 - e. 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, 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.
 - f. An employer to fail or refuse to hire and employ an individual for a position, for an employer 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 in a position if the occupancy of the position, or access to the premises upon which the duties of the position are performed, is subject to a requirement imposed in the interest of the national security of the United States under a security program administered under a statute of the United States or an executive order of the president and the individual has not fulfilled or has ceased to fulfill that requirement.
2. Notwithstanding subdivisions a, b, and c of subsection 1, 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, 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,

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sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in a lawful activity off the employer's premises during nonworking hours.

3. Subsection 1 does not apply to business policies or practices relating to the employment of an individual by the individual's parent, grandparent, spouse, child, or grandchild, or in the domestic service of an individual.
4. The employment of one individual in place of another, standing by itself, is not evidence of a discriminatory practice.
5. After a conditional offer of employment, it is not discriminatory practice for an employer, employment agency, or labor organization to:
 - a. Require an individual to undergo physical examination for the purpose of determining the individual's capability to perform the essential functions of the job with or without reasonable accommodations if every entering employee in the same job category is subjected to the examination; or
 - b. Conduct an investigation as to the individual's medical history for the purpose of determining the individual's capability to perform available employment if every entering employee in the same job category is subjected to the investigation.
6. Medical history obtained under this section must be collected and maintained separate from nonmedical information and must be kept confidential.
7. The provisions of subsection 1 do not repeal or modify a federal, state, or local statute, regulation, or ordinance creating special rights or preference for veterans."

Page 14, remove lines 1 through 31

Page 15, remove lines 1 through 31

Page 16, remove lines 1 through 30

Page 17, remove lines 1 through 19

Page 17, line 21, remove "or unfair"

Page 18, line 2, remove "or unfair"

Page 18, line 5, remove "or unfair"

Page 18, line 11, replace "six months" with "three hundred days"

Page 18, line 12, remove "or unfair"

Page No. 5

30263.0302

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Operator's Signature

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Date

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Page 18, replace lines 14 through 27 with:

"14-02.8-05. Relief. If the commission, 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 commission 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 commission or the court. Interim earnings or amounts earnable with reasonable diligence by the individual 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 cost. 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."

Page 19, after line 3, insert:

- "2. "Complainant" means a person, including the commission, that files a complaint under this chapter.
3. "Conciliation agreement" means a written agreement resolving the issues in conciliation."

Page 19, line 4, replace "2." with "4."

Page 19, after line 4, insert:

- "5. "Discriminatory housing practice" means an act prohibited by section 14-02.9-02 or conduct that is an offense under section 14-02.9-04."

Page 19, line 5, replace "3." with "6."

Page 19, after line 11, insert:

- "7. "Family" includes a single individual."

Page 19, line 12, replace "4." with "8." and replace "building, structure, vacant land, or part thereof offered for" with "structure or part of a structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families or vacant land that is offered for sale or lease for the construction or location of a structure or part of a structure as previously described."

Page 19, remove lines 13 through 15

Page 19, line 16, replace "5." with "9."

Page 19, replace lines 22 through 31 with:

- "10. "To rent" includes to lease, sublease, or let, or to grant in any other manner, for a consideration, the right to occupy premises not owned by the occupant.

14-02.9-02. Discriminatory housing practices prohibited.

1. It is a discriminatory housing practice:

- 7 of 16
- a. For any person to refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to an individual because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance;
 - b. For any person to 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, or status with respect to marriage or public assistance;

Page 20, remove lines 1 through 31

Page 21, remove lines 1 through 6

Page 21, line 7, replace "d." with "c."

Page 21, remove lines 13 through 30

Page 22, line 1, replace "g." with "d."

Page 22, line 10, replace "h." with "e."

Page 22, line 17, replace "i." with "f."

Page 22, line 22, replace "j." with "g."

Page 22, remove lines 27 and 28

Page 22, line 29, replace "3." with "2."

Page 23, remove lines 9 through 11

Page 23, line 12, replace "5." with "3."

Page 23, replace lines 16 through 31 with:

- "4. This chapter does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or a restriction relating to health or safety standards. This chapter does not affect a requirement of nondiscrimination in any other state or federal law.
5. a. 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 commission determines is specifically designed and operated to assist elderly individuals under a 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

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each unit as determined by commission rules. In determining whether housing qualifies as housing for elderly because it is intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit, the commission shall adopt rules that require at least the following factors:

- (1) 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
 - (2) 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.
- b. Housing may not be considered to be in violation of the requirements for housing for the elderly under this section by reason of:
- (1) 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
 - (2) Unoccupied units, provided that the units are reserved for occupancy by individuals who meet the age requirements of this section.
6. This section does 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 any such broker, agent, realtor, or person; or the publication, posting, or mailing of a notice, statement, or advertisement prohibited by this chapter. 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;
 - 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.
7. This section does 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.

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8. 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.
 9. 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."

Page 24, remove lines 1 through 31

Page 25, remove lines 1 through 30

Page 26, remove lines 1 through 9

Page 26, line 10, replace "Unfair or discriminatory" with "Discriminatory"

Page 26, line 12, replace "It is an unfair or discriminatory housing practice and prohibited:" with "A person may not"

Page 26, line 13, remove "a. For any person to" and remove the second "to"

Page 26, line 18, replace "b. For any person to" with:

"2. A person may not"

Page 26, line 24, replace "2." with "3."

Page 27, line 18, replace "3." with "4."

Page 27, line 21, replace "2" with "3"

Page 27, line 22, replace "4." with "5." and replace "2" with "3"

Page 27, line 24, replace "5." with "6."

Page 27, line 28, replace "6." with "7."

Page 28, replace lines 1 through 30 with:

"14-02.9-04. Intimidation or interference - Penalty.

1. A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force, intentionally intimidates or interferes with an individual:
 - a. Because of the individual's race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance and because the individual is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling

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Date

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or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

- b. Because the individual is or has been or to intimidate the individual from participating, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in an activity, service, organization, or facility described by subdivision a; affording another individual opportunity or protection to so participate; or lawfully aiding or encouraging other individuals to participate, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in any activity, service, organization, or facility described in subdivision a.
2. It is a discriminatory practice to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of the individual having exercised or enjoyed, or on account of the individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.
3. An offense under subsection 1 is a class A misdemeanor.

14-02.9-05. Reports and studies. The commission shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The commission shall make studies relating to the nature and extent of discriminatory housing practices in this state.

14-02.9-06. Cooperation with other entities. The commission shall cooperate with and may provide technical and other assistance to federal, state, local, and other public or private entities that are designing or operating programs to prevent or eliminate discriminatory housing practices.

14-02.9-07. Gifts and grants - Fair housing fund - Continuing appropriation. The commission may accept grants from the federal government for administering this chapter. Grants received must be deposited to the credit of the fair housing fund in the state treasury. Moneys deposited to the credit of the fund are appropriated to the commission on a continuing basis for the purposes of administering this chapter.

14-02.9-08. Complaint and answer.

1. The commission shall investigate complaints of alleged discriminatory housing practices. An aggrieved person may file a complaint with the commission alleging the discriminatory housing practice. The commission may file a complaint. A complaint must be in writing and must contain such information and be in such form as prescribed by the commission. 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 commission shall give the aggrieved person notice that the complaint has been received, advise the aggrieved person of the time limits and choice of forums under this chapter, and not later than the tenth day after the date of filing of the complaint or the identification of an additional or substitute respondent under section 14-02.9-10, 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.

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3. Not later than the tenth day after the date of receipt of the notice and copy of the complaint under subsection 2, a respondent may file an answer to the complaint. An answer must be in writing, under oath, and in the form prescribed by the commission.
4. An answer may be amended at any time. An answer does not inhibit the investigation of a complaint.

14-02.9-09. Investigation.

1. If the federal government has referred a complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the commission shall investigate the allegations set forth in the complaint.
2. The commission shall investigate all complaints and, except as provided by subsection 3, shall complete an investigation not later than the hundredth day after the date the complaint is filed or, if it is impracticable to complete the investigation within the hundred-day period, shall dispose of all administrative proceedings related to the investigation not later than the first anniversary after the date the complaint is filed.
3. If the commission is unable to complete an investigation within the time periods prescribed by subsection 2, the commission shall notify the complainant and the respondent in writing of the reasons for the delay.

14-02.9-10. Additional or substitute respondent. The commission may join a person not named in the complaint as an additional or substitute respondent if during the investigation the commission determines that the person is alleged to be engaged, 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 14-02.9-08, the commission 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.

14-02.9-11. Temporary or preliminary relief. The commission may authorize a claim for relief for temporary or preliminary relief pending the final disposition of a complaint if the commission concludes after the filing of the complaint that prompt judicial action is necessary to carry out the purposes of this chapter. On receipt of the commission's authorization, the attorney general shall promptly file the claim. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable statutes and the North Dakota Rules of Civil Procedure. The filing of a claim for relief under this section does not affect the initiation or continuation of administrative proceedings under section 14-02.9-19.

14-02.9-12. Investigative report. The commission 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 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.

14-02.9-13. Reasonable cause determination.

1. The commission shall determine from the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The commission shall make this determination not later than the hundredth day after the date a complaint is filed unless making the

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determination is impracticable, or the commission approves a conciliation agreement relating to the complaint.

2. If making the determination within the period is impracticable, the commission shall give in writing to the complainant and the respondent the reasons for the delay. If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided by section 14-02.9-15, immediately issue a charge on behalf of the aggrieved person.

14-02.9-14. Charge.

1. A charge issued under section 14-02.9-13 must consist of a short and plain statement of the facts on which the commission finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, must be based on the final investigative report, and is not limited to the facts or grounds alleged in the complaint.
2. Within three days after issuing a charge, the commission shall send a copy of the charge with information about the election under section 14-02.9-18 to each respondent and each aggrieved person on whose behalf the complaint was filed.

14-02.9-15. Land-use law. If the commission determines that the matter involves the legality of a state or local zoning or other land-use law or ordinance, the commission may not issue a charge and shall immediately refer the matter to the attorney general for appropriate action.

14-02.9-16. Dismissal. If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice that is the subject of a complaint has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each dismissal.

14-02.9-17. Pending civil trial. The commission may not issue a charge alleging a discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

14-02.9-18. Election of judicial determination. A complainant, a respondent, or an aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted in the charge decided in a civil action as provided by section 14-02.9-24. The election must be made not later than the twentieth day after the date the person having the election receives service under subsection 2 of section 14-02.9-14 or, in the case of the commission, not later than the twentieth day after the date the charge is issued. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the charge relates.

14-02.9-19. Administrative hearing. If a timely election is not made under section 14-02.9-18, the commission shall provide for a hearing on the charge. Except as provided in this section, chapter 28-32 governs a hearing and an appeal of a hearing. A hearing under this section on an alleged discriminatory housing practice may not continue after the beginning of the trial of a claim for relief commenced by the aggrieved person under federal or state law seeking relief with respect to the discriminatory housing practice.

14-02.9-20. Administrative penalties.

1. If the commission determines at a hearing under section 14-02.9-19 that a respondent has engaged in or is about to engage in a discriminatory housing practice, the commission may order the appropriate relief,

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including actual damages, reasonable attorney's fees, court costs, and other injunctive or equitable relief.

2. To vindicate the public's interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed:
 - a. Eleven thousand dollars if the respondent has been found by order of the commission or a court to have committed a prior discriminatory housing practice; or
 - b. Except as provided by subsection 3, twenty-seven thousand dollars if the respondent has been found by order of the commission or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charges and fifty-five thousand dollars if the respondent has been found by the commission or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of filing of the charge.
3. If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has previously been found to have committed acts constituting a discriminatory housing practice, the civil penalties in subdivision b of subsection 2 may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.
4. At the request of the commission, the attorney general shall sue to recover a civil penalty due under this section. Funds collected under this section must be paid to the state treasurer for deposit in the general fund.

14-02.9-21. Effect of commission order. A commission order under section 14-02.9-20 does not affect a contract, sale, encumbrance, or lease that is consummated before the commission issues the order and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under this chapter.

14-02.9-22. Licensed or regulated business. If the commission issues an order with respect to a discriminatory housing practice that occurs in the course of a business subject to a licensing or regulation by a governmental agency, the commission, not later than the thirtieth day after the date the order is issued, shall send copies of the findings and the order to the governmental agency and recommend to the governmental agency appropriate disciplinary action.

14-02.9-23. Order in preceding five years. If the commission issues an order against a respondent against whom another order was issued within the preceding five years under section 14-02.5-33, the commission shall send a copy of each order to the attorney general.

14-02.9-24. Attorney general action for enforcement. If a timely election is made under section 14-02.9-18, the commission 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 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 14-02.9-27 through 14-02.9-32. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with the discovery orders entered by the court.

14-02.9

14-02.9-25. Pattern or practice case - Penalties.

1. On the request of the commission, the attorney general may file a claim for relief in district court for appropriate relief if the commission has reasonable cause to believe that a person is engaged in a pattern or practice of resistance to the full enjoyment of a right granted under this chapter or a person has been denied a right granted by this chapter and that denial raises an issue of general public importance.
2. In an action under this section, the court may award preventative relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as necessary to assure the full enjoyment of the rights granted by this chapter; award other appropriate relief, including monetary damages, reasonable attorney's fees, and court costs; and to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed fifty thousand dollars for a first violation and one hundred thousand dollars for a second or subsequent violation.
3. A person may intervene in an action under this section if the person is a person aggrieved by the discriminatory housing practice or a party to a conciliation agreement concerning the discriminatory housing practice.

14-02.9-26. Subpoena enforcement. The attorney general, on behalf of the commission or another party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in district court.

14-02.9-27. Civil action.

1. An aggrieved person may file a civil action in district court not later than the second year after the date of the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.
2. The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge under this chapter based on the discriminatory housing practice. This subsection does not apply to actions arising from the breach of a conciliation agreement.
3. An aggrieved person may file a claim for relief whether a complaint has been filed under section 14-02.9-08 and without regard to the status of any complaint filed under that section.
4. If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file a claim for relief with respect to the alleged discriminatory housing practice that forms the basis of the complaint except to enforce the terms of the agreement.
5. An aggrieved 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 commission if the commission has begun a hearing on the record under this chapter with respect to the charge.

14-02.9-28. Court-appointed attorney. On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory housing practice is alleged, the court may appoint an attorney for the person.

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14-02.9-29. Effect of relief granted. Relief granted under sections 14-02.9-27 through 14-02.9-32 does not affect a contract, sale, encumbrance, or lease that is consummated before the granting of the relief and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint or civil action under this chapter.

14-02.9-30. Intervention by attorney general. On request of the commission, the attorney general may intervene in an action under sections 14-02.9-27 through 14-02.9-32 if the commission certifies that the case is of general public importance. The attorney general may obtain the same relief as is available to the attorney general under subsection 2 of section 14-02.5-37.

14-02.9-31. Prevailing party. A court in an action brought under this chapter or the commission in an administrative hearing under section 14-02.9-19 may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party."

Page 29, remove lines 1 through 31

Page 30, remove lines 1 through 30

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 30

Page 34, remove lines 1 through 12

Page 34, replace "14-02.9-13" with "14-02.9-32"

Page 34, line 14, remove ", an order pursuant to section 14-02.9-04," and after "or" insert "any"

Page 34, replace lines 21 through 30 with:

- "1. "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."

Page 35, remove lines 1 and 2

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Date

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Page 35, line 7, remove "1." and replace "and prohibited for a person, directly or indirectly, to" with "for a person engaged in the provision of public accommodations to fail to provide to an individual 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 an individual 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 individual's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance."

Page 35, remove lines 8 through 30

Page 36, remove lines 30 and 31

Page 37, remove lines 1 through 12

Page 37, line 13, replace "14-02.10-08" with "14-02.10-07"

Page 37, line 14, replace "sixty" with "one hundred eighty"

Page 37, line 16, replace "14-02.10-09" with "14-02.10-08"

Page 37, line 22, after the period insert "Backpay ordered under this section is limited to no more than two years from the date a minimally sufficient complaint was filed with the commission or the court. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against reduce the backpay otherwise allowable."

Page 37, remove lines 23 through 31

Page 38, remove lines 1 through 31

Page 39, remove lines 1 through 9

Renumber accordingly

Date: February 5, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2306

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30263.0302

Action Taken Amendment #1

Motion Made By Sen. Trenbeath Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent Zero (0)

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Dennis Bercier
Operator's Signature

10/22/03
Date

Date: February 5, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2306

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30263.0302

Action Taken Do Pass as Amendment #1

Motion Made By Sen. Nelson Seconded By Sen. Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman		X	Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever		X			
Sen. Thomas L. Trenbeath		X			

Total (Yes) THREE (3) No THREE (3)

Absent Zero (0)

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Dennis Bercier
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10/22/03
Date

Date: February 5, 2003
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2306

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30263.0302

Action Taken DO NOT PASS as amended

Motion Made By Sen. Dever Seconded By Sen. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier		X
Sen. Stanley Lyson - Vice Chair		X	Sen. Carolyn Nelson		X
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) THREE No THREE

Absent Zero (0)

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Dennis Bercier
Operator's Signature

10/22/03
Date

Date: February 5, 2003
Roll Call Vote #: #

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2306

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30263.0302

Action Taken Submit Bill without Committee Recommendation with Amendment #1

Motion Made By Senator Dick Dever Seconded By Senator Thomas L. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	x	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson		X
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ONE (1)

Absent Zero (0)

Floor Assignment Sen. Dever

If the vote is on an amendment, briefly indicate intent:

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Dennis Bercier 10/22/03
Operator's signature Date

REPORT OF STANDING COMMITTEE (410)
February 7, 2003 1:58 p.m.

Module No: SR-24-2021
Carrier: Dever
Insert LC: 30263.0302 Title: .0400

REPORT OF STANDING COMMITTEE

SB 2306: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION (3 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2306 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to provide for a state policy against discrimination;", after the third comma insert "and", and remove ", and"

Page 1, line 2, remove "14-02.11"

Page 1, after line 5, insert:

"SECTION 1. 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, 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."

Page 1, line 10, replace "means a chronological age of at least eighteen years" with "Insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age"

Page 1, line 16, remove "of an"

Page 1, line 17, remove "individual's", replace "and includes" with a comma, and replace the second "and" with ", or"

Page 1, line 18, remove "The term also means a mental impairment or"

Page 1, remove lines 19 and 20

Page 1, line 21, after "7." insert "'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 results in the unequal treatment or separation or segregation of any individual, 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 individual 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, 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

REPORT OF STANDING COMMITTEE (410)
February 7, 2003 1:58 p.m.

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- 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.

8."

Page 1, line 22, replace "8." with "9."

Page 1, after line 23, insert:

- "10. "Otherwise qualified person" means an individual who is capable of performing the essential functions of the particular employment in question.
11. "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.
12. "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."

Page 2, line 1, replace "9." with "13."

Page 2, line 4, replace "10." with "14."

Page 2, line 6, replace "11." with "15."

Page 8, line 27, after the period insert "If the commission finds that the complainant's allegation of a discriminatory practice is false and not made in good faith, the commission shall order the complainant to pay costs and reasonable attorney's fees incurred by the respondent in responding to the allegation."

Page 12, replace lines 5 through 30 with:

- "1. "Employee" means an individual 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 an individual elected to public office in the state or political

(2) DESK, (3) COMM

Page No. 2

SR-24-2021

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10/22/03
Date

subdivision by the qualified voters thereof, or an individual 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. "Employee" does include an individual subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.

2. "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.
3. "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.
4. "Labor organization" mean 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."

Page 13, remove lines 1 and 2

Page 13, line 3, remove "or unfair"

Page 13, replace lines 4 through 31 with:

- "1. It is a discriminatory practice for:
 - a. 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, 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. 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 or because of that individual's religion. 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 policy making 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.
 - b. An employment agency to accord adverse or unequal treatment to an individual 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, or status with respect to marriage or public assistance; or to accept a listing of employment on that basis.

- c. 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 an individual with respect to the individual'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, or status with respect to marriage or public assistance.
 - d. A person to conceal unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or by means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the making of a record or inquiry, or by use of any device to bring about or facilitate discrimination, or to engage in or threaten to engage in a reprisal, economic or otherwise, against an individual by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purpose and provisions of this chapter because of race, color, religion, sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours.
 - e. 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, 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.
 - f. An employer to fail or refuse to hire and employ an individual for a position, for an employer 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 in a position if the occupancy of the position, or access to the premises upon which the duties of the position are performed, is subject to a requirement imposed in the interest of the national security of the United States under a security program administered under a statute of the United States or an executive order of the president and the individual has not fulfilled or has ceased to fulfill that requirement.
2. Notwithstanding subdivisions a, b, and c of subsection 1, 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, 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, status with respect to marriage or public assistance, or participation in a lawful activity off the employer's premises during nonworking hours.

3. Subsection 1 does not apply to business policies or practices relating to the employment of an individual by the individual's parent, grandparent, spouse, child, or grandchild, or in the domestic service of an individual.
4. The employment of one individual in place of another, standing by itself, is not evidence of a discriminatory practice.
5. After a conditional offer of employment, it is not discriminatory practice for an employer, employment agency, or labor organization to:
 - a. Require an individual to undergo physical examination for the purpose of determining the individual's capability to perform the essential functions of the job with or without reasonable accommodations if every entering employee in the same job category is subjected to the examination; or
 - b. Conduct an investigation as to the individual's medical history for the purpose of determining the individual's capability to perform available employment if every entering employee in the same job category is subjected to the investigation.
6. Medical history obtained under this section must be collected and maintained separate from nonmedical information and must be kept confidential.
7. The provisions of subsection 1 do not repeal or modify a federal, state, or local statute, regulation, or ordinance creating special rights or preference for veterans."

Page 14, remove lines 1 through 31

Page 15, remove lines 1 through 31

Page 16, remove lines 1 through 30

Page 17, remove lines 1 through 19

Page 17, line 21, remove "or unfair"

Page 18, line 2, remove "or unfair"

Page 18, line 5, remove "or unfair"

Page 13, line 11, replace "six months" with "three hundred days"

Page 18, line 12, remove "or unfair"

Page 18, replace lines 14 through 27 with:

"14-02.8-05. Relief. If the commission, 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 commission 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 commission or the court. Interim earnings or amounts earnable with reasonable diligence by the individual 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 cost. 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."

Page 19, after line 3, insert:

- "2. "Complainant" means a person, including the commission, that files a complaint under this chapter.
3. "Conciliation agreement" means a written agreement resolving the issues in conciliation."

Page 19, line 4, replace "2." with "4."

Page 19, after line 4, insert:

- "5. "Discriminatory housing practice" means an act prohibited by section 14-02.9-02 or conduct that is an offense under section 14-02.9-04."

Page 19, line 5, replace "3." with "6."

Page 19, after line 11, insert:

- "7. "Family" includes a single individual."

Page 19, line 12, replace "4." with "8." and replace "building, structure, vacant land, or part thereof offered for" with "structure or part of a structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families or vacant land that is offered for sale or lease for the construction or location of a structure or part of a structure as previously described."

Page 19, remove lines 13 through 15

Page 19, line 16, replace "5." with "9."

Page 19, replace lines 22 through 31 with:

- "10. "To rent" includes to lease, sublease, or let, or to grant in any other manner, for a consideration, the right to occupy premises not owned by the occupant.

14-02.9-02. Discriminatory housing practices prohibited.

1. It is a discriminatory housing practice:
 - a. For any person to refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other

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manner make unavailable or deny a dwelling to an individual because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance;

- b. For any person to 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, or status with respect to marriage or public assistance;"

Page 20, remove lines 1 through 31

Page 21, remove lines 1 through 6

Page 21, line 7, replace "d." with "c."

Page 21, remove lines 13 through 30

Page 22, line 1, replace "g." with "d."

Page 22, line 10, replace "h." with "e."

Page 22, line 17, replace "i." with "f."

Page 22, line 22, replace "j." with "g."

Page 22, remove lines 27 and 28

Page 22, line 29, replace "3." with "2."

Page 23, remove lines 9 through 11

Page 23, line 12, replace "5." with "3."

