

SENATE BILL NO. 2278

Introduced by

Senators Fiebiger, Bakke, Warner

Representatives Hawken, N. Johnson, Mock

1 A BILL for an Act to amend and reenact sections 14-02.4-01, 14-02.4-02, 14-02.4-03,
2 14-02.4-04, 14-02.4-05, 14-02.4-06, 14-02.4-09, 14-02.4-14, 14-02.4-15, 14-02.4-16,
3 14-02.4-17, 14-02.5-02, 14-02.5-03, 14-02.5-04, 14-02.5-05, 14-02.5-07, 14-02.5-08,
4 14-02.5-10, 26.1-40-11, 26.1-47-04, and 27-09.1-02 of the North Dakota Century Code, relating
5 to discrimination on the basis of sexual orientation.

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

7 **SECTION 1. AMENDMENT.** Section 14-02.4-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **14-02.4-01. State policy against discrimination.** It is the policy of this state to
10 prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the
11 presence of any mental or physical disability, sexual orientation, status with regard to marriage
12 or public assistance, or participation in lawful activity off the employer's premises during
13 nonworking hours which is not in direct conflict with the essential business-related interests of
14 the employer; to prevent and eliminate discrimination in employment relations, public
15 accommodations, housing, state and local government services, and credit transactions; and to
16 deter those who aid, abet, or induce discrimination or coerce others to discriminate.

17 **SECTION 2. AMENDMENT.** Section 14-02.4-02 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **14-02.4-02. Definitions.** In this chapter, unless the context or subject matter otherwise
20 requires:

- 21 1. "Age" insofar as it refers to any prohibited unfair employment or other practice
22 means at least forty years of age.
- 23 2. "Aggrieved person" includes any person who claims to have been injured by a
24 discriminatory practice.

- 1 3. "Court" means the district court in the judicial district in which the alleged
2 discriminatory practice occurred.
- 3 4. "Department" means the division of human rights within the labor department.
- 4 5. "Disability" means a physical or mental impairment that substantially limits one or
5 more major life activities, a record of this impairment, or being regarded as having
6 this impairment.
- 7 6. "Discriminatory practice" means an act or attempted act which because of race,
8 color, religion, sex, national origin, age, physical or mental disability, sexual
9 orientation, status with regard to marriage or public assistance, or participation in
10 lawful activity off the employer's premises during nonworking hours which is not in
11 direct conflict with the essential business-related interests of the employer results
12 in the unequal treatment or separation or segregation of any persons, or denies,
13 prevents, limits, or otherwise adversely affects, or if accomplished would deny,
14 prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person
15 of employment, labor union membership, public accommodations, public services,
16 or credit transactions. The term "discriminate" includes segregate or separate and
17 for purposes of discrimination based on sex, it includes sexual harassment.
18 Sexual harassment includes unwelcome sexual advances, requests for sexual
19 favors, sexually motivated physical conduct or other verbal or physical conduct or
20 communication of a sexual nature when:
- 21 a. Submission to that conduct or communication is made a term or condition,
22 either explicitly or implicitly, of obtaining employment, public accommodations
23 or public services, or education;
- 24 b. Submission to or rejection of that conduct or communication by an individual
25 is used as a factor in decisions affecting that individual's employment, public
26 accommodations or public services, education, or housing; or
- 27 c. That conduct or communication has the purpose or effect of substantially
28 interfering with an individual's employment, public accommodations, public
29 services, or educational environment; and in the case of employment, the
30 employer is responsible for its acts and those of its supervisory employees if it

