

SENATE BILL NO. 2332

Introduced by

Senators LaFountain, Mathern, Watne

Representatives Christenson, Kretschmar, Oban

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; to provide a penalty; and to provide an
5 appropriation.

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

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

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

- 10 1. "Commission" means the human rights commission.
11 2. "Staff" means the staff of the human rights commission.

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

- 13 1. The human rights commission is an independent commission within the executive
14 branch of state government.
15 2. The commission consists of five members. The governor shall appoint each
16 member to the commission, one from each of five slates of candidates. After the
17 first commission has been appointed, all later terms are for five years.
18 3. Each commissioner must be eighteen years of age or older and a resident of this
19 state. A commissioner may not have been convicted of a felony or found in an
20 administrative or judicial proceeding to have committed an act of illegal
21 discrimination. Each commissioner must possess the special sensitivity required of
22 the commissioner appointed to that position:
23 a. For position A, the commissioner must possess a special sensitivity to laws
24 concerning discrimination from the perspectives of employers and employees;

- 1 management and labor; providers and users of public accommodations;
2 landlords and tenants; real estate sellers, buyers, and sales people; providers
3 and users of state and local government services; and borrowers and
4 commercial lenders;
- 5 b. For position B, the commissioner must possess a special sensitivity to issues
6 of discrimination based upon race, color, or national origin;
- 7 c. For position C, the commissioner must possess a special sensitivity to issues
8 of discrimination based upon religion and status with regard to receipt of
9 public assistance;
- 10 d. For position D, the commissioner must possess a special sensitivity to issues
11 of discrimination based upon sex, age, and marital status; and
- 12 e. For position E, the commissioner must possess a special sensitivity to issues
13 of discrimination based upon the perception of a physical or mental disability.
- 14 4. A slate of candidates for each seat must be established from nominations
15 submitted from any resident of this state to the office of the governor, or the
16 governor's designee. Each nomination must be supported by a letter of interest
17 from the nominee and a statement of qualifications, which may include volunteer
18 activities, education, work, and employment history, and an explanation of the
19 special sensitivities required of the commissioner for that position as set forth in
20 subsection 3.
- 21 5. Before October 1, 1997, the governor shall publish notice calling for nominations,
22 separately designated, for positions on the commission. Nominations must be
23 submitted in final form before November 1, 1997, and the governor shall make the
24 appointments before December 1, 1997. These terms will begin January 1, 1998.
- 25 6. In all subsequent years, the commission shall publish notice before May first,
26 calling for nominations, separately designated, for any open or expiring position on
27 the commission. Nominations must be submitted in final form before June first,
28 and the governor shall make these appointments before July first. These terms will
29 begin September first.
- 30 **Appointment of commissioners.** In 1997, when the first nominees are submitted to
31 the governor:

- 1 1. The candidate appointed by the governor for position A will be appointed to a term
2 ending on August 31, 1999.
- 3 2. The candidate appointed by the governor for position B will be appointed to a term
4 ending on August 31, 2000.
- 5 3. The candidate appointed by the governor for position C will be appointed to a term
6 ending on August 31, 2001.
- 7 4. The candidate appointed by the governor for position D will be appointed to a term
8 ending on August 31, 2002.
- 9 5. The candidate appointed by the governor for position E will be appointed to a term
10 ending on August 31, 2003.

11 **Commission staff.**

- 12 1. The commission shall be responsible for the hiring of its staff. The commission
13 shall hire a director and may delegate all decisions concerning the hiring,
14 promotion, or termination of other staff to the director.
- 15 2. The staff may include an attorney licensed to practice in this state as general legal
16 counsel. The commission or its designee may fill this position independently or
17 with an assistant attorney general.
- 18 3. The commission or its designee may hire other staff, including attorneys,
19 investigators, and support staff as funds permit.
- 20 4. The commission may appoint hearing officers to hear contested cases and
21 petitions for declaratory rulings. In the alternative, the commission may contract
22 with a private provider of dispute resolution services, including the American
23 arbitration association, to provide these services.

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

- 25 1. Educate employers, providers of public accommodations or services, landlords,
26 real estate sellers, providers of state and local government services, and
27 commercial lenders about ways to respect rights protected by laws that prohibit
28 discrimination;
- 29 2. Educate the general public about rights and responsibilities provided for by laws
30 that prohibit discrimination;

- 1 3. Investigate the extent and nature of discriminatory practices in this state, and
2 report all findings to the governor at least annually;
- 3 4. Report to the governor on initiatives that may improve compliance with laws that
4 prohibit illegal discrimination and proposals for making the operation of the
5 commission more effective and efficient;
- 6 5. Receive and investigate complaints of illegal discrimination under state or federal
7 law;
- 8 6. Resolve conflicts between parties to a complaint through conference, conciliation,
9 or persuasion;
- 10 7. Conduct hearings, issue subpoenas, accept recommendations from its hearing
11 officers, issue orders, award actual damages, and assess civil penalties; and
- 12 8. Otherwise enforce laws that prohibit illegal discrimination.