Page 23, replace lines 16 through 31 with:

- "4. This chapter does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or a restriction relating to health or safety standards. This chapter does not affect a requirement of nondiscrimination in any other state or federal law.
5. a. 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 commission determines is specifically designed and operated to assist elderly individuals under a 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 commission rules. In determining whether housing qualifies as housing for elderly because it is intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit, the commission shall adopt rules that require at least the following factors:

- (1) 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
 - (2) 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.
- b. Housing may not be considered to be in violation of the requirements for housing for the elderly under this section by reason of:
- (1) 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
 - (2) Unoccupied units, provided that the units are reserved for occupancy by individuals who meet the age requirements of this section.
6. This section does 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 any such broker, agent, realtor, or person; or the publication, posting, or mailing of a notice, statement, or advertisement prohibited by this chapter. 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;
 - 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.
7. This section does 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.
8. 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.

9. 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."

Page 24, remove lines 1 through 31

Page 25, remove lines 1 through 30

Page 26, remove lines 1 through 9

Page 26, line 10, replace "Unfair or discriminatory" with "Discriminatory"

Page 26, line 12, replace "It is an unfair or discriminatory housing practice and prohibited:" with "A person may not"

Page 26, line 13, remove "a. For any person to" and remove the second "to"

Page 26, line 18, replace "b. For any person to" with:

"2. A person may not"

Page 26, line 24, replace "2." with "3."

Page 27, line 18, replace "3." with "4."

Page 27, line 21, replace "2" with "3"

Page 27, line 22, replace "4." with "5." and replace "2" with "3"

Page 27, line 24, replace "5." with "6."

Page 27, line 28, replace "6." with "7."

Page 28, replace lines 1 through 30 with:

"14-02.9-04. Intimidation or Interference - Penalty.

1. A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force, intentionally intimidates or interferes with an individual:
 - a. Because of the individual's race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance and because the individual is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or
 - b. Because the individual is or has been or to intimidate the individual from participating, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in an activity, service, organization, or facility described by subdivision a; affording another individual opportunity or protection to so participate; or lawfully aiding or encouraging other individuals to participate, without discrimination

because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in any activity, service, organization, or facility described in subdivision a.

2. It is a discriminatory practice to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of the individual having exercised or enjoyed, or on account of the individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.
3. An offense under subsection 1 is a class A misdemeanor.

14-02.9-05. Reports and studies. The commission shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The commission shall make studies relating to the nature and extent of discriminatory housing practices in this state.

14-02.9-06. Cooperation with other entities. The commission shall cooperate with and may provide technical and other assistance to federal, state, local, and other public or private entities that are designing or operating programs to prevent or eliminate discriminatory housing practices.

14-02.9-07. Gifts and grants - Fair housing fund - Continuing appropriation. The commission may accept grants from the federal government for administering this chapter. Grants received must be deposited to the credit of the fair housing fund in the state treasury. Moneys deposited to the credit of the fund are appropriated to the commission on a continuing basis for the purposes of administering this chapter.

14-02.9-08. Complaint and answer.

1. The commission shall investigate complaints of alleged discriminatory housing practices. An aggrieved person may file a complaint with the commission alleging the discriminatory housing practice. The commission may file a complaint. A complaint must be in writing and must contain such information and be in such form as prescribed by the commission. 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 commission shall give the aggrieved person notice that the complaint has been received, advise the aggrieved person of the time limits and choice of forums under this chapter, and not later than the tenth day after the date of filing of the complaint or the identification of an additional or substitute respondent under section 14-02.9-10, 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.
3. Not later than the tenth day after the date of receipt of the notice and copy of the complaint under subsection 2, a respondent may file an answer to the complaint. An answer must be in writing, under oath, and in the form prescribed by the commission.

4. An answer may be amended at any time. An answer does not inhibit the investigation of a complaint.

14-02.9-09. Investigation.

1. If the federal government has referred a complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the commission shall investigate the allegations set forth in the complaint.
2. The commission shall investigate all complaints and, except as provided by subsection 3, shall complete an investigation not later than the hundredth day after the date the complaint is filed or, if it is impracticable to complete the investigation within the hundred-day period, shall dispose of all administrative proceedings related to the investigation not later than the first anniversary after the date the complaint is filed.
3. If the commission is unable to complete an investigation within the time periods prescribed by subsection 2, the commission shall notify the complainant and the respondent in writing of the reasons for the delay.

14-02.9-10. Additional or substitute respondent. The commission may join a person not named in the complaint as an additional or substitute respondent if during the investigation the commission determines that the person is alleged to be engaged, 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 14-02.9-08, the commission 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.

14-02.9-11. Temporary or preliminary relief. The commission may authorize a claim for relief for temporary or preliminary relief pending the final disposition of a complaint if the commission concludes after the filing of the complaint that prompt judicial action is necessary to carry out the purposes of this chapter. On receipt of the commission's authorization, the attorney general shall promptly file the claim. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable statutes and the North Dakota Rules of Civil Procedure. The filing of a claim for relief under this section does not affect the initiation or continuation of administrative proceedings under section 14-02.9-19.

14-02.9-12. Investigative report. The commission 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 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.

14-02.9-13. Reasonable cause determination.

1. The commission shall determine from the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The commission shall make this determination not later than the hundredth day after the date a complaint is filed unless making the determination is impracticable, or the commission approves a conciliation agreement relating to the complaint.

2. If making the determination within the period is impracticable, the commission shall give in writing to the complainant and the respondent the reasons for the delay. If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided by section 14-02.9-15, immediately issue a charge on behalf of the aggrieved person.

14-02.9-14. Charge.

1. A charge issued under section 14-02.9-13 must consist of a short and plain statement of the facts on which the commission finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, must be based on the final investigative report, and is not limited to the facts or grounds alleged in the complaint.
2. Within three days after issuing a charge, the commission shall send a copy of the charge with information about the election under section 14-02.9-18 to each respondent and each aggrieved person on whose behalf the complaint was filed.

14-02.9-15. Land-use law. If the commission determines that the matter involves the legality of a state or local zoning or other land-use law or ordinance, the commission may not issue a charge and shall immediately refer the matter to the attorney general for appropriate action.

14-02.9-16. Dismissal. If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice that is the subject of a complaint has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each dismissal.

14-02.9-17. Pending civil trial. The commission may not issue a charge alleging a discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

14-02.9-18. Election of judicial determination. A complainant, a respondent, or an aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted in the charge decided in a civil action as provided by section 14-02.9-24. The election must be made not later than the twentieth day after the date the person having the election receives service under subsection 2 of section 14-02.9-14 or, in the case of the commission, not later than the twentieth day after the date the charge is issued. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the charge relates.

14-02.9-19. Administrative hearing. If a timely election is not made under section 14-02.9-18, the commission shall provide for a hearing on the charge. Except as provided in this section, chapter 28-32 governs a hearing and an appeal of a hearing. A hearing under this section on an alleged discriminatory housing practice may not continue after the beginning of the trial of a claim for relief commenced by the aggrieved person under federal or state law seeking relief with respect to the discriminatory housing practice.

14-02.9-20. Administrative penalties.

1. If the commission determines at a hearing under section 14-02.9-19 that a respondent has engaged in or is about to engage in a discriminatory

housing practice, the commission may order the appropriate relief, including actual damages, reasonable attorney's fees, court costs, and other injunctive or equitable relief.

2. To vindicate the public's interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed:
 - a. Eleven thousand dollars if the respondent has been found by order of the commission or a court to have committed a prior discriminatory housing practice; or
 - b. Except as provided by subsection 3, twenty-seven thousand dollars if the respondent has been found by order of the commission or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charges and fifty-five thousand dollars if the respondent has been found by the commission or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of filing of the charge.
3. If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has previously been found to have committed acts constituting a discriminatory housing practice, the civil penalties in subdivision b of subsection 2 may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.
4. At the request of the commission, the attorney general shall sue to recover a civil penalty due under this section. Funds collected under this section must be paid to the state treasurer for deposit in the general fund.

14-02.9-21. Effect of commission order. A commission order under section 14-02.9-20 does not affect a contract, sale, encumbrance, or lease that is consummated before the commission issues the order and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under this chapter.

14-02.9-22. Licensed or regulated business. If the commission issues an order with respect to a discriminatory housing practice that occurs in the course of a business subject to a licensing or regulation by a governmental agency, the commission, not later than the thirtieth day after the date the order is issued, shall send copies of the findings and the order to the governmental agency and recommend to the governmental agency appropriate disciplinary action.

14-02.9-23. Order in preceding five years. If the commission issues an order against a respondent against whom another order was issued within the preceding five years under section 14-02.5-33, the commission shall send a copy of each order to the attorney general.

14-02.9-24. Attorney general action for enforcement. If a timely election is made under section 14-02.9-18, the commission 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 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

14-02.9-27 through 14-02.9-32. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with the discovery orders entered by the court.

14-02.9-25. Pattern or practice case - Penalties.

1. On the request of the commission, the attorney general may file a claim for relief in district court for appropriate relief if the commission has reasonable cause to believe that a person is engaged in a pattern or practice of resistance to the full enjoyment of a right granted under this chapter or a person has been denied a right granted by this chapter and that denial raises an issue of general public importance.
2. In an action under this section, the court may award preventative relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as necessary to assure the full enjoyment of the rights granted by this chapter; award other appropriate relief, including monetary damages, reasonable attorney's fees, and court costs; and to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed fifty thousand dollars for a first violation and one hundred thousand dollars for a second or subsequent violation.
3. A person may intervene in an action under this section if the person is a person aggrieved by the discriminatory housing practice or a party to a conciliation agreement concerning the discriminatory housing practice.

14-02.9-26. Subpoena enforcement. The attorney general, on behalf of the commission or another party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in district court.

14-02.9-27. Civil action.

1. An aggrieved person may file a civil action in district court not later than the second year after the date of the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.
2. The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge under this chapter based on the discriminatory housing practice. This subsection does not apply to actions arising from the breach of a conciliation agreement.
3. An aggrieved person may file a claim for relief whether a complaint has been filed under section 14-02.9-08 and without regard to the status of any complaint filed under that section.
4. If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file a claim for relief with respect to the alleged discriminatory housing practice that forms the basis of the complaint except to enforce the terms of the agreement.

5. An aggrieved 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 commission if the commission has begun a hearing on the record under this chapter with respect to the charge.

14-02.9-28. Court-appointed attorney. On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory housing practice is alleged, the court may appoint an attorney for the person.

14-02.9-29. Effect of relief granted. Relief granted under sections 14-02.9-27 through 14-02.9-32 does not affect a contract, sale, encumbrance, or lease that is consummated before the granting of the relief and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint or civil action under this chapter.

14-02.9-30. Intervention by attorney general. On request of the commission, the attorney general may intervene in an action under sections 14-02.9-27 through 14-02.9-32 if the commission certifies that the case is of general public importance. The attorney general may obtain the same relief as is available to the attorney general under subsection 2 of section 14-02.5-37.

14-02.9-31. Prevailing party. A court in an action brought under this chapter or the commission in an administrative hearing under section 14-02.9-19 may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party."

Page 29, remove lines 1 through 31

Page 30, remove lines 1 through 30

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 30

Page 34, remove lines 1 through 12

Page 34, replace "14-02.9-13" with "14-02.9-32"

Page 34, line 14, remove ", an order pursuant to section 14-02.9-04," and after "or" insert "any"

Page 34, replace lines 21 through 30 with:

- *1. "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."

Page 35, remove lines 1 and 2

Page 35, line 7, remove "1." and replace "and prohibited for a person, directly or indirectly, to" with "for a person engaged in the provision of public accommodations to fail to provide

REPORT OF STANDING COMMITTEE (410)
February 7, 2003 1:58 p.m.

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to an individual 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 an individual 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 individual's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance."

Page 35, remove lines 8 through 30

Page 36, remove lines 30 and 31

Page 37, remove lines 1 through 12

Page 37, line 13, replace "14-02.10-08" with "14-02.10-07"

Page 37, line 14, replace "sixty" with "one hundred eighty"

Page 37, line 16, replace "14-02.10-09" with "14-02.10-08"

Page 37, line 22, after the period insert "Backpay ordered under this section is limited to no more than two years from the date a minimally sufficient complaint was filed with the commission or the court. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against reduce the backpay otherwise allowable."

Page 37, remove lines 23 through 31

Page 38, remove lines 1 through 31

Page 39, remove lines 1 through 9

Renumber accordingly

2003 TESTIMONY

SB 2306

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Deanna Walker
Operator's Signature

10/22/03
Date

Senate Judiciary Committee Testimony
Senator Tim Mathern
Senate Bill 2306, February 5, 2003

Att #1a

Chairman Traynor and members of the Senate Judiciary Committee. My name is Tim Mathern, the Senator from District 11 in Fargo. I sponsored Senate Bill 2306 at the request of the North Dakota Human Rights Coalition with a membership of organizations and individuals from around the state. The goal from the beginning was to keep all of present North Dakota law intact while adding the Commission aspect. Though we had gone through 3 revisions, as indicated in the Legislative Council number, we learned recently of matters that were unintentionally changed. I asked Legislative Council staff and the Coalition to go through this with a fine tooth comb which has now been done. I here pass out a set of amendments which I ask you to adopt as the result of that work.

Senate Bill 2306 as amended will create a Human Rights Commission to oversee and improve enforcement of human rights laws in North Dakota. This bill would create a seven member North Dakota Commission on Human Rights within the Labor Department's Division of Human Rights. The Commission will not replace the Division of Human Rights within the Labor Department, but will enhance and augment the work of the Division of Human Rights. The Division of Human Rights will continue to carry out the responsibilities given to it in past legislative sessions, with the assistance and information that the Commission will be able to provide.

The Commission members would be volunteers appointed by the Governor and would represent the business community, government, and five members from the community at large. The Commission, diverse in membership, would have representatives from across the state. This model has worked well in other states and in communities throughout North Dakota. This Commission would provide the visibility North Dakota needs to show that we recognize the value of diversity and are serious about addressing issues that diversity can bring.

The bill gives the Commission authority to adopt rules for enforcing discrimination statutes and to investigate and hold hearings on complaints of discrimination. The bill is proactive, it calls for the Commission to research and issue reports on ways to minimize or eliminate discriminatory practices in North Dakota and to report annually to the Governor on the discharge of duties assigned to the Commission.

The Division of Human Rights, established in 2001, was a step in the right direction. This bill will take the next crucial step, providing North Dakota citizens most affected by discrimination a voice in the enforcement of our human rights laws. Your support of Senate Bill 2306 will provide the most cost-effective efficient method of fulfilling the goal of enforcing our human rights laws.

Mr. Chairman we have many people to testify so I will leave other matters to others. Please accept Ms. Cheryl Bergian as the next witness as she is prepared to explain the bill in greater detail and will introduce other proponents in a manner that is respectful of your time. I ask for your support of SB 2306 with amendments. Thank you.

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Operator's Signature

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10/22/03

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North Dakota Human Rights Coalition

P.O. Box 1961, Fargo, ND 58107-1961 (701) 239-9323 Fax (701) 478-4452 www.ndhrc.org

Testimony
Cheryl Bergian
Director
North Dakota Human Rights Coalition
Senate Bill 2306
Senate Judiciary Committee
February 5, 2003

The North Dakota Human Rights Coalition is proposing that the North Dakota legislature enact a bill, Senate Bill 2306 as amended, to create a North Dakota Commission on Human Rights. The proposed Commission would operate in addition to the current Division of Human Rights in the North Dakota Department of Labor. The Commission would not replace or supplant the Division; the intention of this legislation is to enhance and augment the work of the Division, and provide the resources to the Division to accomplish activities that the Division has not had the ability to accomplish. The model selected follows that used by Colorado since 1981; the intention of Senate Bill 2306 as amended is to add a Commission to existing North Dakota human rights law, using this model. Other states also have Commissions in addition to Divisions, including South Dakota and Michigan.

The Division of Human Rights was given the ability to investigate and enforce all forms of discrimination prohibited by state law in the 2001 legislative session. Prior to the 2001 session, the Division had the ability to investigate and enforce discrimination in housing, and investigate discrimination in employment (before 2001, those cases were referred to the federal Equal Employment Opportunity Commission for enforcement if discrimination was determined by the Division of Human Rights to have occurred).

While the Division of Human Rights has begun to address the needs of North Dakotans in the human rights area, it has not been able to accomplish several enunciated goals in the past two years. Because of this, the North Dakota Human Rights Coalition is proposing a North Dakota Commission on Human Rights to assist the Division in meeting the needs of North Dakota residents.

Despite repeated promises to do so over the past two years, the Division of Human Rights has not developed rules to govern its decision-making while investigating complaints of discrimination and making determinations of whether discrimination occurred. This has led to an October, 2002 decision of the Division on a housing discrimination complaint filed in June, 2000 that discrimination did not occur in circumstances where a black tenant was required to dispose of a therapeutic dog in violation of state fair housing law and had her rent increased when other tenants' rent was not increased. The Division of Human Rights' investigation documented the landlord's statements to multiple witnesses that blacks and Native Americans were "savages", that blacks were "niggers", and that the tenant in question was a "nigger in the woodpile." The landlord also stated to a witness that he could not keep accommodating "these people" just because they had disabilities or were on welfare. These statements were ignored by the Division of Human Rights in determining that the landlord's adverse actions against the tenant were not because the tenant was black or had a disability.

A Commission would be able to issue rules that govern the decision-making of the Division of Human Rights, and establish the "reasonable cause" standard that the Division is supposed to use when making decisions on whether discrimination has occurred. Because the "reasonable cause" standard has not been established by the Division, there is no way of knowing what decision-making process the Division following in determining that a reasonable person would not decide that discrimination occurred when a landlord is taking adverse action against a black tenant, calls that black tenant a "nigger in the woodpile," makes racist comments regarding blacks to several witnesses, and says that he can't keep accommodating "these people" because they have disabilities.

A Commission would also be able to hear appeals of no reasonable cause determinations like the one issued in this situation. The Commission would be made up of people who represent those likely to experience discrimination, such as people of color, people of different ethnic origin, and people with disabilities, as well as representatives of business and state or local government. The Division of Human Rights rarely determines that there is reasonable cause to believe that discrimination has occurred. It has received 538 complaints of discrimination since in the past four years and it has found reasonable cause to determine that discrimination occurred in only eight. By the Division of Human Rights' decision-making, in only eight incidents reported to it in the past four years would a reasonable person believe that discrimination occurred. The Division of Human Rights did facilitate settlement in 56 of the 538 cases, but those settlements did not include a reasonable cause finding. In contrast, the Division found no reasonable cause that discrimination occurred in 259 of the 538 cases filed. Commissioner Bachmeier has used the examples of Colorado, Iowa, and Kansas, which have human rights commissions in addition to the state staff which investigates complaints, to state that the number of probable cause findings in North Dakota is at a similar level. However, the decision-making in the no probable cause finding cited above creates the question, in North Dakota, of whether the no probable cause decision-making of the Division of Human Rights should be examined more closely. Written testimony from Cheryl Long Feather is provided to you which relates her experience with the investigation and decision-making process of the Division of Human Rights.

The Division has not implemented telephone complaint acceptance of discrimination complaints, despite repeated promises to do so. The current process requires a person with a discrimination complaint to call the Division of Human Rights in Bismarck, and a form is sent to the complainant to fill out. The complainant is asked to provide details regarding the discriminatory incident or incidents, and is asked to get signed witness statements. Written testimony from Doreen K. Kukok is provided for information on the frustration that is created by the request for signed witness statements to be obtained by the complainant, rather than obtained by the Division as part of its investigation of the complaint.

Once the form is returned to the Division by the complainant, the Division decides if the discrimination complaint possibly falls with the prohibitions of the discrimination law in North Dakota. This process is unduly cumbersome and relies on the literacy of the complainant to give the Division the information it needs to investigate the discrimination complaint. The Division should obtain the information it needs for the filing of a complaint in the first or second telephone call. The Division has acknowledged the need to change its complaint acceptance process for more than a year and the Labor Commissioner has said that the computer software is in development for telephone complaint acceptance for more than a year, but the process is still the same. There is written testimony from Felix A. Renville, Jr. that illustrates for you what this means. He called the Division within a month of the day he experienced actions that he felt was based on discrimination. He was not advised of any deadline to submit his complaint. He gathered the information that was requested of him by the Division, including signed witness statements. A copy of the information he collected is included with his testimony. He sent his

complaint to the Division three days too late. Now, there is nothing that can be done to redress what happened to him. If there had been a telephone complaint acceptance process, his complaint would have been filed months earlier. A Commission on Human Rights could assist the Division in addressing the barriers that mean that telephone complaint acceptance has not been started.

The process currently in place means that if the complainant does not work very quickly, the complainant could lose the right to file a discrimination complaint. The deadline for filing some complaints is as short as 6 months from the date of the discriminatory act, as in Felix Renville's situation, and the Division of Human Rights does not advise people of these deadlines in the initial telephone call. If the complainant calls the Division several months after the incident, it is very likely that the complaint will not be signed and filed in time. The complainant's ability to call the Division of Human Rights quickly depends on the complainant's ability to locate that telephone number; the Division of Human Rights is not listed in the Fargo telephone book, despite the Division's promise two years ago to ensure listings in all the telephone books across the state. The Division also is not listed in many other telephone books in the state, including Devils Lake, Grand Forks, Grafton, Minot, Jamestown, Wahpeton, Dickinson, and Williston. The creation of the Commission could provide seven other people, plus dedicated staff time, to address the barriers to access that exist for those who are trying to find the Division of Human Rights.

The Division does in-person complaint acceptance in one city in North Dakota, Fargo (other than in Bismarck, where its office is located). The Division instituted in-person complaint acceptance for one-half day per month in August, 2002, at the request of the Fargo Human Relations Commission. The Fargo Human Relations Commission asked for in-person complaint acceptance in Fargo because of the 18 people referred to the Division in 2001, only 3 people got complaints filed through the written complaint acceptance process. The Division has done no publicity of the availability of in-person complaint acceptance in Fargo, despite its promise to do a press release in September, 2002, and despite a second request for that press release by the Fargo Human Relations Commission in November, 2002. And, the telephone number for the Division of Human Rights (in Bismarck or Fargo) is not listed in the Fargo telephone book. A Commission on Human Rights would be able to assist the Division in publicizing the Division's availability as a resource for complaints or questions in all areas of North Dakota; the Commission would include members from across the state.

The Division of Human Rights has difficulty in meeting its investigation and enforcement role in the discrimination complaints it does receive. As of the end of 2002, it had 3 open cases that been filed in 1999, 10 open cases that had been filed in 2000, 23 open cases that had been filed in 2001, and 120 open cases that had been filed in 2002. The delay in investigating cases means that investigations are started months or years after the discriminatory act or acts occurred, affecting the memory of and availability of witnesses. In the investigation already mentioned, the case was filed in June, 2000 and closed in August, 2002. Since 1999, the Division has had three additional full-time employees added by the North Dakota legislature to assist its investigation and enforcement work.

A Commission would be able to assist the Division by taking on responsibilities that the Division has not been able to address and let the Division to continue to focus on investigating and enforcing the discrimination law in North Dakota. Commissioner Bachmeier has assumed in the fiscal note that the Commission would meet every other month, for one day, and has allocated one-half FTE staff assistance to the Commission (also in the fiscal note). With this amount of time available, both from the Commission and the staff of the Division, it is clear that the Commission would be able to attend to many responsibilities that the Division has not been able to address.

An example of responsibilities that the Division has not been able to address is a study on the extent and nature of discrimination in North Dakota that was required by the 2001 legislature, upon the request of the North Dakota Human Rights Coalition. The Division contracted with a private company which conducted that study in December, 2001. Despite repeated requests to the Division from the North Dakota Human Rights Coalition and the Fargo Human Relations Commission that the results of the study be released and publicized, the Division did not make those results public until last week, after the Coalition brought the Division's delay to the attention of this Committee in January. A Commission would be able to publicize the results of such a study in a more timely manner, including positive and negative results, and assist the Division in developing responses to the negative results in order to improve the quality of life for all North Dakota residents, and for those who might consider residence in North Dakota.

An example of information in the study that the Commission could assist the Division in addressing is the difference in perception of the extent and nature of discrimination between all the respondents in the survey and the respondents who were Native American or Non-White. 75% of all the respondents did not feel that they had been discriminated against in any way, but 55% of the Native American respondents and 52% of the Non-White respondents believed that they had experienced discrimination (Executive Summary, page 3).

The Appendix of the survey lists two pages of places respondents went to seek help for the discrimination they believed they had experienced. In only a handful of times did they seek out the Department of Labor, the state agency given the responsibility to address complaints of discrimination (Appendix page 45).