- 1 knows or should know of the existence of the harassment and fails to take
2 timely and appropriate action.
- 3 7. "Employee" means a person who performs services for an employer, who employs
4 one or more individuals, for compensation, whether in the form of wages, salaries,
5 commission, or otherwise. "Employee" does not include a person elected to public
6 office in the state or political subdivision by the qualified voters thereof, or a person
7 chosen by the officer to be on the officer's political staff, or an appointee on the
8 policymaking level or an immediate advisor with respect to the exercise of the
9 constitutional or legal powers of the office. Provided, "employee" does include a
10 person subject to the civil service or merit system or civil service laws of the state
11 government, governmental agency, or a political subdivision.
- 12 8. "Employer" means a person within the state who employs one or more employees
13 for more than one quarter of the year and a person wherever situated who employs
14 one or more employees whose services are to be partially or wholly performed in
15 the state.
- 16 9. "Employment agency" means a person regularly undertaking, with or without
17 compensation, to procure employees for an employer or to procure for employees
18 opportunity to work for an employer and includes any agent of the person.
- 19 10. "Labor organization" means a person, employee representation committee, plan in
20 which employees participate, or other organization which exists solely or in part for
21 the purpose of dealing with employers concerning grievances, labor disputes,
22 wages, rates of pay, hours, or other terms or conditions of employment.
- 23 11. "National origin" means the place of birth of an individual or any of the individual's
24 lineal ancestors.
- 25 12. "Otherwise qualified person" means a person who is capable of performing the
26 essential functions of the particular employment in question.
- 27 13. "Person" means an individual, partnership, association, corporation, limited liability
28 company, unincorporated organization, mutual company, joint stock company,
29 trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor
30 organization, public body, public corporation, and the state and a political
31 subdivision and agency thereof.

- 1 14. "Public accommodation" means every place, establishment, or facility of whatever
2 kind, nature, or class that caters or offers services, facilities, or goods to the
3 general public for a fee, charge, or gratuity. "Public accommodation" does not
4 include a bona fide private club or other place, establishment, or facility which is by
5 its nature distinctly private; provided, however, the distinctly private place,
6 establishment, or facility is a "public accommodation" during the period it caters or
7 offers services, facilities, or goods to the general public for a fee, charge, or
8 gratuity.
- 9 15. "Public service" means a public facility, department, agency, board, or commission
10 owned, operated, or managed by or on behalf of this state, a political subdivision
11 thereof, or a public corporation.
- 12 16. "Readily achievable" means easily accomplishable and able to be carried out
13 without much difficulty or expense by a person engaged in the provision of public
14 accommodations.
- 15 17. "Reasonable accommodations" means accommodations by an employer that do
16 not:
- 17 a. Unduly disrupt or interfere with the employer's normal operations;
18 b. Threaten the health or safety of the individual with a disability or others;
19 c. Contradict a business necessity of the employer; or
20 d. Impose undue hardship on the employer, based on the size of the employer's
21 business, the type of business, the financial resources of the employer, and
22 the estimated cost and extent of the accommodation.
- 23 18. "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or
24 childbirth.
- 25 19. "Sexual orientation" means actual or perceived heterosexuality, bisexuality,
26 homosexuality, or gender identity or expression.
- 27 20. "Status with regard to public assistance" means the condition of being a recipient
28 of federal, state, or local assistance, including medical assistance, or of being a
29 tenant receiving federal, state, or local subsidies, including rental assistance or rent
30 supplements.

1 **SECTION 3. AMENDMENT.** Section 14-02.4-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **14-02.4-03. Employer's discriminatory practices.** It is a discriminatory practice for
4 an employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse
5 or unequal treatment to a person or employee with respect to application, hiring, training,
6 apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or
7 condition of employment, because of race, color, religion, sex, national origin, age, physical or
8 mental disability, sexual orientation, status with respect to marriage or public assistance, or
9 participation in lawful activity off the employer's premises during nonworking hours which is not
10 in direct conflict with the essential business-related interests of the employer. It is a
11 discriminatory practice for an employer to fail or refuse to make reasonable accommodations
12 for an otherwise qualified person with a physical or mental disability or because of that person's
13 religion. This chapter does not prohibit compulsory retirement of any employee who has
14 attained sixty-five years of age, but not seventy years of age, and who, for the two-year period
15 immediately before retirement, is employed in a bona fide executive or high policymaking
16 position, if the employee is entitled to an immediate nonforfeiture annual retirement benefit from
17 a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those
18 plans, of the employer of the employee, which equal, in the aggregate, at least forty-four
19 thousand dollars.

20 **SECTION 4. AMENDMENT.** Section 14-02.4-04 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **14-02.4-04. Employment agency's discriminatory practices.** It is a discriminatory
23 practice for an employment agency to accord adverse or unequal treatment to a person in
24 connection with an application for employment, referral, or request for assistance in
25 procurement of employees because of race, color, religion, sex, national origin, age, physical or
26 mental disability, sexual orientation, or status with respect to marriage or public assistance; or
27 to accept a listing of employment on that basis.

