

Fifty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2413

Introduced by

Senators Bercier, T. Mathern, Thompson

Representatives Boucher, Lemieux

1 A BILL for an Act to create and enact a new chapter to title 14 of the North Dakota Century  
2 Code, relating to a North Dakota human rights commission; to amend and reenact sections  
3 14-02.4-19 and 14-02.4-21 of the North Dakota Century Code, relating to actions, limitations,  
4 and mediation for discriminatory practices; and to provide a penalty.

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

6 **SECTION 1.** A new chapter to title 14 of the North Dakota Century Code is created and  
7 enacted as follows:

8 **Definitions.** In this chapter, unless the context otherwise requires:

9 1. "Commission" means the human rights commission.

10 2. "Staff" means the staff of the human rights commission.

11 **Human rights commission - Qualifications of commissioners - Selection process.**

12 1. The human rights commission is an independent commission within the executive  
13 branch of state government.

14 2. The commission consists of five members. The governor shall appoint each  
15 member to the commission, one from each of five slates of candidates. After the  
16 first commission has been appointed, all later terms are for five years.

17 3. Each commissioner must be eighteen years of age or older and a resident of this  
18 state. A commissioner may not have been convicted of a felony or found in an  
19 administrative or judicial proceeding to have committed an act of illegal  
20 discrimination. Each commissioner must possess the special sensitivity required  
21 of the commissioner appointed to that position:

22 a. For position A, the commissioner must possess a special sensitivity to laws  
23 concerning discrimination from the perspectives of employers and employees;  
24 management and labor; providers and users of public accommodations;

1                   landlords and tenants; real estate sellers, buyers, and sales people; providers  
2                   and users of state and local government services; and borrowers and  
3                   commercial lenders;

4                   b. For position B, the commissioner must possess a special sensitivity to issues  
5                   of discrimination based upon race, color, or national origin;

6                   c. For position C, the commissioner must possess a special sensitivity to issues  
7                   of discrimination based upon religion and status with regard to receipt of  
8                   public assistance;

9                   d. For position D, the commissioner must possess a special sensitivity to issues  
10                   of discrimination based upon sex, age, and marital status; and

11                   e. For position E, the commissioner must possess a special sensitivity to issues  
12                   of discrimination based upon the perception of a physical or mental disability.

13                   4. A slate of candidates for each position must be established from nominations  
14                   submitted from any resident of this state to the office of the governor, or the  
15                   governor's designee. Each nomination must be supported by a letter of interest  
16                   from the nominee and a statement of qualifications, which may include volunteer  
17                   activities, education, work, and employment history, and an explanation of the  
18                   special sensitivities required of the commissioner for that position as provided in  
19                   subsection 3.

20                   5. Before October 1, 1999, the governor shall publish notice calling for nominations,  
21                   separately designated, for positions on the commission. Nominations must be  
22                   submitted in final form before November 1, 1999, and the governor shall make the  
23                   appointments before December 1, 1999. These terms will begin January 1, 2000.

24                   6. In all subsequent years, the commission shall publish notice before May first,  
25                   calling for nominations, separately designated, for any open or expiring position on  
26                   the commission. Nominations must be submitted in final form before June first,  
27                   and the governor shall make these appointments before July first. These terms  
28                   will begin September first.

29                   **Appointment of commissioners.** In 1999, when the first nominees are submitted to  
30 the governor, the governor shall appoint the commissioner:

31                   1. To position A for a term ending on August 31, 2001.

1           2.   To position B for a term ending on August 31, 2002.

2           3.   To position C for a term ending on August 31, 2003.

3           4.   To position D for a term ending on August 31, 2004.

4           5.   To position E for a term ending on August 31, 2005.

5           **Commission staff.**

6           1.   The commission is responsible for the hiring of its staff. The commission shall hire  
7                 a director and may delegate all decisions concerning the hiring, promotion, or  
8                 termination of other staff to the director.

9           2.   The staff may include special assistant attorneys general licensed to practice in  
10                this state.

11          3.   The commission or its designee may hire other staff as funds permit.

12          4.   The commission may appoint hearing officers to hear contested cases and  
13                petitions for declaratory rulings. In the alternative, the commission may contract  
14                with a private provider of dispute resolution services, including the American  
15                arbitration association, to provide these services.