The respondents in the survey were asked to rate how much of a problem discrimination is in North Dakota using a scale of 1 (No Discrimination) to 5 (Very Significant Problem). The overall mean rating was 2.80, which was interpreted to be that discrimination is not a "very significant problem". (Executive Summary page 2). However, there are more than 30 pages of comments in the Appendix (pages 1 through 31) which list the comments made regarding discrimination in North Dakota. We ask that you read through those pages, and listen to the responses made. There is page after page of reports from the 1316 respondents of discrimination that they experienced or knew about. While the survey may be interpreted to state that discrimination is not a "very significant problem", the voices that you will hear will tell you that it is enough of a problem that additional resources of state government, at a minimal cost, are needed to provide the environment in this state that will attract and keep people in our state.

The North Dakota Human Rights Coalition asked the Division of Human Rights to create an advisory committee, made up of people who represent those likely to experience discrimination, more than a year and a half ago. Despite repeated requests for an answer to the Coalition's request, despite meeting with the Labor Commissioner regarding this request and providing additional information on the reasons for, proposed responsibilities of and proposed structure of the advisory committee, the Labor Commissioner has never responded to the Coalition's request for an advisory committee, despite repeated assurances that he would do so. Copies of letters between the Coalition and the Labor Commissioner, including the proposed responsibilities and structure of the advisory committee, are provided to you as part of this testimony. The advisory committee would have assisted the Division in providing information on discrimination and in publicizing the Division's availability to citizens of North Dakota. The proposed Commission is needed to fill role. It is critical that citizen participation be part of the human rights

education and enforcement role of state government. The participation and involvement of citizens, those who are affected by the discrimination laws of the state, including members of the protected classes, business, and government, is needed to be able to fully, adequately, and effectively fulfill the needs of those who experience or might discrimination within our state. The law passed in 2001 giving full investigation and enforcement authority to the Division of Human Rights was one step in reaching this goal. The creation of a North Dakota Commission on Human Rights is the next step that is needed.

Copies of letters exchanged with the Labor Commissioner regarding the requests of the North Dakota Human Rights Coalition are part of this testimony. It is clear from the letters that the Labor Commissioner agreed that the requests of the Coalition were being considered, and some actions were in the process of being implemented. But, according to the Labor Commissioner, the resources of the Division were being allocated to other priority needs, and the implementation of the actions were delayed. The written testimony of Tom Fiebigger provides additional information about his concerns regarding the operation of the Division of Human Rights within the Department of Labor. It should be noted that the Labor Department has the responsibility of investigating and enforcing the labor laws of North Dakota, in addition to the responsibilities of the human rights laws. The Commission is needed to assist the Division of Human Rights in responding to and implementing the responsibilities given it, by this legislature.

The proposed Commission would be a visible example of North Dakota's commitment to embracing and celebrating diversity, both to those who are residents of North Dakota and those who might be considering residence in North Dakota, and a visible response to the complexities that diversity can bring for those who live here. The written testimony of Heather Ummel-Wagner is provided to you, which provides you the perspective of two new residents of North Dakota and the assessment they did of the question of whether North Dakota would be welcoming of diversity in its population, and her concerns regarding the answer to that question. The Commission would be a low-cost resource for those who are assessing the ability of the state of North Dakota to respond to and encourage the celebration of diversity within the state. It would be a resource for communities that might be considering ways to attract and retain residents of diverse backgrounds and experiences.

As part of this testimony, we're providing to you a list of 35 organizations in the state of North Dakota which support the creation of a North Dakota Commission on Human Rights. The organizations are diverse in nature and scope and represent many of the citizens of North Dakota in varied capacities. And, as part of this testimony, we provide to you a letter from Freedom Resource Center for Independent Living, Inc., which provides information to you on the perspective of an organization that works with people with disabilities.

We ask that the North Dakota legislature recognize the grassroots support for the creation of a North Dakota Commission on Human Rights and pass Senate Bill 2306 as amended.

I believe that there are many citizens here to testify regarding this bill, including some from outside the Bismarck/Mandan area; I respectfully suggest to Chairman Traynor that the number of citizens present to testify be recognized by standing at this time. I would be willing to make myself available to the Committee at the end of the testimony of the citizens present to answer questions regarding the testimony of the North Dakota Human Rights Coalition.

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Deanna Dabbs
Operator's Signature

10/22/03
Date

Good day to each of you and thank you for allowing me to provide this testimony in support of SB2306, a bill to create a Human Rights Commission. My name is Cheryl Long Feather and I am a resident of Bismarck and a life-long resident of North Dakota.

As a former newspaper columnist for the Bismarck Tribune, the Aberdeen American News and the Rapid City Journal, I had the opportunity (or perhaps the misfortune) to hear many stories regarding the experiences of both visitors and residents of our state. I heard far too many stories during the ten years that I wrote the column and it was truly frustrating to be unable to direct these individuals to any entity or provide any recourse for their negative experiences. When the legislature saw fit to create an entity within the Department of Labor, I was somewhat disappointed that a separate and distinct entity was not created but felt it could be a positive step in the right direction.

However, I soon found myself in a situation in which I was faced with my own negative experience. I applied for a job and believed that I had been discriminated against in hiring. A person with a lesser degree, with less experience and with less commensurate experience was hired. In addition, there were several circumstances that occurred during the interview process that led me to become suspicious. I contacted the Department of Labor and began the process for filing a complaint.

I am now testifying on behalf of SB 2306 because of my negative and frustrating experience with the Department of Labor's so-called Human Rights Division. From my first phone contact, I got the clear impression that the investigator had made up his mind about the case. In fact, after I described my situation, the investigator told me that it didn't sound like any discrimination had occurred but I could "go ahead and file a complaint". Wanting to give the process a chance, I continued with the complaint process. After submitting my complaint, I did not receive any word from the Department. After waiting several weeks, I called them and asked what happened. The investigator told me that the organization had denied the claim of discrimination. He told me this as if this were the final word on the matter. I asked him if he had planned to do any further investigation and he - very reluctantly! - said he would. After waiting another week with no word, I called again and was told that I would get a letter and they didn't think my complaint was valid. I asked the investigator if he had compared my scores on the interview sheets and our resumes to determine if there were

any discrepancies. He indicated that he had not. To me, this indicated a profound lack of investigation. This was a most basic question that should have been among the first to be asked. His method of investigation seemed to be merely asking the organization if they discriminated against me and taking their word that they had not. It was as if the investigator truly thought that the only way it could be a convincing case of discrimination is if the organization would readily admit to it and he didn't have to do anything to gather evidence. I was indeed discouraged from the first step of the process to the last.

I believe that a separate and distinct entity such as described in SB2306 is an appropriate solution to the human rights problems in North Dakota. In my experience, the Department of Labor has demonstrated that they do not have the time and commitment necessary to handle such an important and human-oriented task.

In addition to the many economic reasons for creating a separate Human Rights Commission, there is a human need that must be addressed. My experience with the Department was one in which I felt de-valued. I urge you to ensure that this experience does not happen to any more North Dakotans. Please do not mirror the actions of the Department of Labor by not listening or by making up your mind before hearing the evidence. Please do not discourage the many North Dakotans asking you to open your eyes to the reality of discrimination and your ears to the many constituents asking for this commission.

Cheryl Long Feather
Bismarck, North Dakota
701-224-8043
701-220-4542

Dear, Cheryl Bergain, you asked me to write down some of my thoughts about me filing a complaint with the labor dept. When I was fired from my job at Integra Castings in Cando, I was dumb founded to say the least. I had a work place injury and was on workmans comp. I had restrictions put on me by my doctors. I was fired for my work performance. I first contacted my W. C. person to let her know that I had just been fired, she then called the plant and Bruce Chavez contacted her back. I then filled for unemployment and was accepted. The plant fought that all the way but I ended up winning that. I was then told by a lawyer here in cando that I should get ahold of the labor dept, I told him that I had some papers being sent to me to fill out . I filled out the papers and sent them back to the labor department. I had sent them a couple of statements from people I had worked with and from my other employer. I then got a letter back telling me I needed more statements and dates. (while I was still employed I was told to start keeping a diary of daily events .) I sent the labor department some of my diary and other copies of my write ups and my tran. Jobs that I was put on while I was employed at Integra. I was told by miss Bartholomew that I needed to be more detailed and to get more names and statements from employees. I talked to some people that were still out there working if they would be willing to write a statement for me in regards to certain events that had happened to me while I was still employed at Integra. They told me that they would. So about a week later I approached these people to ask if they had made statements yet. I was then told by them that they would not be making statements for me because they were informed by the plant that if they did it would go on their work records that they were uncooperative. I then told them that I was going to call the labor dept. and let them know that I would not get any more statements because the plant had told the employees this. I was then told to get names and dates again. I sent the labor dept. copies of all of my W.C. papers , a letter from my doctor to the W.C. , copies of all of my C.3 forms on injury, all of my diary, you name it and I sent it to them. The last paper I got from the labor dept. I was told to get all of my data in a chronological order. The first investigator that I had was gone and my papers got turned over to a different investigator , so I do not know if all my papers that I have sent them are in one place or if they both have some or all. It is like I have to make all the moves for something to be done. I strongly believe that if someone was to thoroughly look they would understand why I will not let sleeping dogs lay. I am also sending you copies of papers that I have sent to the labor dept.

thank you for your time and let me know
DOREEN K. KUKUK 926 5TH AV. SOUTH
CANDO, N.D. 58324

[Handwritten signature]

Att # 2b

June Renville Read

Testimony
Felix A. Renville, Jr.
45492 Schulz Road
Sisseton, SD 57262
(605) 742-0256

My name is Felix A. Renville, Jr. I am a Viet Nam veteran and a professional alcohol and drug counselor. I work with youth in Sisseton South Dakota. I am also an enrolled member of the Sisseton Wahpeton Sioux Tribe.

I tried to file the following discrimination complaint with the Division of Human Rights. This incident happened on February 14, 2002. After calling several sources, I located the Division of Human Rights through the U.S. Attorney's office in Sioux Falls. I called the Division of Human Rights within a month of February 14th. In that telephone call, the woman I talked to asked what had happened to me, and I gave her the following information. She then told me that they would send me a form to fill out, that I was to write down as much detail as possible, and send it back to them with signed witness statements. She gave me no information that there was any deadline to do this, even though she knew when this had happened to me (on Valentine's Day in 2002), within a month of the telephone call.

My daughter, June Renville, has attended the United Tribes Technical College in Bismarck for the past two years, and is on their basketball team. My family and I attended UTTC's basketball game against Bismarck State College on February 14, 2002, and went eat at the Perkins Family Restaurant on East Bismarck Express Way Drive after the game. We were joining friends of ours, another Native American family, at the restaurant after my daughter showered and dressed after the game.

When we arrived at the Perkins Restaurant that evening at approximately 9:30 p.m., the other family was already seated in a booth. We saw the sign that said "Please wait to be seated". We waited to be seated with our relatives. No one else was waiting to be seated. We waited about 5 minutes. The waitress behind the counter paid no attention to us. Another family, a white family, came in and were seated. A police officer came in and the waitress behind the counter started a friendly conversation with the officer. The waitress looked at us, made eye contact with me, but made no other indication of acknowledgement. The waitress served the police officer coffee and a bag of what I presume were rolls. We waited approximately another 5 minutes.

Then, our relatives came and asked us to come to their table. My wife's cousin, Ms. Rogene Dogskin, said that the restaurant staff knew that their table was expecting another party. We followed our relatives into the dining area and Ms. Dogskin suggested that we look for a larger table than the one they were at. She asked their waiter if it was ok to move to a larger table and the waiter responded that it was. The table had not been cleaned but the waiter began cleaning the table. Then, another female waitress came and said that we could not sit at the table because it had been cleaned. Our relatives said that

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Deanna Hall
Operator's Signature

10/22/03

Date

we would wait for it to be cleaned, but she insisted that we could not dine at that table and had to go out front and wait for a table. She then left.

We waited for approximately 35 minutes and the waitress never came to take our order. Our relatives received their food, that they had ordered while waiting for us. One of our relatives went up front to ask about why we had not had our order taken. She returned and told us that the restaurant staff would not take our order because we did not follow their policy regarding waiting to be seated. Our relative tried to explain that we had joined their table, but the restaurant staff insisted that we go back to the waiting room and wait to be seated before our order would be taken.

We sat, stunned, humiliated. We could not believe that we were being treated this way. I thought to myself "This is the 21st century - does this kind of blatant prejudice still go on?" I saw the expression on my 13-year-old's face. I felt that having to go back to the front to wait again was a way to humiliate us and punish us publicly. My wife felt like we were being treated as dirty Indians and that that was why the restaurant staff didn't want to wait on us. I felt like Blacks being told to sit at the back of the bus.

I am a Viet Nam veteran. I remember what it was like when I returned from Viet Nam, being disrespected and degraded, after serving our country patriotically. I believe that this happened to us because my family looks more "Indian" than our relatives. My daughter's boyfriend and I have long hair; my daughter's boyfriend has several braids. Our relatives do not have such long hair. I was wearing a jacket from a moccasin tournament that had an Indian design on it. My daughter and her boyfriend were wearing UTTC jackets. Our relatives were not wearing clothing with Indian designs.

I have been told by the Division of Human Rights that there is nothing they can do and nothing more I can do because my complaint was filed with them three days too late. I give to you a copy of the complaint and the signed witness statements that I obtained at the direction of the Division of Human Rights. If they had taken the information from me when I called them, my complaint would have been filed within a month of the time this happened to us.

Date

Felix A. Renville, Jr.

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Deanne Ballantyne
Operator's Signature

10/22/03
Date

John Hoeven
Governor

Mark D. Bachmeler
Commissioner



2c
State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

www.state.nd.us/labor
E-mail: labor@state.nd.us

August 14, 2002

Felix Amos Renville Jr.
RR2 Box 9B
Sisseton, SD 57262

RE: Human Rights Discrimination Intake Questionnaire

Dear Mr. Renville:

This letter is in regards to the complaint intake that you submitted to the North Dakota Department of Labor on August 14, 2002.

The Department reviewed all information that you have provided and sympathizes with your situation and the difficulties which you have experienced.

Based on the information that you provided, it appears that the most recent alleged discriminatory act committed by Perkins Restaurant was on February 14, 2002.

There is a time limit for filing discrimination claims. Claims regarding public accommodation and public service must be filed within 180 days of when the alleged act or practice occurred.

Your complaint does not meet the statutory requirement because of the following reason:

- The intake questionnaire alleging discriminatory practice was submitted to our department after one hundred eighty days of the alleged act of wrongdoing.

This ends the department's involvement with this case and the case is now closed.

Thank you for contacting our office with your concerns.

Sincerely,

Milena Stojkovic
Milena Stojkovic
Compliance Investigator

Telephone: (701) 328-2680 ND Toll Free: 1-800-582-8032 Fax: (701) 328-2031 TTY: 1-800-368-8888

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Deanna Hall
Operator's Signature

10/22/03
Date



HUMAN RIGHTS DISCRIMINATION INTAKE QUESTIONNAIRE **NORTH DAKOTA DEPARTMENT OF LABOR** SPN 52974 (Rev. 05-2002)

OFFICE USE ONLY

Date Received:

PLEASE PRINT

The information requested on this form will help us to help you. There is no guarantee that the information submitted will constitute a basis for filing a formal complaint. Please check or answer all questions that apply.

Name: (first, middle, last) FELIX AMOS RENVILLE JR.					
Address: (number and street) RR2 Box 9B		Apt. no:	City: SISSETON	State: S.D.AK.	Zip code: 57262
Home telephone number and area code: 605-742-0256		Work telephone number and area code: 605-698-3917		County: Roberts	
Name of person to contact if you cannot be reached: CAROLINE RENVILLE				Telephone number and area code: 605-742-0813	

THE DISCRIMINATION WAS BECAUSE OF: Check ALL that apply <input checked="" type="checkbox"/> Race: <u>NATIVE AMERICAN</u> (What is your race?) <input checked="" type="checkbox"/> Color: <u>BROWN</u> (What is your color?) <input checked="" type="checkbox"/> Religion: <u>TRADITIONAL</u> (What is your religion?) <input type="checkbox"/> Sex: <input type="checkbox"/> M <input type="checkbox"/> F (Check One) <input type="checkbox"/> National origin: (What is your national origin?) Age: <input type="checkbox"/> Disability: (What is your disability?) <input type="checkbox"/> Marital status: (Specify) <input type="checkbox"/> Pregnancy <input type="checkbox"/> Status with regard to receipt of public assistance <input type="checkbox"/> Retaliation <input checked="" type="checkbox"/> Other: <u>VETERAN</u>		THE ACT(S) OF DISCRIMINATION WERE RELATED TO: Check ALL that apply <input checked="" type="checkbox"/> Denial of service <input checked="" type="checkbox"/> Denial of accommodations <input type="checkbox"/> Denial of credit <input checked="" type="checkbox"/> OTHER <u>ASKED TO TAKE EXTRAORDINARY ACTIONS NOT REQUIRED BY OTHER CUSTOMERS.</u>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

BUSINESS OR SERVICE PROVIDER YOU BELIEVE DISCRIMINATED AGAINST YOU:

Name of business or service provider: PECKINS RESTAURANT			Telephone number and area code: 1-701-221-3113		
Address: 100 EAST BISMARCK EXPRESSWAY		City: BISMARCK	State: ND	Zip code: 58504	County: BURLINGHAM
Contact person: (owner, manager, official)		Title:		Telephone number and area code:	

LIST THE NAMES AND TELEPHONE NUMBERS (IF POSSIBLE) OF WITNESSES YOU FEEL COULD PROVIDE EVIDENCE IN YOUR SUPPORT:
 (ATTACH STATEMENTS FROM WITNESSES IF AVAILABLE.)

(1) Name of witness: DEANISE RENVILLE			Telephone number and area code: 605-742-0256		
Address: RR2 Box 9B		City: SISSETON	State: S.D.AK.	Zip code: 57262	County: ROBERTS
(2) Name of witness: JUNE RENVILLE			Telephone number and area code: 701-255-3285 ext.		
Address: 335 University Dr. Box 11		City: BISMARCK	State: ND	Zip code: 58504	County: BURLINGHAM
Name of witness: WILLIAM ABBEY			Telephone number and area code: 701-255-3285 ext. 222		
Address: 335 University Drive		City: BISMARCK	State: ND	Zip code: 58504	County: BURLINGHAM

CLAYTON & REGENE DOG SKIN.
 CANNON BALL, NORTH DAKOTA
 SI 11 1701 221 3113

THIS INFORMATION WILL BE FURNISHED
 TO YOUR OFFICE FROM THE PERSONALITY.

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Deanne Wallis
 Operator's signature

10/22/03

Date

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BRIEFLY EXPLAIN how and/or why you feel discriminated against (how you were treated differently from others), by whom, when, and where. Be sure to indicate all dates (month, day, year) and names as accurately as possible. If filing on the basis of disability, please provide appropriate medical documentation.

SEE ATTACHMENT #1 SEVEN PAGES

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS

What reasons, if any, were you given for the action you are reporting?

SEE ALL ATTACHMENTS AT ABOVE SECTION

Who gave you these reasons?

OTHER ACTIONS:

Have you filed with the United States Department of Justice or any other agency or group?

☐ Yes ☒ No

Name of agency:

Telephone number and area code:

Address: (number and street)

City:

State:

Zip code:

Name of person who assisted you:

What has this person done for you on this problem?

Do you plan to take this matter to court?

☐ Yes

☐ No

☒ Undecided

Do you have an attorney?

☐ Yes

☒ No

Name of attorney:

Telephone number and area code:

Address: (number and street)

City:

State:

Zip code:

REMEDIES YOU ARE SEEKING FOR RELIEF:

SEE DOCUMENT: REMEDIES I AM SEEKING FOR RELIEF

I LEARNED ABOUT THE HUMAN RIGHTS DIVISION DISCRIMINATION PROGRAM FROM: (Be specific)

POSITION WRITING FROM STATE TRIBAL ATTORNEY.

COUNSEL STEVEN SANDVEN, TRIBAL LEGAL COUNSEL.

I ATTEST THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF

Signature:

Steven Sandven

Date:

8-14-02

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Operator's signature

Steven Sandven

Date

10/22/03

2c

REMEDIES I AM SEEKING FOR RELIEF

One remedy sought includes monetary damages. The emotionally electrified episode was distressing to each of the five members of my family. The amount of \$500,000.00 seems adequate compensation for the continued distress and humiliation suffered in having to re-live this terrible night over and over again. Recollecting this racial injustice and arriving at inequity each time is disheartening at best. Knowing those under my protection were ravished by corporate wolves in sheeps' clothing (in this case, using the American Flag) is demoralizing.

As a member of the Sisseton-Wahpeton Sioux Tribe's (SWST) Viet Nam Veterans Association, Perkins Family Restaurant's misuse and two-faced display of the American Flag must change. SWST Viet Nam Veterans and other veterans should be honored by Perkins Family Restaurant not ignored and maligned by them. A second remedy sought includes the following three items. (a) Monetary damages are paid to my veteran's organization in the amount of \$100,000.00. (b) Perkins Family Restaurant contributes yearly to the Veterans' Pow-wow, which is administered by the SWST Viet Nam Veterans Association. (c) Perkins Family Restaurant set up a fund that veteran organizations across the country can access for their local needs, including meals passes for veterans going to Veteran Administration Hospitals for medical care.

A third remedy sought is for Perkins Family Restaurant (a) to commit to the support of educating their employees to be culturally sensitive, especially those establishments near Indian Reservations and (b) to commit to the education of racially and culturally different people, especially Native Americans. Perkins Family Restaurant can hire more Native American and hire consultants to educate their employees. Perkins Family Restaurant can contribute two yearly scholarship(s) in the amount of \$1,500.00 to students at Sisseton High School in Sisseton, SD and to students at Tiospa Zina Tribal School at Agency Village, SD. I have graduated from Sisseton High School, and my children have graduated from Tiospa Zina Tribal School.

Felix A. Revell Jr

Aug 14, 2002

Attachment 1

The incident of racial discrimination occurred at approximately 9:30 PM on February 14, 2002. The bigotry occurred in the business establishment is Perkins Family Restaurant. It is located at 100 East Bismarck Express Way Drive in Bismarck, ND.

For the past two years, my daughter, June Renville, has attended United Tribes Technical College (UTTC) in Bismarck, ND and is on their basketball team. My family and I attended UTTC's basketball game against Bismarck State College on this date. My family in attendance consists of my wife - Denise Renville and my 13-year old son - Felix Renville III. We reside in Sisseton, SD.

After the basketball game (approximately 9:00 PM), Ms. Rogene Dogskin (my wife's cousin) asked if we would have dinner with her husband - Mr. Clay Dogskin and their children before returning home. My wife agreed, and I was surprised. She usually does not like to dine in restaurants. The special conditions - our families meeting together, our daughter and her boyfriend there, it being Valentine's Day - probably influenced her to eat inside a restaurant. Ms. Rogene Dogskin suggested we eat at Perkins Family Restaurant and suggested we meet them there, since we had to wait for my daughter to shower and dress after the basketball game.

My daughter got changed and was wearing her UTTC women's basketball team warm-up jacket with the UTTC's logos. My family and I, along with Mr. Donovan Abbey left to join the Dogskin family. Donovan is my daughter's boyfriend who also attends UTTC and is on the men's basketball team. He was also wearing his basketball team's jacket with the UTTC's logos.

We arrived at the Perkins Family Restaurant located at 100 East Bismarck Express Way Drive at approximately 9:30 PM. Upon entering the restaurant, we noticed our relatives, Mr. and Mrs. Dogskin and their children, seated in a booth. We also noticed a sign stating, "Please wait to be seated". Realizing the need to cooperate with service staff, we did as the sign instructed and waited for service. No one else was waiting to be seated, and I noticed empty booths in the dining area.

After we waited approximately five minutes, I started to become a little upset because the waitress behind the counter paid no attention to us. While we waiting, another family and a police officer came in. The other family (white people) was seated. I was just about to ask the waitress to seat us when the white male police officer walked to the front counter. Not knowing if some trouble had occurred and the police officer had been summoned, I did not want to interfere, so I did not speak to the waitress.

The waitress appeared to know the police officer and began a friendly conversation with him. While they were talking, the police officer looked at us then looked away and continued conversing with the waitress. During their conversation, the waitress looked at us a few times and made eye contact with me but made no other indication of acknowledgement. While we waited to be seated, the waitress served the police officer a cup of coffee and a small bag of, what I presumed were, rolls. I thought the waitress' behavior was discourteous and rude - carrying on a seemingly personal conversation and not acknowledging my family and not offering my family any service and not asking another service staff to help my family.

