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ROLL NUMBER

DESCRIPTION

2245

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2245

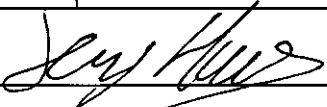
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2245

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-26-05

Tape Number	Side A	Side B	Meter #
1		X	5,140-END
2	X		1-1135
Committee Clerk Signature 			

Minutes:

**Chairman Mutch** opened the hearing on SB 2245. All Senators were present.

**Senator Tim Mathern** introduced the bill. SB 2245 relates to the name change from the Department of Labor to the Department of Labor and Human Rights. See written testimony.

**Cheryl Bergian, Director of the ND Human Rights Commission** appeared in support of the bill. See written testimony.

**Senator Krebsbach-** In your testimony, you make reference to the \$5200 being a worthwhile cause. Do you agree with Senator Mathern that the concept could be replaced as depleted?

**Cheryl-** I agree. The change would be where we wouldn't incur all the cost at once.

**Representative Blair Thoreson-** appeared in support of the bill. The name change is needed and more fully defines what the department does, especially since the department already goes human rights work.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2245

Hearing Date January 26, 2005

**David Kemnitz- President of the ND AFL-CIO**, appeared in support of the bill.

**Amy Schauer-Nelson, Executive Director of the ND Fair Housing Council-** See written testimony.

**Chris Runge, Executive Director of the ND Public Employees Association** supports the bill.

**Carol Two Eagle, presiding bishop of the Church of the Helping Hand** appeared in support of this bill.

**Sheryl Longfeather of the Sioux Tribe** appeared in support of the bill. See written testimony.

Austin Gillette of the 3 Affiliated Tribes appeared in support of the bill. The name change defines and clarifies a place to go when people need help

**Lee Ann Bertsch, Labor Commissioner-** The Labor Department is neutral on this bill.

**Senator Krebsbach-** It was stated that they would allow you to utilize your supplies until they run out, and then become replaced upon depletion. Would that be your intent as well?

**Commissioner Bertsch-** When the fiscal note was prepared, I don't know if we thought about using up are supplies, certainly that may adjust the \$5,200 fiscal note.

**Senator Mutch-** Would changing the name of the department end up anticipating more complaints being filed on human rights issues?

**Commissioner Bertsch-** I'm not sure if it would increase the number of complaints we are receiving, however I believe it would reduce some of the frustrations from people. I don't think right now the average person knows about what duties the Department of Labor has, that is my personal opinion.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2245

Hearing Date January 26, 2005

**Action taken on SB 2245:**

**The motion was made on a Do Pass recommendation by Senator Espegaard. Seconded by**

**Heitkamp. The bill passed unanimously, 7-0. Espegaard is the carrier of SB 2245.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/19/2005

Bill/Resolution No.: SB 2245

**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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$5,200	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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 2245 would require the Department of Labor to reprint all materials on which the agency's name appears. The agency's website would have to be updated. A new logo with the new name would have to be created. The printed materials that would have to be reprinted include:

- Letterhead & envelopes
- Brochures
- Posters
- Business cards
- Nametags
- Display Booth
- Signage for office door

**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.*

**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.*

- Development of new logo - \$500.00
- Updating letterhead & envelopes - \$700.00
- Updating brochures (printing & staff time) - \$700.00
- Updating business cards - \$750.00
- Updating posters (staff time & printing) - \$1,000.00
- Updating website - \$700.00
- Updating nametags - \$200.00
- Updating display booth - \$500.00
- New signage for office door - \$150.00

**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.*

<b>Name:</b>	Leann K. Bertsch	<b>Agency:</b>	Department of Labor
<b>Phone Number:</b>	328-2660	<b>Date Prepared:</b>	01/19/2005



**REPORT OF STANDING COMMITTEE (410)**  
January 27, 2005 8:47 a.m.

**Module No: SR-18-1174**  
**Carrier: Espegard**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2245: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2245 was placed on the Eleventh order on the calendar.**

2005 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 2245

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2245

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 3/10/05

Tape Number	Side A	Side B	Meter #
1	x		0-47.3
Committee Clerk Signature <i>Mick Zui</i>			

Minutes: SB 2245 Relating to a name change from the Department of Labor to the Department of Labor and Human Rights.

**Chairman Haas:** The meeting will come to order, I would like to call the meeting of the House Government and Veterans Affairs Committee to order and ask the clerk to take the roll.

14 members present, 0 absent. The chair declares that we do have a quorum. We will open the hearing on SB 2245 and ask the clerk to read the title, please, thank you. Good morning Senator.

**Senator Tim Mathern-District 11-Introducing the bill-Testimony Attached**

**Rep. Sitte:** Help me out, whenever I hear the term human rights, I think of the United Nations and some of the universal declaration on human rights, what definition are you using for human rights.

**Senator:** Human rights relates specifically to North Dakota, we have a human rights act, there is a North Dakota law, that is what I suggest would be the responsibility of this department. It wouldn't be what the United Nations says, it would be what the State of North Dakota says.

**Rep. Grande:** Talking about this being for North Dakota and how you had talked about a definition, are we expanding the human rights portion of this?

**Senator:** We would not be expanding that bill, because we have a specific direction or what are the issues of human rights, what is the focus of North Dakota.

**Rep. Kasper:** It is not the intent of the bill or your intent at this point with this bill to expand for change of focus of the Department of Labor, simply the name change alone.

**Senator:** Yes.

**Rep. Kasper:** To continue along those lines, it appears at this time that you are happy and satisfied with the fact the decision of the Human Rights and Department of Labor is functioning the way you would like to see it functioning and doing the duties that you would like to see it do.

**Senator:** I believe that present commissioner is in fact doing those duties fine. I think there is a heightened sensitivity to moving cases forward and getting work done and I think that it is all very positive.

**Rep. Froseth:** In regards to the fiscal note 5200, would require it to go to appropriations. If we asked the department to provide us with fiscal note that would eliminate letter heads, envelope and posters, we could cut that fiscal note down to 2050 dollars. They could use all there old material.

**Senator:** I think it would be good to hear from the department, I think that would be an option.

**Chairman Haas:** Are there further questions for Senator Mathern, if not, thank you Senator Mathern.

**Cheryl Bergian, Director of the North Dakota Human Rights Coalition-For-Testimony**

**Attached**

**Rep. Kasper:** The third paragraph you state that there has been some high profile discrimination cases which is apparent that the victims of discrimination did not call the labor dept. Who were those.

**Cheryl:** The cases in Fargo, where the district court had been under discrimination under a district court judge for years and it was apparent that none of them called the labor department, the labor department has had the investigation responsibility. The employees could have called the department of labor had they known it was the place to go. The public service commissioner, right here in the capitol, for decades was sexually harassing employees and it came out after the term of that commissioner.

**Rep. Kasper:** Cheryl you are suggesting that people who work the court and they hear these types of cases everyday and people who are in the capital, and by the way, I don't think there has been a conviction at all or any finding on any commissioner, in fact that you state that they were is subjective on your part right now, but these people work in the capital, they work in the court and they would not know where to look, I suggest that they chose not to, because all of the people in our state that know where to go, those two instances that you are citing would know.