16          **Duties of commission.** The commission shall:

17          1.   Educate employers, providers of public accommodations or services, landlords,  
18                real estate sellers, providers of state and local government services, and  
19                commercial lenders about ways to respect rights protected by laws that prohibit  
20                discrimination;

21          2.   Educate the general public about rights and responsibilities provided for by laws  
22                that prohibit discrimination;

23          3.   Investigate the extent and nature of discriminatory practices in this state, and  
24                report all findings to the governor at least annually;

25          4.   Report to the governor on initiatives that may improve compliance with laws that  
26                prohibit illegal discrimination and proposals for making the operation of the  
27                commission more effective and efficient;

28          5.   Receive and investigate complaints of illegal discrimination under state or federal  
29                law which are not authorized to be received and investigated by any other state  
30                agency;

1           6. Resolve conflicts between parties to a complaint through conference, conciliation,  
2           or persuasion; and

3           7. Conduct hearings, issue subpoenas, accept recommendations from its hearing  
4           officers, issue orders, award actual damages, and assess civil penalties.

5           **Commission powers.** The commission may adopt rules to implement its authority.

6           1. The commission has full authority to enforce chapter 14-02.4. In addition, the  
7           commission has authority to enforce all federal antidiscrimination laws.

8           2. The commission may contract with the federal government or any federal agency  
9           to coordinate and fund any of the commission's activities.

10          3. The commission may seek other contracts and accept gifts and grants from any  
11          source to help fund the commission's activities.

12          **Filing complaints.**

13          1. A complaint may be filed by or on behalf of any person claiming to be aggrieved by  
14          any discrimination prohibited by law. The complaint must be in the form of a  
15          verified complaint stating the name and address of the person alleged to have  
16          engaged in discrimination and the particulars of the alleged discrimination. The  
17          staff may file a complaint when discrimination comes to the staff's attention.

18          2. A complaint must be filed with the commission within three hundred days after the  
19          alleged discrimination occurred or was discovered, whichever is later. Except as  
20          otherwise provided in this chapter with respect to a person's private right of action,  
21          a complaint may not be filed more than one hundred eighty days after the alleged  
22          discrimination occurred or was discovered, whichever is later, if the victim of an  
23          alleged discriminatory act has not attempted to resolve the dispute by filing a  
24          grievance under any applicable grievance procedure, contract, written rule, or  
25          policy.

26          3. The commission may not consider a complaint that is not timely filed.

27          **Resolution of complaints.**

28          1. Staff shall informally investigate all complaints promptly and impartially. If the  
29          allegations are supported by substantial evidence, staff shall immediately try to  
30          eliminate the discriminatory practice by conference, conciliation, or persuasion.

- 1           2. If the informal efforts to resolve a complaint are unsuccessful, staff shall issue  
2           notice to the alleged perpetrator of a hearing to be held on the matter.
- 3           3. Each hearing must be conducted in the county in which the discrimination is  
4           alleged to have occurred. A hearing officer may grant a change of venue based on  
5           good cause.
- 6           4. The case in support of the complaint may be presented by staff, the complainant,  
7           or an attorney representing the complainant.
- 8           5. Staff must notify the commission in writing of all complaints filed. The commission  
9           shall meet at least four times annually to hear and act upon any recommendations  
10          submitted by the hearing officers.
- 11          6. The commission may make provisions to defray the expenses of an indigent party  
12          in a contested case.
- 13          7. The prevailing party may bring an action against the opposing party in district court  
14          for reasonable attorney's fees. A court is guided by its discretion and fairness in  
15          deciding the issues about attorney's fees.

16          **Orders.**

- 17          1. If the commission determines that illegal discrimination has occurred, the  
18          commission may order the offending party:
  - 19           a. To conform all future conduct to certain conditions relative to the type of  
20           discriminatory practice involved;
  - 21           b. To implement all reasonable measures to correct the discrimination and to  
22           rectify any harm, pecuniary or otherwise, to the victim or victims of the  
23           discrimination;
  - 24           c. To report on the manner and progress of compliance; and
  - 25           d. To permit commission staff to investigate and monitor compliance for no more  
26           than three years.
- 27          2. If the commission cannot determine that illegal discrimination has occurred, the  
28          commission shall order the complaint dismissed.
- 29          3. The commission may not issue any order for the payment of punitive damages to  
30          the alleged victim.

1           4. Upon a determination of illegal discrimination, the commission may assess the  
2           offending party with a civil penalty, payable to the commission, in an amount not to  
3           exceed five thousand dollars.

4           5. If the commissioner's order is not obeyed, the order may be enforced in district  
5           court in a proceeding initiated by the victim of the discrimination or by staff.

6           **Private right of action.** Any person claiming to be aggrieved by a discriminatory  
7           practice in violation of chapter 14-02.4 may bring an action in the district court in any district in  
8           the state in which the unlawful practice is alleged to have been committed within three hundred  
9           days of the alleged act of wrongdoing without first filing a complaint with the commission or, if  
10          the commission has not resolved the complaint, within one year of receiving the complaint.  
11          However, the alleged victim may not proceed directly to district court to pursue a private action  
12          during the first sixty days after a hearing on the merits of the case by the commission. If the  
13          commission has issued its final decision within that sixty-day time period, judicial review may be  
14          pursued at any time subject to chapter 28-32. Deadlines for filing a complaint before the  
15          commission do not apply to an action brought in district court which is governed by applicable  
16          statutes of limitation. The running of the statute of limitations is tolled for up to three hundred  
17          days while the claimant, after having filed a grievance under any applicable grievance  
18          procedure, contract, written rule, or policy, is attempting in good faith to resolve the dispute  
19          through that grievance procedure, and so long as the complaint is pending before the  
20          commission. If a complaint is properly filed in district court, the commission is immediately  
21          divested of jurisdiction in the matter.