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

- 14 1. The commission has full authority to enforce chapter 14-02.4. In addition, the
15 commission has authority to enforce all federal antidiscrimination laws.
- 16 2. The commission may contract with the federal government or any federal agency
17 to coordinate and fund any of the commission's activities.
- 18 3. The commission may seek other contracts or grants to help fund the commission's
19 activities.

20 **Subpoena power.**

- 21 1. The commission may subpoena witnesses, take testimony of any person under
22 oath, administer oaths, subpoena books, papers, or other tangible evidence, and
23 order that property or other things be made available for inspection, when
24 investigating or hearing a complaint.
- 25 2. These powers may be delegated to staff for purposes of investigating a complaint.
- 26 3. Any hearing officer conducting a hearing for the commission may exercise these
27 powers and any other powers authorized under chapter 28-32.
- 28 4. Subpoenas and orders, whether issued for an investigation or a hearing, may be
29 enforced as provided in section 28-32-09.

30 **Filing complaints.**

- 1 1. A complaint may be filed by or on behalf of any person claiming to be aggrieved by
2 any discrimination prohibited by law. The complaint must be in the form of a
3 verified complaint stating the name and address of the person alleged to have
4 engaged in discrimination and the particulars of the alleged discrimination. The
5 staff may file a complaint when discrimination comes to the staff's attention.
- 6 2. A complaint must be filed with the commission within three hundred days after the
7 alleged discrimination occurred or was discovered, whichever is later. Except as
8 provided for below, relating to a person's private right of action, a complaint may
9 not be filed more than one hundred eighty days after the alleged discrimination
10 occurred or was discovered, whichever is later, if the victim of an alleged
11 discriminatory act has not attempted to resolve the dispute by filing a grievance
12 under any applicable grievance procedure, contract, written rule, or policy.
- 13 3. The commission may not consider a complaint that is not timely filed.

14 **Resolution of complaints.**

- 15 1. Staff shall informally investigate all complaints promptly and impartially. If the
16 allegations are supported by substantial evidence, staff shall immediately try to
17 eliminate the discriminatory practice by conference, conciliation, or persuasion.
- 18 2. If the informal efforts to resolve a complaint are unsuccessful, staff shall issue
19 notice to the alleged perpetrator of a hearing to be held on the matter.
- 20 3. Each hearing must be conducted in the county in which the discrimination is
21 alleged to have occurred. A hearing officer may grant a change of venue based on
22 good cause.
- 23 4. All hearings must be conducted in accordance with chapter 28-32. The case in
24 support of the complaint may be presented by staff, the complainant, or an attorney
25 representing the complainant.
- 26 5. Staff must notify the commission in writing of all complaints filed. The commission
27 shall meet at least four times annually to hear and act upon any recommendations
28 submitted by the hearing officers.
- 29 6. The commission may make provisions to defray the expenses of an indigent party
30 in a contested case.

1 7. The prevailing party may bring an action against the opposing party in district court
2 for reasonable attorney's fees. A court is guided by its discretion and fairness in
3 deciding the issues about attorney's fees.

4 **Orders.**

- 5 1. If the commission determines that illegal discrimination has occurred, the
6 commission may order the offending party:
- 7 a. To conform all future conduct to certain conditions relative to the type of
8 discriminatory practice involved;
- 9 b. To implement all reasonable measures to correct the discrimination and to
10 rectify any harm, pecuniary or otherwise, to the victim or victims of the
11 discrimination;
- 12 c. To report on the manner and progress of compliance; and
- 13 d. To permit commission staff to investigate and monitor compliance for no more
14 than three years.
- 15 2. If the commission cannot determine that illegal discrimination has occurred, the
16 commission shall order the complaint dismissed.
- 17 3. The commission may not issue any order for the payment of punitive damages to
18 the alleged victim.
- 19 4. Upon a determination of illegal discrimination, the commission may assess the
20 offending party with a civil penalty, payable to the commission, in an amount not to
21 exceed five thousand dollars.
- 22 5. If the commissioner's order is not obeyed, the order may be enforced in district
23 court in a proceeding initiated by the victim of the discrimination or by staff.