**Cheryl:** I resent your interpretation of those two situations.

**Chairman Haas:** Are there any further questions for Cheryl? Thank you very much. Additional testimony in favor of SB 2245?

**Amy Schauer Nelson-Executive Director of the North Dakota Fair Housing**

**Council-For-Testimony Attached**

**Rep. Meier:** How many complaints do you take on an average to the Department of Labor right now?

**Amy:** Either complaints that we referrer or assist complainants in filing, it varies by year, but it has been pretty consistent, between 25 and 35.

**Chairman Haas:** Further questions for Amy?

**Rep. Sitte:** I am wondering if we should more accurately be naming it the Department of Labor and Fair Housing or listening to Miss Bergian, the Department of Labor and Equal Opportunity or Department of Labor and Fair Practices, we are really talking about quality and fairness aren't we.

**Amy:** What I don't want us to do is get such a long name that it is to much of a mouth full. I think Human Rights would reflect Housing Discrimination law, because housing discrimination laws are human rights laws.

**Chairman Haas:** Are there further questions for Amy? Thank you very much. Additional testimony in favor of SB 2245?

**David Kemnitz-North Dakota AFL-CIO-**We are in support of this bill.

**Don Morrison-North Dakota Progressive Coalition-**We are in support of this bill.

**Austin Gillette-Three Affiliated Tribes-Tex Hall-Chariman-Mandan, Hidatsa and Arikara Nation-**Testimony Attached-For

**Leann Bertsch-Commissioner of Labor-**Testimony Attached-Neutral

**Rep. Potter:** How do you feel about the name change?

**Leann:** Initially I thought it is a waste of money, the more I talked to people in the community, I don't think that they realized the extent of human rights activities that we do in our department. The bulk of the work is done in the human rights division.

**Rep. Grande:** Senator Mathern mentioned utilization of supplies and work into that and I think we could probably remove from the fiscal note the letter head and the envelope and business cards, because those are types of things that will turn over. The development of new logos, brochures, printing and staff, there is development time in that. Those are expenses that will occur. We are still looking at 3750 dollars. How would you see that we put that in a budget for you, when would you see those types of things would have to start?

**Leann:** I think are budget could absorb the remaining costs.

**Rep. Grande:** Your department could absorb the web site costs, also.

**Leann:** We do continually update our web site.

**Rep. Grande:** Sections 8, 9 and 10, with the scope of the Labor Commission in those sections, if this would be broadened with the human rights issues including states, nations and countries, do you see any issues with all that.

**Leann:** No, we already have those duties.

**Chairman Haas:** There is no substance change in any of these sections, obviously, the only thing that is going to change is are the words that are under lined which is human rights.

**Leann:** Yes, Mr. Chairman that is correct.

**Chairman Haas:** Leann if we think about the term human rights, is that not generally thought of as an umbrella term that would include all of the items for example: come under EEOC, such as age discrimination, disability, veteran, sex any of those categories.

**Leann:** Human rights is a term that encompasses much more then even the activity that we carry out on the human rights act. We do not have the enforcement authority over a number of human rights issues.

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House Government and Veterans Affairs Committee

Bill/Resolution Number SB 2245

3/10/05

**Chairman Haas:** It is an umbrella that includes all of these things.

**Leann:** That is correct.

**Chairman Haas:** Are there any further questions for Leann? Thank you very much. Is there any more testimony in favor of SB 2245? Is there opposition testimony to SB 2245? If not we will close the hearing on SB 2245.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2245

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 3/10/05

Tape Number	Side A	Side B	Meter #
1	x		47.3-end
Committee Clerk Signature <i>Dupuy</i>			

Minutes: SB 2245 Relating to a name change from the Department of Labor to the Department of Labor and Human Rights.

Discussion and voting.

**Chairman Haas:** We will discuss SB 2245.

**Rep. Sitte:** I would like to know how many nations have signed onto universal declaration of human rights of the United Nations? Congress has not, they rejected it. I think it is a reciprocity nightmare.

**Rep. Amerman:** You see the human rights being inserted in several things. Nothing else, that I can see, as far as the duties and the responsibilities under the human rights act has changed. These are put in to reflect what the Department of Labor has been asked and made to do in 2001 and to put the human rights issues under the Department of Labor. To me this very simply says it will be more accessible, more knowledgeable to the people in North Dakota where they can find, if they have a human rights issue under North Dakota human rights act.

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House Government and Veterans Affairs Committee  
Bill/Resolution Number SB 2245  
Hearing Date 3/10/05

**Rep. Froseth:** This bill does nothing more then identify where people can find North Dakota human rights policy.

**Chairman Haas:** To do what we have authorized them to do. Any further discussion on SB 2245.

We will further discuss SB 2245.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2245

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 3/17/05

Tape Number	Side A	Side B	Meter #
3	x		13.4-21.0
Committee Clerk Signature <i>Dale H. Quinn</i>			

Minutes: Relating to a name change from the department of labor to the department of labor and human rights.

Discussion and voting.

**Chairman Haas:** Committee members lets look at Senate Bill 2245. There is no substitutive change in the bill that would relate to anything that the department of labor currently does or does not do. It is purely and simply a name change. What are your wishes? Rep. Conrad moves a DO PASS motion, seconded by Rep. Potter. Is there any discussion.

**Rep. Conrad:** We have kind of a black mark on North Dakota, that I don't think is necessary and this bill would correct it. When people publish reports on Human Rights, we have no Department of Human Rights and we have no commission. We look like we are not concerned about Human Rights and yet we have a Human Rights Department and I am very pleased with there actions and how they are addressing issues and how people can locally can get things handled and think this just allows us to acknowledge what we are doing right now, so I would strongly consider this.

**Rep. Froseth:** This bill has a fiscal note of 5200 dollars, I believe that we should have had all bills out this week.

**Chairman Haas:** No, it does not include an appropriation. LeAnn Burke said that she would absorb this in her budget. Any further discussion, if not we have a DO PASS motion by Rep. Conrad, seconded by Rep. Potter on SB 2245. We will ask the clerk to take the roll.

**VOTE: YES 5 NO 9 ABSENT 0 THE MOTION FAILS**

We have a motion for a DO NOT PASS by Rep. Sitte, is there a second, seconded by Rep. Grande, is there further discussion.

**Rep. Amerman:** If we don't want our citizens to find where their Human Rights can be found, I do not understand, all we are doing is putting that on, so it could be in the phone book or it could be in the government directory, the legislators directed the Labor Dept. to handle these issues and this would just inform the public, because I can guarantee the general public does not know.

**Rep. Sitte:** At the Federal level it is just called the Department of Labor and yet it handles all these issues. At the Federal level there is nothing that says Human Rights and it is all of our responsibility to deal with fair standards, fair practices, that is all under the Department of Labor.

**Rep. Klemin:** If you look at the letter head on the Department of Labor now, they have a separate web address for Human Rights and it is not part of Labor or anything. They can certainly put that in the phone book, if you look in the state directory, there probably is a separate entry. Most of the agencies do have separate lines, listing the different divisions. Things that Rep. Amerman is concerned about is on the web and in the phone book.

