

SENATE BILL NO. 2306

Introduced by

Senators Mathern, Thane, Bercier

Representatives Gulleson, Maragos, Winrich

1 A BILL for an Act to create and enact chapters 14-02.7, 14-02.8, 14-02.9, 14-02.10, and
2 14-02.11 of the North Dakota Century Code, relating to human rights and the establishment of a
3 commission on human rights; to repeal chapters 14-02.4 and 14-02.5 of the North Dakota
4 Century Code, relating to human rights and housing discrimination; and to provide a penalty.

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

6 **SECTION 1.** Chapter 14-02.7 of the North Dakota Century Code is created and
7 enacted as follows:

8 **14-02.7-01. Definitions.** As used in this chapter and chapters 14-02.8, 14-02.9,
9 14-02.10, and 14-02.11, unless the context otherwise requires:

- 10 1. "Age" means a chronological age of at least eighteen years.
- 11 2. "Commission" means the North Dakota commission on human rights.
- 12 3. "Commissioner" means a member of the commission.
- 13 4. "Court" means the district court in the judicial district in which the alleged
14 discriminatory practice occurred.
- 15 5. "Director" means the director of the division.
- 16 6. "Disability" means a physical impairment that substantially limits one or more of an
17 individual's major life activities and includes a record of the impairment and being
18 regarded as having the impairment. The term also means a mental impairment or
19 psychological disorder, including developmental disability, organic brain syndrome,
20 mental illness, or specific learning disabilities.
- 21 7. "Division" means the North Dakota division of human rights.
- 22 8. "National origin" means the place of birth of an individual or any of the individual's
23 lineal ancestors.

9. "Respondent" means any person, agency, organization, or other entity against whom a charge is filed pursuant to chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11.

10. "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

11. "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.

14-02.7-02. North Dakota human rights division - Director. The division is created within the department of labor. The labor commissioner shall appoint the director of the division. In appointing the director, the labor commissioner shall give good-faith consideration to the recommendations of the commission before making the appointment. The director shall appoint those investigators and other personnel as may be necessary to carry out the functions and duties of the division.

14-02.7-03. Commission on human rights - Membership. The North Dakota commission on human rights is created within the division. The commission consists of seven members appointed by the governor, with the consent of the senate, for terms of four years. However, of the first members appointed, two must be appointed for terms of two years and two must be appointed for terms of three years. In making the first two appointments to the commission, the governor shall appoint one member to represent the business community and one member to represent state or local government entities. The governor shall make all subsequent appointments in such a manner that there is at all times one member of the commission representing the business community, one member of the commission representing state or local government entities, and five members of the commission from the community at large. The membership of the commission must at all times be composed of at least four members who are members of groups of people who have been or who might be discriminated against because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance. Appointments must be made to provide geographical area representation insofar as may be practicable, and no more than four members may belong to the same political party. Vacancies must be filled by the

1 governor by appointment, with the consent of the senate, and the term of a commissioner
2 appointed must be for the unexpired part of the term for which the commissioner is appointed.
3 Any commissioner may be removed from office by the governor for misconduct, incompetence,
4 or neglect of duty. Members of the commission who are not state employees are entitled to be
5 compensated at a rate of sixty-two dollars and fifty cents per day and entitled to mileage and
6 expenses as provided by law for state officers and employees. A state employee who is a
7 member of the commission must receive that employee's regular salary and is entitled to
8 mileage and expenses, to paid by the employing agency.

9 **14-02.7-04. Powers and duties of commission.** The commission may:

- 10 1. Adopt rules that are consistent with and for the implementation of chapters
11 14-02.8, 14-02.9, 14-0.10, and 14-02.11.
- 12 2. Receive, investigate, and pass upon charges alleging unfair or discriminatory
13 practices in violation of chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11.
- 14 3. Investigate and study the existence, character, causes, and extent of unfair or
15 discriminatory practices as defined in chapters 14.02.8, 14-02.9, 14-02.10, and
16 14-02.11 and formulate plans for the elimination of discriminatory practices by
17 educational or other means.
- 18 4. Hold hearings upon any complaint issued against a respondent pursuant to section
19 14-02.7-06.
 - 20 a. The hearings may be held by the commission itself, by any commissioner, or
21 by any administrative law judge appointed by the commission, subject to
22 appropriations for administrative law judges made to the office of
23 administrative hearings. If no administrative law judge is made available
24 within the time limitations set forth in subsection 12 of section 14-02.7-06, the
25 governor shall appoint an administrative law judge at the request of the
26 commission, and the administrative law judge must be paid out of moneys
27 appropriated to the division.
 - 28 b. No person may be excused from attending and testifying or from producing
29 records, correspondence, documents, or other evidence in obedience to a
30 subpoena in any matter on the ground that the evidence or the testimony
31 required of that person may tend to incriminate the person or subject the

person to any penalty or forfeiture. However, no testimony or other information compelled under order from the commission, or other information directly or indirectly derived from the testimony or other information, may be used against the witness in any criminal case, except a prosecution and punishment for perjury or false statement committed in so testifying.

5. Issue publications and reports of investigations and research as in the commission's judgment will tend to promote goodwill among the various racial, religious, age, and ethnic groups of the state and which will tend to minimize or eliminate discriminatory or unfair practices as specified by chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11.
6. Prepare and transmit annually a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the commission.
7. Recommend policies to the governor and to submit recommendations to persons, agencies, organizations, and other entities in the private sector to effectuate those policies.
8. Make recommendations to the legislative assembly for legislative action concerning discrimination as it may determine necessary and desirable.
9. Cooperate within the limits of any appropriations made for its operation, with other agencies or organizations whose purposes are consistent with those of chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11, in the planning and conducting of educational programs designed to eliminate racial, religious, cultural, age, and intergroup tensions.
10. Intervene in racial, religious, cultural, age, and intergroup tensions or conflicts for the purpose of informal mediation using alternative dispute resolution techniques. The intervention may be made in cooperation with other agencies or organizations whose purposes are consistent with chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11.

14-02.7-05. Limitations on acts of commission.

1. Notwithstanding any other provision of law, a person may not be required to alter, modify, or purchase any building, structure, or equipment or incur any additional

expense that would not otherwise be incurred to comply with chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11.

2. In exercising the powers and performing the duties and functions under chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11, the commission, the division, and the director shall presume that the conduct of any respondent is not unfair or discriminatory until proven otherwise.
3. Whether by rule or other action or whether as a remedy for violation of any provision of chapter 14-02.8, 14-02.9, 14-02.10, or 14-02.11, or otherwise, the commission may not prescribe or require the implementation of a quota system.

14-02.7-06. Charge - Complaint - Hearing - Procedure - Exhaustion of administrative remedies.

