

Introduced by

Senators Nelson, Grabinger, Warner

Representatives Beadle, Boschee, Maragos

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, 14-02.4-08, 14-02.4-09, 14-02.4-14, 14-02.4-15,
3 14-02.4-16, 14-02.4-17, 14-02.5-02, 14-02.5-03, 14-02.5-04, 14-02.5-05, 14-02.5-07,
4 14-02.5-08, and 14-02.5-10, subsection 11 of section 26.1-04-03, subsection 1 of section
5 26.1-30.1-01.1, subsection 1 of section 26.1-39-17, and sections 26.1-40-11, 26.1-47-04, and
6 27-09.1-02 of the North Dakota Century Code, relating to prohibition of discrimination on the
7 basis of sexual orientation.

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

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

11 **14-02.4-01. State policy against discrimination.**

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

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

22 **14-02.4-02. Definitions.**

23 In this chapter, unless the context or subject matter otherwise requires:

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

1 c. That conduct or communication has the purpose or effect of substantially
2 interfering with an individual's employment, public accommodations, public
3 services, or educational environment; and in the case of employment, the
4 employer is responsible for its acts and those of its supervisory employees if it
5 knows or should know of the existence of the harassment and fails to take timely
6 and appropriate action.

7 7. "Employee" means a person who performs services for an employer, who employs
8 one or more individuals, for compensation, whether in the form of wages, salaries,
9 commission, or otherwise. "Employee" does not include a person elected to public
10 office in the state or political subdivision by the qualified voters thereof, or a person
11 chosen by the officer to be on the officer's political staff, or an appointee on the
12 policymaking level or an immediate adviser with respect to the exercise of the
13 constitutional or legal powers of the office. Provided, "employee" does include a
14 person subject to the civil service or merit system or civil service laws of the state
15 government, governmental agency, or a political subdivision.

16 8. "Employer" means a person within the state who employs one or more employees for
17 more than one quarter of the year and a person wherever situated who employs one
18 or more employees whose services are to be partially or wholly performed in the state.

19 9. "Employment agency" means a person regularly undertaking, with or without
20 compensation, to procure employees for an employer or to procure for employees
21 opportunity to work for an employer and includes any agent of the person.

22 10. "Gender identity" means actual or perceived gender-related identity, appearance, or
23 mannerisms, or other gender-related characteristics of an individual, regardless of the
24 individual's designated gender at birth.

25 11. "Labor organization" means a person, employee representation committee, plan in
26 which employees participate, or other organization which exists solely or in part for the
27 purpose of dealing with employers concerning grievances, labor disputes, wages,
28 rates of pay, hours, or other terms or conditions of employment.

29 ~~11.~~12. "National origin" means the place of birth of an individual or any of the individual's
30 lineal ancestors.

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- 1 ~~12-13.~~ "Otherwise qualified person" means a person who is capable of performing the
2 essential functions of the particular employment in question.
- 3 ~~13-14.~~ "Person" means an individual, partnership, association, corporation, limited liability
4 company, unincorporated organization, mutual company, joint stock company, trust,
5 agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization,
6 public body, public corporation, and the state and a political subdivision and agency
7 thereof.
- 8 ~~14-15.~~ "Public accommodation" means every place, establishment, or facility of whatever
9 kind, nature, or class that caters or offers services, facilities, or goods to the general
10 public for a fee, charge, or gratuity. "Public accommodation" does not include a bona
11 fide private club or other place, establishment, or facility which is by its nature distinctly
12 private; provided, however, the distinctly private place, establishment, or facility is a
13 "public accommodation" during the period it caters or offers services, facilities, or
14 goods to the general public for a fee, charge, or gratuity.
- 15 ~~15-16.~~ "Public service" means a public facility, department, agency, board, or commission
16 owned, operated, or managed by or on behalf of this state, a political subdivision
17 thereof, or a public corporation.
- 18 ~~16-17.~~ "Readily achievable" means easily accomplishable and able to be carried out without
19 much difficulty or expense by a person engaged in the provision of public
20 accommodations.
- 21 ~~17-18.~~ "Reasonable accommodations" means accommodations by an employer that do not:
22 a. Unduly disrupt or interfere with the employer's normal operations;
23 b. Threaten the health or safety of the individual with a disability or others;
24 c. Contradict a business necessity of the employer; or
25 d. Impose undue hardship on the employer, based on the size of the employer's
26 business, the type of business, the financial resources of the employer, and the
27 estimated cost and extent of the accommodation.
- 28 ~~18-19.~~ "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
- 29 ~~19-20.~~ "Sexual orientation" means actual or perceived heterosexuality, bisexuality,
30 homosexuality, or gender identity.