**Chairman Haas:** Further discussion.

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House Government and Veterans Affairs Committee  
Bill/Resolution Number SB 2245  
Hearing Date 3/17/05

**Rep. Conrad:** I just picked up the phone book and it is listed as the Labor Dept. period. It is listed as Human Rights Division, with a toll free number.

**Chairman Haas:** Is there further discussion on a DO NOT PASS motion SB 2245, if not we will take a roll call vote on a DO NOT PASS motion on SB 2245.

**VOTE: YES 9 NO 5 ABSENT 0 DO NOT PASS ON SB 2245**

**REP. SITTE WILL CARRY THE BILL.**

FAILED

Date: 3/17/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2245

House House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Conrad Seconded By Rep. Potter

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas		✓	Rep. Bill Amerman	✓	
Bette B. Grande - Vice Chairman		✓	Rep. Kari Conrad	✓	
Rep. Randy Boehning		✓	Rep. Louise Potter	✓	
Rep. Glen Froseth		✓	Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin		✓			
Rep. Stacey Horter	✓				
Rep. Jim Kasper		✓			
Rep. Lawrence R. Klemin		✓			
Rep. Lisa Meier		✓			
Rep. Margaret Sitte		✓			

Total (Yes) 5 No 9

Absent Ø

Floor Assignment \_\_\_\_\_

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

Date: 3/17/05  
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB2245

House House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Rep. Sitte Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman		✓
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad		✓
Rep. Randy Boehning	✓		Rep. Louise Potter		✓
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig		✓
Rep. Pat Galvin	✓				
Rep. Stacey Horter		✓			
Rep. Jim Kasper	✓				
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. Sitte

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

**REPORT OF STANDING COMMITTEE (410)**  
March 17, 2005 12:24 p.m.

**Module No: HR-49-5258**  
**Carrier: Sitte**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2245: Government and Veterans Affairs Committee (Rep. Haas, Chairman)**  
recommends **DO NOT PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING).  
SB 2245 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2245

Good day. My name is Cheryl Long Feather and I am a board member of the North Dakota Human Rights Coalition. I am an enrolled member of the Standing Rock Sioux Tribe. But, most germane to this testimony, I am also a citizen of the great state of North Dakota.

I am here to testify on behalf of this bill because of my experiences as a community member and employee of the Native American Training Institute. I can only share my personal experiences in the Native community in North Dakota and hope that you will have receptive hearts as leaders.

Before the creation of the Division of Human Rights in the N.D. Department of Labor, I received many phone calls and personal contacts from Native people who had experienced discrimination. They did not know who to talk to, who to contact or what to do about the injustice of their situation. I often felt frustrated and helpless in not being able to help them. Unfortunately, since the creation of the Division of Human Rights, I have continued to receive such contacts. People are still unaware of their options or that there is a state department to handle such issues (I use the phrase "handle such issues" very loosely here. But that's a whole other can of worms...). At any rate, the prior work and the expense of creating a Division of Human Rights is for naught if people are not aware of its existence or services. This bill would help create the awareness that the Division apparently cannot or will not.

The constituents you will assist and serve with this bill are those who have been hurt and deserve to know they have recourse. As a very important man once said, "Whatsoever you do unto the least of my brothers, that you do unto me". I urge your support of this bill that will greatly assist the least of our brothers.

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**Testimony before the  
Senate Industry, Business and Labor Committee  
on Senate Bill 2245  
by the North Dakota Fair Housing Council  
January 26, 2005**

*Same given to House*

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 agency who provides support, encouragement and assistance to those seeking equal opportunity in housing. The NDFHC educates the public on Fair Housing Laws and also investigates allegations of housing discrimination. When discrimination is found, we assist complainants in filing complaints of housing discrimination and throughout the administrative process. As a result of our assistance in complaint filing, we often work with the North Dakota Department of Labor because it is the state agency charged with receiving complaints and enforcing violations of housing discrimination. We strongly support their efforts in working to eliminate housing discrimination in North Dakota.

The North Dakota Fair Housing Council supports passage of Senate Bill 2245 because it would more accurately identify to members of the public who may be unfamiliar with the North Dakota Department of Labor's role in human rights enforcement. When we assist complainants, there is often confusion for complainants as to why the North Dakota Department of Labor is responsible for fair housing violations. Although we inform complainants about the North Dakota Department of Labor's Human Rights Division, it is still confusing.

We hope you will support the proposed name change to the Department of Labor and Human Rights. I thank you for the opportunity to provide testimony today and please let me know if you have any questions. Thank you.



Cheryl Bergian



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Logged In: **cherylbergian**

**From:** humanrights 4 / 27  
**To:** Cheryl Bergian  
**Subject:** Revised Testimony for SB 2245 from Darlene Perkins **Sent:** Tue 01/25/05 03:25 PM

[Reply](#) | [Reply to All](#) | [Forward](#) | [Delete](#)

Chairman Mutch and members of the Committee, my name is Darlene Perkins. I am a Native American woman and Reverend in the United Church of Christ.

In 1998, I experienced discrimination on my job and decided to file a claim against my employer. My resources and money were quite limited, and I found it difficult to determine where to go for help. I knew that North Dakota had a Department of Labor, however I did not believe that North Dakota had a human rights office. I went to a family member with a law background to help me figure out what steps to take. He made me aware of the Department of Labor, Division of Human Rights.

I believe my experience would have been less frustrating and timely had I known there was a human rights office within the Department of Labor. I can also tell you from first hand experience that many of the Native people I have spoken to are unfamiliar with the Division of Human Rights, although they know that there is a Labor Department. These are the same people that experience violations of their human rights and have become complacent because there is no recourse. This ladies and gentlemen of the Committee is not acceptable.

I understand that there would be a one-time cost of \$5,200 to change the name. This cost is miniscule in comparison to the injustice that many people endure thinking that there is no where to go when their rights have been violated. There is much to be said for a name, particularly one so important as the proposed Department of Labor and Human Rights.

I support SB 2245, which will change the name of the ND Department of Labor to the ND Department of Labor and Human Rights.

I ask for a do pass recommendation on Senate Bill 2245. I appreciate this opportunity to testify before this distinguished Committee.

Darlene Perkins  
 P.O. Box 122  
 Parshall, ND 58770

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Senate Bill 2245  
Senate Industry, Business and Labor Committee  
January 26, 2005

Chairman Mutch and members of the IBL Committee,

I am Tim Mathern, Senator from Fargo.

SB 2245 directs the name of the Department of Labor be changed to add "and Human Rights" to accurately reflect the responsibilities of the Department.

A few weeks ago I met with the Labor Commissioner asking for more action on her part about work place safety regarding air quality. Her response included an instruction to me that two thirds of her department's duties involve enforcing and implementing our laws regarding human rights.

She is correct, I presume. This bill just helps us recognize this 2/3 reality. It also helps our citizens who have a human rights concern to get to the right agency as soon as possible.