1. Any individual claiming to be aggrieved by a discriminatory or unfair practice as defined by chapter 14-02.8, 14-02.9, 14-02.10, or 14-02.11 may make, sign, and file with the commission a written charge that states the name and address of the respondent alleged to have committed the discriminatory or unfair practice and which sets forth the particulars and contains any other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file the charge. Before any other action by the commission, the respondent must be notified of the charges.
2. After the filing of a charge, the director, with the assistance of the staff, shall make a prompt investigation of the charge. If the charge alleges an unfair employment practice as defined in chapter 14-02.8, 14-02.9, 14-02.10, or 14-02.11, the director may subpoena witnesses and compel the testimony of witnesses and the production of books, papers, and records, if the testimony, books, papers, and records sought are limited to matters directly related to the charge. Any subpoena issued pursuant to this subsection may be issued only if the person to be subpoenaed has refused or failed, after a request from the director, to provide to the director the information sought by the subpoena.
3. The director shall determine as promptly as possible whether probable cause exists for crediting the allegations of the charge and shall follow one of the following courses of action:

- 1 a. If the director determines that probable cause does not exist, the director shall
2 dismiss the charge and shall notify the individual filing the charge and the
3 respondent of the dismissal. In addition, in the notice the director shall advise
4 both parties:
- 5 (1) That the charging party has the right to file an appeal of the dismissal
6 with the commission within ten days of the date of mailing of the
7 notification of the dismissal;
- 8 (2) That if the charging party wishes to file a civil action in a district court in
9 this state, which action is based on the alleged discriminatory or unfair
10 practice that was the subject of the charge filed with the commission,
11 the charging party must do so within ninety days of the date of mailing
12 of the notice specified in this paragraph if the charging party does not
13 file an appeal with the commission pursuant to paragraph 1 or within
14 ninety days of the date of mailing of notice that the commission has
15 dismissed the appeal specified in paragraph 1; and
- 16 (3) That, if the charging party does not file an action within the time limits
17 specified in paragraph 2, the action will be barred and no district court
18 will have jurisdiction to hear the action.
- 19 b. If the director determines that probable cause exists, the respondent must be
20 served with written notice that states with specificity the legal authority and
21 jurisdiction of the commission and the matters of fact and law asserted and
22 the director shall order the charging party and the respondent to participate in
23 compulsory mediation. Immediately after the notice has been given, the
24 director shall attempt to eliminate the discriminatory or unfair practices by
25 conference, conciliation, and persuasion and by means of the compulsory
26 mediation required by this section.
- 27 4. A complaint received by the commission under this chapter is an open record.
28 Information obtained during any investigation conducted under this chapter is
29 exempt from section 44-04-18 before the institution of any judicial proceedings or
30 administrative hearing relating to the complaint under this chapter or before the
31 administrative closure of a complaint by the commission. The commission may

1 disclose to the complainant or the respondent information obtained during an
2 investigation if determined necessary by the commission for securing an
3 appropriate resolution of a complaint. The commission may disclose to federal
4 officials information obtained under this chapter if necessary for the processing of
5 complaints under an agreement with the agency. The commission may not
6 disclose anything said or done as part of the informal negotiation or conciliation
7 efforts relating to a complaint under this chapter except to the federal equal
8 employment opportunity commission as needed for proper processing and closure.

9 5. When the director is satisfied that further efforts to settle the matter by conference,
10 conciliation, and persuasion will be futile, the director shall report that finding to the
11 commission. If the commission determines that the circumstances warrant, the
12 commission shall issue and cause to be served a written notice and complaint
13 requiring the respondent to answer the charges at a formal hearing before the
14 commission, a commissioner, or an administrative law judge. The hearing must be
15 commenced within one hundred twenty days after the service of the written notice
16 and complaint. The notice and complaint must state the time, place, and nature of
17 the hearing, the legal authority and jurisdiction under which it is to be held, and the
18 matters of fact and law asserted.

19 6. In accordance with rules adopted by the commission, discovery procedures may
20 be used by the commission and the parties under the same circumstances and in
21 the same manner as is provided by the North Dakota Rules of Civil Procedure after
22 the notice of hearing under subsection 5 has been given.

23 7. The respondent may file a written answer before the date of the hearing. When a
24 respondent has failed to answer at a hearing, the commission, a commissioner, or
25 the administrative law judge, as the case may be, may enter the respondent's
26 default. For good cause shown, the entry of default may be set aside within ten
27 days after the date of the entry. If the respondent is in default, testimony may be
28 heard on behalf of the complainant. After hearing the testimony, the commission, a
29 commissioner, or the administrative law judge, as the case may be, may enter the
30 order as the evidence warrants.

8. The commission or the complainant may reasonably and fairly amend any complaint and the respondent may amend the respondent's answer.

9. The decision reached as a result of the hearing must include a statement of the reasons why the findings of fact lead to the conclusions. The case in support of the complaint must be presented at the hearing by one of the commissioner's attorneys or agents, but no one presenting the case in support of the complaint may counsel or advise the commission, a commissioner, or the administrative law judge who hears the case. The director and the staff may not participate in the hearing except as a witness, nor may the director and the staff participate in the deliberations of, or counsel or advise, the commission, a commissioner, or the administrative law judge in the case. At the hearing, the person presenting the case in support of the complaint has the burden of showing that the respondent has engaged or is engaging in an unfair or discriminatory practice, and the respondent's conduct must be presumed not to be unfair or discriminatory until proven otherwise.

10. If, upon all the evidence at a hearing, there is a statement of findings and conclusions together with a statement of reasons for the conclusions showing that a respondent has engaged in or is engaging in any discriminatory or unfair practice, the commission shall issue and cause to be served upon the respondent an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take any action as it may order in accordance with chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11.

11. If, upon all of the evidence at a hearing, there is a statement of findings and conclusions, together with a statement of reasons for the conclusions, showing that a respondent has not engaged in any discriminatory or unfair practice, the commission shall issue and cause to be served an order dismissing the complaint on the individual alleging the discriminatory or unfair practice.

12. If written notice that a formal hearing will be held is not served within two hundred seventy days after the filing of the charge, if the complainant has requested and received a notice of right to sue pursuant to subsection 16 of this section, or if the hearing is not commenced within the one hundred twenty-day period prescribed by

subsection 5 of this section, the jurisdiction of the commission over the complaint ceases, and the complainant may seek the relief authorized under this chapter and chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11 against the respondent by filing a civil action in the district court for the district in which the alleged discriminatory or unfair practice occurred. The action must be filed within ninety days of the date upon which the jurisdiction of the commission ceased, and if not so filed, the action barred and the district court has no jurisdiction to hear the action. If any party requests the extension of any time period prescribed by this subsection, the extension may be granted for good cause by the commission, a commissioner, or the administrative law judge, as the case may be, but the total period of all extensions to either the respondent or the complainant may not exceed ninety days each, and, in the case of multiple parties, the total period of all extensions may not exceed one hundred eighty days.

13. The division shall maintain a central file of decisions rendered under chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11, and the file is open to the public for inspection during regular business hours.
14. Any member of the commission and any person participating in good faith in the making of a complaint or a report or in any investigative or administrative proceeding authorized by chapter 14-02.8, 14-02.9, 14-02.10, or 14-02.11 is immune from liability in any civil action brought against the persons for acts occurring while acting in the person's capacity as a commission member or participant, respectively, if the person was acting in good faith within the scope of his respective capacity, made a reasonable effort to obtain the facts of the matter as to which the individual acted, and acted in the reasonable belief that the action taken by the person was warranted by the facts.
15. No individual may file a civil action in a district court in this state based on an alleged discriminatory or unfair practice prohibited in chapters 14-02.8, 14-02.9, 14-02.10, and 14-02.11 without first exhausting the proceedings and remedies available to that individual under this chapter unless the individual shows, in an action filed in the appropriate district court, by clear and convincing evidence the

individual's ill health is of such a nature that pursuing administrative remedies would not provide timely and reasonable relief and would cause irreparable harm.

16. The charging party in any action may request a written notice of right to sue at any time before service of a notice and complaint pursuant to subsection 5. Any request for notice of right to sue must be in writing. A claimant's request for notice of right to sue made after the expiration of one hundred eighty days following the filing of the charge must be granted promptly. If a claimant makes a request for a notice of right to sue before the expiration of one hundred eighty days following the filing of the charge, the request must be granted upon a determination by the commission, a commissioner, or the administrative law judge that the investigation of the charge will not be completed within one hundred eighty days following the filing of the charge. A notice of right to sue constitutes final agency action and exhaustion of administrative remedies and proceedings pursuant to this chapter.