After waiting approximately another 5 minutes, I realized their conversation seemed more personal rather than business-related. I was going to interrupt their conversation and asked to be seated. Even though as a traditional Native American, I am more sensitive to the disrespect and discourtesy of interrupting a private conversation. I felt we had been more than patient and cooperative in waiting for service. I was also thinking of my family's safety. We had to travel approximately four hours to get back home, and I had hoped to get back on the road as soon as possible.

Just then, my wife's cousin - Ms. Rogene Dogskin came to where we were standing and told us to come to their table. She said they (the Perkins Family Restaurant staff) knew that their table was expecting another party. With this in mind and glad our wait was over, my family followed my wife's cousin into the dining area.

Ms. Rogene Dogskin then suggested we look for a larger table to accommodate both our families. She noticed a large booth with a large round table at the back of the dining area. She asked their waiter if it was okay to move to the larger table, and he said it was okay. We followed their family to the larger table and sat down. The table had not been cleaned from the previous customers.

The waiter, who had been serving the Dogskin family, was named Dusty or perhaps Dustin. He began cleaning the table and stated it was all right for us to dine at that table. Just then, another female waitress came over and said we could not sit at that table because it was not cleaned. Mr. Clay Dogskin told her that it was no big deal and that we could wait for it to be cleaned. She still insisted that we could not dine at that table and said we needed to go back out front and wait for a table. Wanting her to realize it was also acceptable to my family, I repeated what Clay had told her saying, "Hey, come on now, its no big deal. We can wait for it to be cleaned." She left us afterwards.

This waitress seemed to have a very negative attitude. She did not smile but looked disgusted. She seemed more focused on Dustin's allowing us to be seated there without her approval. She could have helped Dustin's efforts to serve my family rather than hindering his efforts and contradicting a co-worker in front of customers. After she had left, the waiter - Dustin - said under his breath, "There's no big deal. I could clean the table for you guys."

We started to tease Dustin. In tense circumstances, it is a cultural practice of Native Americans to joke or tease to lighten the situation. Given the lack of and/or the poor quality of service shown up to this point (the excessive waiting to be seated and no response, the very negative attitude of the female waitress toward us, and her contradicting Dustin and arguing in front of customers) and given Dustin's willingness to serve us, our teasing him helped us and, I believe, helped him. We teased him by saying, "What's your name again?" and "Boy, you're sure going to get a big tip for doing this for us." He seemed accepting of the teasing, smiling and laughing. He said we did not have to give him a tip. After cleaning the table and serving us water, Dustin said, "Your waiter should be right with you."

So, my wife, daughter, son, Donovan, and I began waiting for service, again. We visited with my wife's cousin and her family about the game and the trip back home. After a while, our relatives started receiving their food, and my party continued to wait.

We had been waiting for approximately 25 minutes when my wife and son asked if they were going to wait on us. My son said he was starting to get hungry. I was becoming impatient and a little upset about this second delay. The restaurant was still not crowded. From my seat, I began looking toward the front for a waiter. The service staff had been coming back towards us, but they had just been walking past without acknowledging us. Finally, a waitress brought over an entrée that went with our relatives' meal. The waitress did not mention anything to my party, like "We'll be right with you" or given any type of courtesy. Ms. Rogene Dogskin commented on the delay in waiting on my family.

After waiting an additional 10 minutes, I started telling myself that something is not right. At this time, Ms. Rogene Dogskin said she was going there and find out what was going on or what was the problem. She must have felt somewhat responsible because she invited us and chose Perkins Family Restaurant. She went up front and talked with the staff and was there between 5-10 minutes.

Ms. Dogskin returned and told us (my party) that they (Perkins Family Restaurant) are not going to give you guys any service. She said that they (Perkins Family Restaurant) are refusing you guys because you did not follow their policy regarding waiting to be seated. She stated that she had attempted to explain to Perkins Family Restaurant staff about their waiter knowing another party was expected and that she had directed my family to join them. She, continued, saying that in order to get service you would have to go up there and sit on the benches until you are seated.

As my wife's cousin told us (my family) what Perkins Family Restaurant had said, I could see disbelief, disappointment, discouragement, and, perhaps, disgust on the faces of my wife, daughter, son, and Donovan. I was shocked! I could not believe what was happening to my family! I was hurt for the ones I loved and for Donovan. I was angry because Perkins Family Restaurant mistreated them this way and then tried to say we were at fault for what had transpired.

As my family and Donovan sat stunned, my blood pressure began to rise because I could feel it. I have the disease of hypertension or "high blood pressure". I had planned to take my medication with our dinner, but, apparently, Perkins Family Restaurant was trying to obstruct that from happening. A simple Valentine's Day treat for my wife and son and for my daughter and her boyfriend turns in to this humiliation.

When I saw the expression on my 13-year son's face, I instantly thought of an old movie with Rock Hudson, Elizabeth Taylor, James Dean, and Dennis Hopper. I think the movie was called "Giant". The movie that flooded into my mind was about a wealthy Texas oilman (Rock Hudson) whose rebellious son (James Dean, I think) married a Mexican girl and had a son. The movie scene that flashed in my mind was toward the end of the movie, when Rock Hudson finally accepted his son's marriage. He took his darker-skinned grandson into a diner called "Sarge's". The owner was an old Marine sergeant who was a redneck. Rock Hudson and his grandson are sitting at a table, and he asks his little grandson if he would like an ice cream cone on such a hot day. Sarge stands over the table and says that little *#!#* (some kind of derogatory name - such as greaser or wetback) probably wants a tamale. Later when Sarge tries to rough up an old Mexican man with his wife, Rock Hudson intervenes and fights him.

I thought to myself, this is the 21st century - does this kind of blatant prejudice still go on? If it does, as the head of my family, I need to protect them as much as possible. As a Viet Nam veteran, even though other veterans and I served our country patriotically, we were disrespected and degraded when we returned home. Now, here I am being treated like this again and by a business that flies a huge American Flag overhead. I was a chapter officer of the American Indian Movement (AIM) in the 1970's on my reservation. Other AIM members and I stood up for and protected our people against prejudice, political and government abuse and corruption.

At this point, I told my wife that I am going up there and find out what the problem is. Denise asked (kind of pleaded with) me not to do anything. She knows how I was in my past before we had children. I rarely get angry in front of my children. As I looked at my children, I could see a look of fear and disbelief on their faces. My son asked, "Dad, does this mean we can't eat here?" I told him to just wait because I was going to find out what the problem is. I thought, my son has been waiting almost an hour since we got into this place - now I'm telling him to wait even longer.

As I walked towards the front and approached the front desk, I noticed a female waitress standing behind it. I calmly asked her if she could get the manager or assistant manager of this establishment. She asked why. I told her that I was going to file a complaint on Perkins Family Restaurant. The waitress said she would go get her. Her response was the first type of direct service given to me since I entered Perkins Family Restaurant over an hour ago.

I noticed a Perkins Family Restaurant cashier card and a pen on the counter, and I wrote the time and date on the card. After a couple of minutes, a female person approached the counter from the back. She asked if she could help me. I asked if she was the manager of this restaurant this evening. She replied yes. I asked her why my family was not going to receive service tonight - why they (Perkins Family Restaurant) were denying us service. She said because you did not wait to be seated as the sign states.

I explained that when my family entered the restaurant I did wait for ten minutes and that no one had the courtesy to say "I'll be right with you". I told her that she was standing behind the counter when we entered and that she had seen us standing there and had seen us waiting. I told her that a family (white people) who came in after us was seated before us and that she had a conversation with and served a police officer that had come into the restaurant after us. I told her that she had made eye contact with me so she knew we were waiting. I told her the police officer even looked at us while she was talking with him. I told her that we waited another five minutes before my wife's cousin came to the front and said she (my wife's cousin) had told their waiter that another party was going to join them and that the waiter said it was okay. I spoke in a calm audible voice. The manager made no comments on my statements.

The manager still insisted that we did not follow their policy and that was why they (Perkins Family Restaurant) denied us any service. I felt that she was ignoring me again as she did when my family entered the restaurant. She had seen us waiting. She had heard my explanation (and probably my wife's cousin's explanation also).

I thought of reasons why we were being denied service. Mr. Donovan Abbey's hair and my hair are quite a bit longer than Mr. Clay Dogskin whose hair is about shoulder length. We probably appeared "more Indian" than he. My hair is down past the middle of my back. Donovan's hair is to his shoulder blades and has several long braids in the style of young people. The appearance of our hair was a difference between my family and the Dogskin family.

I thought another reason we were being denied service was my family's clothing. My jacket was from a moccasin tournament and had an Indian design on the back of it. June's (my daughter) and Donovan's jackets had the UTTC's logos (an Indian design), and UTTC had just beaten Bismarck State College. The appearance of our clothing was a difference between my family and the Dogskin family who were not wearing clothing with Indian designs. UTTC is quite a rival with Bismarck State College. My daughter's school of education, as well as her boyfriend's choice was likely targeted by Perkins Family Restaurant.

I stated, "What's going on, is this because we are Native Americans?" She answered that this is no race issue. Even though the Dogskin family had gotten service, I did not know how long they had to wait at that time. I stated that I was from Sisseton, SD and had a four-hour trip home. I asked, "Is this how you treat all your out of town guests or just my family and I?" I told her that I had lost a whole hour of travel just over your stupid policy that we did not even violate.

I remembered what Ms. Rogene Dogskin told my family and me about having to come back up front and having to sit on the bench in order to get service, like we were little children being humiliated and punished publicly. I remembered the stories that elders of my people told of boarding schools where they were to stand perfectly still or kneel for hours - just to eat. I remembered Blacks from the 1960's who had to sit in back of the bus or they would not be allowed to ride it - some of the same ones who fought in Viet Nam like me. I commented, "I thought this happened to the Blacks in the 1960's, what, is it the Native Americans turn now?" I said, "This is the 21st century now, wake up."

Throughout the disagreement, the manager appeared unfriendly (not smiling), uncooperative, and defensive. She appeared more absorbed in defending a policy than listening to a customer. She appeared more interested in being right than remedying the situation. Her mannerism was unprofessional and prejudicial.

After this discussion, I asked her how I go about filing a complaint against your establishment or Perkins Family Restaurant. She pointed at the door, at first I thought she was gesturing for me to leave, then she said the sign with the customer service number is whom you call. The sign was about 25 feet away. She made no effort to come from behind the counter to assist me. By staying behind the counter, it was as if she was afraid of me even though I had given no hint of aggression. I had only been asserting my rights as a customer in a calm manner.

I began to write down the 1-800-Guest number, and I asked for her name since she was in charge. She responded, "I don't have to give you my name." Again, my wanting professional service was denied. I looked at her nametag, which said Jennifer. When I asked for her last name, she replied, "I don't have to give it to you." I wrote her first name down. I told her that I did not need it right now and that I would get it when we find out whom all worked on the evening shift. By staying behind the counter and then by not giving her name, it was as if she was afraid of me or was trying to hide something. I felt she was attempting to hinder my right to seek relief from the situation - like if she ignored me, I would go away. I told her that Perkins Family Restaurant should not have employees like her working for them.

As a professional alcohol/drug counselor who works with youth, I am accustomed to have angry responses from the youth, their parents, and the community. I know how to respond courteously and professionally, and her response was neither courteous nor professional. I know that working toward a remedy is better than working at being right. I am sensitive of communication through body language. As a traditional Pipe carrier I am sensitive to people and things around me.

I walked away from the manager and motioned for my family to come. By this time, my relatives had received their meal and were eating. My family and Ms. Rogene Dogskin came to the front. I briefly told them what had transpired between the manager and I. My wife said, "Let's not eat here, if that's how they are going to treat us."

Even though our behavior had been appropriate, we apologized to our relatives. Being culturally sensitive, we understood that our relatives and others present had been unnecessarily involved in a public display. We clearly understood Perkins Family Restaurant would not be offering any apology. Our apology was made to calm any tension that may have arisen in the other people.

We said that we were going to eat at the McDonald's restaurant across the street and that they should come over there when they were done with their meal. Leaving with the little dignity that Perkins Family Restaurant would allow, we made a joke with our relatives saying, "I guess, we have to settle for some hamburgers tonight."

As we were leaving, a Native American couple was leaving the dining area to pay their bill. The lady commented, "Did I hear right that they are denying you service?" I answered, "Yes." She encouraged me to file a complaint and said they wouldn't be returning here again.

Our relatives came over after finishing their meal. They said that they could feel the stares and cold feelings from the staff when they left the place. When our relatives asked if we were going to file a complaint on the restaurant, I told them yes. I asked if I could get a hold of them for statements as witnesses of they saw and heard. They agreed to give statements as witnesses. It was about 11:00 PM, when we headed home.

My daughter who attends UTTC said she was going to tell people at the school to not eat at Perkins Family Restaurant because they are prejudice. I could tell she was negatively affected by the experience because this is not her normal response. She treats all people respectfully and expects to be treated the same. She has been raised to cherish our culture and has been taught that respect is to be valued. But when her cultural value of respect has been ignored and her loved ones esteem trampled, her response was understandable.

I never wanted my son to experience racial prejudice like we went through. He is too young, too vulnerable, and too impressionable. He could be traumatized by it. His outlook on different races of people could be negatively impacted. As we were returning home, my son asked, "Dad, are they (Perkins Family Restaurant) prejudice? Is that why they (Perkins Family Restaurant) didn't feed us?" I said, "Yes, sometimes there are ignorant people in this world." His questioning seemed to indicate his internal confusion. It was as if he questioned his own worth, questioned if he did something wrong to be treated so terribly, or questioned why others would get service but not him. My only consolation was that he was not alone when this occurred.

When I woke up the next morning, I thought I had a bad dream, but it wasn't a bad dream, it really happened to my family. My wife said that she felt belittled, that it was like we were dirty Indians and they (Perkins Family Restaurant) didn't want to wait on us.

I felt ridiculed and insulted by Perkins Family Restaurant. Because of Mr. Donovan Abbey's long hair with several braids and because of my long hair, I felt singled-out, as if Perkins Family Restaurant had a racial profile on people they would make wait and wait and then not serve. When the manager stayed behind the counter as if fearing and hiding from me, I felt depicted as "a wild Indian". Throughout my involvement with AIM, I knew non-Indians did not accept my long hair. Indians with long hair were looked upon as militants or troublemakers. Now it was happening again. The manager lack of a response when I asked if that is how Perkins Family Restaurant treats all their customers seems to indicate racial profiling.

Perkins Family Restaurant is located near UTTC, a school for Native Americans. It is located in the vicinity of the Standing Rock Sioux Reservation, one of North Dakota's largest Native American populations. The facts are obvious that two Native American students (my daughter for one) dressed in school jackets with obvious Native American design are denied service given freely to other customers. Perkins Family Restaurant discriminated against the educational choice of my daughter and her boyfriend.

I felt I was not treated as a human being deserving respect when told I had sit on the bench in order to get service. It was as if my family and I were treated as dogs that had to sit up and beg in order to get something to eat. At best, I felt like a second-class citizen - like Blacks told to sit at the back of the bus. I felt the degradation my elders felt at boarding school in having to stand still or kneel for hours as punishment or to receive

I felt shame and humiliation at having to be put on public display when I tried to speak up for my rights and the rights of my family. I felt the burden of tyranny like when I was involved with AIM. Why couldn't I be treated like others? Why did I have to, again, stand up to fight for rights given so freely to others? I felt like a child being chided by the white management, as if told to be a good little Indian, do as you're told, and don't cause trouble.

6

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Operator's Signature

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As a Viet Nam veteran who served honorably and loyally to the Flag of the United States of America, I am appalled at the mistreatment I received at Perkins Family Restaurant. Is the American Flag only used as a marketing gimmick by Perkins Family Restaurant? If it is only a marketing ploy, then Perkins Family Restaurant American Flag should be made to remove it from each of their premises. If the American Flag is not a scam of Perkins Family Restaurant, why was I, as a veteran, so ostracized. When do I, as a veteran, get to rest from protecting of my family and my people from oppressive acts as displayed at Perkins Family Restaurant? Their subtle domineering display of disregarding those who look more like Indians and their bigoted business practices of excluding those who look more like Indians should not be allowed under our country's symbol of equality.

As a member of the Sisseton-Wahpeton Sioux Tribe's (SWST) Viet Nam Veterans Association, I am appalled at the two-faced display of the American Flag by Perkins Family Restaurant. SWST Viet Nam Veterans were asked to lead the parade when the Viet Nam Memorial Wall was displayed for the first time. It is an honor that I, as a veteran, cherish. To see this corporation's careless waving of the American Flag sickens me. My people shed their blood defending their homeland against the American government and their flag. Later, my people shed their blood defending the rights represented by the American Flag. Now, Perkins Family Restaurant waves it like a toy flag with no regard for it meaning.

I felt oppression similar to the long-time oppression felt by Native Americans whose treaties were violated. Perkins Family Restaurant's sign stated "Please wait to be seated". I obeyed the policy of Perkins Family Restaurant - I waited to be seated and waited, waited, and waited for service. I kept my part of the bargain by waiting - just like my ancestors waited for food rations that corrupt government agents refused to give them.

Perkins Family Restaurant had a public contract offer - wait to be seated and you will be served. The waiter of the Dogskin family had agreed to extend that offer for service without requiring the waiting. I have witnessed other people not having to wait when their party is already seated. However, my family and I were mistreated because we did wait but to no avail. My rights, which have been afforded to other customers, were violated by the oppressive and manipulative acts of Perkins Family Restaurant

Felix A. Renville, Jr.
Felix A. Renville, Jr.

8-14-2002
Date

Denise Renville
Denise Renville

8-14-2002
Date

FELIX A. RENVILLE III
Felix A. Renville, III

8-14-2002
Date

From what I witnessed the night of February 14th 2002, at Perkins Family Restaurant, in Bismarck N.D., it made me feel violated, or like we weren't good enough to eat there, or didn't have enough money.

My parents, and my relatives, from Cannon Ball N.D. have came up to Bismarck to come watch me play basketball that February 14th 2002. We have arrived at Perkins, about 9:30-10:00 p.m., I have just gotten done playing in a basketball game, at Bismarck State College. My Auntie Rogene Dog skin, had asked us to join them for supper, so we went to Perkins. When arriving my family, my mother, father, little brother, and my boyfriend, all walked in together. We stood in front waited to be seated for about 5 minutes, it was weird because there was a family (white) standing behind us, and then there was a cop that was behind us also. The young girl sat the family behind us down, she went up to them and asked them how many was in their party and I don't recall what it was, and right after she came back she came, and started a conversation with the police officer. I didn't think anything of it at the time because I was talking with my parents, since I didn't see them for awhile. But yet we were still standing there waiting to be seated, I asked, "well when are we gonna be seated?" then my auntie came up and said that she had told them that there was another party the was going to accompany them, but they had not arrived yet, so I guess they said that, it was fine. So we didn't think anything, we went to go sit down. Then there was a young waiter that came by, and we asked him if we could sit at a bigger table? He said sure, we went to sit at a round table that was still dirty, but still insisted to sit down, then a girl came up and said that we couldn't sit there because they hadn't cleaned it yet, but we said that it was ok, we'll wait till someone comes to clean it then. That waitress attitude was really rude. Then the young waiter came back and cleaned the table for us, he also said that he'll do it, it was no problem. After cleaning the table, he came with some glasses of water. At that time my auntie's and their food came. So I thought everything was alright by then, so we waited there for some one to bring us our menus, but no one did, so we must have been sitting there for about a half and hour, then my dad went up to see what was going, he went up to talk to young girl, that earlier came to tell us that we could not sit at that table. He asked her, "what was going on why didn't his family get waited on yet?"

I don't know what else they were talking about I just saw him standing up there, you can tell that he was getting up set. That had gotten me mad to, to see my dad getting like that. I don't like to see my dad getting

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Deanna Wallis
Operator's Signature

10/22/03
Date

all worked up because of his high blood pressure. So I went up there to see what was going on. As I walked up there, I heard her raising her voice at my dad. So I stood up there, she looked at me, and her voice had changed, she had gotten calmer. Then I asked me dad, " what was going on?" he told me that she wanted us to go back up there and stand up there till some one comes to seat us. I looked at my dad I had a funny look on my face and I looked at her, I didn't want to say anything. Then my dad said that we didn't have to do that, and he asked her why she had helped the family after us, and the cop that was standing behind us first? But she had no answer to that. Then he asked for the manager, and she said that she was the supervisor on duty or something I really do not recall. And he asked for her name which she told him, and he tried to ask for her last name, but she did not give it to him, she said that it was none of his business, he said yes it is because I'm going to bring up this incident with your manager. What's the phone number here, and she had given my dad some other number to reach, some 800 number I think. That girls attitude was getting me mad, I had to leave and go sit back down because I would have said stuff to make things even worse then what they were, so I went to sit down. My dad had came back and said that they were not going to serve us, so he said that we might as well go over to McDonalds, and he told my auntie and them that we were going over there, they said yeah we'll be right over after we get done eating. So we left. But after what happened I was so mad, and felt like that should have never happen to us, it never did before. I mean because if you look at it Bismarck has a lot of Indians that live there, and that should not be a problem to anyone about which race you are. I thought that I would never have to go through with that ever. I feel bad that my dad had to get mad over something that I thought didn't exist, and my little brother had to go through something like that at a young age. Since that time I had never dined at that Perkins again. I told teachers at the college (United Tribes Technical College) what had happened and that my father was filing against them, they said that, it was a good idea, they thought that it was rude of a family restaurant to treat a family like that, and I said the same thing too. But I guess this still happens in our world, something has to be done about it to.

June Renville

June Renville
August 14, 2002

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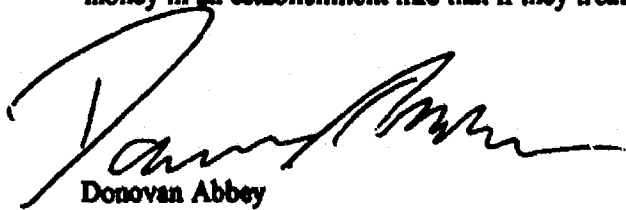
Deanna Wallis
Operator's signature

10/22/03

Date

When June's family, her and I had arrived together at the Perkins Restaurant, we expected to be seated once we have arrived. We were to meet June's aunt and uncle, there for supper. Then I have noticed that there was a family of a different race that was waiting right behind us that arrived a little after we have arrived. Then as I noticed there was a cop that had arrived too. The waitress that was standing in front of us asked how many was in the family behind us but I do not recall what they have said. She seated the family behind us. The restaurant was not busy at the time. Then as she came back she had ask the cop if she could help him. And so the cop came up and they had started a conversation at that time. Just then June's aunt had came up and said that she had told them that there was another party that was to be seated with them, so they said that it was fine. But yet the waitress had not seated us yet, we must have been standing there for about ten minutes. So we had sat down with her aunt, then a waiter had came up and offered us some water, so we were sitting there drinking our water and just then the waitress came up and said that we could not sit there because the table was not clean, and the waiter came back and said that it was no big deal and that he would clean the table. Then the waitress walked away, with a funny disgusted look on her face. As this time we sat at that table for awhile, and we were still not helped. So June's father had went up to see what was going on. He was up there talking for awhile and he had came back and told us that they are not going to serve us because we did not wait to be seated. So he left mad, we went across the street to McDonalds to go eat.

My thoughts on this are issue is that this was a racial motive to not treat is with the service that we deserved. I don't know what the reason was, but I do know that our money is green and worth the same value as any other race. I thought that this was a weak action that the restaurant did to us, and that no one should have to experience this whether they're black, brown, white, or any other race since then I have not dined at that restaurant their or any other locations. I feel that there is no need to spend our hard-earned money in an establishment like that if they treat people like that!


Donovan Abbey
8-13-02

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Operator's Signature

10/22/03

Date

Date: February 15, 2002

To: All Concerned

From: Clayton Ayutapi and Florence Dogskin

Subject: Perkins Restaurant Incident (evening).

On February 14, 2002, my relatives, Felix and Denise Renville (Denise is my first cousin), came from Sisseton, South Dakota to Bismarck, North Dakota, to see their daughter, June Renville, play college basketball, United Tribes Educational Center vs Mary College.