1 21. "Status with regard to public assistance" means the condition of being a recipient of
2 federal, state, or local assistance, including medical assistance, or of being a tenant
3 receiving federal, state, or local subsidies, including rental assistance or rent
4 supplements.

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

7 **14-02.4-03. Employer's discriminatory practices.**

- 8 1. It is a discriminatory practice for an employer to fail or refuse to hire a person; to
9 discharge an employee; or to accord adverse or unequal treatment to a person or
10 employee with respect to application, hiring, training, apprenticeship, tenure,
11 promotion, upgrading, compensation, layoff, or a term, privilege, or condition of
12 employment, because of race, color, religion, sex, national origin, age, physical or
13 mental disability, sexual orientation, status with respect to marriage or public
14 assistance, or participation in lawful activity off the employer's premises during
15 nonworking hours which is not in direct conflict with the essential business-related
16 interests of the employer.
- 17 2. It is a discriminatory practice for an employer to fail or refuse to make reasonable
18 accommodations for an otherwise qualified person with a physical or mental disability
19 or because of that person's religion.
- 20 3. This chapter does not prohibit compulsory retirement of any employee who has
21 attained sixty-five years of age, but not seventy years of age, and who, for the
22 two-year period immediately before retirement, is employed in a bona fide executive or
23 high policymaking position, if the employee is entitled to an immediate nonforfeiture
24 annual retirement benefit from a pension, profit-sharing, savings, or deferred
25 compensation plan, or any combination of those plans, of the employer of the
26 employee, which equal, in the aggregate, at least forty-four thousand dollars.
- 27 4. a. This chapter does not prohibit a religious organization, association, or society or
28 a nonprofit institution or organization operated, supervised, or controlled by or in
29 conjunction with a religious organization, association, or society from establishing
30 any qualifications or hiring criteria for employees and volunteers in religious
31 positions.

1 nonworking hours which activity is not in direct conflict with the essential business-related
2 interests of the employer, are unwelcome, objectionable, not acceptable, or not solicited.

3 **SECTION 7. AMENDMENT.** Section 14-02.4-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **14-02.4-08. Qualification based on religion, sex, national origin, physical or mental**
6 **disability, or marital status.**

7 Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice
8 for an employer to fail or refuse to hire and employ an individual for a position, to discharge an
9 individual from a position, or for an employment agency to fail or refuse to refer an individual for
10 employment in a position, or for a labor organization to fail or refuse to refer an individual for
11 employment, on the basis of religion, sex, national origin, physical or mental disability, sexual
12 orientation, or marital status in those circumstances ~~wherein~~ which religion, sex, national origin,
13 physical or mental disability, sexual orientation, or marital status is a bona fide occupational
14 qualification reasonably necessary to the normal operation of that particular business or
15 enterprise; nor is it a discriminatory practice for an employer to fail or refuse to hire and employ
16 an individual for a position, or to discharge an individual from a position on the basis of that
17 individual's participation in a lawful activity that is off the employer's premises and that takes
18 place during nonworking hours and which is not in direct conflict with the essential
19 business-related interests of the employer, if that participation is contrary to a bona fide
20 occupational qualification that reasonably and rationally relates to employment activities and the
21 responsibilities of a particular employee or group of employees, rather than to all employees of
22 that employer.