14-02.7-07. Judicial review and enforcement.

1. Any complainant or respondent claiming to be aggrieved by a final order of the commission, including a refusal to issue an order, may obtain judicial review of the order, and the commission may obtain an order of court for enforcement in a proceeding as provided in this section.
2. The proceeding must be brought in the district court.
3. The proceeding must be initiated by the filing of a petition in the court and the service of a copy of the petition upon the commission and upon parties who appeared before the commission, and thereafter the proceeding must be processed under the North Dakota Rule of Civil Procedure. The district court has jurisdiction of the proceeding and the questions determined therein and has power to grant the temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in the transcript an order enforcing, modifying, and enforcing as so modified or settings aside the order of the commission in whole or in part.
4. An objection that has not been urged before the commission may not be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances.

- 1 5. Any party may move the court to remit the case to the commission in the interests
- 2 of justice for the purpose of adducing additional specified and material evidence
- 3 and seeking findings thereof if the party shows reasonable grounds for the failure
- 4 to adduce the evidence before the commission.
- 5 6. The findings of the commission as to the facts must be conclusive if supported by
- 6 substantial evidence.
- 7 7. The jurisdiction of the court is exclusive and the court's judgment and order are
- 8 final, subject to review as provided by law and the North Dakota Rules of Civil
- 9 Procedure.
- 10 8. The commission's copy of the testimony must be available to all parties for
- 11 examination at all reasonable times, without cost, and for the purpose of judicial
- 12 review of the commission's orders.
- 13 9. The commission may appear in court by its own attorney.
- 14 10. Upon application by a person alleging a discriminatory housing practice under
- 15 chapter 14-02.9 or a person against whom the practice is alleged, the court may
- 16 appoint an attorney for the person or may authorize the commencement or
- 17 continuation of a civil action without the payment of fees, costs, or security, if in the
- 18 opinion of the court, the person is financially unable to bear the costs of the action.
- 19 11. The commission or court upon motion may grant a stay of the commission order
- 20 pending appeal.
- 21 12. Appeals filed under this section must be heard expeditiously and determined upon
- 22 the transcript filed, without requirement for printing. Hearings in the district court
- 23 under this chapter take precedence over all other matters, except matters of the
- 24 same character.
- 25 13. If no proceeding to obtain judicial review is instituted by a complainant or
- 26 respondent within forty-five days from the service of an order of the commission
- 27 pursuant to section 14-02.7-06, the commission may obtain a decree of the district
- 28 court for the enforcement of the order upon showing that such respondent is
- 29 subject to the jurisdiction of the commission and resides or transacts business
- 30 within the county in which the petition for enforcement is brought.

1 **SECTION 2.** Chapter 14-02.8 of the North Dakota Century Code is created and
2 enacted as follows:

3 **14-02.8-01. Definitions.** As used in this chapter, unless the context otherwise
4 requires:

- 5 1. "Apprenticeship" means any program for the training of apprentices.
- 6 2. "Employee" means any individual employed by an employer, except an individual
7 in the domestic service of any person.
- 8 3. "Employer" means the state of North Dakota or any political subdivision,
9 commission, department, institution, or school district thereof, and every other
10 person employing persons within the state. The term does not include religious
11 organizations or associations, except those organizations or associations
12 supported in whole or in part by money raised by taxation or public borrowing.
- 13 4. "Employment agency" means any person undertaking to procure employees or
14 opportunities to work for any other person or holding itself out to be equipped to do
15 so.
- 16 5. "Joint apprenticeship committee" means any association of representatives of a
17 labor organization and an employer providing, coordinating, or controlling an
18 apprentice training program.
- 19 6. "Labor organization" means any organization that exists for the purpose in whole or
20 in part of collective bargaining, or of dealing with employers concerning grievances,
21 terms, or conditions of employment, or of other mutual aid or protection in
22 connection with employment.
- 23 7. "On-the-job training" means any program designed to instruct an individual who,
24 while learning the particular job for which the individual is receiving instruction, is
25 also employed at that job or who may be employed by the employer conducting the
26 program during the course of the program or when the program is completed.
- 27 8. "Unfair employment practice" means those practices specified as discriminatory or
28 unfair in section 14-02.8-02.
- 29 9. "Vocational school" means any school or institution conducting a course of
30 instruction, training, or retraining to prepare individuals to follow an occupation or

trade or to pursue a manual, mechanical, technical, industrial, business,
commercial, office, personal service, or other nonprofessional occupation.

14-02.8-02. Discriminatory or unfair employment practices.

1. It is a discriminatory or unfair employment practice:

- a. For an employer to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation against any individual otherwise qualified because of race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this subdivision if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job. For purpose of this subdivision, "harass" means to create a hostile work environment based upon an individual's race, national origin, sex, disability, age, or religion. Notwithstanding the provisions of this subdivision, harassment is not an illegal act unless a complaint is filed with the appropriate authority at the complainant's workplace and the authority fails to initiate a reasonable investigation of a complaint and take prompt remedial action if appropriate.
- b. For an employment agency to refuse to list and properly classify for employment or to refer an individual for employment in a known available job for which the individual is otherwise qualified because of race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance or for an employment agency to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance. However, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employment agency to refuse to list and

properly classify for employment or to refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the applicant from the job, and the disability has a significant impact on the job.

c. For a labor organization to exclude any individual otherwise qualified from full membership rights in the labor organization, or to expel the individual from membership in the labor organization, or to otherwise discriminate against any of its members in the full enjoyment of work opportunity because of race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance.

d. For any employer, employment agency, or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or membership, or to make any inquiry in connection with prospective employment or membership which expresses, either directly or indirectly, any limitation, specification, or discrimination as to race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance or intent to make any limitation, specification, or discrimination, unless based upon a bona fide occupational qualification or required by and given to an agency of government for security reasons.

e. For any person, whether or not an employer, employment agency, a labor organization, or the employees or members thereof:

- (1) To aid, abet, incite, compel, or coerce the doing of any act defined in this section to be a discriminatory or unfair employment practice;
- (2) To obstruct or prevent any person from complying with this chapter or any order issued with respect to this chapter;
- (3) To attempt, either directly or indirectly, to commit any act defined in this section to be a discriminatory or unfair employment practice; or
- (4) To discriminate against any individual because the individual has opposed any practice made a discriminatory or an unfair employment

practice by this chapter, because the individual has filed a charge with the commission, or because the individual has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to chapters 14-02.7 and 14-02.8.

f. For any employer, labor organization, joint apprenticeship committee, or vocational school providing, coordinating, or controlling apprenticeship programs or providing, coordinating, or controlling on-the-job training programs or other instruction, training or retraining programs:

- (1) To deny to or withhold from any qualified individual because of race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance the right to be admitted to or participate in an apprenticeship training program, an on-the-job training program, or any other occupational instruction, training, or retraining program. However, with regard to a disability, it is not a discriminatory or unfair employment practice to deny or withhold the right to be admitted to or participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the applicant from the program, and the disability has a significant impact on participation in the program.
- (2) To discriminate against any qualified individual in pursuit of the programs or to discriminate against the individual in the terms, conditions, or privileges of the programs because of race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance.
- (3) To print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for the programs, or to make any inquiry in connection with the programs which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public