Felix and Denise stated they were going to head right back to Sisseton, after the game as it was about a four hour drive home. Clayton and I had invited them to Perkins Restraunt at the south side location. Clayton and I arrived a little bit earlier and seated ourselves as it seemed it was busy. We seated ourselves at a dirty table and a male waiter came over and said it would be a minute to come back to clean and to take our order, at which time we told him that there would be others joining us. It took about fifteen minutes for him to come and clean and to take our order. Our order took another half an hour to present at our table, by which time, we were getting worried about if my relatives were able to find the restraunt.

By the time our order arrived, Felix and Denise and their daughter June and her friend had walked

in the building. There was a larger area with two tables uncleared that we moved to. There we sat and waited for a waiter for a least one half to forty five minutes until we got another waiter from another area, if we could get menus to order. The waiter apologized for the long wait, saying that our table wasn't his area but he would clean and get us menus. We mentioned to him how long we were waiting and he said he would be right back. By this time another lady came and said that it was their policy that we needed to go back up to the front and wait to be seated. I told her what had happened before hand about us informing the other waiter that more guests were coming. She still insisted that we wait to be seated which we were already seated. I mentioned that this was never the case with Clayton and I when we first walked in and seated ourselves. Nobody said we needed to go back to the front to be seated then.

When the lady again stated that we needed to go back to the front and wait, we stated that by previous visits to the Perkins Eating Place, they would allow for us to go ahead and seat ourselves and there was never a problem. This lady was very determined to have us go back to the front and wait. Felix then stated that in all the years of customer service he has had, this was the first time that he was asked to go back and wait to be seated. He then asked for the main manager. The waiter who had cleaned off our area (which wasn't his area), again apologized for what was happening. This waiter talked to us in a gentle manner, completely the opposite of the lady who insisted that we wait to be seated. We sat there for a while and Felix decided that his family didn't

need to patronize a restaurant that treated their customer the way we were treated. They left to eat at the McDonald's restaurant across the street. As we were walking out of the building, we noticed the glaring stares from two of the ladies at the cashier till. It was very humiliating to be treated this way and especially for my relatives who were just visiting for the evening. I could say the approximate time my relatives wait in the restaurant was about one hour with no service before they left. I felt very uncomfortable about the whole situation and apologized to my relatives and let them know that most of our Bismarck businesses have great customer service.

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Deanna Dally
Operator's Signature

10/22/03
Date

June 28, 2001

Mark D. Bachmeier, Commissioner
North Dakota Department of Labor
State Capitol Building, 13th Floor
600 East Boulevard, Dept. 406
Bismarck, ND 58505-0340

Dear Commissioner Bachmeier,

Thank you for the phone conversations that we've shared regarding issues related to North Dakota Senate Bill 2217 and its implementation. Your information and your willingness to discuss these issues with me has been very much appreciated. Thank you!

My letter is written as spokesperson for our coalition that has been known as North Dakotans for a Human Rights Commission (NDHRC). Our mission was to establish through the legislative process a Commission for Human Rights in North Dakota. The work of our coalition began in late 1999 - early 2000, the organizational impetus originating within the Arc's of North Dakota, most specifically the Arc of Cass County. Our work has involved a number of organizations and individuals who share a mutual concern about human rights enforcement in North Dakota. Sixty-eight member organizations have joined and endorsed the work of the Coalition which led to the introduction of Senate Bill 2217 and the mirror bill to it introduced in the North Dakota House.

My role with the coalition has been to serve as its chair and spokesperson. Others have spoken on behalf of the coalition as situations have dictated. My personal goal is that the issue of human rights not be drawn into a partisan debate. If this were to happen, I believe, it would be a great disservice to the cause of human rights.

We are continuing our work as a coalition and have chosen to rename our Coalition under the banner of North Dakota Human Rights Coalition (NDHRC). The focus of our coalition will be on the implementation of the landmark legislation set forth under provisions of Senate Bill 2217. Our coalition, hopefully in a coordinated effort and with the cooperation of the Department of Labor, will monitor both how the Human Rights Division implements its responsibilities under the Act and, subsequently, its actual record of performance.

The first priority, we believe, is the establishment of an advisory committee to the Human Rights Division. It has been our understanding that, in the past, you've expressed a receptiveness to this concept. An advisory committee composed of a broad bipartisan group of North Dakotans, familiar with human rights issues, is essential. The Advisory Committee would have direct access to the Labor Commissioner and the Human Rights Division Director. The Department would cooperate fully with the Advisory Committee to ensure that the Committee is kept fully informed of all the phases of the implementation of its duties under provisions of the legislation that was passed and is now to be enacted.

The advisory committee would meet on a regular basis and solicit input from all North Dakotans. There are obvious logistical matters regarding the establishment and function of an advisory committee, but the immediate priority is to determine whether you and the Human Rights Director agree that an advisory committee is necessary and will be implemented as soon as possible. Please advise at your earliest convenience in response to this issue.

Our Coalition is also interested in the area of training for the Department's employees. Now that the Department of Labor has the full authority to investigate violations of human rights under the State's Human Rights Act, as well as to enforce legitimate complaints, proper training of the investigating personnel is an obvious priority. Please advise us as to what training would be provided to the Department's Human Rights Investigators, both initially and further on an ongoing basis.

A third and major concern of our Coalition is what criteria the Labor Department will use to determine whether probable cause exists with regard to the complaints it receives. As you know a finding of probable cause is the condition of having the complaint move onto the next level of administrative enforcement, i.e., a formal hearing before an administrative law judge. As I am sure you are aware, there has been much criticism in the past of the probable cause determination process of the Department of Labor. Statistics show that only a minute percentage of complaints were found to have a probable cause determination. Obviously, not every complaint of discrimination will have merit; but, just as obvious, it seems to us, that many will. Therefore, a clear definition of probable cause and how probable cause determinations are made, are absolutely crucial in our opinion. It would seem that the entire probable cause process should be set forth by administrative regulation and be made available for public comment prior to the implementation; these regulations being in accordance with the North Dakota Administrative Agencies Practices Act. Obviously, with the legislation scheduled to take effect as of August 1st, 2001, any regulation regarding the determination of probable cause needs to be drafted and published as soon as it is feasible. Please advise us of your intentions in this regard.

A fourth concern: a key component of implementation is for the Department of Labor to conduct a study to determine the extent to which discrimination outlawed under the Human Rights Act exists in North Dakota. We understand that the Division of Human Rights is in the process of implementing that study through private contract. It is of vital importance, of course, that this study be conducted in good faith by trained professionals who have the training and experience necessary to conduct this study using scientifically valid methodology. As you know, no such study has been attempted in North Dakota heretofore. It is crucial, therefore, that the integrity of the study be unassailable, so that regardless of its results, no one based on a particular agenda, can dismiss it as being biased or invalid. In this regard, please advise us as what is being done to implement this study and to ensure its validity.

Commissioner Bachmeier

page 3

Please know that our Coalition very much desires to have input into the study before any proposal is made or consultation chosen. Also, please send us any or all documentation you have regarding what the North Dakota Department of Labor has done thus far in implementing its responsibilities under the new legislation.

Finally, if at all possible, we would like to have you address representatives of our Coalition at a meeting, to be arranged at your convenience, but, as soon as possible. Our Coalition was gratified that, at last, North Dakota has a form of structure to redress violations of human rights of it's citizens. The awesome responsibility for this enforcement has been placed within the North Dakota Department of Labor. Our Coalition looks to work with you when we can and offer constructive criticism where we must, in order to ensure that the promise of human rights protection to all of our North Dakota citizens does not go unfulfilled. In that spirit, we look forward to working with you in serving the people of North Dakota in the cause of human rights. I look forward to your response. Thank you.

Sincerely,

Allan Peterson, Chairperson
North Dakota Human Rights Coalition
7009 Horseshoe Bend
Fargo, ND 58104-5719
Phone: 282-4644

cc: Dina Butcher, Director, Division of Human Rights,

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Dina Butcher
Operator's Signature

10/22/03
Date

John Hoeven
Governor

Mark D. Bachmeier
Commissioner



State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

www.state.nd.us/labor
E-mail: labor@state.nd.us

September 10, 2001

Mr. Allan Peterson, Chairperson
North Dakota Human Rights Coalition
7009 Horseshoe Bend
Fargo, ND 58104-5719

Post-It Fax Note	7871	Date	10/12/01
To	Cheryl Bergman	From	Allan Peterson
Co/Dept		Co	
Phone #		Phone #	
Fax #	701-232-8366	Fax #	

Dear Allan:

Please accept my most sincere apology for taking so long to respond to your June 28 letter. I certainly did not intend to ignore your concerns. I am embarrassed to say that your letter was simply among a very large number of pressing matters to which I have had to dedicate my attention during the past several months. Please do not take my poor response time as an indication of lack of interest or concern. I will do my best to respond, in order, to the issues you addressed in your letter.

First, I have enjoyed our telephone conversations. I appreciate your perspective and invite you to contact me any time.

I am certainly willing to discuss the concept of an advisory committee but I need to understand more about what the intent, composition and functions of such a group would be. I believe that the entire Department of Labor, and I personally, need to be accessible to anyone with questions or concerns about our programs and activities. Communication between the department and the public is essential to the success of our human rights enforcement and other programs. Moreover, I believe strongly in accountability. We have responsibilities to citizens of North Dakota and I think those citizens have every right to hold us accountable for meeting our obligations. I simply don't know enough at this point about what an advisory committee would look like to tell you whether or not I believe it to be a necessary part of meeting these objectives.

Training for our investigative staff is taking a number of forms. Several of our staff have years of investigative experience and have attended a variety of training provided by the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development (HUD). One of our staff holds an investigator certification from the Council on Licensure, Enforcement and Regulation. Beginning this fall, various staff will be attending specific human rights investigator training provided by the National Association of Human Rights Workers. My goal is to eventually have all investigative staff certified by that organization. In addition, we have gathered a great deal of information from other states' human rights enforcement agencies and have purchased a variety of quality research and reference materials.

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I am aware of the criticisms of the department's record of finding probable cause in equal employment cases. It is true that the agency has issued few probable cause findings historically. However, the number of probable cause findings is not a valid measure of the number of allegations that we find to be supported by the evidence we obtain during our investigations. The vast majority of complaints that are supported by evidence are settled prior to a formal determination. We expect this since it is clearly in the interest of respondents in such cases to avoid the inevitable litigation that follows a probable cause determination. We have negotiated many settlements and in some cases settlements have been reached directly between the parties and the complaints have been subsequently withdrawn.

I believe that settling a case is always preferable to issuing a probable cause finding as long as both parties agree voluntarily to the terms of the settlement. Our goal is always to resolve a complaint and to seek a suitable remedy for anyone who has been harmed by a discriminatory practice. I think it is a good thing whenever this can be accomplished without formal hearings or litigation. In addition, we have a statutory obligation to "emphasize conciliation to resolve complaints." The clear intent of the Legislative Assembly was that we resolve complaints informally to the extent possible.

Another factor is that, prior to the passage of SB 2217, we had no authority to hold administrative hearings or otherwise enforce remedies in equal employment cases. Consequently, probable cause findings almost invariably resulted in complainants seeking remedies on their own behalf in courts. We have certainly tried to avoid this when possible.

I would also point out that the EEOC has reviewed every determination issued by the department since 1987 in every case meeting federal jurisdiction. Under the terms of our agreement with the federal agency, it may refer back to us any case in which it does not agree with our conclusion. Our rate of rejection by the EEOC is less than two percent, among the lowest in the Rocky Mountain Region. We reopen for further investigation the few cases that are rejected by the EEOC and bring each one to an acceptable resolution if at all possible. We have been notified that we will soon be issued "certified" status by the EEOC, specifically for our record of accurate determinations.

The North Dakota Supreme Court discussed probable cause as a legal standard in its opinion in *Asbridge v. ND State Highway Commissioner*, 291 NW2d 739 (ND 1980). The Court concluded that "reasonable grounds", "reasonable cause", and "probable cause" are synonymous and noted essentially that probable cause exists where the facts and circumstances are sufficient to "warrant a man of reasonable caution in the belief that, an offense has been or is being committed." The Court further noted that "whether or not probable cause exists depends on the facts and circumstances of each case." Our process entails conducting a thorough investigation to gather all available information relating to an allegation and applying this "reasonable person standard" to the weight of that evidence. When the evidence leads us to "reasonably" believe that a discriminatory practice has occurred, we issue a probable cause finding if we are unable to negotiate a resolution. I don't know if there is a more exacting way to articulate the probable

cause standard. Your general point regarding the need for documentation of our processes and standards is very well taken, however, and we will certainly be working toward that goal.

Both the housing discrimination law passed during the 1999 Legislative Session and SB 2217 mandated that we study "the nature and extent of discrimination" in North Dakota. I welcome that obligation because we have far too little information about the prevalence of discrimination in our state. We need information to effectively administer our programs and target our educational efforts. I view this as an ongoing process approached methodologically in a variety of ways. As you are aware, we are proposing to begin with a relatively broad, general survey inquiring about people's experiences. No single methodology will be sufficient to cover all of the questions encompassed by the topic. My belief is that starting with an overview and moving to more specific and more qualitative research is a sound approach. I welcome your input into the entire study process and your comments regarding the integrity of the research are right on the mark. We will work, to the extent that resources allow, with a credible research firm.

I would welcome any opportunity to meet with you and other representatives of your coalition at your convenience. Please call me any time you would like to schedule a meeting and I will gladly drive to Fargo to meet with you.

Finally, I want you to know that I take our human rights responsibilities very seriously. I am committed to making our investigation and resolution of human rights complaints thorough, timely, and fair for all parties. Toward this goal, I am presently implementing a number of organizational initiatives intended to make our processes better and more efficient. These initiatives involve maximizing the number of agency staff dedicated to investigative work, organizing investigative staff into an investigative team that will work collaboratively on all types of complaints, consolidating a number of currently independent processes into a single, unified case management process, and developing technology that will improve the efficiency of case management and information processing. I would be happy to discuss these initiatives and other activities of the agency with you any time.

Again, I am very sorry that I was not more timely in my response. I appreciate your thoughts and comments and I look forward to continuing an ongoing dialogue with you and other members of the North Dakota Human Rights Coalition.

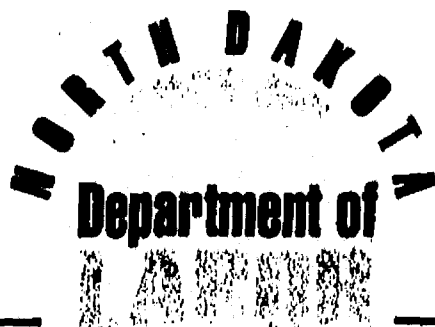
Sincerely,

Mark D. Bachmeier

Mark D. Bachmeier,
Commissioner of Labor

John Hoeven
Governor

Mark D. Bachmeler
Commissioner



State Capitol - 13th Floor
600 E Boulevard Ave Dept 408
Bismarck, ND 58505-0340

www.state.nd.us/labor
E-mail: labor@state.nd.us

April 2, 2002

Mr. Allan Peterson, Chairperson
North Dakota Human Rights Coalition
7009 Horseshoe Bend
Fargo, ND 58104-5719

Dear Allan:

Thank you for your February 8, 2002 letter. We are reviewing your proposal for an Advisory Committee to the Human Rights Division and will respond to that issue upon completion of our review. I want to thank you as well for your participation in our diversity conference. I very much appreciate your valuable contribution and I am very glad to hear that you feel the day was successful. We received many useful comments and suggestions from participants. I will be happy to forward those to you as quickly as I am able to make time to finish compiling them. Finally, thank you and your members for meeting with me in December. I want you to know that I very much welcome the interaction with you and your members.

In your letter, you ask me to provide written responses to the points you addressed in your November 25, 2001 letter and that we discussed during our December 17, 2001 meeting. I am happy to do so.

The first issue you addressed in your November letter related to the formation of an advisory committee. As I note above, we are reviewing your recent proposal on that topic.

Secondly, you noted several issues relating to the training, experience, and expertise of our staff. I truly believe that we have an exceptional group of investigators assembled at the department, including one person who is a licensed social worker, another who worked for more than twenty years in a housing assistance program, and a third who spent several years working in a refugee assistance program. I assure you that each member of the group is caring and committed. Four of our six investigators have now completed half of the requirements for certification by the National Association of Human Rights Workers and a fifth already has investigator certification through the Council on Licensure, Enforcement, and Regulation.

As I noted during our December meeting, we have reorganized the investigative staff from working in individual areas into an investigative team that works together on all types of complaints. That change is progressing well. The team now meets weekly to discuss cases and to make group decisions about the dispositions of complaints. No

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human rights complaint is closed without a thorough discussion by the group. These sessions also serve to provide a vehicle for cross training investigative staff.

We do not have an attorney on staff per se but receive legal services as necessary from the Attorney General's Office. I recently met with representatives of that office specifically to discuss our increased need for legal services in the area of human rights and have subsequently been informed that two attorneys in the Civil Litigation Division have been assigned to provide legal services to our Human Rights Division. We will utilize these services for opinions on questions of law, case reviews, and legal representation in formal proceedings.

The next issue you addressed in your November letter was our discrimination study. You also requested an update on the study in your February letter. We have not placed a specific timetable on the project but I expect to be able to review the findings report within the next couple of weeks. We will plan to release the results as soon as we have had an opportunity to look them over.

I understand the concern you have raised about the use of telephones as a methodology for gathering data on discrimination. I want to stress again that the decision was mine and one that I based on a number of considerations. There are five main areas in which discrimination is prohibited and eleven protected categories under the North Dakota Human Rights Act and the North Dakota Housing Discrimination Act. I felt it was necessary to employ a methodology that would allow us to collect initial data on all protected areas. The statutory obligation for the department to "conduct studies of the nature and extent of discrimination in the state" was not accompanied by any funding for the purpose. Attempting to collect data on all protected areas with more qualitative methods was cost prohibitive. I continue to believe that the study will provide useful information about the areas and bases upon which people most prevalently feel that they have been treated differently. I believe that information will be useful in guiding our education and enforcement efforts, as well as subsequent research.

Next, you addressed the issue of reasonable cause. Please know that I am convinced that we need to promulgate a clear definition of reasonable cause in implementing regulations and be assured that we will do so. I don't believe that the standard I discussed in my previous letter is contrary the EEOC standard discussed by Mr. Schneider of finding reasonable cause when a charge has "sufficient merit to warrant litigation if it is not conciliated," although I agree that the latter is perhaps more clear as a working definition. "Sufficient merit to warrant litigation" implies that a judgment must be made about the extent to which the allegation contained in a complaint is supported by evidence obtained during an investigation. My intent in discussing a "reasonable person test" was to attempt to define reasonable cause as a standard for making that judgement, as distinguished from "preponderance of evidence" or "beyond a reasonable doubt."

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As evidence that our standard in practice is similar to that utilized by the EEOC, I would again point out that the federal agency has reviewed the dispositions in hundreds of cases completed by the department and has disagreed with only very small number.

The only point on which I have to respectfully disagree with Mr. Schneider's analysis is his assertion that we should issue a finding of either probable cause or no probable cause in every complaint. We have very frequent contact with HUD and the EEOC and I have met and/or talked with representatives of many other state human rights agencies. I personally know of no state or federal human rights agency that issues a finding in every complaint. A formal finding can be made only when an investigation has been completed and there are a variety of actions or circumstances that result in the resolutions of complaints before that time. Some complaints are withdrawn, for example. In many others, the parties themselves initiate attempts to settle them prior to the end of the investigative process. Every human rights agency case management process that I have reviewed includes at least one stage at which the agency offers the parties an opportunity to resolve the complaint, generally pre-investigation, through some form of mediation, settlement negotiation, or conciliation. These methods of resolution often prove to be very effective and timely ways to resolve complaints and to remedy the harmful effects of discrimination for individuals. If parties to complaints are voluntarily willing to discuss their disputes and resolutions that would be acceptable to them, I think we should help facilitate that process.

Please understand that I have no reluctance whatsoever to issue a probable cause finding and to pursue a remedy in any case where we complete an investigation and reasonably believe from the evidence that discrimination has occurred but I also believe that informal resolutions are appropriate and effective means for resolving complaints.

Finally, in your February 8 letter, you inquired about our progress in filling the position in our office previously held by Dina Butcher. We are presently considering several final candidates and I expect that we will make our decision before the end of April.

Thank you once again for your great patience with me. Please be assured that we are working extremely hard to organize the resources of our agency and develop processes in ways that will ensure effective resolutions of human rights, as well as labor complaints. I am very committed to these goals. I appreciate your time and look forward to continued dialogue with you and your members.

Sincerely,

Mark D. Bachmeier

Mark D. Bachmeier

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(5) The work of an Advisory Committee would add to the credibility of the Department's efforts. The existence of an Advisory Committee would give the Department greater credibility with people it serves because it would demonstrate the Department's willingness to cooperate collaboratively with community leaders for the enforcement of our human rights laws.

(6) An Advisory Committee could assist with efforts to create more public awareness about the Division of Human Rights and educate the public on what constitutes discriminatory practices. The ultimate success of advocacy for human rights enforcement is for all people to come to a greater understanding and appreciation for the personal dignity that is sought through observance of our human rights laws. It is our belief that the Advisory Committee would be of great assistance in creating more public awareness and appreciation for our State's Human Rights Laws.

On the Composition of an Advisory Committee:

It is proposed that the membership of the Advisory Committee to the Division should be composed of (1) representatives that are chosen from the leadership of organizations of people who have been identified as belonging to the protected classes which are listed in the North Dakota Human Rights Act, (2) representatives from leadership in the business community, (3) professionals who have experience in this area and have dealt with issues of human rights and equal opportunity and (4) individuals with a legal background and experience in the area of human rights enforcement and administrative law. The Advisory Committee should be composed of, at least, ten to twelve members. It is suggested that each of the protected classes identified in the Human Rights Act be represented on the Committee in numbers proportional to their percentage within the total population of the state.

Appointments to the Advisory Committee:

The appointments to the Advisory Board could be made, for example, in a somewhat similar manner as those made to the State Independent Living Council (SILC). Nominees would be submitted with recommendations for appointment; the Governor's Office would then have the discretion to finalize any of the recommendations for appointments. Members would serve without any compensation other than being reimbursed for the expenses they incur.

Concluding Statement of Support:

Our nation's government and culture have been built upon the ideals of democracy and equality for all. The progress that we've achieved as a nation has without doubt, been a product of the ideals to which our form of government has aspired. Our society is progressively becoming more diverse; we, as a state, need to embrace the diversity which has become more pronounced elsewhere in our nation. It is our belief that discrimination is not only unlawful but ultimately undermines the values and the resources of our culture and society. We also believe that the Advisory Committee that we've proposed can assist the Department of labor to minimize the extent to which discrimination is experienced by the citizens of North Dakota.

November 25, 2001

Mark D. Bachmeier, Commissioner
North Dakota Department of Labor
State Capitol Building, 13th Floor
600 East Boulevard, Dept. 406
Bismarck, ND 58505-0340

Dear Commissioner Bachmeier,

Thank you again for your September tenth letter in response to the letter which we sent to you on June 28th. Your letter of response has been shared with other members of our North Dakota Human Rights Coalition for their thoughts and input.

As indicated in our initial June 28th letter, we believe there are four basic issues which are absolutely critical to fully implement North Dakota's Human Rights Act. We wish to again address these issues in this current letter and continue to expand our dialogue with you.

You stated in your response that you were "certainly willing to discuss the concept of an Advisory Committee," but, that you needed to understand more about what the intent, composition and functions of such a group would be". As you are well aware, there are distinct subgroups of people within our population who, because of their identity, are more likely to be subjected to acts of discrimination. Many, who are so categorized, are represented by various advocacy groups who speak to the issues that affect people in these defined populations. It would seem to be wise for the Division of Human Rights to seek the counsel of leaders in these defined populations to advise them on such issues as, how to effectively communicate with people in these various constituencies. Our primary intent in seeking establishment of an Advisory Committee would be to help the Division address the problems it faces in making it more accountable to the people of North Dakota. Defining the specific responsibilities of an Advisory Committee could be addressed in conjunction with reaching a consensus on the need for such a group.

It is our belief that the Advisory Committee would significantly increase the Department's productivity and effectiveness. A commonly shared opinion is that educating the public in regard to what constitutes discriminatory practices and what increases the dignity of people would be beneficial to all concerned. We believe an Advisory Committee would be a key component in coordinating efforts to educate the public regarding human rights issues. As you can appreciate, public relations is crucial to the success of many public enterprises; an Advisory Committee would serve a significant role in the success of the Department's public relations effort. We want to strongly emphasize that our primary intent in advocating for inclusion of an Advisory Committee is to help the Division of Human Rights accomplish its mission of fully enacting our states Human Rights Law.