23 **SECTION 8. AMENDMENT.** Section 14-02.4-09 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **14-02.4-09. Seniority, merit, or other measuring systems and ability tests not**
26 **discriminatory.**

27 Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice
28 for an employer to apply different standards of compensation, or different terms, conditions, or
29 privileges of employment pursuant to a bona fide seniority or merit system, or a system which
30 measures earnings by quantity or quality of production or to employees who work in different
31 locations provided that the differences are not the result of an intention to discriminate because

1 of race, color, religion, sex, national origin, age, physical or mental disability, status with respect
2 to marriage or public assistance, or participation in lawful activity off the employer's premises
3 during nonworking hours; or for an employer to give and to act upon the results of any
4 professionally developed ability test; provided, that the test, its administration, or action upon
5 the results is not designed, intended, or used to discriminate because of race, color, religion,
6 sex, national origin, age, physical or mental disability, sexual orientation, status with respect to
7 marriage or public assistance, or participation in a lawful activity off the employer's premises
8 during nonworking hours.

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

11 **14-02.4-14. Public accommodations - Discriminatory practices.**

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

26 **SECTION 10. AMENDMENT.** Section 14-02.4-15 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **14-02.4-15. Public services - Discriminatory practices.**

29 It is a discriminatory practice for a person engaged in the provision of public services to fail
30 to provide to a person access to the use of and benefit thereof, or to give adverse or unequal
31 treatment to a person in connection therewith because of the person's race, color, religion, sex,

1 national origin, age, physical or mental disability, sexual orientation, or status with respect to
2 marriage or public assistance.

3 **SECTION 11. AMENDMENT.** Section 14-02.4-16 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **14-02.4-16. Advertising public accommodations or services - Discriminatory**
6 **practices - Exceptions.**

7 It is a discriminatory practice for a person to advertise or in any other manner indicate or
8 publicize that the patronage of persons of a particular race, color, religion, sex, national origin,
9 age, physical or mental disability, sexual orientation, or status with respect to marriage or public
10 assistance is unwelcome, objectionable, not acceptable, or not solicited. This section does not
11 prohibit a notice or advertisement banning minors from places where alcoholic beverages are
12 being served.

13 **SECTION 12. AMENDMENT.** Section 14-02.4-17 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **14-02.4-17. Credit transactions - Discriminatory practices.**

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

24 **SECTION 13. AMENDMENT.** Section 14-02.5-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **14-02.5-02. Sale or rental.**

27 1. A person may not refuse to sell or rent, after the making of a bona fide offer, refuse to
28 negotiate for the sale or rental of, or in any other manner make unavailable or deny a
29 dwelling to an individual because of race, color, religion, sex, disability, age, familial
30 status, national origin, sexual orientation, or status with respect to marriage or public
31 assistance.

- 1 2. A person may not discriminate against an individual in the terms, conditions, or
2 privileges of sale or rental of a dwelling or in providing services or facilities in
3 connection with a sale or rental of a dwelling because of race, color, religion, sex,
4 disability, age, familial status, national origin, sexual orientation, or status with respect
5 to marriage or public assistance.
- 6 3. This section does not prohibit discrimination against an individual because the
7 individual has been convicted under federal law or the law of any state of the illegal
8 manufacture or distribution of a controlled substance.
- 9 4. Nothing in this chapter prevents a person from refusing to rent a dwelling to two
10 unrelated individuals of opposite gender who are not married to each other.

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

13 **14-02.5-03. Publication.**

14 A person may not make, print, or publish or effect the making, printing, or publishing of a
15 notice, statement, or advertisement that is about the sale or rental of a dwelling and that
16 indicates any preference, limitation, or discrimination or the intention to make a preference,
17 limitation, or discrimination because of race, color, religion, sex, disability, age, familial status,
18 national origin, sexual orientation, or status with respect to marriage or public assistance.

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

21 **14-02.5-04. Inspection.**

22 A person may not represent to an individual because of race, color, religion, sex, disability,
23 age, familial status, national origin, sexual orientation, or status with respect to marriage or
24 public assistance that a dwelling is not available for inspection for sale or rental when the
25 dwelling is available for inspection.

26 **SECTION 16. AMENDMENT.** Section 14-02.5-05 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **14-02.5-05. Entry into neighborhood.**

29 A person may not, for profit, induce or attempt to induce another to sell or rent a dwelling by
30 representations regarding the entry or prospective entry into a neighborhood of an individual of

1 a particular race, color, religion, sex, disability, age, familial status, national origin, sexual
2 orientation, or status with respect to marriage or public assistance.