- 1 assistance or any intent to make any limitation, specification, or
2 discrimination, unless based on a bona fide occupational qualification.
- 3 (4) For any private employer to refuse to hire, or to discriminate against,
4 any individual whether directly or indirectly, who is otherwise qualified
5 for employment solely because the individual did not apply for
6 employment through a private employment agency. However, an
7 employer does not violate this section if the employer retains one or
8 more employment agencies as exclusive suppliers of personnel, and no
9 employment fees are charged to an employee who is hired as a result
10 of having to utilize the services of the employment agency.
- 11 (5) For any employer to discharge an employee or to refuse to hire an
12 individual solely on the basis that the employee or individual is married
13 to or plans to marry another employee of the employer, but this
14 paragraph does not apply to employers with twenty-five or fewer
15 employees.
- 16 (6) It is not unfair or discriminatory for an employer to discharge an
17 employee or to refuse to hire an individual for the reasons stated in
18 paragraph 5 under circumstances in which one spouse directly or
19 indirectly would exercise supervisory, appointment, or dismissal
20 authority or disciplinary action over the other spouse; one spouse would
21 audit, verify, receive, or be entrusted with moneys received or handled
22 by the other spouse; or one spouse has access to the employer's
23 confidential information, including payroll and personnel records.
- 24 2. This section does not prohibit any employer from making individualized
25 agreements with respect to compensation or the terms, conditions, or privileges of
26 employment for persons suffering a disability if the individualized agreement is part
27 of a therapeutic or job training program of no more than twenty hours per week and
28 lasting no more than eighteen months.
- 29 3. Notwithstanding any other provision of this section to the contrary, it is not a
30 discriminatory or an unfair employment practice with respect to age:

- 1 a. To take action otherwise prohibited by this section if age is a bona fide
2 occupational qualification reasonably necessary to the normal operation of the
3 particular employer or where the differentiation is based on reasonable factors
4 other than age; or
- 5 b. To observe the terms of a bona fide seniority system or any bona fide
6 employee benefit plan, such as a retirement, pension, or insurance plan,
7 which is not a subterfuge to evade the purposes of this section; except that,
8 unless authorized in subdivision a of this subsection, an employee benefit
9 plan may not require or permit the involuntary retirement of any individual
10 because of the age of the individual; or
- 11 c. To compel the retirement of any employee who is sixty-five years of age or
12 older and under seventy years of age and who, for the two-year period
13 immediately before retirement, is employed in a bona fide executive or a high
14 policymaking position if the employee is entitled to an immediate
15 nonforfeitable annual retirement benefit from a pension, profit-sharing,
16 savings, or deferred compensation plan, or any combination of the plans, of
17 the employer of such employee and if the plan equals, in the aggregate, at
18 least forty-four thousand dollars; or
- 19 d. To discharge or otherwise discipline an individual for reasons other than age.

20 **14-02.8-03. Unlawful prohibition of legal activities as a condition of employment.**

- 21 1. It is discriminatory or unfair employment practice for an employer to terminate the
22 employment of any employee due to that employee's engaging in any lawful
23 activity off the premises of the employer during nonworking hours unless the
24 restriction:
 - 25 a. Relates to a bona fide occupational requirement or is reasonably and
26 rationally related to the employment activities and responsibilities of a
27 particular employee or a particular group of employees, rather than to all
28 employees of the employer; or
 - 29 b. Is necessary to avoid a conflict of interest with any responsibilities to the
30 employer or the appearance of such a conflict of interest.
- 31 2. Notwithstanding any other provision of this chapter:

- a. The sole remedy for any individual claiming to be aggrieved by a discriminatory or unfair employment practice as defined in this section is to bring a civil suit for damages in any district court of competent jurisdiction and sue for all wages and benefits which would have been due the individual up to and including the date of the judgment had the discriminatory or unfair employment practice not occurred. This section does not relieve that individual from the obligation to mitigate the individual's damages.
- b. The court shall award the prevailing party in the action court costs and reasonable attorney fees.

14-02.8-04. Time limits of filing of charges. Any charge alleging a violation of this chapter must be filed with the commission pursuant to section 14-02.7-06 within six months after the alleged discriminatory or unfair employment practice occurred, and if not so filed, the action is barred.

14-02.8-05. Charges by employers and others. Any employer, labor organization, joint apprenticeship committee, or vocational school whose employees or members, or some of them, refuse or threaten to refuse to comply with this chapter may file with the commission a written charge in duplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

14-02.8-06. Relief authorized. In addition to the relief authorized by subsection 10 of section 14-02.7-06, the commission may order a respondent who has been found to have engaged in an unfair or discriminatory employment practice to take affirmative action regarding back pay; hiring, reinstatement, or upgrading of employees, with or without back pay; the referring of applicants for employment by any respondent employment agency; the restoration to membership by any respondent labor organization; the admission to or continuation in enrollment in an apprenticeship program, on-the-job training program, or a vocational school; the posting of notices; and the making of reports as to the manner of compliance. The commission may order the remedies singly or in any combination.

SECTION 3. Chapter 14-02.9 of the North Dakota Century Code is created and enacted as follows:

14-02.9-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Aggrieved individual" means any individual who claims to have been injured by a discriminatory housing practice or believes that the individual will be injured by a discriminatory housing practice that is about to occur.
2. "Discriminate" includes both segregate and separate.
3. "Familial status" means one or more individuals, who have not attained eighteen years of age, being domiciled with a parent or another person having legal custody of or parental responsibilities for the individual or individuals or the designee of the parent or other persons having custody or parental responsibilities with the written permission of the parent or other person. Familial status applies to any individual who is pregnant or is in the process of securing legal custody of parental responsibilities of any individual who has not attained eighteen years of age.
4. "Housing" means any building, structure, vacant land, or part thereof offered for sale, lease, rent, or transfer of ownership. The term does not include any room offered for rent or lease in a single-family dwelling maintained and occupied in part by the owner or lessee of the dwelling as the owner or lessee's household.
5. "Person" does not include any private club not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purposes unless the club has the purpose of promoting discrimination in the matter of housing against any person because of race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance.
6. "Restrictive covenant" means any specification limiting the transfer, rental, or lease of any housing because of race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance.
7. "Transfer" as used in this chapter, does not apply to transfer of property by will or gift.
8. "Unfair housing practice" means a practice specified in section 14-02.9-02.

14-02.9-02. Unfair housing practices prohibited.

1. It is an unfair housing practice and prohibited:
 - a. For any person to refuse to show, sell, transfer, rent, or lease, or to refuse to receive and transmit any bona fide offer to buy, sell, rent, or lease, or

1 otherwise make unavailable or deny or withhold from any individual that
2 housing because of race, color, religion, sex, national origin, age, familial
3 status, physical or mental disability, or status with regard to marriage or public
4 assistance; to discriminate against any individual because of race, color,
5 religion, sex, national origin, age, familial status, physical or mental disability,
6 or status with regard to marriage or public assistance in the terms, conditions,
7 or privileges pertaining to any housing or the transfer, sale, rental, or lease of
8 the housing or in the furnishing of facilities or services in connection therewith;
9 or to cause to be made any written or oral inquiry or record concerning the
10 race, color, religion, sex, national origin, age, familial status, physical or
11 mental disability, or status with regard to marriage or public assistance of an
12 individual seeking to purchase, rent, or lease any housing. This subdivision
13 does not require a dwelling to be made available to an individual whose
14 tenancy would constitute a direct threat to the health or safety of other
15 individuals or whose tenancy would result in substantial physical damage to
16 the property of others;