When the substituted version of Senate Bill 2217 was being debated during the past legislative session, some of our advocates for a Human Rights Commission, were assured that an Advisory Committee for the Division would be considered and could be implemented once the bill became law. We would hope that the assurances that were given on this most critical of issues would be honored. We continue to believe it to be absolutely essential that there be an Advisory Committee to the Division composed primarily of people who are spokespersons for groups of people who commonly experience acts of discrimination.

Our Coalition does appreciate the information you and Ms. Dina Butcher have provided regarding the training and experience of the Division's staff. We believe it to be extremely important that the staff not only be highly trained in regard to human rights enforcement but that they also be sensitive and committed to the very important work they do in order to assure that people's rights are not violated. Since the Division has so much responsibility for the legal issues of human rights enforcement, we assumed that there would be an attorney on the staff who specialized in this area of the law. Do you employ an attorney within the Division's staff whose responsibility is to review claims of discrimination?

We are encouraged to hear that many of the procedures and forms used for documenting claims of discrimination are being streamlined by the Division. We also feel that cross training your staff in different areas of the law will lead to more efficient use of the Division's investigative staff.

In August, many of us received a request for input on a proposed study, which was to be financed by the Department of Labor, for the purpose of determining the extent of discrimination present in North Dakota. What is the current status of this study? The reasoning given for conducting the study was to help determine a base line of discrimination experienced by the population in North Dakota. As you are well aware, there are valid studies and ones that are flawed and aren't worth the money and resources that were invested in conducting them. It would seem to us that a telephone survey would by its very nature leave out low income people, people who have difficulty communicating and minorities who are residing on reservations and in homeless shelters. Also important is what questions are asked and how they are asked. It also seems to be very important to determine what goals you are trying to attain and what hypothesis are being established prior to conducting the study. Sampling the classes of people most likely to experience discrimination would seem to more clearly define the extent of discrimination. Although, some people may object to the use of testers, they have proven to be a very reliable means of determining prevailing attitudes and practices. We would like to draw your attention again to the North Dakota Advisory Committee's 1999 Report to the U.S. Civil Rights Commission which found that discrimination is "commonplace" in North Dakota.

In regard to the issue of "probable cause," the response given here has been written by Fargo attorney, Mark Schneider, who is a fellow member of our Coalition. In this response, Mark has reviewed the comments made regarding "probable cause" in your September 10th letter to us. Mark's credentials include his service for several years on the bipartisan North Dakota Advisory Committee, that prepared the 1999 North Dakota Report to the U.S. Civil Rights Commission; Mark is also well versed on administrative law. The following remarks (enclosed in bold brackets) is his response to your description of how the Division of Human Rights determines the existence of "probable cause".

{We would like to follow up on your assertion that, "the vast majority of complaints, that are supported by evidence, are settled prior to a formal determination." You offer this by way of explanation why " . . . the agency has issued few probable cause findings historically."

First, how does the Department determine whether the "complaints . . . are supported by evidence . . ." without making some type of "probable cause" determination? How do you inform the charging parties that their complaints are "supported by evidence?" in order that the complaining party may maximize the settlement that is to be obtained?

Also we don't understand your assertion that a "probable cause" determination results in "inevitable litigation." It would seem to us to be just the opposite, i.e., if your Department makes a probable cause determination, both parties are given notice of the merits of the claim, thus enhancing not only the prospects of settlement but a settlement amount that is reasonable given the obvious merits of the complaint.

Obviously, all parties should be "treated fairly", but after all, the North Dakota Human Rights Act is a clear and unequivocal statement of legislative purpose that illegal discrimination, in all its forms, should be eradicated "root and branch." According to your letter, there are numerous "complaints that are supported by evidence" that are not the subject of a "probable cause" determination. With all due respect, it would seem to us that if complaints are "supported by evidence", then, obviously, the purpose of the Human Rights Act is enhanced by using that evidence to make a "probable cause" determination and give the best possible leverage to the charging party to have his/her claim settled with the "benefit of the probable cause" determination. Any other process, it seems to us, does not embrace either the spirit or the letter of the Human Rights Act, i.e., that your agency will investigate all complaints within its jurisdiction and will seek to assist charging parties to resolve the cases - - through settlement if possible and litigation if necessary - - if those claims are "supported by the evidence."

Also, while the EEOC is far from a model of perfection, we do urge you to look at the EEOC procedures regarding "reasonable-cause" (probable cause) decisions. EEOC is charged to either make a "no cause" or "reasonable cause" decision. If a "no cause" decision is reached, EEOC must dismiss the charge, while a "reasonable cause" decision means the EEOC must undertake its statutory obligation of attempting to conciliate the dispute. 42 USC 2000E-5 (B); 45B AmJur 2d, Job Discrimination, Section 1350-1361. Certainly, if the claim has no merit, and to be fair to the person being charged with the discrimination, your agency should issue a no probable cause determination promptly after fully investigating the complaint. By the same token, if there is "probable cause", it is not only fair to the charging party - - but it is the essential function of your agency - - to promptly make the "probable cause" determination and attempt to conciliate if possible and litigate if it is necessary.

You appropriately emphasize the legislative direction that says, "the Department shall emphasize conciliation to resolve complaints." N.D.C.C. Section 14-02.4-22. You ignore, however, the equally clear mandate of the legislature that requires that, "the Department shall determine from the facts whether probable cause exists to believe a discriminatory practice has occurred." N.D.C.C. Section 14-02.4-23(2). Emphasis added. Reading these two statutory mandates together, it seems obvious to us that the legislature mandates a decision from your department whether "probable cause" exists in every complaint. If it doesn't exist, "... the department shall promptly dismiss the complaint. . . ." *Id.* Again, the clear statutory direction - - we believe one that all reasonable people can agree with - - is that "conciliation" should be used to resolve complaints". However this salutary goal has nothing to do with the independence - - and the mandatory - - statutory duty of your department to make a determination in every complaint whether "probable cause" exists to believe a discriminatory practice has occurred. N.D.C.C. Section 14-02.4-23.

Also, it seems essential - - and fair to all concerned - - that your Department have a regulatory appeal process with regard to a finding of no probable cause. Again, the EEOC has this regulatory procedure, allowing a request for review to be filed with subsequent notification to all parties to the charge. 45B AmJur 2d, Job Discrimination, Section 1356.

We also believe it is essential that your Department develop a regulatory definition of "probable cause." You have cited the case of Asbridge v. ND State Highway Commissioner, 291 N.W. 2d 739 (N.D. 1980) for the proposition that "reasonable grounds", "reasonable cause" and "probable cause" are synonymous. And see Chadwick v. Moore, 551 N.W. 2d 783 (N.D. 1996) (reasonable grounds to arrest are equivalent to probable cause to arrest). Of course, the Asbridge case dealt with what constitutes "reasonable grounds" to stop a motor vehicle operator who is suspected of (cont.)

drunken driving. The Asbridge case discusses "probable cause" for arrest in a criminal law context, and seems to us, is not readily adaptable to "probable cause" determinations under complaints of civil rights violations.

It seems to us that adopting a criminal law standard of "probable cause" simply doesn't fit the context of what constitutes "reasonable (cause)" in the context of investigating an allegation of civil rights discrimination. Rather, the plain speaking language of the EEOC in regard to what constitutes "reasonable cause" seems to have much clearer application, i.e., a "reasonable cause" in most circumstances means the EEOC finds the charge to have sufficient merit to warrant litigation if it is not conciliated. 45B AmJur 2d, Job Discrimination, Section 1350. This common sense definition embraces your Department's mandatory duty to make "probable cause" determinations on every complaint and, if it exists, seek to conciliate the complaint, if possible.

Finally, even in a criminal law context, our Supreme Court (while confirming that standard is indeed "knowledge that would give a prudent person reasonable grounds to believe a violation of law has occurred") has found that it is not necessary that the arresting officer have knowledge of facts sufficient to establish guilt. Mayo v. Moore, 527 N.W. 2d 257 (N.D. 1995). In other words, the "probable cause" determination can never be predicated upon the necessity of having the complaint proved either "beyond a reasonable doubt" (the criminal standard of proof) or by a "preponderance of the evidence" (the civil standard of proof). Rather, "probable cause" should be found in every case where there is sufficient merit to litigate if the case is not conciliated. If so, the matter must be either conciliated, or failing that, must be litigated to determine the truth of the matter through a due process hearing.

Again it seems essential that your Department promulgate regulations that provide a working definition of "probable cause" that embraces the spirit and the letter of the North Dakota Human Rights Act.

Therefore, we ask that you revisit the entire issue of "probable cause" not only because it is an indispensable and integral portion of the statutory duties of your department, but perhaps even more importantly, because open, fair, and just determinations of all complaints of discrimination are essential to winning the public confidence that your agency will be a positive factor in eradicating illegal discrimination in our state.

We look forward to your response that addresses our concerns regarding your "probable cause" mandate.} This concludes Mark Schneider's comments in regard to the issue of "probable cause" as were addressed in your letter to us.

Commissioner Bachmeier

(11/25/01)

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For your information, our coalition is seeking support from a granting agency for the purpose of employing staff whose work would be dedicated to help the coalition organize and to more efficiently address our work on human rights issues in North Dakota.

Thank you for your offer to meet with us in Fargo at any time. We of the coalition would very much like to schedule a meeting with you sometime before the beginning of the new year. Please advise us as to openings in your schedule that would allow for a trip to Fargo during that time period. We do look forward to your response!

Sincerely,

Allan Peterson, Chairperson
North Dakota Human Rights Coalition
Home Address: 7009 Horseshoe Bend,
Fargo, ND 58104
Phone: 701-282-4644

c: Rose Stoller, State Director, Mental Health Association

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February 8, 2002

Mark D. Bachmeier, Commissioner
North Dakota Department of Labor
State Capitol Building, 13th Floor
600 East Boulevard, Dept. 406
Bismarck, ND 58505-0340

Dear Commissioner Bachmeier,

We, the members of the North Dakota Human Rights Coalition, wish to thank you for the time and effort that was required of you to meet with us on December 17th. The consensus of our group was that our meeting with you was informative and very worthwhile.

By way of review, most of the topics we discussed at that December meeting were also raised in our previous exchange of letters. In principle, our discussion at the Dec. 17th meeting was based upon the issues that were outlined in our letter of November 25th. We continue to refer to these points because, we feel, they are absolutely crucial to the framework upon which an effective means of human rights enforcement for North Dakota citizens can be built. Although our discussion during our December meeting was rather detailed, we feel it to be important that there would be a written response to points in the letter of November 25th. Thank you in advance for the thought and research required of you to compose this response.

As you will recall, one of the principle issues that garnered so much discussion during our meeting on December 17th, was the establishment of an Advisory Committee for the Division of Human Rights. During our discussion, you questioned those present as to why an Advisory Committee was necessary. Our discussion led to an offer to document the reasoning for establishing such a Committee. To this end, enclosed with this letter is a proposal that outlines reasons why such a Committee should be instituted.

It has been well established in many instances that State Boards and Commissions have served a vital role within state government. Similarly, it is our belief that the input from an Advisory Committee would also prove to be vital to the administration of human rights enforcement within agencies of state government. We believe, that this contribution would more than justify the reimbursement of its members for the expenses that they would incur.

Another major focal point of our previous letters and discussions has been the procedures for establishment of "probable (reasonable) cause" for the complaints that are submitted to the Division. As you are well aware, this issue was addressed rather extensively in the contribution Mark Schneider made in our letter of November 25th. We ask that you would review and respond to the issue of probable (reasonable) cause as it was addressed in that letter.

Mark Bachmeier (2/8/02)

page 2

Personally, I thank you for including me as a panel member representing North Dakota Association of the Blind and the North Dakota Human Rights Coalition at the Diversity Day Celebration, that was conducted in conjunction with observance of Martin Luther King Day, at the University of Mary in Bismarck on Monday, January 21st. I feel that it was an excellent opportunity for all participants to share information among themselves and to learn from these shared experiences. I very much look forward to receiving a compilation of the notes taken at the diversity day Celebration.

If it is available, would you also send me a copy of the instrument (questionnaire) that D and H Research used in their telephone interviews to help determine the extent of discrimination which is experienced by citizens of North Dakota? Whenever the results of this study are available, we would be most interested in receiving the details that it contains.

Has there been a decision as to how the position which Dina Butcher previously held in the Division will be filled? Information you could supply in that regard would also be most appreciated.

Please know that your response to this letter and its enclosure are most appreciated.

Sincerely,

Allan Peterson, Chairperson
North Dakota Human Rights Coalition
Home Address:
7009 Horseshoe Bend,
Fargo, ND 58104-5719
Phone: 282-4644

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Deanne Hallmark
Operator's Signature

10/22/03
Date

An Advisory Committee Proposal for the Division of Human Rights

The proposal we outline herein addresses the intent, function and composition of an Advisory Committee for the Division of Human Rights as administrated within the North Dakota Department of Labor.

Intent:

The intent of the Advisory Committee is not to manage or administrate the Division of Human Rights; The primary intent, in advocating for the establishment of an Advisory Committee, is for it to be of assistance and to be a resource for the Department as the Division of Human Rights seeks to accomplish it's mission. Our advocacy for establishing an Advisory Committee, is for it to help the Division be an effective means within state government by which all acts of discrimination can be minimized and eventually, eliminated altogether.

Function:

We believe that the functions that an Advisory Committee would preform would be beneficial to the success that the Department would realize in its efforts to enforce our states Human Rights Act. A list of suggested functions for an Advisory Committee include the following:

- (1) It would be a resource for critical review. The Committee would periodically review a summary of the work and the progress that the Division has made on cases that have been submitted over a time interval between meetings. Based on the review of the overall summary of cases, the Committee could make pertinent suggestions to the administrators of the Division. the Committee would not review individual cases unless a specific request for their advice and input on such cases were made.
- (2) It could be a Sounding Board for reviewing procedures and initiatives. The Advisory Committee could review policy and initiatives that the Division has undertaken to guide its work. For the sake of illustration This could include, what documentation the Division collects and how it is collected. The administrators of the Department would then have had the opportunity to gain these suggestions and utilize the knowledge they would have gained from this input in any way they would deem to be appropriate.
- (3) The Committee would be a resource for information. Individuals who were selected to serve on the proposed Advisory Committee would be chosen to reflect a broad base of expertise and experience with advocacy groups who have addressed human rights violations. Through the process of sharing their knowledge with administrators of the Division, they would provide the insight that would help make the Department a more effective agency.
- (4) Provide a link to the community. The Advisory Committee would be a link to the people in the various regions and communities in North Dakota. Although Department personnel can conduct open forums in different locations of the state, their day-to-day contact within individual communities is limited. Advisory Committee members would add the perspective of those persons who do have daily contacts with people in the various communities of the state.

North Dakota Human Rights Coalition
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701-478-4452 (fax)
ndhrc@hotmail.com

July 24, 2002

Sent by fax to (701) 328-2031

Mark D. Bachmeier
Commission of Labor
State Capitol - 13th Floor
600 E. Boulevard Ave., Dept 406
Bismarck, ND 58505-0340

RE: North Dakota Human Rights Coalition requests

Dear Commissioner Bachmeier:

The following is the text of an e-mail sent to you on July 10, 2002. I have not had a response. Please confirm that you have received this fax at your earliest convenience.

The North Dakota Human Rights Coalition would like to bring the following requests to your attention:

(1) The NDHRC first requested in June, 2001 that an Advisory Committee to the Division of Human Rights in the Department of Labor be established. A comprehensive proposal regarding the intent, function and composition of that Advisory Committee was submitted to the Department of Labor in February, 2002. There were also letters reiterating this request from the North Dakota Human Rights Coalition in November, 2001, and February, 2002, and a meeting of the North Dakota Human Rights Coalition with you regarding this request and other matters in December, 2001. It is my understanding that this request has been forwarded for review by the Governor's office.

Is there someone within the Governor's office with whom we should be communicating? It is the belief of the North Dakota Human Rights Coalition that an Advisory Committee is vital to the administration of human rights enforcement by the State of North Dakota and we ask that we be of assistance in addressing any questions or concerns which are delaying the implementation of this Advisory Committee. At the least, there should be some timeframe within which a decision or further development of this request will be made. Our request in June, 2001 identified the establishment of the Advisory Committee as the first priority and we believe that creation of that Advisory Committee should be addressed without further delay.

(2) The NDHRC also asked in June, 2001 that criteria for the determination of probable (reasonable) cause be established for public review and comment and use by the Division

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Deanna Hall
Operator's Signature

10/22/03
Date

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of Human Rights within the Department of Labor. This request was further discussed in the letters and meeting outlined above. It is our understanding that the Department of Labor intends to promulgate these regulations and has been in the process of gathering information regarding the drafting of those regulations. As part of the promulgation of this criteria, we asked that the Department of Labor establish a policy of making a determination of probable cause or no-probable cause on all human rights complaints filed with the Department of Labor, as required by state statute and outlined in the correspondence listed above. While we understand the Department of Labor's policy of encouraging settlement, the statutory requirement cannot be disregarded; in fact, complying with the statute will enhance the settlement prospects of complaints, as the complainant and opposing part(ies) would have better information regarding the substantive merits of the complaint at a stage of the process that would enhance settlement prospects.

We also ask that a civil (as opposed to criminal) probable cause standard be adopted, as outlined in our letter to you dated November 25, 2001. We reiterate the reasons cited in that letter for our position regarding the efficacy and requirement for a determination of probable cause or no-probable cause to be made regarding all complaints filed. We note that the Equal Employment Opportunity Commission is charged with this same requirement and ask that a timeframe for the promulgation of these regulations be identified.

(3) We also ask for the release of the results of the study on discrimination conducted by the Department of Labor in December, 2001.

Regarding all three of these requests, we understand that the staffing levels of the Department of Labor have contributed to the pace of progress on the requests. However, we believe that these requests must be addressed and fulfilled for the Division of Human Rights within the Department of Labor to appropriately address violations of the North Dakota Human Rights Act.

Please feel free to contact me if the North Dakota Human Rights Coalition can be of any assistance regarding these requests; we are especially interested in contacting the Governor's office in order to establish the Advisory Committee, if that is necessary.

Cheryl Bergian
Director

John Heeven
Governor
Mark D. Boehmeyer
Commissioner



State Capitol - 13th Floor
600 E Boulevard Ave Dept 408
Bismarck, ND 58505-0340
www.state.nd.us/Labor
E-mail: labor@state.nd.us

August 2, 2002

Sent by fax to (701) 478-4452

Cheryl Bergian, Director
North Dakota Human Rights Coalition
P.O. Box 1961
Fargo, ND 58107-1961

RE: NDHRC Requests

Dear Cheryl:

In response to your July 24, 2002 fax:

1. We have recently discussed the advisory committee proposal again and are giving it thorough consideration. I fully expect to provide an answer to you soon. While others have reviewed the proposal, it is ultimately my responsibility to get an answer to you. I recognize how pressing you feel this is and I am sorry for not being more prompt in my responses. I have felt it necessary and appropriate to prioritize work related the continued development of our case management processes. Implementing our new responsibilities under the 2001 legislation and our efforts to integrate all of our case management work has virtually required my continuous attention during most of the past year. You should always feel free to contact the Governor's office with your concerns about my job performance. The Governor's Constituent Services person is Monty Ann Rauser, the Governor's Policy Advisor for our area is Duane Houdek, and the Chief of Staff is William Goetz. Any of these people can be reached at 328-2200.
2. Regarding reasonable cause:
 - a. I refer you to my April 2, 2002 letter for a discussion of the reasons I believe it is impracticable to issue a formal determination in every complaint. I believe that our current approach to the resolution of complaints is appropriate, effective, consistent with the intent of our laws, and consistent with the approaches of other human rights agencies. I do not believe that a change in policy is necessary.
 - b. I am completely confident that we apply the proper "probable cause" standard in our determinations in human rights cases. I attempted in my April 2, 2002 letter to clarify the intent of my November 25, 2001 comments on this topic. I submit again that the Department of Labor has maintained a work-sharing agreement in excellent standing with the EEOC for fifteen years. During that time, the EEOC

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Operator's Signature

Date

has reviewed the department's dispositions in hundreds of cases. Moreover, we recently underwent our second successful fair housing performance evaluation by HUD officials and will soon be entering into our third annual work-sharing agreement with that agency. Our eligibility to share work with these agencies has been and continues to be dependent upon our application of standards for the resolution of complaints that are consistent with theirs. As I have previously noted, we will include a clarifying, operational definition of probable/reasonable cause in administrative rules but I have no doubt whatsoever that we are applying the proper standard in our work today.

3. The survey results are a priority for me. As I am beginning to be able to increasingly delegate day-to-day responsibilities to our new Human Rights Director, I anticipate being able to turn greater attention to the survey project shortly.

Thank you for your correspondence, as well as your time and patience. Please continue to feel free to contact me any time.

Sincerely,

Mark D. Bachmeier

Mark D. Bachmeier

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Deanna Waller
Operator's Signature

10/22/03
Date

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October 3, 2002

Sent by fax to (701) 328-2031

Mark D. Bachmeier
Commission of Labor
State Capitol - 13th Floor
600 E. Boulevard Ave., Dept 406
Bismarck, ND 58505-0340

RE: North Dakota Human Rights Coalition requests

Dear Commissioner Bachmeier:

The North Dakota Human Rights Coalition would like to bring the following requests to your attention:

(1) The NDHRC first requested in June, 2001 that an Advisory Committee to the Division of Human Rights in the Department of Labor be established. A comprehensive proposal regarding the intent, function and composition of that Advisory Committee was submitted to the Department of Labor in February, 2002. There were also letters reiterating this request from the North Dakota Human Rights Coalition in November, 2001, February, 2002, and July, 2002 and a meeting of the North Dakota Human Rights Coalition with you regarding this request and other matters in December, 2001.

It is the belief of the North Dakota Human Rights Coalition that an Advisory Committee is vital to the administration of human rights enforcement by the State of North Dakota. As we stated in our letter in July, 2002, at the least, there should be some timeframe within which a decision or further development of this request will be made. Our request in June, 2001 identified the establishment of the Advisory Committee as the first priority and we believe that creation of that Advisory Committee should be addressed without further delay.

(2) The NDHRC also asked in June, 2001, as subsequently as listed above that criteria for the determination of probable (reasonable) cause be established for public review and comment and use by the Division of Human Rights within the Department of Labor. This request was further discussed in the letters and meeting outlined above. It is our understanding that the Department of Labor intends to promulgate these regulations and has been in the process of gathering information regarding the drafting of those regulations. As part of the promulgation of this criteria, we asked that the Department of Labor establish a policy of making a determination of probable cause or no-probable

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Deanna Hall
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10/22/03
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cause on all human rights complaints filed with the Department of Labor, as required by state statute and outlined in the correspondence listed above. While we understand the Department of Labor's policy of encouraging settlement, the statutory requirement cannot be disregarded; in fact, complying with the statute will enhance the settlement prospects of complaints, as the complainant and opposing part(ies) would have better information regarding the substantive merits of the complaint at a stage of the process that would enhance settlement prospects.

We also ask that a civil (as opposed to criminal) probable cause standard be adopted, as outlined in our letter to you dated November 25, 2001. We reiterate the reasons cited in that letter for our position regarding the efficacy and statutory requirement for a determination of probable cause or no-probable cause to be made regarding all complaints filed. We note that the Equal Employment Opportunity Commission is charged with this same requirement and ask that a timeframe for the promulgation of these regulations be identified.

(3) We also ask for the release of the results of the study on discrimination conducted by the Department of Labor in December, 2001, as requested since December, 2001 as listed above.

Regarding all three of these requests, we understand that the staffing levels of the Department of Labor have contributed to the pace of progress on the requests. However, we believe that these requests must be addressed and fulfilled for the Division of Human Rights within the Department of Labor to appropriately address violations of the North Dakota Human Rights Act.

Please feel free to contact me if the North Dakota Human Rights Coalition can be of any assistance regarding these requests.

Cheryl Bergian
Director

My name is Tom Fiebiger. I have been a licensed attorney since 1984. I practice extensively in the area of labor and employment law and have litigated numerous discrimination lawsuits. I am a Fargo resident and a member of the Fargo Human Relations Commission. I provide this testimony in support of the current proposed legislation to establish a Human Rights Commission in the state of North Dakota.