I also suggest that there is no requirement in this bill to throw away paper, brochures and the like. I suggest such changes be made as resources like these are used up.

I ask for a do pass recommendation on Senate Bill 2245. Thank you.

# North Dakota Human Rights Coalition

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



## Testimony

### Senate Bill 2245

Senate Industry, Business and Labor Committee

January 26, 2005

Chairman Mutch and members of the Committee, I am Cheryl Bergian, Director of the North Dakota Human Rights Coalition. The Coalition includes a broad-based, statewide membership of individuals and organizations interested in the furtherance of human rights in North Dakota; the Coalition's mission is to effect change so that all people in North Dakota enjoy full human rights.

We support the work of the Division of Human Rights in the North Dakota Department of Labor for the enforcement of the North Dakota Human Rights Act and North Dakota Housing Discrimination Act. We have asked that the name of the North Dakota Department of Human Rights be change to add "and Human Rights" to more accurately reflect the responsibilities of the department, and to make the Division of Human Rights in the Department of Labor easier to find.

It is our understanding from the Labor Commissioner that two-thirds of the work of the Department is now involved human rights complaints. Clearly, changing the name of the Department will provide the visibility for human rights issues that it already is addressing. Residents of North Dakota who are looking for the state agency that has the responsibility of enforcing the North Dakota Human Rights Act and North Dakota Housing Discrimination Act will know where to call simply from the agency's name. There have been some high profile discrimination cases in North Dakota in which it is apparent that the victims of discrimination did not call the Labor Department. Perhaps that would have been different, and those situations would not have lasted years, if the agency's name had reflected its responsibilities more accurately.

There is a one-time cost to the name change; the fiscal note is \$5,200.00. Given the benefit of the name change, we believe that the cost is worthwhile.

The Worker's Compensation Bureau changed its name to Workforce Safety and Insurance within the past year. Their website says:

This year marks a turning point for our organization. Just recently, the organization changed its name from North Dakota Workers Compensation (Bureau) to Workforce Safety & Insurance. We live in changing times – and in keeping up with those changing times, we wanted a name that more closely reflects our commitment to providing safety and insurance services to the workforce across North Dakota.

We believe the same reasoning applies to the name change for the North Dakota Department of Labor.

We ask for a do pass recommendation on Senate Bill 2245. I appreciate this opportunity to testify on behalf of the North Dakota Human Rights Coalition.

# North Dakota Human Rights Coalition

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



## MEMBER ORGANIZATIONS

- AARP of North Dakota
- American Association of University Women  
Fargo
- Arc of Cass County
- Bismarck-Mandan Unitarian Universalist  
Church
- Bremer Bank - Fargo
- Cultural Diversity Resources
- Dakota Center for Independent  
Living
- Dakota Resource Council
- Dorothy Day House
- Fargo Human Relations  
Commission
- Fargo-Moorhead Amnesty International
- Freedom Resource Center for Independent  
Living
- The GOD'S CHILD Project North Central
- Grand Forks Unitarian Universalist  
Fellowship
- MSUM Social Work Department
- Mental Health Association in North  
Dakota
- Montana Human Rights Network
- Nativity Social Justice Ministry
- ND Association of the Deaf
- ND Disabilities Advocacy Consortium
- ND Fair Housing Council
- ND Progressive Coalition
- ND Statewide Independent Living Council
- Pride Collective and Community Center
- Student Social Work Organization – Minot  
State University

Senate Bill 2245  
House Government and Veterans Affairs Committee  
March 10, 2005

Chairman Haas and members of the GVA Committee,

I am Tim Mathern, Senator from Fargo.

SB 2245 directs the name of the Department of Labor be changed to add "and Human Rights" to accurately reflect the responsibilities of the Department.

About a month ago I met with the Labor Commissioner asking for more action on her part about work place safety regarding air quality. Her response included a helpful and informative instruction to me that two thirds of her department's duties involve enforcing and implementing our laws regarding human rights.

She is correct, I presume. This bill just helps us recognize this 2/3 reality.

Through the years I have heard complaints from citizens wondering if we did anything in human rights. Passage of this bill helps our citizens who have questions about human rights get to the right agency as soon as possible.

There is no requirement in this bill to throw away paper, brochures and the like. I suggest such changes be made as resources like these are used up.

I ask for a do pass recommendation on Senate Bill 2245.

Thank you.

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## Testimony

### Senate Bill 2245

House Government and Veterans Affairs Committee

March 10, 2005

Chairman Haas and members of the Committee, I am Cheryl Bergian, Director of the North Dakota Human Rights Coalition. The Coalition includes a broad-based, statewide membership of individuals and organizations interested in the furtherance of human rights in North Dakota; the Coalition's mission is to effect change so that all people in North Dakota enjoy full human rights.

We support the work of the Division of Human Rights in the North Dakota Department of Labor for the enforcement of the North Dakota Human Rights Act and North Dakota Housing Discrimination Act. We have asked that the name of the North Dakota Department of Human Rights be change to add "and Human Rights" to more accurately reflect the responsibilities of the department, and to make the Division of Human Rights in the Department of Labor easier to find.

It is our understanding from the Labor Commissioner that two-thirds of the work of the Department is now involved human rights complaints. Clearly, changing the name of the Department will provide the visibility for human rights issues that it already is addressing. Residents of North Dakota who are looking for the state agency that has the responsibility of enforcing the North Dakota Human Rights Act and North Dakota Housing Discrimination Act will know where to call simply from the agency's name. There have been some high profile discrimination cases in North Dakota in which it is apparent that the victims of discrimination did not call the Labor Department. Perhaps that would have been different, and those situations would not have lasted years, if the agency's name had reflected its responsibilities more accurately.

There could be one-time cost to the name change if the department discards all of its brochures, letterhead and similar items; the fiscal note is \$5,200.00. Given the benefit of the name change, we believe that the cost would be worthwhile. However, the cost would not need to be incurred, if the department makes the changes as supplies are used up.

The Worker's Compensation Bureau changed its name to Workforce Safety and Insurance within the past year. Their website says:

This year marks a turning point for our organization. Just recently, the organization changed its name from North Dakota Workers Compensation (Bureau) to Workforce Safety & Insurance. We live in changing times – and in keeping up with those changing times, we wanted a name that more closely reflects our commitment to providing safety and insurance services to the workforce across North Dakota.

We believe the same reasoning applies to the name change for the North Dakota Department of Labor.

We ask for a do pass recommendation on Senate Bill 2245. I appreciate this opportunity to testify on behalf of the North Dakota Human Rights Coalition.



**MANDAN, HIDATSA & ARIKARA NATION**  
Three Affiliated Tribes • Ft. Berthold Reservation  
404 Frontage Road • New Town, ND 58763-9402

**59<sup>th</sup> LEGISLATIVE ASSEMBLY**  
**GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**  
**HONORABLE C.B. HAAS, CHAIR & COMMITTEE MEMBERS**

**TESTIMONY OF TEX G. HALL, CHAIRMAN**  
**MANDAN, HIDATSA & ARIKARA NATION**  
**ON SENATE BILL 2245**

Chairman Haas and Committee Members my name is Tex Hall and I am the Chairman of the Mandan, Hidatsa & Arikara Nation. I apologize for not being able to testify in person before you today but preexisting commitments prohibit me from being here. I have asked one of our lobbyist, Tiffiany Johnson, to provide this testimony on behalf of the Mandan, Hidatsa & Arikara Nation.