28 **SECTION 5. AMENDMENT.** Section 14-02.4-05 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **14-02.4-05. Labor organization's discriminatory practices.** It is a discriminatory
31 practice for a labor organization to deny full and equal membership rights to an applicant for

1 membership or to a member; to expel, suspend, or otherwise discipline a member; or to accord
2 adverse, unlawful, or unequal treatment to a person with respect to the person's hiring,
3 apprenticeship, training, tenure, compensation, upgrading, layoff, or a term or condition of
4 employment because of race, color, religion, sex, national origin, age, physical or mental
5 disability, sexual orientation, or status with respect to marriage or public assistance.

6 **SECTION 6. AMENDMENT.** Section 14-02.4-06 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **14-02.4-06. Certain employment advertising deemed discriminatory.** It is a
9 discriminatory practice for an employer, employment agency, or labor organization, or the
10 employees, agents, or members thereof directly or indirectly to advertise or in any other manner
11 indicate or publicize that individuals of a particular race, color, religion, sex, national origin, age,
12 physical or mental disability, sexual orientation, or status with respect to marriage or public
13 assistance, or who participate in lawful activity off the employer's premises during nonworking
14 hours which activity is not in direct conflict with the essential business-related interests of the
15 employer, are unwelcome, objectionable, not acceptable, or not solicited.

16 **SECTION 7. AMENDMENT.** Section 14-02.4-09 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **14-02.4-09. Seniority, merit, or other measuring systems and ability tests not**
19 **discriminatory.** Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a
20 discriminatory practice for an employer to apply different standards of compensation, or
21 different terms, conditions, or privileges of employment pursuant to a bona fide seniority or
22 merit system, or a system which measures earnings by quantity or quality of production or to
23 employees who work in different locations provided that the differences are not the result of an
24 intention to discriminate because of race, color, religion, sex, national origin, age, physical or
25 mental disability, sexual orientation, status with respect to marriage or public assistance, or
26 participation in lawful activity off the employer's premises during nonworking hours; or for an
27 employer to give and to act upon the results of any professionally developed ability test;
28 provided, that the test, its administration, or action upon the results is not designed, intended, or
29 used to discriminate because of race, color, religion, sex, national origin, age, physical or
30 mental disability, sexual orientation, status with respect to marriage or public assistance, or
31 participation in a lawful activity off the employer's premises during nonworking hours.

1 **SECTION 8. AMENDMENT.** Section 14-02.4-14 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **14-02.4-14. Public accommodations - Discriminatory practices.**

- 4 1. It is a discriminatory practice for a person engaged in the provision of public
5 accommodations to fail to provide to a person access to the use of any benefit from
6 the services and facilities of the public accommodations; or to give adverse,
7 unlawful, or unequal treatment to a person with respect to the availability to the
8 services and facilities, the price or other consideration therefor, the scope and
9 equality thereof, or the terms and conditions under which the same are made
10 available because of the person's race, color, religion, sex, national origin, age,
11 physical or mental disability, sexual orientation, or status with respect to marriage
12 or public assistance.
- 13 2. If a place of public accommodation has an architectural or communication barrier,
14 the person engaged in the provision of public accommodations shall remove the
15 barrier, if removal is readily achievable. If a public accommodation can
16 demonstrate that barrier removal is not readily achievable, the public
17 accommodation shall make that person's goods, services, facilities, privileges,
18 advantages, or accommodations available through alternative methods, if those
19 alternative methods are readily achievable.

20 **SECTION 9. AMENDMENT.** Section 14-02.4-15 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **14-02.4-15. Public services - Discriminatory practices.** It is a discriminatory practice
23 for a person engaged in the provision of public services to fail to provide to a person access to
24 the use of and benefit thereof, or to give adverse or unequal treatment to a person in
25 connection therewith because of the person's race, color, religion, sex, national origin, age,
26 physical or mental disability, sexual orientation, or status with respect to marriage or public
27 assistance.