I do not think the Labor Department Division of Human Rights has been responsive to the needs of the citizens of the state of North Dakota. For instance, if you check the Fargo telephone directory, and as I understand it the other North Dakota city directories except Bismarck/Mandan, you will not find a listing for the ND Labor Dept. Division of Human Rights. Why not? Something as rudimentary as this is inexcusable. It tells me they do not want to be found. I have visited with Labor Commissioner Bachmeier about this on more than one occasion over the last year and a half and he acknowledges this oversight and states that they are moving to correct it. Yet it has not been corrected. More importantly, it is something so fundamental it should not need to be corrected.

In my practice I represent both employees and employers. Both have been frustrated by the current complaint process and its lack of responsiveness. Recently, a woman came to me after going through the Labor Department process that started about two years ago and told me the Labor Department had now issued its decision - a finding of no probable cause of discrimination. She wanted to know if I could help her because she had ninety days to file a lawsuit. Unfortunately, several of the coworkers had left town, one witness had died, and apparently none of the people she asked the Labor Department to interview in connection with her complaint were interviewed. This woman went to our state's Labor Department in good faith to avoid the legal system. She was not assisted by the process. To the contrary, she was harmed. I also have had employer clients call and be frustrated that a complaint that laid dormant for 18 months is now being picked up by the Labor Department and they want to send someone out to interview employees 18 months after the alleged actions took place. I also remember discussions with Commissioner Bachmeier through my role as a Fargo Human Relations Commissioner about trying to get the Labor Department to have a presence in Fargo one day a month. This process took months to accomplish. We had been trying to get the Labor Department to send someone to Fargo without success.

Commissioner Bachmeier, as part of that discussion, conveyed to me his concern that if the Department sent someone to Fargo one day a month, than other communities might want or expect them to send someone there. What a sad commentary on the willingness to provide basic and important services to all citizens of this state outside of Bismarck. Again, much of this is about what you see as your goal. This is not about closing out old files, or suggesting that our large delay in addressing citizen complaints is not as bad as some states. The current Division of Human Rights is not serving the needs of our citizens. A North Dakota Human Rights Commission is needed. We are one of only a handful of states without one. We are also a state where our young people are leaving. How we treat our citizens and protect their rights matters to young people. It matters to us all.

Please take favorable action on the proposed legislation to establish a Human Rights Commission in North Dakota. It will make a difference.

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Deanne Walker
Operator's Signature

10/22/03
Date

My name is Heather Ummel-Wagner, and I am a lecturer in the Modern Languages department of NDSU. My husband, Alexander Wagner, who is a recently appointed assistant professor of Physics at NDSU, and I moved to Fargo in August 2002. We moved here from Edinburgh, Scotland, where we had been working for several years. Before that, he and I were conducting post-graduate research at M.I.T. and Harvard University, respectively, in Cambridge, MA. And before that, we were graduate students together at Oxford University in Oxford, England. This information is simply to give you a context in which to place the following information.

We are very pleased to be living in Fargo, as it is a pleasant community with very little crime and is a very affordable place to live. For example, I relish the fact that people can leave their keys in the car ignition here without worrying about burglary; also, we're excited at the prospect of finally being able to own a home. Moreover, we enjoy living in a small town and having quick accessibility to walking along the Red River, riding our bikes along groomed trails, and discovering other outdoor activities.

When we decided to move to Fargo last Spring, our main concern in moving here was not the weather: on the contrary, we enjoy cold weather with plenty of sunshine. Rather, we were worried that we would not meet like-minded people who appreciate and respect cultural diversity. Although this aspect encompasses music, theater, and the arts in general, a larger part of this relates to the treatment of fellow human beings. In a nutshell, we were afraid we would be surrounded by an all-white community that wanted to remain as such (by the way, we are both caucasian).

For the most part, we have been pleased with our decision to move here, but reading the statistics of the Division of Human Rights is chilling. I hope this does not represent a larger picture of possible discrimination taking place in ND. The fact that the DHR found only 8 out of 528 cases of discrimination to be well-founded is worrying, indeed, and suggests that institutionalized discrimination is taking place. I acknowledge that I am not aware of each individual case, but this low number appears overwhelmingly statistically significant towards possible problems within the existing system. Given the statistics, the DHR appears to lack credibility.

Having such an organization as the North Dakota Commission on Human Rights would be a sure sign that ND is concerned about the welfare of every individual of this state. As a new citizen of ND, and one who hopes to remain here for at least a decade, the newly devised Commission looks like an important step towards establishing an outward-looking North Dakota.

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Deanne Waller
Operator's Signature

10/22/03
Date



January 31, 2003

Cheryl Bergian, Director
ND Human Rights Coalition
PO Box 1961
Fargo, ND 58107-1961

Dear Cheryl:

At its January 27 meeting, the Freedom Resource Center Board of Directors enthusiastically voted to support your organization's effort to gain a Commission on Human Rights for the State of North Dakota. As you probably recall, Freedom was one of the first organizations to begin work on this important issue. I believe that this effort has been ongoing for over three years now.

We work with many people with disabilities who feel they have experienced discrimination. It is difficult for us to have to tell them that the remedies available are slow and sometimes unavailable. I believe that the presence of an independent body such as a Commission would inspire some level of confidence in people that their issues will be heard. It will also give those people likely to experience discrimination a voice from which to tell our elected officials what they feel needs to happen to make this a more open, welcoming state.

Our Board also recommended that it would be fitting for a representative from Freedom be on such a commission. Human rights are a principal that we work for every day.

I support you in your efforts. If there is anything else Freedom can do to help, please let me know.

Sincerely,

Nate Aalgaard
Executive Director

Phone:
V/TTY
701-478-0459
1-800-450-0459

Fax:
701-478-0510

Mailing Address:
2701 9th Ave. S
Fargo, ND 581

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10/22/03
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**A North Dakota Commission on Human Rights
Can Address Complaints of Discrimination
Fact Sheet #5**

The proposed North Dakota Commission on Human Rights can address complaints of discrimination by hearing appeals of the dismissal of discrimination complaints by the Division of Human Rights in the North Dakota Department of Labor.

A North Dakota Commission on Human Rights could address complaints of discrimination in which errors are made by the Division of Human Rights in the North Dakota Department of Labor, such as the no probable cause finding issued by the Division of Human Rights on October 28, 2002, in which it found the following:

- The complainants are "JC", a black woman and her husband, a black man, "WC".
- The landlord "EA" owns a real estate company in one of the larger communities in North Dakota.
- JC has a mental disability for which her doctor prescribed a therapeutic dog.
- EA required JC and WC to dispose of the therapeutic dog, although he had received a letter from JC's doctor outlining JC's need for the therapeutic dog.
 - Permitting a therapeutic dog would be a required reasonable accommodation for a disabled tenant under the Americans with Disability Act and North Dakota Housing Discrimination Act.
- EA told another tenant that he couldn't keep accommodating "these people just because they have disabilities or are on welfare".
- JC and WC's rent was increased when other tenants' rent was not increased.

Cheryl Bergian, Director
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(701) 239-9323
Fax (701) 478-4452
cherylbergian@ndhrc.org

Lisa Caskey, Deputy Director
P.O. Box 1961
Fargo, ND 58107-1961
(701) 365-2012
Fax (701) 478-4452
leecacasky@ndhrc.org

- EA's former maintenance worker reported that EA called blacks and Native Americans "savages".
- Another of EA's tenants reported that EA stated that there was no "damn way" he would rent to Indians from Belcourt.
- EA asked a white prospective tenant if she would have any problem living next to black people.
- EA's former office manager told JC and WC that EA called blacks "niggers" and that he did not like blacks.
- EA's former office manager told WC that EA considered JC to be a "nigger in the woodpile".
- EA's former office manager reported that EA was discriminatory toward blacks in that he called them "niggers" and that he discriminated against Native Americans in that he didn't want to make repairs to their units because "they would just break things again".
- EA's former office manager reported that EA was discriminatory toward people with disabilities in that they were the last people to get repairs made.
- EA's former office manager recorded EA's telephone threat not to say anything that would hurt him, or that she would "regret it".
- The Division of Human Rights should find probable cause that discrimination has occurred when a "reasonable person" would determine that discrimination has occurred, which is distinguished from a "preponderance of the evidence" (a higher standard) or "beyond a reasonable doubt" (a yet higher standard).
- The Division of Human Rights disregarded EA's racial slurs and discriminatory comments about blacks, Native Americans and disabled people because they were not made directly to JC and WC.

The Division of Human Rights decided that a reasonable person would not determine that discrimination had occurred in this case. This standard is less than a preponderance of evidence, which would require that it was more likely than not that discrimination had occurred. A tenant is required to dispose of a therapeutic dog, has rent increases that other tenants do not have, and the landlord uses racial slurs and makes discriminatory comments about blacks, and the Division of Human Rights decided that a reasonable person would not decide that the disparate treatment was related to the landlord's racist and discriminatory attitudes.

If a North Dakota Commission on Human Rights were in place, this decision could have been appealed to that body. As it is now, the Division of Human Rights has publicly declared that it is permissible to treat black tenants differently than white tenants, to use racial slurs, to make discriminatory comments about blacks, Native Americans and disabled people, to be a real estate agent taking these actions, and as long as the comments are not made to the black, Native

American or disabled tenants, they do not harm the black, Native American or disabled tenants and do not relate to the disparate treatment of those tenants.

North Dakota wishes to embrace diversity and encourage the development of a diverse workforce. When it is the decision of the Division of Human Rights in the North Dakota Department of Labor that a reasonable person would not decide that discrimination has occurred in these circumstances, North Dakota will not be able to encourage people of color or people from other countries to live in North Dakota, and North Dakota will continue to lose those who do live here. As it is now, this is the public decision of the Division of Human Rights in the North Dakota Department of Labor.

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The Proposed North Dakota Human Rights Commission Fact Sheet #3

The proposed North Dakota Human Rights Commission would:

- Be seven members
- Be volunteers
- ~~Be bipartisan or multipartisan~~
- Represent persons likely to experience discrimination
- Represent business and government
- Provide statewide representation
- Be selected by the governor and approved by the state senate
- Investigate and study the existence, character, causes and extent of unfair or discriminatory practices and will formulate plans for the elimination of these practices
- Conduct hearings on discrimination
- Recommend policies to the governor and to the legislature
- Adopt and amend rules and regulations for the enforcement of state statutes on discrimination
- Help the Division of Human Rights within the Department of Labor maintain its impartiality and objectivity in applying North Dakota's laws that prohibit discriminatory practices
- Review appeals of cases investigated and dismissed by the Division of Human Rights within the Department of Labor
 - The Division of Human Rights within the Department of Labor investigates complaints and issues determinations on those complaints, and provides training and information on discrimination

December, 2002

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Deanna Walcott
Operator's signature

10/22/03
Date

Immigration important for US economy. Study

Immigrants accounted for more than half the growth of the nation's entire civilian workforce. #3

SUMAN GUHA MOZUMDER
in New York

Vinod K. Seth MD

Vinseth a. net. net

Even as authorities turn the heat on immigrants, a study has thrown light on the increasingly important role they have come to play in the growth of the US economy.

Based on an analysis of the Census 2000 data and 2001 monthly Current Population Surveys and conducted by the Northwestern University's Center for Labor Market Studies, the study notes that between 1990 and 2001, immigrants accounted for more than half the growth of the nation's entire civilian workforce, although their impact on labor force growth varied markedly by age, gender, region and state.

Over the decade, immigration levels reached an all time high with between 13 and 14 million immigrants arriving in the country and contributing approximately 40 percent of the net growth in population.

A combination of the immigrants' relative youth and strong labor market attachment had a substantial impact on the

growth of the US labor force, especially in the private sector.

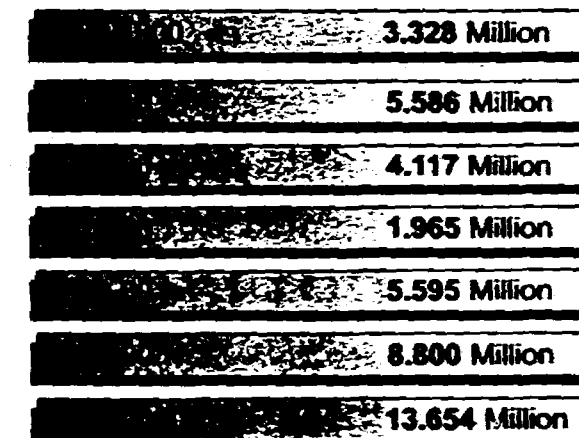
This is specially significant in light of the steady decline of the nation's labor force from the 1970s on, reaching a low of 11.5 percent in the 1990s. "Had it not been for new immigration, the nation's labor force would have grown by only five percent over the last decade and would have seriously constrained both job growth and economic growth," the study says.

The study, prepared last year for the Business Roundtable's Education and the Workforce Task Force in Washington and released by the Center late last month, notes that neither the dimensions of immigrant participation in the labor force nor the role they played in the '90s boom has been fully appreciated.

"At no point during the past century did new immigrants ever contribute so substantially to the labor market growth of the country," commented Andrew Sum, director of the center and who along with Ishwar Khatriwada is one of seven co-authors of the



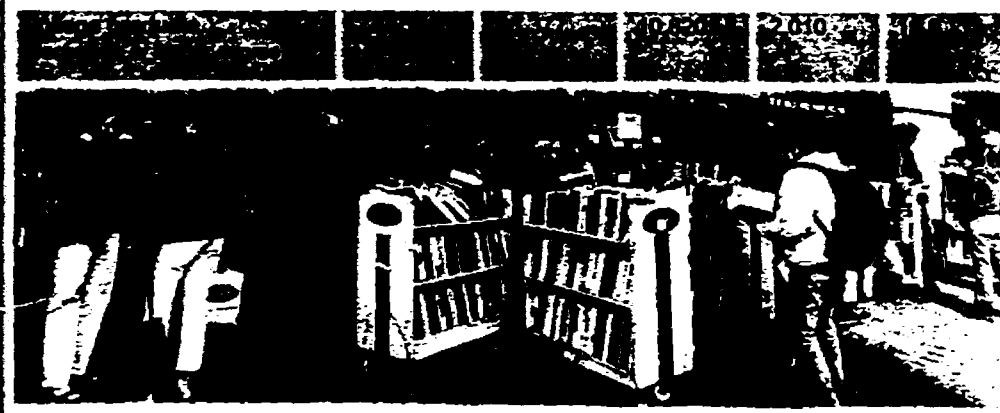
Net New Immigration Inflows into the US



GRAPHICS: UTM/CHOSH

Changes in the Civilian Labor Force of the US by Educational Attainment, 1990 to 2000/01

	1990	1995	2000	2001	%
Less than high school	22,587	18,775	-3,812	2,468	All
Some college	36,345	40,452	4,108	1,123	27.3%



study. "New immigrants' role in contributing to the 1990s job boom in both sheer magnitude and breadth can no longer be ignored."

The study seeks to dispel myths that new immigrants are relegated to low level service and manufacturing jobs.

"New immigrants filled a relatively high share of jobs in professional, skilled blue-collar and production/assembler positions, including many engineering, scientific and skilled craft positions," notes Paul Harrington, associate director of the Center.

However, though they are now found in every major occupational group, they remain under-represented in management and high-level sales positions. "New immigrants were most heavily under-represented in the 'cushier' finance/insurance, real estate, professional services and public administration sectors where hard physical labor is seldom performed," the study notes.

Sum says the impact of new immigrants on private sector job growth during the decade was particularly astounding.

"Without their active participation, major shortages in the labor market would have likely cropped up, including many high skilled occupations," he says.

The study calls for a more detailed and objective analysis by national and state policymakers of the contributions of immigrant workers to US employment growth, and their impact on the economic well being of native-born American workers.

The authors hope the study would encourage lawmakers and state governments to strengthen educational and training systems to support the assimilation of these immigrants into American society and culture, while acknowledging the needs of those who have been displaced by their arrival.

"The findings in this report on the growing dependence of American industry on immigrant workers need to stimulate an objective and sustained public policy debate on immigrant labor policies, taking into account both the important and valuable contributions of immigrant workers and the liabilities of some forms of immigrant labor," Sum says.

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Testimony for the North Dakota Senate Judiciary Committee
Pertaining to North Dakota Senate Bill 2306
Prepared for the hearing scheduled on February 5, 2003

Chairman Trainer and Members of the Senate Judiciary Committee:

My name is Allan Peterson from Fargo; My mailing address is 7009 Horseshoe Bend, Fargo, ND 58104. The State Legislative District in which I reside is State Legislative District 22.

Thank you so much for the opportunity to speak to you in support of legislation, (North Dakota Senate Bill 2306), that, when enacted, will implement the creation of a State Commission that would do much to help assure the observance of our North Dakota human rights Laws.

I serve as Chairperson for the North Dakota Human Rights Coalition and also am the current President of North Dakota Association of the Blind. I also serve on a number of other Boards and Committees of organizations who advocate and serve the needs of people with disabilities.

As a person who is blind and as an advocate for people with disabilities, I share the experience of many other advocates, who have found that people with disabilities are often judged not on the merits of their ability but are judged principally on their disability. I believe, this judgement is the primary reason that the rate of unemployment among people with disabilities is consistently near or over seventy percent. If the same rate was realized among non-disabled people it would have been a state and national crisis and remedies would have been implemented long ago.

People with disabilities do experience discrimination, not only in their ability to secure employment, but also encounter discrimination in almost every other aspect of public life including, housing, reasonable accommodations, and the ability to gain access to public services. Almost every incident of prejudice and discrimination aren't reported - the reason being that people don't want to be labeled as "trouble-makers" and fear the process they must deal with in filing a case within the bureaucratic system.

The process of filing a report with the Division of Human Rights needs to be made "people friendly". A Commission for Human Rights can aid in the process of making these procedures more accessible and friendly to people who feel they have experienced personal harm from a discriminatory act.

A Human Rights Commission would include the participation of people from those who are defined by law as belonging to protected classes of people - Commissioners would be selected because they have expertise in this area. We believe that this expertise would be an invaluable aid for the work of the Division of Human Rights. We pride ourselves in a citizen legislature; likewise, a Human Rights Commission would include the participation of citizens as a resource to help to assure that all people of North Dakota enjoy full human rights.

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Notably, a recommendation supporting establishment of a Human Rights Commission are found within the November, 1999 Report of the North Dakota Advisory Committee to the U.S. Commission on Civil Rights. The Advisory Committee's "Report on Civil Rights Enforcement in North Dakota" recommended that the State establish a Human Rights Commission and fashion it to be as independent as possible from unwarranted political interference. A Human Rights Commission, whose role is structured similar to that of the Colorado Commission, achieves a large measure of political independence.

It is important to note too that the Advisory Committee that prepared the 1999 Report on the State's Civil Rights Enforcement had a broad representation of members from throughout the political spectrum within North Dakota. Another important fact to note about the Report is that the Advisory Committee did come to a unanimous conclusion as it reached consensus on the findings within this public document.

Our coalition believes that the North Dakota Legislature is entrusted with protecting its citizens from all forms of discrimination. Accordingly, this public trust mandates that human rights be enforced to the fullest extent possible for the improved protection of all of its citizens. North Dakota citizens need a place where they can readily voice their concerns, seek needed information, obtain assistance, and when necessary file discrimination complaints - a Commission would be an invaluable aid in helping achieve this goal.

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STATEMENT BY EQUALITY NORTH DAKOTA IN SUPPORT OF SB 2306

Good morning, Mr. Chairman and other members of the committee. My name is Robert Uebel, and I live in Fargo. I am here today as co-chair of Equality North Dakota, the statewide advocacy organization for gay, lesbian, bisexual and transgender (GLBT) North Dakotans, to speak in support of Senate Bill 2306.

Equality North Dakota is a member of the North Dakota Human Rights Coalition and has been an active supporter of the efforts to create an independent human rights commission in our state from the very beginning. Our organization believes that the creation of an independent human rights commission will send the clear message that the state of North Dakota is serious about fighting discrimination and creating a more welcoming climate for those who are seen as "different." We are convinced of the necessity for such a commission, even though it would presently not be able to address the very real discrimination experienced by GLBT North Dakotans, such as loss of employment and even eviction from their homes once their sexual orientation becomes known.

We must face the unpleasant reality that North Dakota is not known as a state where people who are believed to be "out of the mainstream" are fully welcomed and valued as equal members of the North Dakota family. I know of many talented GLBT North Dakotans who have chosen to leave the state because they do not enjoy equal rights and consequently feel they can create a better future for themselves elsewhere. Can we continue to afford to educate GLBT North Dakotans in our schools and in our universities only to have them move to neighboring states where their rights are better protected?

Dr. Richard Florida, in his book *The Rise of the Creative Class*, has spoken of technology, talent and tolerance as the three "T's" of economic development. He states, "... the creative capital theory says that regional growth comes from the 3 T's of economic development, and to spur innovation and economic growth a region must offer all three of them." He has shown a strong correlation between the presence of a thriving GLBT community and a successful high-tech industry. In other words, a region that welcomes and values the GLBT community is very likely to possess the qualities that will attract the kind of individuals who will spur creativity and generate high-tech growth.

"Business as usual" is not going to create the climate that will allow North Dakota to grow and prosper in the new century. Other speakers have shown that the Division of Human Rights within the Department of Labor has not adequately addressed issues of discrimination in our state in the two years of its existence. I ask you to support SB 2306 and help make North Dakota a state that values all of its citizens equally.

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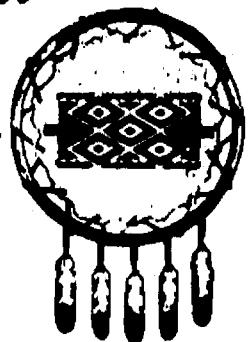
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Wes Longfeather



UNITED TRIBES TECHNICAL COLLEGE
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Judiciary Committee
North Dakota Senate
58th Legislative Assembly

Testimony of United Tribes Technical College

on SB 2306
Human Rights Commission
February 5, 2003

Mr. Chairman, members of the Committee, thank you for the opportunity to present testimony today in favor of SB 2306 that would establish a Human Rights Commission within the Department of Labor in North Dakota. For your information, United Tribes Technical College is located near the airport in Bismarck, North Dakota. Its President is David M. Gipp, who could not be present to present this testimony today.

United Tribes provided testimony two years ago, in the last session of the Legislature, and in fact has testified in favor of a Human Rights commission each year it has been brought before the legislature since 1977. As an institution, United Tribes will not stop providing testimony to you on this issue until the state does the responsible thing and establishes a Commission that can effectively enforce the human rights laws of this state.

Our 105 acre campus is home to as many as 600 students at any one time, who come from a wide variety of backgrounds. Some are non-Indian, and many come directly from a reservation. Bismarck is, for many students, the first city in which they have lived. Our students are generally residents on campus, but this year, for the first time, we have provided a number of apartments for students off campus. Our campus provides more than 15 different degree granting course of studies, in subjects as ranging from our Licensed Practical Nurse program to standard vocational trades to a course of study in Tribal management. Our students are placed not only back on reservations, but in businesses, governments, hospitals and other institutions throughout the Great Plains and beyond, but we also place a large number of students in positions in North Dakota.

We want to recognize that the sponsors of the legislation are preparing amendments to make it clear that this bill is not changing very much the present North Dakota Human Rights law. We see no reason to have the fundamental provisions of the North Dakota Human Rights law be changed and am glad for the amendments in this regard.

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Testimony of David M. Gipp
SB 2306, Senate Judiciary Committee
February 6, 2003
Page 2 of 4

Recently our President, David M. Gipp, attended the hearing at which time Mark Bachmeier, the Labor Department Director, provided information to the legislature about what has happened since the 57th Legislative Assembly provided the Labor Department with the obligation of enforcing the North Dakota Human Rights laws, effective in 2001. What startled Dr. Gipp about Mr. Bachmeier's report, among other things, was the fact that relatively few cases resulted in a finding of discrimination.

It is startling because we know that discrimination continues to occur. Our students are well aware of being treated differently in our schools, our malls, our businesses in North Dakota. When such a case occurs, we refer them to the Department of Labor. But many of them, rather than stay in North Dakota, go elsewhere where discrimination is less pervasive and where better remedies for racial discrimination are present.