3 **SECTION 17. AMENDMENT.** Section 14-02.5-07 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **14-02.5-07. Residential real estate-related transaction.**

6 A person whose business includes engaging in residential real estate-related transactions
7 may not discriminate against an individual in making a real estate-related transaction available
8 or in the terms or conditions of a real estate-related transaction because of race, color, religion,
9 sex, disability, age, familial status, national origin, sexual orientation, or status with respect to
10 marriage or public assistance. A residential real estate-related transaction is the selling,
11 brokering, or appraising of residential real property or the making or purchasing of loans or the
12 provision of other financial assistance to purchase, construct, improve, repair, maintain a
13 dwelling, or to secure residential real estate. Nothing in this section prohibits a person engaged
14 in the business of furnishing appraisals of real property to take into consideration factors other
15 than race, color, religion, sex, disability, age, familial status, national origin, sexual orientation,
16 or status with respect to marriage.

17 **SECTION 18. AMENDMENT.** Section 14-02.5-08 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **14-02.5-08. Brokerage services.**

20 A person may not deny an individual access to, or membership or participation in, a
21 multiple-listing service, real estate brokers' organization, or other service, organization, or
22 facility relating to the business of selling or renting dwellings, or discriminate against an
23 individual in the terms or conditions of access, membership, or participation in the organization,
24 service, or facility because of race, color, religion, sex, disability, age, familial status, national
25 origin, sexual orientation, or status with respect to marriage or public assistance.

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

28 **14-02.5-10. Religious organization, private club, and appraisal exemption.**

29 1. This chapter does not prohibit a religious organization, association, or society or a
30 nonprofit institution or organization operated, supervised, or controlled by or in
31 conjunction with a religious organization, association, or society from limiting the sale,

1 rental, or occupancy of dwellings that it owns or operates for other than a commercial
2 purpose to individuals of the same religion or giving preference to persons of the same
3 religion, unless membership in the religion is restricted because of race, color, or
4 national origin.

5 2. This chapter does not prohibit a private club that is not in fact open to the public and
6 that, as an incident to its primary purpose, provides lodging that it owns or operates for
7 other than a commercial purpose from limiting the rental or occupancy of the lodging
8 to its members or from giving preference to its members, unless membership in the
9 club is restricted because of race, color, or national origin.

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

14 **SECTION 20. AMENDMENT.** Subsection 11 of section 26.1-04-03 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 11. Refusing to insure risks. Refusing to insure risks solely because of race, color, creed,
17 sex, sexual orientation, or national origin, or refusing to continue to insure risks solely
18 because an employer chooses to offer a health maintenance organization option to
19 employees in its health benefit plan.

20 **SECTION 21. AMENDMENT.** Subsection 1 of section 26.1-30.1-01.1 of the North Dakota
21 Century Code is amended and reenacted as follows:

22 1. The race, religion, nationality, ethnic group, disability, age, sex, sexual orientation, or
23 marital status of the applicant or named insured, except this subsection does not
24 prohibit rating differentials based upon age, sex, or marital status.

25 **SECTION 22. AMENDMENT.** Subsection 1 of section 26.1-39-17 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 1. The race, religion, nationality, ethnic group, age, sex, sexual orientation, or marital
28 status of the applicant or named insured.

29 **SECTION 23. AMENDMENT.** Section 26.1-40-11 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **26.1-40-11. Terminations - Declinations - Prohibited reasons.**

2 The declination of an application for, or the termination of, a policy by an insurer or
3 insurance producer is prohibited if the declination or termination is:

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

20 **SECTION 24. AMENDMENT.** Section 26.1-47-04 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **26.1-47-04. Preferred provider participation requirements.**

23 Health care insurers may place reasonable limits on the number of classes of preferred
24 providers which satisfy the standards set forth by the health care insurer, provided that there be
25 no discrimination against any providers on the basis of religion, race, color, national origin, age,
26 sex, sexual orientation as defined in section 14-02.4-02, or marital status, and further provided
27 that selection of preferred providers is made on the combined basis of least cost and highest
28 quality of service.

29 **SECTION 25. AMENDMENT.** Section 27-09.1-02 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **27-09.1-02. Discrimination prohibited.**

2 A citizen may not be excluded from jury service in this state on account of race, color,
3 religion, sex, sexual orientation as defined in section 14-02.4-02, national origin, physical
4 disability, or economic status.