28 **SECTION 10. AMENDMENT.** Section 14-02.4-16 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **14-02.4-16. Advertising public accommodations or services - Discriminatory**
31 **practices - Exceptions.** It is a discriminatory practice for a person to advertise or in any other

1 manner indicate or publicize that the patronage of persons of a particular race, color, religion,
2 sex, national origin, age, physical or mental disability, sexual orientation, or status with respect
3 to marriage or public assistance is unwelcome, objectionable, not acceptable, or not solicited.
4 This section does not prohibit a notice or advertisement banning minors from places where
5 alcoholic beverages are being served.

6 **SECTION 11. AMENDMENT.** Section 14-02.4-17 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **14-02.4-17. Credit transactions - Discriminatory practices.** It is a discriminatory
9 practice, except as permitted or required by the Equal Credit Opportunity Act [15 U.S.C. 1691],
10 for a person, whether acting as an individual or for another, to deny credit, increase the charges
11 or fees for or collateral required to secure credit, restrict the amount or use of credit extended,
12 impose different terms or conditions with respect to the credit extended to a person, or item or
13 service related thereto because of race, color, religion, sex, national origin, age, physical or
14 mental disability, sexual orientation, or status with respect to marriage or public assistance.
15 This section does not prohibit a party to a credit transaction from considering the credit history
16 of a person or from taking reasonable action thereon.

17 **SECTION 12. AMENDMENT.** Section 14-02.5-02 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **14-02.5-02. Sale or rental.**

- 20 1. A person may not refuse to sell or rent, after the making of a bona fide offer, refuse
21 to negotiate for the sale or rental of, or in any other manner make unavailable or
22 deny a dwelling to an individual because of race, color, religion, sex, disability, age,
23 familial status, national origin, sexual orientation, or status with respect to marriage
24 or public assistance.
- 25 2. A person may not discriminate against an individual in the terms, conditions, or
26 privileges of sale or rental of a dwelling or in providing services or facilities in
27 connection with a sale or rental of a dwelling because of race, color, religion, sex,
28 disability, age, familial status, national origin, sexual orientation, or status with
29 respect to marriage or public assistance.

1 3. This section does not prohibit discrimination against an individual because the
2 individual has been convicted under federal law or the law of any state of the illegal
3 manufacture or distribution of a controlled substance.

4 4. Nothing in this chapter prevents a person from refusing to rent a dwelling to two
5 unrelated individuals of opposite gender who are not married to each other.

6 **SECTION 13. AMENDMENT.** Section 14-02.5-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **14-02.5-03. Publication.** A person may not make, print, or publish or effect the
9 making, printing, or publishing of a notice, statement, or advertisement that is about the sale or
10 rental of a dwelling and that indicates any preference, limitation, or discrimination or the
11 intention to make a preference, limitation, or discrimination because of race, color, religion, sex,
12 disability, age, familial status, national origin, sexual orientation, or status with respect to
13 marriage or public assistance.

14 **SECTION 14. AMENDMENT.** Section 14-02.5-04 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **14-02.5-04. Inspection.** A person may not represent to an individual because of race,
17 color, religion, sex, disability, age, familial status, national origin, sexual orientation, or status
18 with respect to marriage or public assistance that a dwelling is not available for inspection for
19 sale or rental when the dwelling is available for inspection.

20 **SECTION 15. AMENDMENT.** Section 14-02.5-05 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **14-02.5-05. Entry into neighborhood.** A person may not, for profit, induce or attempt
23 to induce another to sell or rent a dwelling by representations regarding the entry or prospective
24 entry into a neighborhood of an individual of a particular race, color, religion, sex, disability, age,
25 familial status, national origin, sexual orientation, or status with respect to marriage or public
26 assistance.

27 **SECTION 16. AMENDMENT.** Section 14-02.5-07 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **14-02.5-07. Residential real estate-related transaction.** A person whose business
30 includes engaging in residential real estate-related transactions may not discriminate against an
31 individual in making a real estate-related transaction available or in the terms or conditions of a

1 real estate-related transaction because of race, color, religion, sex, disability, age, familial
2 status, national origin, sexual orientation, or status with respect to marriage or public
3 assistance. A residential real estate-related transaction is the selling, brokering, or appraising
4 of residential real property or the making or purchasing of loans or the provision of other
5 financial assistance to purchase, construct, improve, repair, maintain a dwelling, or to secure
6 residential real estate. Nothing in this section prohibits a person engaged in the business of
7 furnishing appraisals of real property to take into consideration factors other than race, color,
8 religion, sex, disability, age, familial status, national origin, sexual orientation, or status with
9 respect to marriage.