Now, with the passage of time has come new information about whether discrimination is indeed a problem in North Dakota. We have the completed results of a survey conducted in 2001 by the Department of Labor that essentially asked whether discrimination is a problem in North Dakota. These results rather emphatically tell all of us there is a need for a Human Rights Commission. We invite the members of this Committee to evaluate the results of that study, and especially to look at the comments made by those who said they did not see discrimination as much of a problem and those who said they were discriminated against.

Even many of those interviewed by the survey who do not consider discrimination much of a problem recognize that there are groups within the state, such as Native Americans, who are likely targets of discrimination. The tables also show that those who have been discriminated against generally did not seek to help to remedy their situation. Why should that be, unless they were not convinced that an adequate remedy was at hand?

It should come as no surprise that 55% of the Native Americans who were interviewed in the survey believed they had been the victims of discrimination. This shows that the number of persons actually discriminated against is large indeed. The study confirms the results of the North Dakota Advisory Commission to the U.S. Civil Rights Commission hearings in the state in 1997 and 1998, issued in November, 1999, which pointed out that the information they had obtained overwhelmingly showed a need for a full-fledged investigatory and compliance body that could work to end the practice of discrimination in our state.

Why is this issue so important to all of us testifying today? Isn't the Labor Department doing a fine job? What is important is that we have an institution whose

Testimony of David M. Glipp
SB 2306, Senate Judiciary Committee
February 5, 1999
Page 3 of 4

decisions will be respected and trusted by everyone, and especially those who have been discriminated against. Any person subject to discrimination needs to know that it isn't just going to be another white person deciding that discrimination did not occur; but that people who are subject to discrimination themselves are assisting in making an informed decision about whether discrimination took place in any particular instance. A commission fills that purpose and then some.

What this bill does is to provide an effective remedy for discrimination, that relies on a two-step process: 1) The director of the Human Rights Division within the Labor Department makes an initial investigation to determine if there is reason to believe that discrimination against a complainant took place; and 2) if a finding of discrimination is made, the Commission goes on to complete the investigation and make a finding and issue an order to stop the discrimination and provide relief to the complainant.

The safeguards present in this bill will go a long way to create a healthier atmosphere of respect for diversity in our state. Corporate America has found that diversity is a critical factor in increasing creativity, productivity and in fostering a healthy work environment for all concerned. Diversity, in fact, is the strength of the United States. Our students at United Tribes are a part of that diversity. Without respect for diversity, which a Human Rights Commission can help ensure, we can be assured that North Dakota will not improve its economy like we would like.

I would also like to give you some examples of discrimination that our students have and faculty have experienced in recent years. Now, with a better statute, we would hope that there would be remedies. Nevertheless, because there is no actual Commission, it has been difficult to convince those discriminated against that the Labor Department is where they should go to have these issues addressed.

Bismarck has long been a very typical near reservation community, viewed by most Indian persons who have lived here as discriminatory, or racist. Many of our students, and even some of our faculty, have grown used to the occasional additional proof required to cash a check, or being followed around at the malls by additional security, or being denied the opportunity to rent an apartment, or having a more than difficult time finding a job. Most never complain about these experiences, largely out of a feeling that there is little or nothing that can be done.

Another issue was brought to the attention of the Justice Department in the mid 1990's, involving discriminatory placement of Indian children special education classes in local schools. Although this situation did not involve our students directly, some of our student's children have been affected. While to my knowledge this problem has now been largely corrected, it was indicative to me of larger problems

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David M. Glipp
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Testimony of David M. Gipp
SB 2306, Senate Judiciary Committee
February 5, 2003
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within our community that do affect our students.

A few years ago, again, some our students and their children were dealing with racial incidents at a middle school in Bismarck. These incidents are not isolated, and are not all coming from students, but are in fact in part coming from the teachers themselves, who sometimes show a lack of sensitivity or even hostility to the persons of different cultures in their classrooms.

Another example: Our students and their families frequent the malls and various stores of Bismarck. Consistently for a number of years, students have complained that they are followed and occasionally harassed by security forces at such establishments. In the past, security personnel have told people that they watch Indian persons more closely for possible shoplifting.

Another example of concern. Like many other Indian people, our students, and sometimes the Indian members of our faculty and administration, are unable to cash checks locally. At least one lawsuit has been filed about such practices, with mixed results. Credit opportunities can also be limited, especially in the area of housing, for both off-campus students and our Indian employees.

Perhaps most troubling in the capital of North Dakota is the lack of Indian employees in state government. Except for positions that relate directly to Indians and tribal issues, there are almost no Indian employees at major state agencies headquartered in Bismarck. While one can, to some degree, say that few Indian people apply for positions at the state capitol building, that does not entirely explain the lack of Indian employees there. Is this a case of systemic discrimination? This is an issue that the Labor Commissioner by himself is ill-equipped to handle. Without a Human Rights Commission to investigate, it is very hard to prove one way or the other, but the lack of Indian employees suggests the answer.

Will a Human Rights Commission provide all of the answers? No, of course not. But it can provide a first step, if funded adequately to do its job. I urge a DO PASS recommendation for SB 2306 as it is being amended by its sponsors.

Deanna Hall
Operator's Signature

10/22/03

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Att # 7 2/5

Mr. Chairman and members of the committee.

It is time that North Dakota fully enforce our human rights laws.

SB 2306 would create a seven member North Dakota Commission on Human Rights within the Labor Department's Division of Human Rights. The Commission members would be volunteers appointed by the Governor and would represent the business community; local and state government; and five members from the community at large. The appointment process would ensure that tribal members have adequate representation in the administration and enforcement of our human rights laws.

SB 2306 creates a human rights commission and provides the necessary authority to adopt rules for enforcing discrimination statutes, to investigate and hold hearings on complaints of discrimination. These are laudable and necessary goals. And SB 2306 is based upon a model that other states, such as Colorado, have used successfully.

SB 2306 also calls on the commission to research and issue reports on ways to minimize or eliminate discriminatory practices in North Dakota and to report annually to the Governor on the discharge of duties assigned to the Commission. This responsibility is well placed in an commission such as this because it will engage more people in the process and be more accesible to North Dakota citizens.

The Labor Department's Division of Human Rights, established in 2001, was a first step in the right direction. This bill will take the next crucial step, providing North Dakota citizens most affected by discrimination a voice in the enforcement of our human rights laws. Native American Tribes and tribal members and other people of color, indeed all minorities, deserve a voice in the enforcement of human rights laws and this commission will provide that. I urge the committee to make a recommendation of Do Pass.

Senator Dennis Bercier

District 9

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Dennis Bercier
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MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation
404 Frontage Road • New Town, North Dakota 58763-9402

**Judiciary Committee
North Dakota Senate
58th Legislative Assembly**

**Testimony of Three Affiliated Tribes
Mandan, Hidatsa and Arikara Nation**

**Tex G. Hall
Chairman
on SB 2306**

**Human Rights Commission
February 5, 2003**

Dosha! (Hello). Mr. Chairman, members of the Committee, thank you for the opportunity to present testimony today in favor of SB 2306 that would establish a Human Rights Commission within the Department of Labor in North Dakota. For your information, I am Chairman of the Mandan, Hidatsa and Arikara Nation (the Three Affiliated Tribes) located in northwest North Dakota. I am also President of the National Congress of American Indians, and unable to be here today due to other Tribal business.

Two years ago I spoke to your colleagues on the Political Subdivisions Committee of the Senate about a similar measure and I promised I would be back if that measure did not pass. Here I am again, and I will not quit providing testimony to you until the state does the responsible thing and establish a Commission that can effectively enforce the human rights laws of this state.

I also represent the many Tribal members who off the reservation in North Dakota, such as those that live in Bismarck, Fargo, Grand Forks, Minot and all of other towns and cities in North Dakota. As Chairman, I remain dismayed that in the year 2003, now more than 38 years after the passage of the federal Civil Rights Act of 1964 there would be a need to discuss with you why a Human Rights Commission should be established.

I do recognize that the sponsors of the legislation are preparing amendments to make it clear that this bill is not changing very much the present North Dakota Human Rights law. We see no reason to have the fundamental provisions of the North Dakota Human Rights law be changed and am glad for the amendments in this regard.

With the passage of time has come new information about whether discrimination is indeed a problem in North Dakota. We now have the completed results of a survey conducted in 2001 by the Department of Labor that essentially asked whether discrimination is a problem in North Dakota. These results rather emphatically tell all of us why there is a need for a Human Rights Commission. One result from that survey that immediately comes at you --- 55% of the Native Americans who were interviewed in the survey believed they had been the

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Testimony of Three Affiliated Tribes
SB 2306 Human Rights Commission
Chairman Tex G. Hall
February 5, 2003
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victims of discrimination. If that was a statistically sound sample of Native Americans in North Dakota, and I have no reason to believe it is not, the number of possible complaints of discrimination just among the Native Americans is very large, indeed.

Yet the Department of Labor's own statistics over the past two years seemingly tell a different story. The Department of Labor would have us believe that finding cases where there is probable cause to believe discrimination occurred is rare -- that there seems to often be either insufficient evidence about the possible discriminatory act or another explanation entirely for what occurred to a person who has taken the time to complain to the Labor Department about what they believe to be a discriminatory act against them.

Someone told me recently there are those who think talking about discrimination is a negative thing, and that we should be looking at positive ways that people in North Dakota can and should interact with each other, and look for positive solutions. That is all fine, and I know of no other thing I would rather talk about than how we can work together in such areas as economic development and education and health care and a host of other issues. But discrimination still happens in our state and because it does still happen, and because, according to the survey the Labor Department conducted, it still happens entirely too often, we must address discrimination squarely and not pretend it does not exist or that it is an isolated incident.

Members of the Committee, discrimination hurts and damages citizens across our state. It prevents many people from achieving their full potential. It reduces the ability of many of the Tribal members I represent from doing what they want to do, from living where they want to live, from getting the kind of credit they need and from enjoying the quality of life they have every much right to have as any non-Indian person in the state.

What this bill does is to provide an effective remedy for discrimination, that relies on a two-step process: 1) The director of the Human Rights Division within the Labor Department makes an initial investigation to determine if there is reason to believe that discrimination against a complainant took place; and 2) if a finding of discrimination is made, the Commission goes on to complete the investigation and make a finding and issue an order to stop the discrimination and provide relief to the complainant.

Why do we need to pay for a commission rather than just let the Department of Labor Director do it all? For one thing, a commission of people representative of the state's population can best look at the Department's decisions when an appeal is taken from a finding of no discrimination and see if something was overlooked. A representative commission will be able to provide tremendous credibility to a good Director's decisions and will be able to make sure that any one political appointee is free of biases that can affect the outcome of decisions that are often politically and socially sensitive. What is most important about a

Testimony of Three Affiliated Tribes
SB 2306 Human Rights Commission
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Commission is that people will look to the Commission as a body that will more likely be trusted to provide a remedy for discrimination if it is found, because, among other things, it will have, as the bill requires, people who know what discrimination is because they are minorities themselves. That is the fundamental reason a Commission is so important. No matter how well meaning, any individual decision maker who is not generally subject to discrimination will not fully appreciate the harm that discrimination causes and will more easily be inclined to determine that discrimination does not exist. Having on the Commission those who are part of groups that have been discriminated against provides a check against this problem.

Now this Legislature has a chance to finally put this issue to rest. Every person in this state deserves to be treated fairly, in all of the areas covered by the North Dakota Human Rights law. Anyone discriminated against should have a remedy and a chance to have their case heard. No one should have to fear discrimination in the 21st Century in North Dakota in the areas of housing, employment, labor union membership, property rights, public accommodations, public services, or credit transactions. No one should be left without a swift and sure remedy for discriminatory acts against them on the basis of race, color, physical or mental disability, religion, age, sex, status with respect to marital status or public assistance or participation in lawful activities off the employer's premises.

That's where a remedy comes in. Tribal members who are discriminated against don't call their legislators to complain, they call their Tribal leaders and their friends, if they call at all. I have received many complaints of discrimination from Tribal members in towns both on and off the Fort Berthold Reservation about housing, employment, credit discrimination and public accommodations discrimination. I could talk all day about the incidents I have witnessed and that have been related to me. Many others will tell you of their experiences here today.

Based on the Labor Department's own reports of how it has evaluated various discrimination complaints, I cannot tell those constituents with confidence that the single person making the decision at the Labor Department will protect their interests. But with a representative citizen commission composed of people who know how discriminatory acts affects people's lives, I can feel more confident that a good, hard look at a discrimination complaint will take place in an unbiased way.

This issue is important to me for another critical reason: economic development. As our Tribal Nations in North Dakota continue to grow, we are putting our Tribal members in the North Dakota work force at an increasing rate. In fact, the growth of our Native American population in the past 10 years kept North Dakota from losing population. We are the fastest growing minority in the United States. The new employees and workers we produce graduate from our community colleges, from United Tribes Technical College, from the

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Testimony of Three Affiliated Tribes
SB 2306 Human Rights Commission
Chairman Tex G. Hall
February 5, 2003
Page 4 of 4

University of North Dakota and North Dakota State University, from our high schools, from schools out of state. Will they stay and help North Dakota be prosperous, or will they get some experience here or leave the state entirely when it appears that it will be hard for them to be treated fairly because they are Native Americans as well as North Dakota citizens? As a Tribal leader, I need to know that my Tribal members will in fact get fair treatment in the lives they choose to live in North Dakota, wherever in the state they may be located.

Again, the only assurance I can get that something will be done if a Tribal member is discriminated against is to have a functioning Human Rights Commission that enforces the Human Rights laws of North Dakota that are now the law of this State. Otherwise, the plain fact is that people, good people, hardworking people who can and do contribute a lot to the economy of this state will leave, and businesses others will not come into this state, because they cannot be assured that they will be treated fairly.

I do want to recommend an amendment to the legislation. As a Native American leader, I believe every Tribal Nation in North Dakota should be recognized and have a member on the Human Rights Commission. That includes not only the Spirit Lake Tribe, the Standing Rock Sioux Tribe, the Three Affiliated Tribes and the Turtle Mountain Band of Chippewa but also the Sisseton Wahpeton Sioux Tribe, which also a large presence in North Dakota. We are all sovereign nations within North Dakota and have diverse cultures and unique situations. The addition of a member from each of the Tribes in North Dakota will add tremendously to the development of an effective Human Rights Commission in our state and insure that no one will be left out.

I urge a DO PASS recommendation for SB 2306 as it is being amended by its sponsors.

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Testimony before the
Senate Judiciary Committee
February 5, 2003
by the
North Dakota Fair Housing Council

Mr. Chairman, and members of the committee, my name is Amy Schauer Nelson and I am the Executive Director of the North Dakota Fair Housing Council (NDFHC). The NDFHC is a non-profit organization which works to eliminate housing discrimination in North Dakota. The NDFHC supports passage of Senate Bill 2306.

Senate Bill 2306 would establish an independent, volunteer based human rights commission to assist the Human Rights Division at the North Dakota Department of Labor. This commission would not compete with the duties of the Department of Labor but work with them to eliminate discrimination in North Dakota.

Through our experience, the NDFHC knows that the North Dakota Department of Labor's Human Rights Division is extremely busy investigating complaints of housing discrimination and other types of discrimination. This legislation would give the Labor Department assistance by freeing up staff time. Staff would be able to focus their energy on the daily functions of investigating; mediating and ruling on complaints of housing discrimination and attending trainings to more advance their knowledge in this area. The Human Rights Commission could focus on long term goals and larger projects dealing with the public and the legislature. This Commission could also work to educate the public on other cultures.

In addition, the Human Rights Commission could:

- conduct public hearings on discrimination;
- coordinate activities to educate the public on discrimination laws;
- provide a yearly status on discrimination in North Dakota for the Governor, legislature and public;
- recommend policies;
- review appeals of cases; and
- review regulatory changes and amendments.

The Commission as outlined in the bill would be bipartisan, represent businesses, represent those likely to be victims of discrimination, and have statewide representation. This appears to cover everyone and would be a fair representation of all interested parties.

The North Dakota Fair Housing Council urges the Committee to pass this bill. As a state we need to continue to make it known that all types of people are welcome in our state. This legislation would be one way of showing that.

Email: ndfhc2@btinet.net
Equal Housing Opportunity



Web: www.ndfhc.org
Fax 701-221-9597

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The NDFHC proposes the following amendment:

Currently, age is a protected class under the North Dakota Human Rights Act and the state Housing Discrimination Act. However, in housing, there was an oversight two sessions ago in which age was not defined under the housing act. As a result, the employment definition of 40 and over has applied. This definition does not address allegations of age discrimination in housing because the most common victims are those under the age of 30. There should be a separate definition of age for housing discrimination which defines it as applying to those 16 and over.

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Posted on Thu, Jan. 30, 2003

NORTH DAKOTA LEGISLATURE: Youth push for more progress

Lawmakers need to address job growth, arts and culture, before young North Dakotans leave state, panel

says

By Xiao Zhang
Herald Staff Writer**BISMARCK** - Young North Dakotans have identified five areas of importance for the state to address its population loss, a panel of young people told lawmakers Wednesday at the Capitol.

Speaking before two dozen legislators, the panel shared their ideas to help the state move forward. The seven-member panel is made up of 32 young residents who came together after the "Saving North Dakota Roundtable," an initiative launched earlier this month by Forum Communications Co. to bring legislators and young people together.

Suggestions

State officials need to enhance human rights and reduce discrimination, promote art in communities as an economic stimulus and foster pride in North Dakotans, panelists said. The state also needs to further develop technology, increase commercialization of university research and market the state for economic development, they said.

The panel recognized the state's progress in technology and efforts to market North Dakota, but more needs to be done.

"There's this attitude in North Dakota that's keeping people down," said Prairie Rose, 22, a student at North Dakota State University in Fargo, "(people) are taking their businesses outside of the state just because human rights are weak here."

Rose talked about her personal experience of being discriminated against as an American Indian. She recommended setting up a human rights commission for education and enforcement, as proposed in SB2306, introduced by Sen. Tim Mathern, D-Fargo.

Fargo resident Amanda Butcher Mack, 30, asked lawmakers to support HB1010, a \$1 million-plus appropriation for the Council on the Arts. Arts can be an economic force that "can create vital, active communities that will be attractive to businesses and young people," she said.

Jonathan Gelfman, 34, Grand Forks, stressed the importance of commercializing research at the state's universities.

Gelfman co-founded the North Dakota Design Center, which will be located at UND's aerospace school and report to an advisory board made up of NDSU and UND research directors. The goal of the center is to commercialize research in engineering and computer science, according to the center's executive summary.

Lawmakers said they appreciated the presentation.

"This is a very good beginning," said Rep. Elliot Glasshelm, D-Grand Forks. "They can tell their friends that legislators are interested in what they have to say."

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Glassheim was pleased with the turnout of the legislators and hopes the discussion will be followed up by some of the ideas mentioned Wednesday, such as setting up a Web site to encourage young people to express their ideas.

He also hopes, in one or two years, the legislators and young people can get together again before the Legislature and put their ideas down by drafting bills together.

Sen. Ray Holmberg, R-Grand Forks, said the presentation was informative and that talk of discrimination reminded him of growing up in the only Catholic family in a small town.

Sen. Tony Grindberg, R-Fargo, said he appreciates the panelists' "initiative to come out and be engaged in the process." The legislators are already working on some of the issues mentioned by the panel, he said. By the end of the session, Wednesday's panel will find many issues they addressed in some form of legislation, he said.

Zhang covers the North Dakota Legislature. She can be reached at (701) 255-5520 or xzhang@gfherald.com.

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SB 2306

Thank you for allowing me to address you today. My name is St. Clair Mellard. My wife is a native of North Dakota and we met while in serving in the armed forces. We now live in Fargo with our son. Today I would like to voice my support for Senate Bill #2306 and briefly state three reasons why.

First, I cannot speak of racial, gender, disability or age discrimination through any direct experience. The sting of such prejudice I only know by reading history and discussions with others. However, because of my religious belief, or rather my lack thereof, I have been on the receiving end of similar prejudices. I am convinced that my application to Graduate School at North Dakota State University was denied in part due to my outspokenness about religious issues.

Though I could hide my beliefs, there are those that cannot hide their skin color, nor their disability, nor their age. The idea of hiding who we are or what we are is abhorrent. The stifling of our selves, even if possible, is not what our country is about. Each person has to be who and what they are.

Secondly, history reminds us of leaders such as Ghengis Kahn and Adolf Hitler. Immediately these two names bring a number of negative descriptions to mind: ruthless, terror, merciless, cold blooded. We remember, as well we should, the horrible things these and other leaders like them have done. History remembers leaders for how they treated those less fortunate. Lincoln for the Emancipation Proclamation; Franklin Roosevelt for his New Deal policies; Theodore Roosevelt for championing the little man; and George Washington for starting it all. These presidents were listed as the top four Presidents of the United States.

It is in our national interest and our state interest to see that the rights of those that are in some way less fortunate are protected. Not because they are a special minority but simply because, like you and I, they are humans, and if the sanctity of life means anything then it must apply to all. As Martin Luther King, Jr. said, "injustice anywhere is a threat to justice everywhere."

Finally, as I have said, I cannot imagine the lasting effects of being denied basic human rights. Nor could anyone explain them in such a manner that the experience would forever plague my mind and spirit. Therefore, a commission built with those who have faced injustice is one that is truly qualified to understand and represent those across this great state who do in fact see injustice visited upon them.

I again thank you and urge you to pass Senate Bill #2306.

Respectfully,

St. Clair Mellard

TESTIMONY ON SB 2306 BY CAROL TWO EAGLE. February 5, 2003.

Hau mitakuyapi. Hello my relatives. For the record, my name is Carol Two Eagle. I want to speak in support of SB 2306 regarding establishing a Human Rights Commission in North Dakota.

Establishing a Human Rights Commission as provided in this bill will provide greater depth, efficiency, and effectiveness to the NDDOL's efforts to eradicate discrimination in North Dakota, by its makeup as provided in this bill. While the North Dakota Department of Labor has worked hard to cover its responsibilities in this area, and has done a good job, establishment of a Human Rights Commission within NDDOL to work on this matter specifically would result in greater efficiency and effectiveness in diminishing discrimination because its makeup would include people with more direct experience in dealing with discrimination than is possible to find among bureaucrats. *ESPECIALLY WHITE BUREAUCRATS, WITH NO LIFE EXPERIENCE IN THE MINORITY OR FEMALE (OR BOTH) PARTS OF THE WORLD.* Moreover, establishing such a commission within the NDDOL would result in greater retention of North Dakota's young citizens and significantly slow out-migration by its youth. *WITH NO LIFE EXPERIENCE, THEY CANNOT* Young people want to live and work where the state environment is one of fairness, celebration of diversity, and a positive approach to resolving problems. They don't want to stay where denial of problems is the usual mode of operation and which results in continuation of whatever problems exist.

States that promote, protect, and celebrate diversity in their populations attract good companies and so improve the state's wealth and economic picture; while states that do not do these things, do not attract such companies and their economies suffer accordingly. Hard though it is to hear, there is a reason why North Dakota's economy ranks as low as it does in the nation. Historically, until very recently, the official attitude has been one of denial that problems exist here. *RECOGNIZE DISCRIMINATION, EVEN WHEN IT'S RIGHT UNDER THEIR NOSES. I HAVE SEEN THIS 1ST HAND.*

This has resulted in large numbers of people moving out of North Dakota. We do not need a large population in order to survive and thrive, we need a population that is diverse, competent, energetic and enthusiastic. Among the many reasons to prefer a smaller human population are space, quiet, a relatively low cost of living, variety and abundance of wildlife and wild places, and a low crime rate. A populations that is diverse, competent, energetic and enthusiastic is not entirely a function of age, but older people die oftener than younger people do, and if we don't replace those younger people, then we will have a bigger problem than we do now.

Establishment of a Human Rights Commission as provided in this bill would also be a positive step toward greater success in the program to bring home people who grew up in North Dakota but who have lived and worked elsewhere for most of their lives. Youth is not the only criterion for value, after all. If it were, the old teaching that "youth, speed, and exuberance will always be outdone by age, experience, and creativity" would not have survived so long. It is a truism.

Establishment of a Human Rights Commission as provided for in HB 2306 would be a positive addition to North Dakota's arsenal of tools to improve quality of life for her citizens. Please give this bill a rousing "Do Pass". Thank you for hearing me in a good way now. I will be happy to answer any questions anyone may have. Mitakuye oiasin.

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North Dakota Department of Labor Human Rights Division

2001 Public Perception Study of Discrimination in North Dakota

2001



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