- 17 b. For any person to whom application is made for financial assistance for the
18 acquisition, construction, rehabilitation, repair, or maintenance of any housing
19 to make or cause to be made any written or oral inquiry concerning the race,
20 color, religion, sex, national origin, age, familial status, physical or mental
21 disability, or status with regard to marriage or public assistance of an
22 individual seeking financial assistance or concerning the race, color, religion,
23 sex, national origin, age, familial status, physical or mental disability, or status
24 with regard to marriage or public assistance of prospective occupants to
25 tenants of the housing, or to discriminate against any individual because of
26 the race, color, religion, sex, national origin, age, familial status, physical or
27 mental disability, or status with regard to marriage or public assistance of the
28 individual or prospective occupants or tenants in the terms, conditions, or
29 privileges relating to the obtaining or use of any financial assistance;

- 30 c. (1) For any person to include in any transfer, sale, rental, or lease of
31 housing any restrictive covenants but may not include any person who,

- 1 in good faith and in the usual course of business, delivers any
2 document or copy of a document regarding the transfer, sale, rental, or
3 lease of housing which includes any restrictive covenants which are
4 based upon race or religion or reference thereto; or
5 (2) For any person to honor or exercise or attempt to honor or exercise any
6 restrictive covenant pertaining to housing;
7 d. For any person to make, print, or publish or cause to be made, printed, or
8 published any notice or advertisement relating to the sale, transfer, rental, or
9 lease of any housing which indicates any preference, limitation, specification,
10 or discrimination based on race, color, sex, national origin, age, familial
11 status, physical or mental disability, or status with regard to marriage or public
12 assistance;
13 e. For any person to aid, abet, incite, compel, or coerce the doing of any act
14 defined in this section as an unfair housing practice; to obstruct or prevent any
15 person from complying with this chapter or any order issued with respect to
16 this chapter; to attempt either directly or indirectly to commit any act defined in
17 this section to be an unfair housing practice; to discriminate against any
18 individual because the individual has opposed any practice made an unfair
19 housing practice by this chapter, because the individual has filed a charge
20 with the commission, or because the individual has testified, assisted, or
21 participate in any manner in an investigation, proceeding, or hearing
22 conducted pursuant to chapter 14-02.7, 14-02.8, 14-02.9, or 14-02.10; or to
23 coerce, intimidate, threaten, or interfere with any individual in the exercise or
24 enjoyment of, or on account of the person having exercised or enjoyed, or on
25 account of the individual having aided or encouraged, any other individual in
26 the exercise of any right granted or protected by chapters 14-02.7, 14-02.8,
27 14-02.9, and 14-02.10;
28 f. For any person to discharge, demote, or discriminate in matters of
29 compensation against any employee or agent because of the employee's or
30 agent's obedience to this chapter;

- 1 g. For any person whose business includes residential real estate-related
2 transactions, which transactions involve the making or purchasing of loans
3 secured by residential real estate or the revisions of other financial
4 assistance for purchasing, construction, improving, repairing, or maintaining a
5 dwelling or the selling, brokering, or appraising of residential real property, to
6 discriminate against any individual in making available the transaction or in
7 fixing the terms or conditions of the transaction because of race, color,
8 religion, sex, national origin, age, familial status, physical or mental disability,
9 or status with regard to marriage or public assistance;
- 10 h. For any person to deny an individual access to or membership or participation
11 in any multiple-listing service, real estate broker's organization or other
12 service, organization, or facility related to the business of selling or renting
13 dwellings or to discriminate against the individual in the terms or conditions of
14 the access, membership, or participation on account of race, color, religion,
15 sex, national origin, age, familial status, physical or mental disability, or status
16 with regard to marriage or public assistance;
- 17 i. For any person, for profit, to induce or attempt to induce any person to sell or
18 rent any dwelling by representations regarding the entry or prospective entry
19 into the neighborhood of an individual of a particular race, color, religion, sex,
20 national origin, age, familial status, physical or mental disability, or status with
21 regard to marriage or public assistance; or
- 22 j. For any person to represent to any other person that any dwelling is not
23 available for inspection, sale, or rental, when the dwelling is in fact available,
24 for the purpose of discriminating against an individual on the basis of race,
25 color, religion, sex, national origin, age, familial status, physical or mental
26 disability, or status with regard to marriage or public assistance.
- 27 2. This section does not apply to or prohibit compliance with local zoning ordinance
28 provisions concerning residential restrictions on marital status.
- 29 3. This chapter does not bar any religious or denominational institution or
30 organization that is operated or supervised or controlled by or is operated in
31 connection with a religious or denominational organization from limiting the sale,

rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to those individuals, unless membership in the religion is restricted on account of race, color, or national origin, nor does anything in this chapter prohibit a private club not in fact open to the public which, as an incident to its primary purpose or purposes provides lodgings that it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

4. This section does not prevent or restrict the sale, lease, rental, transfer, or development of housing designed or intended for the use of individuals with disabilities.
5. This chapter does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, national origin, age, familial status, physical or mental disability, or status with regard to marriage or public assistance.
6.
 - a. This section does not limit the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling, nor does this section regarding familial status apply with respect to housing for older individuals.
 - b. As used in this subsection, "housing for older individuals" means housing provided under any state or federal program that the division determines is specifically designed and operated to assist older individuals, or 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 per unit. In determining whether housing intended and operated for occupancy by one individual fifty-five years of age or older per unit qualifies as housing for older individuals under this subsection, the division shall require:
 - (1) That the housing facility or community publish and adhere to policies and procedures that demonstrate the intent required under this subdivision;

- 1 (2) That at least eighty percent of the occupied units be occupied by at
- 2 least one individual who is fifty-five years of age or older; and
- 3 (3) That the housing facility or community comply with rules adopted by the
- 4 commission for verification of occupancy. The rules must:
- 5 (a) Provide for verification by reliable surveys and affidavits; and
- 6 (b) Include examples of the types of policies and procedures relevant
- 7 to a determination of the compliance with the requirements of
- 8 paragraph 2 of this subdivision. The survey and affidavits are
- 9 admissible in administrative and judicial proceedings for the
- 10 purposes of verification of occupancy in accordance with this
- 11 section.
- 12 c. Housing may not be considered to be in violation of the requirements for
- 13 housing for older individuals under this section by reason of:
- 14 (1) Individuals residing in the housing as of October 1, 2002, who do not
- 15 meet the age requirements of this section, provided that new occupants
- 16 of the housing meet the age requirements; or
- 17 (2) Unoccupied units, provided that the units are reserved for occupancy by
- 18 individuals who meet the age requirements of this section.
- 19 d. A person may not be held personally liable for monetary damages for a
- 20 violation of this chapter if the person reasonably relied, in good faith, on the
- 21 application of the exemption available under this chapter relating to housing
- 22 for older individuals. For purposes of this subdivision, a person may only
- 23 show good faith reliance on the application of an exemption by showing that
- 24 the person has no actual knowledge that the facility or community is not or will
- 25 not be eligible for the exemption claimed; and the owner, operator, or other
- 26 official representative of the facility or community has stated, formally, in
- 27 writing, that the facility or community complies with the requirements of the
- 28 exemption claimed.
- 29 7. With respect to "familial status", this chapter does not apply to:
- 30 a. Any single-family house sold or rented by an owner if the private individual
- 31 owner does not own more than three such single-family houses at any one

time. In the case of the sale of the single-family house by a private individual owner not residing in the house at the time of the sale or who was not the most recent resident of the house before the sale, the exemption granted by this subsection applies only with respect to one sale within any twenty-four-month period. The bona fide private individual owner may not own any interest in, nor may there be owned or reserved on the owner's behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three single-family houses at any one time. The sale or rental of the single-family house is excepted from the application of this subsection only if the house is sold or rented:

- (1) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of the facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of the broker, agent, salesman, or person; and
- (2) Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this section; however, this section does not prohibit the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as necessary to perfect or transfer the title.

b. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner actually maintains and occupies one of the living quarters as the owner's residence.

c. For the purposes of this subsection, a person is deemed to be in the business of selling or renting dwellings if:

- (1) The person, 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 therein;

(2) The person, within the preceding twelve months, has participated as agent, other than in the sale of his own personal residence in the 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 therein; or

(3) The person is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

8. This chapter does not prevent a person from refusing to rent a dwelling to two unrelated individuals of opposite gender who are not married to each other.

