

HOUSE BILL NO. 1386

Introduced by

Representatives Boschee, P. Anderson, Beadle, Delmore, Dobervich, Guggisberg, Hogan, M. Johnson, Schneider

Senator Nelson

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, and 14-02.4-09, subsection 1 of section
3 14-02.4-14, sections 14-02.4-15, 14-02.4-16, and 14-02.4-17, subsections 1 and 2 of section
4 14-02.5-02, sections 14-02.5-03, 14-02.5-04, 14-02.5-05, 14-02.5-07, and 14-02.5-08,
5 subsection 3 of section 14-02.5-10, subsection 11 of section 26.1-04-03, subsection 1 of section
6 26.1-30.1-01.1, subsection 1 of section 26.1-39-17, subsection 1 of section 26.1-40-11, and
7 sections 26.1-47-04 and 27-09.1-02 of the North Dakota Century Code, relating to prohibition of
8 discrimination on the basis of sexual orientation.

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

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

12 **14-02.4-01. State policy against discrimination.**

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

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

1 **14-02.4-02. Definitions.**

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

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

- 1 b. Submission to or rejection of that conduct or communication by an individual is
2 used as a factor in decisions affecting that individual's employment, public
3 accommodations or public services, education, or housing; or
- 4 c. That conduct or communication has the purpose or effect of substantially
5 interfering with an individual's employment, public accommodations, public
6 services, or educational environment; and in the case of employment, the
7 employer is responsible for its acts and those of its supervisory employees if it
8 knows or should know of the existence of the harassment and fails to take timely
9 and appropriate action.
- 10 7. "Employee" means a person who performs services for an employer, who employs
11 one or more individuals, for compensation, whether in the form of wages, salaries,
12 commission, or otherwise. "Employee" does not include a person elected to public
13 office in the state or political subdivision by the qualified voters thereof, or a person
14 chosen by the officer to be on the officer's political staff, or an appointee on the
15 policymaking level or an immediate adviser with respect to the exercise of the
16 constitutional or legal powers of the office. Provided, "employee" does include a
17 person subject to the civil service or merit system or civil service laws of the state
18 government, governmental agency, or a political subdivision.
- 19 8. "Employer" means a person within the state who employs one or more employees for
20 more than one quarter of the year and a person wherever situated who employs one
21 or more employees whose services are to be partially or wholly performed in the state.
- 22 9. "Employment agency" means a person regularly undertaking, with or without
23 compensation, to procure employees for an employer or to procure for employees
24 opportunity to work for an employer and includes any agent of the person.
- 25 10. "Gender identity" means actual or perceived gender-related identity, appearance, or
26 mannerisms, or other gender-related characteristics of an individual, regardless of the
27 individual's designated gender at birth.
- 28 11. "Labor organization" means a person, employee representation committee, plan in
29 which employees participate, or other organization which exists solely or in part for the
30 purpose of dealing with employers concerning grievances, labor disputes, wages,
31 rates of pay, hours, or other terms or conditions of employment.

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- 1 ~~41.12.~~ "National origin" means the place of birth of an individual or any of the individual's
2 lineal ancestors.
- 3 ~~42.13.~~ "Otherwise qualified person" means a person who is capable of performing the
4 essential functions of the particular employment in question.
- 5 ~~43.14.~~ "Person" means an individual, partnership, association, corporation, limited liability
6 company, unincorporated organization, mutual company, joint stock company, trust,
7 agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization,
8 public body, public corporation, and the state and a political subdivision and agency
9 thereof.
- 10 ~~44.15.~~ "Public accommodation" means every place, establishment, or facility of whatever
11 kind, nature, or class that caters or offers services, facilities, or goods to the general
12 public for a fee, charge, or gratuity. "Public accommodation" does not include a bona
13 fide private club or other place, establishment, or facility which is by its nature distinctly
14 private; provided, however, the distinctly private place, establishment, or facility is a
15 "public accommodation" during the period it caters or offers services, facilities, or
16 goods to the general public for a fee, charge, or gratuity.
- 17 ~~45.16.~~ "Public service" means a public facility, department, agency, board, or commission
18 owned, operated, or managed by or on behalf of this state, a political subdivision
19 thereof, or a public corporation.
- 20 ~~46.17.~~ "Readily achievable" means easily accomplishable and able to be carried out without
21 much difficulty or expense by a person engaged in the provision of public
22 accommodations.
- 23 ~~47.18.~~ "Reasonable accommodations" means accommodations by an employer that do not:
24 a. Unduly disrupt or interfere with the employer's normal operations;
25 b. Threaten the health or safety of the individual with a disability or others;
26 c. Contradict a business necessity of the employer; or
27 d. Impose undue hardship on the employer, based on the size of the employer's
28 business, the type of business, the financial resources of the employer, and the
29 estimated cost and extent of the accommodation.
- 30 ~~48.19.~~ "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

1 ~~19-20.~~ "Sexual orientation" means actual or perceived heterosexuality, bisexuality,
2 homosexuality, or gender identity.

