

**FIRST ENGROSSMENT
with House Amendments**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 pursuant to chapter 28-32 to
6 implement its authority.

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

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

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

13 **Filing complaints.**

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

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

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

28 **Resolution of complaints.**

29 1. Staff shall informally investigate all complaints promptly and impartially. If the
30 allegations are supported by substantial evidence, staff shall immediately try to
31 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.