14-02.9-03. Unfair or discriminatory housing practices against individuals with disabilities prohibited.

1. It is an unfair or discriminatory housing practice and prohibited:

- a. For any person to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter, or of any individual who will reside in the dwelling after it is sold, rented, or made available, or of any person associated with the buyer or renter;
- b. For any person to discriminate against another 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 any person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or of any person associated with that person.

2. For purposes of 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. However, 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;

- 1 b. A refusal to make a reasonable accommodation in rules, policies, practices, or
- 2 services if the accommodation may be necessary to afford the individual
- 3 equal opportunity to use and enjoy a dwelling; or
- 4 c. The failure to design and construct a covered multifamily dwelling in a manner
- 5 that allows the public use and common use portions of the dwellings to be
- 6 readily accessible to and usable by individuals having a disability; that allows
- 7 all doors designed to allow passage into and within all premises within the
- 8 dwellings to be sufficiently wide to allow passage by an individual who has
- 9 disability and who is in a wheelchair; and that provides all premises within the
- 10 dwellings contain the following features of adaptive design:
- 11 (1) An accessible route into and throughout the dwelling;
- 12 (2) Light switches, electrical outlets, thermostats, and other environmental
- 13 controls in accessible locations;
- 14 (3) Reinforcements in bathroom walls to allow later installation of grab
- 15 bars; and
- 16 (4) Kitchens and bathrooms that are usable and have sufficient space in
- 17 which an individual in a wheelchair can maneuver.
- 18 3. Compliance with the appropriate requirements of the American national standard
- 19 for buildings and facilities providing accessibility and usability for individuals having
- 20 physical disabilities, commonly cited as "ANSI A 117.1 (1986)", satisfies the
- 21 requirements of adaptive design in subdivision c of subsection 2.
- 22 4. The adaptive design requirements of subdivision c of subsection 2 do not apply to
- 23 a building the first occupancy of which occurred before March 14, 1992.
- 24 5. This section does not require a dwelling to be made available to an individual
- 25 whose tenancy would constitute a direct threat to the health or safety of other
- 26 individuals whose tenancy would result in substantial physical damage to the
- 27 property of others.
- 28 6. Covered multifamily dwellings are buildings consisting of four or more units if the
- 29 buildings have one or more elevators and ground floor units in other buildings
- 30 consisting of four or more units.

1 **14-02.9-04. Refusal to show housing.** If the charge alleging an unfair housing
2 practice relates to the refusal to show the housing involved, the commission, after proper
3 investigations as set forth in section 14-02.7-06, may issue its order that the housing involved
4 be shown to the individual filing the charge, and, if the respondent refuses without good reason
5 to comply with the order within three days, the commission or any commissioner may file a
6 petition pursuant to section 14-02.9-13. The court shall hear these matters at the earliest
7 possible time and the court may waive the requirement of security for a petition filed under this
8 section. If the court finds that the denial to show is based upon an unfair housing practice, the
9 court shall order the respondent to immediately show the housing involved and also to make full
10 disclosure concerning the sale, lease, or rental prices and any other information being then
11 given to the public.

12 **14-02.9-05. Time limits on filing of charges.**

- 13 1. Any charges alleging a violation of this chapter may be filed with the commission
14 pursuant to section 14-02.7-06 within one year after the alleged unfair housing
15 practice occurred, or the action is barred.
- 16 2. A civil action filed by the attorney general under this section must be commenced
17 not later than eighteen months after the date of the occurrence or the termination
18 of the alleged discriminatory housing practice.
- 19 3. The director, not later than ten days after filing or identifying additional
20 respondents, shall serve on the respondent a notice identifying the alleged
21 discriminatory housing practice and advising the respondent of the procedural
22 rights and obligations of respondents under this chapter, together with a copy of
23 the original charge.
- 24 4. The director shall commence an investigation of any charge filed pursuant to
25 subsection 1 of this section within thirty days of the filing. Within one hundred days
26 after the filing of the charge, the director shall determine, based on the facts,
27 whether probable cause exists to believe that a discriminatory housing practice has
28 occurred or is about to occur, unless it is impracticable to do so or the director has
29 approved a conciliation agreement with respect to the charge. If the director has
30 approved a conciliation agreement with respect to the charge. If the director is

1 unable to complete the investigation within one hundred days after the filing of the
2 charge, the director shall notify the parties of the reasons for not doing so.

3 5. After a determination by the director that probable cause exists to believe that a
4 discriminatory housing practice has occurred or is about to occur, the commission
5 shall issue a notice and complaint as provided in subsection 5 of section
6 14-02.7-06. After the notice and complaint is issued by the commission, the
7 complainant, respondent, or any aggrieved individual on whose behalf the charge
8 has filed may elect to have the claims asserted in the charge decided in a civil
9 action in lieu of an administrative hearing. The election must be made in writing
10 within twenty days after receipt of the notice and complaint issued by the
11 commission. The commission shall provide notice of the election to all other
12 parties to whom the notice and complaint relates.

13 6. If all parties agree to have the charges decided in an administrative hearing, the
14 commission shall hold a hearing as provided in section 14-02.7-06. If any party
15 elects a civil action, the commission shall authorize the attorney general to
16 commence and maintain a civil action in the appropriate district court to obtain
17 relief with respect to the discriminatory housing practice or practices alleged in the
18 notice and complaint.

19 7. Final administrative disposition of a charge filed pursuant to this section must be
20 made within one year of the date the charge was filed, unless it is impractical to do
21 so. If the commission is unable to do so, the commission shall notify the
22 complainant and the respondent in writing, of the reason that such disposition is
23 impractical.

24 **14-02.9-06. Charges by other persons.** Any person whose employees, agents,
25 employers, or principals, or some of them, refuse or threaten to refuse to comply with this
26 chapter may make, sign, and file with the commission a written charge asking the commission
27 for assistance to obtain their compliance by conciliation or other remedial action.

28 **14-02.9-07. Enforcement by the attorney general.**

29 1. Upon timely application, the attorney general may intervene in any civil action filed
30 as provided in section 14-02.9.08 if the attorney general certifies that the case is of
31 the general public importance. Upon the intervention, the attorney general may

1 obtain that relief as would be available to the director under section 14-02.7-06 in a
2 civil action to which that section applies.

- 3 2. Whenever the attorney general has probable cause to believe that any person or
4 group of persons is engaged in a pattern or practice of resistance to the full
5 enjoyment of any of the rights granted by this title or that any group of individuals
6 has been denied any of the rights granted by this title and the denial raises an
7 issue of general public importance, the attorney general may commence a civil
8 action in any appropriate district court.
- 9 3. The attorney general may commence a civil action in any appropriate district court
10 for appropriate relief with respect to:
- 11 a. A discriminatory housing practice referred to the attorney general by the
12 commission under section 14-02.7-06; or
- 13 b. Breach of a conciliation agreement referred to the attorney general by the
14 director under section 14-02.9-10.
- 15 4. The attorney general, on behalf of the commission, division, or other party at
16 whose request a subpoena is issued under this section, may enforce the subpoena
17 in appropriate proceedings in the district court for the district in which the person to
18 whom the subpoena was addressed resides, was served, or transacts business.