Senate Bill 2245 amends the North Dakota Century Code to rename to Department of Labor to the Department of Labor and Human Rights. The Mandan, Hidatsa & Arikara Nation supports this bill as it is our understanding that the majority of the work that the Department of Labor involves human rights complaints. The State should make it plainly evident to those that have human rights complaints that this is the State agency tasked with the responsibility of enforcing the North Dakota Human Rights Act and the North Dakota Housing Discrimination Act. The proposed name change will accomplish this.

Accordingly, I respectfully urge this committee to recommend a DO PASS on Senate Bill 2245.

John Hoeven  
Governor

Leann K. Bertsch  
Commissioner



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

[discovernd.com/labor](http://discovernd.com/labor)  
[discovernd.com/humanrights](http://discovernd.com/humanrights)

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Testimony on SB 2245  
Prepared for the  
House Government & Veterans Affairs Committee  
By the North Dakota Department of Labor

March 10, 2005

Chairman Haas and members of the Government and Veteran Affairs Committee, good morning. For the record, I am Leann Bertsch, Commissioner of Labor. I would like to provide an overview of the Department's work in the area of human rights.

- ✦ The department has two primary areas of responsibility. The Office of the Labor Commissioner is responsible for establishing and enforcing rules relating to the wages and working conditions of employees in the state. In addition to these traditional duties, the Human Rights Division within the Department of Labor administers the provisions of the North Dakota Human Rights Act and the North Dakota Housing Discrimination Act.
- ✦ The Department's Human Rights Division, in addition to receiving and investigating complaints directly from individuals who believe they have been victims of unlawful discrimination under North Dakota's anti-discrimination laws, also processes cases for the U.S. Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC). During the first eighteen months of the current biennium, the Department Resolved 243 employment discrimination complaints, 70 housing discrimination complaints, and 34 complaints alleging discrimination in public accommodations and public services. The Department obtained directly \$211,409 in monetary relief for claimants. The Department was able to reduce the average number of days to investigate an employment discrimination case from 252 days in 2003 to 132 days in 2004. This has been accomplished without sacrificing fair and effective enforcement. This achievement is largely attributable to the hard work, experience and ongoing training of the investigative staff and the additional assistance of the temporary office support position.
- ✦ The Department of Labor continued to broaden awareness of equal rights protections and the Department's services through public education and outreach. The Department of Labor has maintained a number of public education efforts, working with civil rights, business, labor, professional, and non-profit organizations. The Department of Labor continued to provide speakers and

trainers for conferences, workshops, schools, employers, labor organizations, businesses, landlord and tenant organizations, government agencies, and other community groups on rights and responsibilities under anti-discrimination laws. The Department provided over 50 presentations in the first eighteen months of the 2003-2005 biennium.

‡ Currently, the Department of Labor performs its responsibilities of enforcing North Dakota labor and anti-discrimination laws and educating the public regarding rights and responsibilities under these laws with a staff of ten. The ND Department of Labor staff includes the Commissioner, a Human Rights Director who oversees all case management functions of the agency, a Business Manager who oversees administrative functions of the agency, an administrative assistant and six Compliance Investigators.

‡ The staff members of the ND Department of Labor who perform the work of the Human Rights Division have a wealth of training, experience, and education which allows them to conduct investigations into all types of discrimination complaints filed with the Department. These investigations involve analyzing and applying complex anti-discrimination laws to the facts of each case to determine whether an illegal discriminatory practice occurred. Staff training is ongoing and critical to maintaining proficiency performing investigative, and mediation duties. All staff members who perform case work receive ongoing training in mediation. All investigators, the human rights director, and the labor commissioner are trained at HUD's National Fair Housing Training Academy and will be certified as fair housing investigators upon completion of the six part training program. In addition, several of the Department's investigators have received certification through the National Association of Human Rights Workers and the other investigators are close to completing the required training for such certification. Training also occurs internally for investigative staff on an ongoing basis through weekly investigator meetings, which include group discussions of actual cases and investigative issues.

‡ **Pending Case Load<sup>1</sup>:**

- 32 claims for unpaid wages;
- 59 complaints alleging employment discrimination or retaliation;
- 15 complaints alleging discriminatory housing practices;
- 40 complaints alleging discrimination in public services, public accommodations, or credit transactions;

‡ The proposed name would more accurately reflect the expanded and important responsibilities that the Department performs in the area of human rights.

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<sup>1</sup> NDDOL's goals for investigating these various types of cases is as follows:

Wage claims – 90 days

Employment discrimination /retaliation – 180 days

Housing discrimination – 100 days

Public service, public accommodation or credit transactions – 180 days

Fax: 701-328-1997

TO: <sup>Rep</sup> Chairman Haas and members of the North Dakota House Government and Veteran Affairs Committee

Testimony for the hearing on Senate Bill 2245 scheduled for Thursday, March 10, 2005 at 9:00 A.M. in the Fort Union Room.

This testimony is from Allan Peterson. Address: 7009 Horseshoe Bend, Fargo, ND 58104. I am registered with the Secretary of State's Office as a representative for North Dakota Association of the Blind and serve as its Legislative Liaison. During the 2001 Legislative Assembly I served as Chairperson of a coalition that was organized under the banner of North Dakotans for a Human Rights Commission. After the 2001 Session, our group officially incorporated itself as the North Dakota Human Rights Coalition (NDHRC). I've served as the Chairperson of the NDHRC Board for three and a half years. The mission of our Coalition is to effect change so that all people of North Dakota will be able to enjoy their full complement of human rights.

I'm advocating in support of the passage of Senate Bill 2245 legislation that would change the name of the Department of Labor to the Department of Labor and Human Rights. The purpose of this legislation is to help reflect the work that this Department conducts and to help increase the visibility of the Department's work among the citizens of our state.

First, I wish to take this opportunity to again acknowledge and thank the 57th Legislature of 2001 for their wisdom in enacting the legislation needed to grant the authority to the Department of Labor to enforce the provisions of the North Dakota Human Rights Law. This truly was a very critical step taken to address violations of our State's Human Rights Act!

The work of many organizations like our Coalition has shown that there is a disturbing and ongoing record of discrimination and prejudice within all aspects of public life in our state. It is vital that people who are so affected, clearly know where it is that they can go to make these violations known so they can seek proper courses of remedial action.

Two-thirds or more of the Department of Labor's time and a majority of the Department employee job descriptions are directed toward work on claims of violations of our State's Human Rights Law. It is only a matter of clarity that the name of the Department should be reflective of its purpose and mission.

President Bush and other leaders of our nation often make reference to phrases that include the words freedom, liberty and democracy as ideologies that our nation values and respects. I submit that the ideology that these words engender cannot be fully realized by people if they experience widespread discrimination and prejudice in the society in which they live. This legislation is a step that is needed to help our state's citizens enjoy their full complement of human rights!