22          **Records.**

23          1. All information discovered by the commission in the course of an investigation is  
24          not subject to disclosure under the open records laws.

25          2. Except for the victim's address, all information presented at a hearing is public  
26          information and is subject to the open records laws.

27          **Criminal conduct - Penalty.** It is a class B misdemeanor for any person to willfully  
28          resist, prevent, impede, or interfere with the commission or its staff in the performance of an  
29          official duty. It is a class B misdemeanor for a person to willfully violate an order of the  
30          commission.

1           **SECTION 2. AMENDMENT.** Section 14-02.4-19 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **14-02.4-19. Actions - Limitations.** Any person claiming to be aggrieved by a  
4 discriminatory practice in violation of this chapter may bring an action in the district court in any  
5 district in the state in which the unlawful practice is alleged to have been committed, or in the  
6 district in which the records relevant to such practice are maintained and administered, ~~or in the~~  
7 ~~judicial district in which the person would have worked or obtained credit were it not for the~~  
8 ~~alleged discriminatory act within three years of the alleged act of wrongdoing.~~ Any person  
9 claiming to be aggrieved by a discriminatory practice in violation of this chapter ~~with regard to~~  
10 ~~an employer's discriminatory practice~~ may bring a complaint of ~~discriminating employment~~  
11 ~~practices~~ the discriminatory practice under this chapter to the ~~department of labor~~ human rights  
12 commission within three hundred days of the alleged act of wrongdoing. Any person claiming  
13 to be aggrieved by a discriminatory practice in violation of this chapter ~~with regard to housing or~~  
14 ~~public accommodations or services~~ may bring an action in the district court in any district in the  
15 state in which the unlawful practice is alleged to have been committed, ~~or in the judicial district~~  
16 ~~in which the person would have obtained housing or public accommodations or services were it~~  
17 ~~not for the alleged discriminatory act~~ or in the district in which the records relevant to such  
18 practice are maintained and administered within ~~one hundred eighty days~~ three hundred days  
19 of the alleged act of wrongdoing, or, if the human rights commission has not resolved the  
20 complaint within one year. However, the alleged victim may not proceed to district court if the  
21 commission has held a hearing within the preceding sixty days. The running of the statute of  
22 limitations is tolled while the complaint is pending before the commission. If a complaint is  
23 properly filed with the district court, the commission is immediately divested of jurisdiction in the  
24 matter.

25           **SECTION 3. AMENDMENT.** Section 14-02.4-21 to the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **14-02.4-21. Optional mediation by ~~department of labor~~ human rights commission**  
28 **- Relief - Appeals - Records exempt.** The ~~department of labor~~ human rights commission may  
29 receive complaints of ~~discriminating employment~~ discriminatory practices under this chapter  
30 and may investigate the complaints to determine if there is probable cause to believe the  
31 complaint is meritorious and, if so, attempt to obtain voluntary compliance with this chapter's

1 ~~employment~~ requirements through ~~informal advice, negotiation conference, or conciliation, or~~  
2 persuasion. This chapter does not prohibit a person from filing, or require a person to file, a  
3 complaint with the ~~department of labor~~ commission before using ~~the provisions of this chapter~~.  
4 A complaint received and information obtained during any investigation conducted under this  
5 section are exempt from section 44-04-18 before the institution of any judicial proceedings  
6 under this chapter. The ~~commissioner~~ commission may disclose to the complainant or the  
7 respondent, or attorneys for the complainant or respondent, information obtained under this  
8 section if deemed necessary by the ~~commissioner~~ commission for securing an appropriate  
9 resolution of a complaint. Any record or information held by the ~~department of labor~~  
10 commission pursuant to an agreement with any federal agency for the enforcement of ~~fair~~  
11 ~~employment~~ nondiscriminatory practices is exempt from section 44-04-18, and the ~~department~~  
12 ~~of labor~~ commission may disclose to federal officials information obtained under this section if  
13 appropriate to carry out the enforcement of ~~fair employment~~ nondiscriminatory practices  
14 pursuant to the agreement. The ~~department of labor~~ commission may not disclose anything  
15 said or done as part of the ~~informal negotiation conference, persuasion,~~ or conciliation efforts  
16 under this section.