19 **14-02.9-08. Enforcement by private individuals.**

- 20 1. Notwithstanding any provision of this article to the contrary, an aggrieved individual
21 may commence a civil action in an appropriate United States district court or state
22 district court not later than two years after the occurrence or the termination of an
23 alleged discriminatory housing practice or the breach of a conciliation agreement
24 entered into under this title, whichever occurs last, to obtain appropriate relief with
25 respect to the discriminatory housing practice or breach.
- 26 2. The computation of the two-year period does not include any time during which an
27 administrative proceeding under this title was pending with respect to a complaint
28 or charge under this title based upon the discriminatory housing practice. This
29 subsection does not apply to actions arising from a breach of a conciliation
30 agreement.

3. Notwithstanding any provision of this article to the contrary, an aggrieved individual may commence a civil action under this section whether or not a charge has been filed under section 14-02.7-06 and without regard to the status of the charge, but if the director or local agency has obtained a conciliation agreement with the consent of an aggrieved individual, no action may be filed under this section by the aggrieved individual with respect to the alleged discriminatory housing practice which forms the basis for such charge except for the purpose of enforcing the terms of such an agreement.
4. An aggrieved individual may not commence a civil action under this section with respect to an alleged discriminatory housing practice which forms the basis of a complaint issued by the commission if an administrative law judge has commenced a hearing on the record under this title with respect to such complaint.
5. At the request of the aggrieved individual, the court may appoint an attorney in accordance with subsection 10 of section 14-02.7-07.
6. In addition to the relief which may be granted in accordance with section 14-02.9-12, the following relief is available:
 - a. 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 or may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering the affirmative action as may be appropriate.
 - b. The court, in its discretion, may allow the prevailing party reasonable attorney fees and costs.
 - c. Relief granted under this section does not affect any contract, sale, encumbrance, or lease consummated before the granting of the relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a charge with the commission or a civil action under this section.

14-02.9-09. Probable cause. In making a determination of probable cause under subsection 2 of section 14-02.7-06, the director shall find that probable cause exists if upon all

the facts and circumstances an individual of reasonable prudence and caution would be warranted in a belief that an unfair housing practice has been committed.

14-02.9-10. Conciliation agreements.

1. A conciliation agreement arising out of a conciliation must be an agreement between the respondent and the charging party and is subject to approval by the director.

2. A conciliation agreement may provide for binding arbitration of the dispute arising from the charge. Any arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

3. Each conciliation agreement must be made public unless the charging party and respondent otherwise agree and the director determines that disclosure is not required to further the purposes of this section.

4. Whenever the director has reasonable cause to believe that a respondent has breached a conciliation agreement, the director shall refer the matter to the attorney general with a recommendation that a civil action be filed under section 14-02.9-07 for the enforcement of the agreement.

14-02.9-11. Injunctive relief.

1. After the filing of a charge pursuant to subsection 1 of section 14-02.7-06, the commission or a commissioner designated by the commission for that purpose may file in the name of the state through the attorney general of the state a petition in the district court of the county in which the alleged unfair housing practice occurred, or of any county in which a respondent resides, seeking appropriate injunctive relief against the respondent, including orders or decrees restraining and enjoining the respondent from selling, renting, or otherwise making unavailable to the complainant any housing with respect to which the complaint is made, pending the final determination of proceedings before the commission under this chapter.

2. Any injunctive relief granted pursuant to this section expires by its terms within the time after entry, not to exceed sixty days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. And affidavit of notice of hearing must be filed in the office of the

clerk of the district court where the petition is filed. The procedure for seeking and granting the injunctive relief, including temporary restraining orders and preliminary injunctions, is the procedure provided in the Rules of Civil Procedure for courts of record in the state pertaining to injunctions, and the district court has power to grant such temporary relief or restraining orders as it deems just and proper.

3. The district court shall hear matters on the request for an injunction at the earliest possible time.

4. If, upon all the evidence at a hearing, the commission finds that a respondent has not engaged in any unfair housing practice, the district court that has granted temporary relief or restraining orders pursuant to the petition filed by the commission or commissioner shall dismiss the temporary relief or restraining orders. Any individual filing a charge alleging an unfair housing practice with the commission, a commissioner, or the attorney general may not thereafter apply directly to the district court for any further relief under this chapter, except as provided in section 14-02.7-07.

14-02.9-12. Relief authorized.

1. In addition to the relief authorized by subsection 10 of section 14-02.7-06, the commission may order a respondent who has been found to have engaged in an unfair housing practice:
 - a. To rehire, reinstate, and provide back pay to any employee or agent discriminated against because of the respondent's obedience to this chapter;
 - b. To take affirmative action regarding the granting of financial assistance as provided in subdivision b of subsection 1 of section 14-02.9-02 or the showing, sale, transfer, rental, or lease of housing;
 - c. To make reports as to the manner of compliance with the order of the commission;
 - d. To reimburse any individual who was discriminated against for any fee charged in violation of this chapter and for any actual expenses incurred in obtaining comparable alternate housing, as well as any storage or moving charges associated with obtaining such housing;

- e. To award actual damages suffered by the aggrieved individual and injunctive or other equitable relief; or
- f. To assess a civil penalty against the respondent in the following amounts:
 - (1) Not to exceed ten thousand dollars if the respondent has not been adjudged to have committed any prior discriminatory housing practice;
 - (2) Not to exceed twenty-five thousand dollars if the respondent has been adjudged to have committed any other discriminatory housing practice during the five-year period ending on the date of the filing of the charge;
 - (3) Not to exceed fifty thousand dollars if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.

14-02.9-13. Enforcement sought by commission. Upon refusal by a person to comply with any order, an order pursuant to section 14-02.9-04, or regulation of the commission, the commission may immediately seek an order in the district court enforcing the order or regulation of the commission. The proceedings must be brought in the district court in the county in which the respondent resides or transacts business.

SECTION 4. Chapter 14-02.10 of the North Dakota Century Code is created and enacted as follows:

14-02.10-01. Definitions. As used in this chapter:

1. "Place of public accommodation" means any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public, including but not limited to any business offering wholesale or retail sales to the public; any place to eat, drink, sleep, or rest, or any combination thereof; any sporting or recreational area and facility; any public transportation facility; a barber shop, bathhouse, swimming pool, bath, steam or massage parlor, gymnasium, or other establishment conducted to serve the health, appearance, or physical condition of a person; a campsite or trailer camp; a dispensary, clinic, hospital, convalescent home, or other institution for the sick, ailing, aged, or infirm; a mortuary, undertaking parlor, or cemetery; an

educational institution; or any public building, park, arena, theater, hall, auditorium, museum, library, exhibit, or public facility of any kind whether indoor or outdoor.

2. "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.

14-02.10-02. Discrimination in places of public accommodation.

1. It is a discriminatory practice and prohibited for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or, directly or indirectly, to publish, circulate, issue, display, post, or mail any written or printed communication, notice, or advertisement which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual's patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of race, color, religion, sex, national origin, age, physical or mental disability, or status with regard to marriage or public assistance.
2. It is a discriminatory practice and prohibited for any person to discriminate against any individual or group because such individual or group has opposed any practice made a discriminatory practice by this chapter or because such individual or group has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to this chapter.
3. Notwithstanding any other provision of this section, it is not a discriminatory practice for a person to restrict admission to a place of public accommodation to individuals of one sex if the restriction has a bona fide relationship to the goods, services, facilities, privileges, advantages, or accommodations of such place of public accommodation.