# North Dakota Human Rights Coalition

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- North Dakota Progressive Coalition
- North Dakota Public Employees Association
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- Social Action Committee of Fargo-Moorhead  
Unitarian Universalist Church
- Student Social Work Organization – Minot  
State University

## CHAPTER 14-02.4 HUMAN RIGHTS

**14-02.4-01. State policy against discrimination.** It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, 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.

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

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age.
2. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
3. "Department" means the division of human rights within the labor department.
4. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment.
5. "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, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:
  - a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, or education;
  - b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
  - c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, or educational environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.
6. "Employee" means a person who performs services for an employer, who employs one or more individuals, for compensation, whether in the form of wages, salaries,

commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.

7. "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.
8. "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.
9. "Labor organization" means a person, employee representation committee, plan in which employees participate, or other organization which exists solely or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.
10. "National origin" means the place of birth of an individual or any of the individual's lineal ancestors.
11. "Otherwise qualified person" means a person who is capable of performing the essential functions of the particular employment in question.
12. "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.
13. "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.
14. "Public service" means a public facility, department, agency, board, or commission owned, operated, or managed by or on behalf of this state, a political subdivision thereof, or a public corporation.
15. "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.

16. "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
17. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

**14-02.4-03. Employer's discriminatory practices.** It is a discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental disability, 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 person with a physical or mental disability or because of that person'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 policymaking position, if the employee is entitled to an immediate nonforfeiture annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equal, in the aggregate, at least forty-four thousand dollars.

**14-02.4-04. Employment agency's discriminatory practices.** It is a discriminatory practice for an employment agency to accord adverse or unequal treatment to a person in connection with an application for employment, referral, or request for assistance in procurement of employees because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance; or to accept a listing of employment on that basis.

**14-02.4-05. Labor organization's discriminatory practices.** It is a discriminatory practice for a labor organization to deny full and equal membership rights to an applicant for membership or to a member; to expel, suspend, or otherwise discipline a member; or to accord adverse, unlawful, or unequal treatment to a person with respect to the person's hiring, apprenticeship, training, tenure, compensation, upgrading, layoff, or a term or condition of employment because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.

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

**14-02.4-07. Requiring security clearance not discriminatory.** Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, 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.

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

**14-02.4-09. Seniority, merit, or other measuring systems and ability tests not discriminatory.** Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations provided that the differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, age, physical or mental disability, 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.

**14-02.4-10. Employment of individual - Exceptions - Physical examination - Investigation of medical history.**

1. Sections 14-02.4-03 through 14-02.4-06 do 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.
2. The employment of one person in place of another, standing by itself, is not evidence of a discriminatory practice.
3. After a conditional offer of employment, it is not a 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.
4. Medical history obtained under this section must be collected and maintained separate from nonmedical information and must be kept confidential.

**14-02.4-11. Rights of veterans.** Nothing contained in sections 14-02.4-03 through 14-02.4-06 repeals or modifies a federal, state, or local statute, regulation, or ordinance creating special rights or preference for veterans.

**14-02.4-12. Discriminatory housing practices by owner or agent.** Repealed by S.L. 1999, ch. 134, § 4.

**14-02.4-12.1. Discriminatory housing practices.** Repealed by S.L. 2001, ch. 145, § 14.

**14-02.4-13. Discriminatory housing practice by financial institution or lender.** Repealed by S.L. 1999, ch. 134, § 4.

**14-02.4-14. Public accommodations - Discriminatory practices.** It is a discriminatory practice for a person engaged in the provision of public accommodations to fail to provide to a person access to the use of any benefit from the services and facilities of the public accommodations; or to give adverse, unlawful, or unequal treatment to a person with respect to the availability to the services and facilities, the price or other consideration therefor, the scope and equality thereof, or the terms and conditions under which the same are made available because of the person's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.

**14-02.4-15. Public services - Discriminatory practices.** It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to a person access to the use of and benefit thereof, or to give adverse or unequal treatment to a person in connection therewith 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.

**14-02.4-15.1. Discrimination in governmental contracts and programs prohibited.** A governmental entity may not discriminate against any health care institution or any private agency in any grant, contract, or program because of the institution's or agency's refusal to permit, perform, assist, counsel, or participate in any manner in any health care service that violates the institution's or agency's written religious or moral policies.

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

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

**14-02.4-18. Concealing, aiding, compelling, or inducing unlawful discrimination - Threats or reprisals.** It is a discriminatory practice for 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.

**14-02.4-19. Actions - Limitations.** Any person claiming to be aggrieved by a discriminatory practice with regard to public services or public accommodations in violation of this chapter may file a complaint of discriminatory practices with the department or may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed or in the district in which the person would have obtained public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing. Any person claiming to be aggrieved by any discriminatory practice other than public services or public accommodations in violation of this chapter may file a complaint of discriminatory practice with the department or may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to the practice are maintained and administered, or in the district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three hundred days of the alleged act of wrongdoing. If a complaint of a discriminatory practice is first filed with the department, the period of limitation for bringing an action in the district court is ninety days from the date the department issues a written notice to the complainant that administrative action on the complaint has concluded.

**14-02.4-20. Relief.** If the department, 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 department 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 department or the court. Interim earnings or amounts earnable with reasonable diligence by the person 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 costs. 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.

**14-02.4-21. Records exempt.** A complaint filed with the department under this chapter is an open record. Information obtained during an investigation conducted by the department under this chapter is exempt from section 44-04-18 before the institution of any judicial proceedings or administrative hearing relating to the complaint under this chapter or before the administrative closure of a complaint by the department. The department may disclose to the complainant or the respondent, or a representative of the complainant or the respondent, information obtained during an investigation if deemed necessary by the department for securing an appropriate resolution of a complaint. The department may disclose information obtained during an investigation to a federal agency if necessary for the processing of complaints under an agreement with the agency. Individually identifiable health information obtained during an investigation may not be disclosed by the department except to a federal agency if necessary for the processing of complaints under an agreement with the agency. Statements made or actions taken during conciliation efforts relating to a complaint under this chapter may not be disclosed by the department, except to a federal agency if necessary for the processing of complaints under an agreement with the agency, and may not be used as evidence in a subsequent proceeding under this chapter without the written consent of the parties to the conciliation. A conciliation agreement is an open record unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Investigative working papers are exempt from section 44-04-18.

**14-02.4-22. Duties and powers of department.** The department shall receive and investigate complaints alleging violations of this chapter. The department may adopt rules necessary to implement this chapter. Within the limits of legislative appropriations, the department shall foster prevention of discrimination under this chapter through education for the public, employers, providers of public accommodations or services, and commercial lenders on

the rights and responsibilities provided under this chapter and ways to respect those protected rights. The department shall emphasize conciliation to resolve complaints. The department shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The department shall conduct studies relating to the nature and extent of discriminatory practices in this state.