10 **SECTION 17. AMENDMENT.** Section 14-02.5-08 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **14-02.5-08. Brokerage services.** A person may not deny an individual access to, or
13 membership or participation in, a multiple-listing service, real estate brokers' organization, or
14 other service, organization, or facility relating to the business of selling or renting dwellings, or
15 discriminate against an individual in the terms or conditions of access, membership, or
16 participation in the organization, service, or facility because of race, color, religion, sex,
17 disability, age, familial status, national origin, sexual orientation, or status with respect to
18 marriage or public assistance.

19 **SECTION 18. AMENDMENT.** Section 14-02.5-10 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **14-02.5-10. Religious organization, private club, and appraisal exemption.**

- 22 1. This chapter does not prohibit a religious organization, association, or society or a
23 nonprofit institution or organization operated, supervised, or controlled by or in
24 conjunction with a religious organization, association, or society from limiting the
25 sale, rental, or occupancy of dwellings that it owns or operates for other than a
26 commercial purpose to individuals of the same religion or giving preference to
27 persons of the same religion, unless membership in the religion is restricted
28 because of race, color, or national origin.
- 29 2. This chapter does not prohibit a private club that is not in fact open to the public
30 and that, as an incident to its primary purpose, provides lodging that it owns or
31 operates for other than a commercial purpose from limiting the rental or occupancy

1 of the lodging to its members or from giving preference to its members, unless
2 membership in the club is restricted because of race, color, or national origin.

3 3. This chapter does not prohibit a person engaged in the business of furnishing
4 appraisals of real property from considering in those appraisals factors other than
5 race, color, religion, sex, disability, age, familial status, national origin, sexual
6 orientation, or status with respect to marriage or public assistance.

7 **SECTION 19. AMENDMENT.** Section 26.1-40-11 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **26.1-40-11. Terminations - Declinations - Prohibited reasons.** The declination of an
10 application for, or the termination of, a policy by an insurer or insurance producer is prohibited if
11 the declination or termination is:

- 12 1. Based upon the race, religion, nationality, ~~or~~ ethnic group, or sexual orientation as
13 defined in section 14-02.4-02 of the applicant or named insured.
- 14 2. Based solely upon the lawful occupation or profession of the applicant or named
15 insured, except that this provision does not apply to any insurer or insurance
16 producer which limits its market to one lawful occupation or profession or to several
17 related lawful occupations or professions.
- 18 3. Based upon the principal location of the insured motor vehicle unless such decision
19 is for a business purpose which is not mere pretext for unfair discrimination.
- 20 4. Based solely upon the age, sex, or marital status of an applicant or an insured,
21 except that this subsection does not prohibit rating differentials based upon age,
22 sex, or marital status.
- 23 5. Based upon the fact that the applicant or named insured previously obtained
24 insurance coverage through a residual market insurance mechanism or an
25 insurance company that insures substandard risks.
- 26 6. Based upon the fact that another insurer previously declined to insure the applicant
27 or terminated an existing policy in which the applicant was the named insured.

28 **SECTION 20. AMENDMENT.** Section 26.1-47-04 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **26.1-47-04. Preferred provider participation requirements.** Health care insurers
31 may place reasonable limits on the number of classes of preferred providers which satisfy the

1 standards set forth by the health care insurer, provided that there be no discrimination against
2 any providers on the basis of religion, race, color, national origin, age, sex, sexual orientation
3 as defined in section 14-02.4-02, or marital status, and further provided that selection of
4 preferred providers is made on the combined basis of least cost and highest quality of service.

5 **SECTION 21. AMENDMENT.** Section 27-09.1-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **27-09.1-02. Discrimination prohibited.** A citizen may not be excluded from jury
8 service in this state on account of race, color, religion, sex, national origin, physical disability,
9 sexual orientation as defined in section 14-02.4-02, or economic status.