24 **Private right of action.** Any person claiming to be aggrieved by a discriminatory
25 practice in violation of chapter 14-02.4 may bring an action in the district court in any district in
26 the state in which the unlawful practice is alleged to have been committed within three hundred
27 days of the alleged act of wrongdoing without first filing a complaint with the commission or, if
28 the commission has not resolved the complaint within one year of receiving the complaint.
29 However, the alleged victim may not proceed directly to district court to pursue a private action
30 during the first sixty days after a hearing on the merits of the case by the commission. If the
31 commission has issued its final decision within that sixty-day time period, judicial review may be

1 pursued at any time subject to chapter 28-32. Deadlines for filing a complaint before the
2 commission do not apply to an action brought in district court which is governed by applicable
3 statutes of limitation. The running of the statute of limitations is tolled for up to three hundred
4 days while the claimant, after having filed a grievance under any applicable grievance
5 procedure, contract, written rule, or policy, is attempting in good faith to resolve the dispute
6 through that grievance procedure, and so long as the complaint is pending before the
7 commission. If a complaint is properly filed in district court, the commission is immediately
8 divested of jurisdiction in the matter.

9 **Records.**

- 10 1. All information discovered by the commission in the course of an investigation is
11 not subject to disclosure under the open records laws.
12 2. Except for the victim's address, all information presented at a hearing is public
13 information and is subject to the open records laws.

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

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

20 **14-02.4-19. Actions - Limitations.** Any person claiming to be aggrieved by a
21 discriminatory practice in violation of this chapter may bring an action in the district court in any
22 district in the state in which the unlawful practice is alleged to have been committed; or in the
23 district in which the records relevant to such practice are maintained and administered; ~~or in the~~
24 ~~judicial district in which the person would have worked or obtained credit were it not for the~~
25 ~~alleged discriminatory act within three years of the alleged act of wrongdoing.~~ Any person
26 claiming to be aggrieved by a discriminatory practice in violation of this chapter ~~with regard to~~
27 ~~an employer's discriminatory practice~~ may bring a complaint of ~~discriminating employment~~
28 ~~practices~~ the discriminatory practice under this chapter to the ~~department of labor~~ human rights
29 commission within three hundred days of the alleged act of wrongdoing. Any person claiming
30 to be aggrieved by a discriminatory practice in violation of this chapter ~~with regard to housing or~~
31 ~~public accommodations or services~~ may bring an action in the district court in any district in the

1 state in which the unlawful practice is alleged to have been committed, ~~or in the judicial district~~
2 ~~in which the person would have obtained housing or public accommodations or services were it~~
3 ~~not for the alleged discriminatory act~~ or in the district in which the records relevant to such
4 practice are maintained and administered within ~~one hundred eighty days~~ three hundred days
5 of the alleged act of wrongdoing, or, if the human rights commission has not resolved the
6 complaint within one year. However, the alleged victim may not proceed to district court if the
7 commission has held a hearing within the preceding sixty days. The running of the statute of
8 limitations is tolled while the complaint is pending before the commission. If a complaint is
9 properly filed with the district court, the commission is immediately divested of jurisdiction in the
10 matter.

11 **SECTION 3. AMENDMENT.** Section 14-02.4-21 of the 1995 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **14-02.4-21. Optional mediation by ~~department of labor~~ human rights commission**
14 **- Relief - Appeals.** The ~~department of labor~~ human rights commission may receive complaints
15 of ~~discriminating employment~~ discriminatory practices under this chapter and attempt to obtain
16 voluntary compliance with this chapter's ~~employment~~ requirements through ~~informal advice,~~
17 ~~negotiation conference,~~ or conciliation, or persuasion. This chapter does not prohibit a person
18 from filing, or require a person to file, a complaint with the ~~department of labor~~ commission
19 before using the provisions of this chapter.

20 **SECTION 4. APPROPRIATION.** The funds provided in this section, or so much of the
21 funds as may be necessary, are hereby appropriated out of any moneys in the general fund in
22 the state treasury, not otherwise appropriated, and from special funds derived from federal
23 funds or other income, to the human rights commission for the purpose of defraying the
24 expenses of that office, for the biennium beginning July 1, 1997, and ending June 30, 1999, as
25 follows:

26 Salaries and wages	\$ 350,000
27 Operating expenses	150,000
28 Data processing	50,000
29 Equipment	<u>10,000</u>
30 Total all funds	\$ 560,000

Fifty-fifth
Legislative Assembly

1	Less estimated income	<u>370,000</u>
2	Total general fund appropriation	\$ 190,000