**14-02.4-23. Complaints - Probable cause - Administrative hearing.**

1. The department shall investigate complaints of alleged discriminatory practices. An aggrieved person may file a complaint with the department alleging the discriminatory practice. The department may file a complaint. A complaint must be in writing and in the form prescribed by the department.
2. The department shall determine from the facts whether probable cause exists to believe that a discriminatory practice has occurred. If the department determines that no probable cause exists to believe that a discriminatory practice has occurred, the department shall promptly dismiss the complaint.
3. If the department determines that probable cause exists to believe that a discriminatory practice has occurred and is unable to resolve the complaint through informal negotiations or conciliation, the department shall provide for an administrative hearing in the manner provided in chapter 28-32 on the complaint.

## **CHAPTER 14-02.5 HOUSING DISCRIMINATION**

**14-02.5-01. Definitions.** The definitions in section 14-02.4-02 may be used to supplement the definitions in this chapter. In this chapter, unless the context otherwise requires:

1. "Aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice or believes that the person will be injured by a discriminatory housing practice that is about to occur.
2. "Complainant" means a person, including the department, that files a complaint under section 14-02.5-18.
3. "Conciliation" means the informal negotiations among an aggrieved person, the respondent, and the department to resolve issues raised by a complaint or by the investigation of the complaint.
4. "Conciliation agreement" means a written agreement resolving the issues in conciliation.
5. "Department" means the labor department.
6. "Disability" means a mental or physical impairment that substantially limits at least one major life activity, a record of this impairment, or being regarded as having this impairment. The term does not include current illegal use or addiction to any drug or illegal or federally controlled substance and does not apply to an individual because of an individual's sexual orientation or because that individual is a transvestite.
7. "Discriminatory housing practice" means an act prohibited by sections 14-02.5-02 through 14-02.5-08 or conduct that is an offense under section 14-02.5-45.
8. "Dwelling" means any 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.
9. "Familial status" means one or more minors being domiciled with a parent or another person having legal custody of the minor or minors; or the designee of the parent or other person having such custody with the written permission of the parent or other person. The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any minor.
10. "Family" includes a single individual.
11. "Respondent" means a person accused of a violation of this chapter in a complaint of discriminatory housing practice or a person identified as an additional or substitute respondent under section 14-02.5-21 or an agent of an additional or substitute respondent.
12. "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.

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

1. A person may not 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.

2. A person may not discriminate against an individual in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with a sale or rental of a dwelling because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.
3. This section does not prohibit discrimination against an individual because the individual has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.
4. Nothing in this chapter prevents a person from refusing to rent a dwelling to two unrelated individuals of opposite gender who are not married to each other.

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

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

**14-02.5-05. Entry into neighborhood.** A person may not, for profit, induce or attempt to induce another to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of an individual of a particular race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.

**14-02.5-06. Disability.**

1. A person may not discriminate in the sale or rental of, or make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter; of an individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or of any individual associated with the buyer or renter.
2. A person may not discriminate against an individual in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of that individual; of an individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or of any individual associated with that individual.
3. In this section, discrimination includes:
  - a. A refusal to permit, at the expense of the individual having a disability, a reasonable modification of existing premises occupied or to be occupied by the individual if the modification may be necessary to afford the individual full enjoyment of the premises, except that, in the case of a rental, the landlord may condition, when it is reasonable to do so, permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
  - b. A refusal to make a reasonable accommodation in rules, policies, practices, or services if the accommodation may be necessary to afford the individual equal opportunity to use and enjoy a dwelling; or

- c. The failure to design and construct a covered multifamily dwelling in a manner that allows the public use and common use portions of the dwellings to be readily accessible to and usable by individuals having a disability; that allows all doors designed to allow passage into and within all premises within the dwellings to be sufficiently wide to allow passage by an individual who has a disability and who is in a wheelchair; and that provides all premises within the dwellings contain the following features of adaptive design:
  - (1) An accessible route into and throughout the dwelling;
  - (2) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
  - (3) Reinforcements in bathroom walls to allow later installation of grab bars; and
  - (4) Kitchens and bathrooms that are usable and have sufficient space in which an individual in a wheelchair can maneuver.
4. Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for individuals having physical disabilities, commonly cited as "ANSI A 117.1 (1986)", satisfies the requirements of adaptive design in subdivision c of subsection 3.
5. The adaptive design requirements of subdivision c of subsection 3 do not apply to a building the first occupancy of which occurred on or before March 13, 1991.
6. This section does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals whose tenancy would result in substantial physical damage to the property of others.
7. Covered multifamily dwellings are buildings consisting of four or more units if the buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

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

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

**14-02.5-09. Sales and rentals exempted.**

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

or reserved on the person's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time. In addition, the house must be sold or rented without the use of the sales or rental facilities or services of a licensed real estate broker, agent, or realtor, or of a person in the business of selling or renting dwellings, or of an employee or agent of any such broker, agent, realtor, or person; or the publication, posting, or mailing of a notice, statement, or advertisement prohibited by section 14-02.5-03. The exemption provided in this subsection applies only to one sale or rental in a twenty-four-month period, if the owner was not the most recent resident of the house at the time of the sale or rental. For the purposes of this subsection, a person is in the business of selling or renting dwellings if the person:

- a. Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest in a dwelling;
  - b. Within the preceding twelve months, has participated as agent, other than in the sale of the person's own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest in a dwelling; or
  - c. Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.
2. Section 14-02.5-02 and sections 14-02.5-04 through 14-02.5-08 do not apply to the sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other, if the owner maintains and occupies one of the living quarters as the owner's residence.

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

1. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to individuals of the same religion or giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.
2. This chapter does not prohibit a private club that is not in fact open to the public and that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of the lodging to its members or from giving preference to its members, unless membership in the club is restricted because of race, color, or national origin.
3. This chapter does not prohibit a person engaged in the business of furnishing appraisals of real property from considering in those appraisals factors other than race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.

**14-02.5-11. Housing for elderly exempted.**

1. The provisions of this chapter relating to familial status and age do not apply to housing that the secretary of housing and urban development determines is specifically designed and operated to assist elderly individuals under a federal program; the department determines is specifically designed and operated to assist elderly individuals under a state program; is intended for, and solely occupied by, individuals sixty-two years of age or older; or is intended and operated for occupancy

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

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

**14-02.5-12. Effect on other law.**

1. 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.
2. This chapter does not affect a requirement of nondiscrimination in any other state or federal law.

**14-02.5-13. Duties and powers of department.** The department shall administer this chapter. The department may adopt rules necessary to implement this chapter, but substantive rules adopted by the department must impose obligations, rights, and remedies that are the same as are provided in federal fair housing regulations. Within the limits of legislative appropriations, the department shall foster prevention of discrimination under this chapter through education for the public, landlords, publishers, realtors, brokers, lenders, and sellers on the rights and responsibilities provided under this chapter and ways to respect those protected rights. The department shall emphasize conciliation to resolve complaints.

**14-02.5-14. Complaints.** As provided by sections 14-02.5-18 through 14-02.5-35, the department shall receive, investigate, seek to conciliate, and act on complaints alleging violations of this chapter.

**14-02.5-15. Reports and studies.** The department shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The department shall make studies relating to the nature and extent of discriminatory housing practices in this state.