1 **14-02.10-03. Public services - Discriminatory practices.** It is a discriminatory
2 practice for a person engaged in the provision of public services to fail to provide to a person
3 access to the use of and benefit thereof, or to give adverse or unequal treatment to a person in
4 connection therewith because of the person's race, color, religion, sex, national origin, age,
5 physical or mental disability, or status with respect to marriage or public assistance.

6 **14-02.10-04. Discrimination in governmental contracts and programs prohibited.**
7 A governmental entity may not discriminate against any health care institution or any private
8 agency in any grant, contract, or program because of the institution's or agency's refusal to
9 permit, perform, assist, counsel, or participate in any manner in any health care service that
10 violates the institution's or agency's written religious or moral policies.

11 **14-02.10-05. Credit transactions - Discriminatory practices.** It is a discriminatory
12 practice, except as permitted or required by the Equal Credit Opportunity Act [15 U.S.C. 1691],
13 for a person, whether acting as an individual or for another, to deny credit, increase the charges
14 or fees for or collateral required to secure credit, restrict the amount or use of credit extended,
15 impose different terms or conditions with respect to the credit extended to a person, or item or
16 service related thereto because of race, color, religion, sex, national origin, age, physical or
17 mental disability, or status with respect to marriage or public assistance. This section does not
18 prohibit a party to a credit transaction from considering the credit history of a person or from
19 taking reasonable action as a result of considering that credit history.

20 **14-02.10-06. Concealing, aiding, compelling, or inducing unlawful discrimination -**
21 **Threats or reprisals.** It is a discriminatory practice for a person to conceal unlawful
22 discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or
23 by means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the
24 making of a record or inquiry, or by use of any device to bring about or facilitate discrimination,
25 or to engage in or threaten to engage in a reprisal, economic or otherwise, against a person by
26 reason of the latter's filing a complaint, testifying, or assisting in the observance and support of
27 the purpose and provisions of this chapter because of race, color, religion, sex, national origin,
28 age, physical or mental disability, status with respect to marriage or public assistance, or
29 participation in lawful activity off the employer's premises during nonworking hours.

30 **14-02.10-07. Penalty - Civil liability.** Any person who violates this chapter by denying
31 to any individual, except for reasons applicable alike to all individuals of every race, color,

1 religion, sex, national origin, age, physical or mental disability, or status with regard to marriage
2 or public assistance, and regardless of race, color, religion, sex, national origin, age, physical or
3 mental disability, or status with regard to marriage or public assistance, the full use or
4 enjoyment of any of the accommodations, services, programs, advantages, facilities, or
5 privileges in this chapter or by aiding or inciting the denial, for every offense, shall forfeit and
6 pay a sum of not less than fifty dollars nor more than five hundred dollars to the individual
7 aggrieved thereby to be recovered in any court of competent jurisdiction in the county in which
8 the offense was committed; and also for every offense the person is guilty of a class B
9 misdemeanor. A judgment in favor of the party aggrieved or punishment upon an indictment or
10 information is not a bar to either prosecution, respectively; but the relief provided by this section
11 may be an alternative to that authorized by subsection 10 of section 14-02.7-06, and an
12 individual who seeks redress under this section is permitted to seek relief from the commission.

13 **14-02.10-08. Time limits on filing of charges.** Any charge filed with the commission
14 alleging a violation of this chapter must be filed pursuant to section 14-02.7-06 within sixty days
15 after the alleged discriminatory act occurred, and if not so filed, the action is barred.

16 **14-02.10-09. Relief authorized.** In addition to the relief authorized by subsection 10 of
17 section 14-02.7-06, the commission may order a respondent who has been found to have
18 engaged in a discriminatory practice as defined in this chapter to rehire, reinstate, and provide
19 back pay to any employee or agent discriminated against because of the respondent's
20 obedience to this chapter; to make reports as to the manner of compliance with the order of the
21 commission; and to take affirmative action, including the posting of notices setting forth the
22 substantive rights of the public under this chapter.

23 **SECTION 5.** Chapter 14-02.11 of the North Dakota Century Code is created and
24 enacted as follows:

25 **14-02.11-01. Publishing of discriminative matter forbidden.** No person that is the
26 owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public
27 accommodation, resort, or amusement, directly or indirectly, may publish, issue, circulate, send,
28 distribute, give away, or display in any way, manner, or shape or by any means or method,
29 except as provided in this section, any communication, paper, poster, folder, manuscript, book,
30 pamphlet, writing, print, letter, notice, or advertisement of any kind, nature, or description which
31 is intended or calculated to discriminate or actually discriminates against any race, color,

1 religion, sex, national origin, age, physical or mental disability, or status with regard to marriage
2 or public assistance or against any of the members thereof in the matter of furnishing or
3 neglecting or refusing to furnish to them or any one of them any lodging, housing, schooling, or
4 tuition or any accommodation, right, privilege, advantage, or convenience offered to or enjoyed
5 by the general public or which states that any of the accommodations, rights, privileges,
6 advantages, or conveniences of the place of public accommodation, resort, or amusement may
7 be or will be refused, withheld from, or denied to any person or class of person on account of
8 race, color, religion, sex, national origin, age, physical or mental disability, or status with regard
9 to marriage or public assistance or that the patronage, custom, presence, frequenting, dwelling,
10 staying, or lodging at such place by any person or class of person belonging to or purporting to
11 be of any particular race, color, religion, sex, national origin, age, physical or mental disability,
12 or status with regard to marriage or public assistance is unwelcome or objectionable or not
13 acceptable, desired, or solicited.

14 **14-02.11-02. Presumptive evidence.** The production of any communication, paper,
15 poster, folder, manuscript, book, pamphlet, writing, print, letter, notice, or advertisement,
16 purporting to relate to the place and to be made by any person that is the owner, lessee,
17 proprietor, agent, superintendent, manager, or employee thereof, are presumptive evidence in
18 any civil or criminal action or prosecution that the same was authorized by the person.

19 **14-02.11-03. Places of public accommodation, resort, or amusement.** As used in
20 this chapter, "place of public accommodation, resort, or amusement" includes any inn, tavern,
21 or hotel, whether conducted for the entertainment, housing, or lodging of transient guests or for
22 the benefit, use, or accommodation of those seeking health, recreation, or rest, and any
23 restaurant, eating house, public conveyance on land or water, bathhouse, barber shop, theater,
24 and music hall.

25 **14-02.11-04. Exemptions.** This chapter does not prohibit the mailing of a private
26 communication in writing sent in response to specific written inquiry.

27 **14-02.11-05. Penalty.** Any person who violates this chapter or who aides in, incites,
28 causes, or brings about in whole or in part the violation of this chapter is guilty of a class B
29 misdemeanor. The penalty provided by this section may be an alternative to the relief
30 authorized by subsection 10 of section 14-02.7-06, and an individual who seeks redress under
31 this section may not be permitted to seek relief from the commission.

1 **14-02.11-06. Time limits on filing of charges.** Any charge filed with the commission
2 alleging a violation of this chapter must be filed pursuant to section 14-02.7-06 within sixty days
3 after the alleged discriminatory act occurred, and, if not so filed, the action is barred.

4 **14-02.11-07. Relief authorized.** In addition to the relief authorized by subsection 10 of
5 section 14-02.7-06, the commission may order a respondent who has been found to have
6 violated this chapter to rehire, reinstate, and provide back pay to any employee or agent
7 discriminated against because of obedience to this chapter; to make reports as to the manner
8 of compliance with the order of the commission; and to take affirmative action, including the
9 posting of notices setting forth the substantive rights of the public under this chapter.

10 **SECTION 6. REPEAL.** Chapters 14-02.4 and 14-02.5 of the North Dakota Century
11 Code are repealed.