**14-02.5-16. Cooperation with other entities.** The department 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.

**14-02.5-17. Gifts and grants - Fair housing fund - Continuing appropriation.** The department 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 department on a continuing basis for the purposes of administering this chapter.

**14-02.5-18. Complaint.**

1. The department shall investigate complaints of alleged discriminatory housing practices. An aggrieved person may file a complaint with the department alleging the discriminatory housing practice. The department may file a complaint. A complaint must be in writing and must contain such information and be in such form as prescribed by the department. A complaint must be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later. A complaint may be amended at any time.
2. On the filing of a complaint, the department shall give the aggrieved 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 the filing of the complaint or the identification of an additional or substitute respondent under section 14-02.5-21, serve on each respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this chapter and a copy of the original complaint.

**14-02.5-19. Answer.**

1. Not later than the tenth day after the date of receipt of the notice and copy of the complaint under subsection 2 of section 14-02.5-18, a respondent may file an answer to the complaint. An answer must be in writing, under oath, and in the form prescribed by the department.
2. An answer may be amended at any time. An answer does not inhibit the investigation of a complaint.

**14-02.5-20. Investigation.**

1. If the federal government has referred a complaint to the department or has deferred jurisdiction over the subject matter of the complaint to the department, the department shall investigate the allegations set forth in the complaint.
2. The department 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 department is unable to complete an investigation within the time periods prescribed by subsection 2, the department shall notify the complainant and the respondent in writing of the reasons for the delay.

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

**14-02.5-22. Conciliation.** The department shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the department, to the

extent feasible, engage in conciliation with respect to the complaint. A conciliation agreement between a respondent and the complainant is subject to departmental approval. A conciliation agreement may provide for binding arbitration or another method of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.

**14-02.5-23. Temporary or preliminary relief.** The department may authorize a claim for relief for temporary or preliminary relief pending the final disposition of a complaint, if the department 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 department'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 14-02.5-31.

**14-02.5-24. Investigative report.** The department shall prepare a final investigative report, including the names of and dates of contacts with witnesses, a summary of correspondence and other contacts with the aggrieved 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.

**14-02.5-25. Reasonable cause determination.**

1. The department shall determine from the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The department shall make this determination not later than the one-hundredth day after the date a complaint is filed unless making the determination is impracticable, or the department approves a conciliation agreement relating to the complaint.
2. If making the determination within the period is impracticable, the department shall give in writing to the complainant and the respondent the reasons for the delay. If the department determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the department shall, except as provided by section 14-02.5-27, immediately issue a charge on behalf of the aggrieved person.

**14-02.5-26. Charge.**

1. A charge issued under section 14-02.5-25 must consist of a short and plain statement of the facts on which the department 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 department shall send a copy of the charge with information about the election under section 14-02.5-30 to each respondent and each aggrieved person on whose behalf the complaint was filed.
3. The department shall include with a charge sent to a respondent a notice of the opportunity for a hearing under section 14-02.5-31.

**14-02.5-27. Land use law.** If the department determines that the matter involves the legality of a state or local zoning or other land use law or ordinance, the department may not issue a charge and shall immediately refer the matter to the attorney general for appropriate action.

**14-02.5-28. Dismissal.** If the department 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 department shall promptly dismiss the complaint. The department shall make public disclosure of each dismissal.

**14-02.5-29. Pending civil trial.** The department 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.

**14-02.5-30. 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 14-02.5-36. 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 14-02.5-26 or, in the case of the department, not later than the twentieth day after the date the charge is issued. The person making the election shall give notice to the department and to all other complainants and respondents to whom the charge relates.

**14-02.5-31. Administrative hearing.** If a timely election is not made under section 14-02.5-30, the department 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.

**14-02.5-32. Administrative penalties.**

1. If the department determines at a hearing under section 14-02.5-31 that a respondent has engaged in or is about to engage in a discriminatory housing practice, the department 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 department 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 department 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 department 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 department 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 department, 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.

**14-02.5-33. Effect of departmental order.** A departmental order under section 14-02.5-32 does not affect a contract, sale, encumbrance, or lease that is consummated before

the department 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.

**14-02.5-34. Licensed or regulated business.** If the department 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 department, 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.

**14-02.5-35. Order in preceding five years.** If the department issues an order against a respondent against whom another order was issued within the preceding five years under section 14-02.5-33, the department shall send a copy of each order to the attorney general.

**14-02.5-36. Attorney general action for enforcement.** If a timely election is made under section 14-02.5-30, the department shall authorize and the attorney general shall file not later than the thirtieth day after the date of the election a claim for relief seeking relief on behalf of the aggrieved person in a district court. Venue for an action is in the county in which the alleged discriminatory housing practice occurred or is about to occur. An aggrieved person may intervene in the action. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under sections 14-02.5-39 through 14-02.5-44. If monetary relief is sought for the benefit of an aggrieved 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 discovery orders entered by the court.

**14-02.5-37. Pattern or practice case - Penalties.**

1. On the request of the department, the attorney general may file a claim for relief in district court for appropriate relief if the department 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 preventive 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.

**14-02.5-38. Subpoena enforcement.** The attorney general, on behalf of the department or another party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in district court.

**14-02.5-39. 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 14-02.5-18 and without regard to the status of any complaint filed under that section.
4. If the department 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 department if the department has begun a hearing on the record under this chapter with respect to the charge.

**14-02.5-40. 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.

**14-02.5-41. Relief granted.** If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, reasonable attorney's fees, court costs, and subject to section 14-02.5-42, a permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

**14-02.5-42. Effect of relief granted.** Relief granted under sections 14-02.5-39 through 14-02.5-44 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.

**14-02.5-43. Intervention by attorney general.** On request of the department, the attorney general may intervene in an action under sections 14-02.5-39 through 14-02.5-44 if the department 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.

**14-02.5-44. Prevailing party.** A court in an action brought under this chapter or the department in an administrative hearing under section 14-02.5-31 may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party.

**14-02.5-45. 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 an 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 of this section is a class A misdemeanor.

**14-02.5-46. Records exempt.** A complaint filed with the department under section 14-02.5-18 is an open record. Information obtained during an investigation conducted by the department under this chapter is exempt from section 44-04-18 before the institution of any judicial proceedings or administrative hearing relating to the complaint under this chapter or before the administrative closure of a complaint by the department. The department may disclose to the complainant or the respondent, or representatives of the complainant or respondent, information obtained during an investigation if deemed necessary by the department for securing an appropriate resolution of a complaint. The department may disclose information obtained during an investigation to a federal agency if necessary for the processing of complaints under an agreement with the agency. Individually identifiable health information obtained during an investigation may not be disclosed by the department except to a federal agency if necessary for the processing of complaints under an agreement with the agency. Statements made or actions taken during conciliation efforts relating to a complaint under this chapter may not be disclosed by the department, except to a federal agency if necessary for the processing of complaints under an agreement with the agency, and may not be used as evidence in a subsequent proceeding under this chapter without the written consent of the parties to the conciliation. A conciliation agreement is an open record unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Investigative working papers are exempt from section 44-04-18.