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

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

9 **14-02.4-03. Employer's discriminatory practices.**

- 10 1. It is a discriminatory practice for an employer to fail or refuse to hire an individual; to
11 discharge an employee; or to accord adverse or unequal treatment to an individual or
12 employee with respect to application, hiring, training, apprenticeship, tenure,
13 promotion, upgrading, compensation, layoff, or a term, privilege, or condition of
14 employment, because of race, color, religion, sex, sexual orientation, national origin,
15 age, physical or mental disability, status with respect to marriage or public assistance,
16 or participation in lawful activity off the employer's premises during nonworking hours
17 which is not in direct conflict with the essential business-related interests of the
18 employer.
- 19 2. It is a discriminatory practice for an employer to fail or refuse to make reasonable
20 accommodations for an otherwise qualified individual with a physical or mental
21 disability, because that individual is pregnant, or because of that individual's religion.
22 An employer is not required to provide an accommodation that would disrupt or
23 interfere with the employer's normal business operations; threaten an individual's
24 health or safety; contradict a business necessity of the employer; or impose an undue
25 hardship on the employer, taking into consideration 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 3. This chapter does not prohibit compulsory retirement of any employee who has
29 attained sixty-five years of age, but not seventy years of age, and who, for the
30 two-year period immediately before retirement, is employed in a bona fide executive or
31 high policymaking position, if the employee is entitled to an immediate nonforfeiture

1 annual retirement benefit from a pension, profit-sharing, savings, or deferred
2 compensation plan, or any combination of those plans, of the employer of the
3 employee, which equal, in the aggregate, at least forty-four thousand dollars.

4 4. a. This chapter does not prohibit a religious organization, association, or society or
5 a nonprofit institution or organization operated, supervised, or controlled by or in
6 conjunction with a religious organization, association, or society from establishing
7 any qualifications or hiring criteria for employees and volunteers in religious
8 positions.

9 b. This chapter does not prohibit a religious organization, association, or society
10 from limiting employment and volunteers in nonreligious positions to individuals
11 who are of the same religion.

12 c. This chapter does not prohibit a religious organization, association, or society
13 from limiting access or admission to its places of worship or its parochial schools
14 to individuals of the same religion.

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

17 **14-02.4-04. Employment agency's discriminatory practices.**

18 It is a discriminatory practice for an employment agency to accord adverse or unequal
19 treatment to a person in connection with an application for employment, referral, or request for
20 assistance in procurement of employees because of race, color, religion, sex, sexual
21 orientation, national origin, age, physical or mental disability, or status with respect to marriage
22 or public assistance, or to accept a listing of employment on that basis.

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

25 **14-02.4-05. Labor organization's discriminatory practices.**

26 It is a discriminatory practice for a labor organization to deny full and equal membership
27 rights to an applicant for membership or to a member; to expel, suspend, or otherwise discipline
28 a member; or to accord adverse, unlawful, or unequal treatment to a person with respect to the
29 person's hiring, apprenticeship, training, tenure, compensation, upgrading, layoff, or a term or
30 condition of employment because of race, color, religion, sex, sexual orientation, national origin,
31 age, physical or mental disability, or status with respect to marriage or public assistance.

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

3 **14-02.4-06. Certain employment advertising deemed discriminatory.**

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

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

13 **14-02.4-08. Qualification based on religion, sex, sexual orientation, national origin,**
14 **physical or mental disability, or marital status.**

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

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

3 **14-02.4-09. Seniority, merit, or other measuring systems and ability tests not**
4 **discriminatory.**

5 Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice
6 for an employer to apply different standards of compensation, or different terms, conditions, or
7 privileges of employment pursuant to a bona fide seniority or merit system, or a system which
8 measures earnings by quantity or quality of production or to employees who work in different
9 locations provided that the differences are not the result of an intention to discriminate because
10 of race, color, religion, sex, sexual orientation, national origin, age, physical or mental disability,
11 status with respect to marriage or public assistance, or participation in lawful activity off the
12 employer's premises during nonworking hours; or for an employer to give and to act upon the
13 results of any professionally developed ability test; provided, that the test, its administration, or
14 action upon the results is not designed, intended, or used to discriminate because of race, color,
15 religion, sex, sexual orientation, national origin, age, physical or mental disability, status with
16 respect to marriage or public assistance, or participation in a lawful activity off the employer's
17 premises during nonworking hours.

18 **SECTION 9. AMENDMENT.** Subsection 1 of section 14-02.4-14 of the North Dakota
19 Century Code is amended and reenacted as follows:

20 1. It is a discriminatory practice for a person engaged in the provision of public
21 accommodations to fail to provide to a person access to the use of any benefit from
22 the services and facilities of the public accommodations; or to give adverse, unlawful,
23 or unequal treatment to a person with respect to the availability to the services and
24 facilities, the price or other consideration therefor, the scope and equality thereof, or
25 the terms and conditions under which the same are made available because of the
26 person's race, color, religion, sex, sexual orientation, national origin, age, physical or
27 mental disability, or status with respect to marriage or public assistance.

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

1 **14-02.4-15. Public services - Discriminatory practices.**

2 It is a discriminatory practice for a person engaged in the provision of public services to fail
3 to provide to a person access to the use of and benefit thereof, or to give adverse or unequal
4 treatment to a person in connection therewith because of the person's race, color, religion, sex,
5 sexual orientation, national origin, age, physical or mental disability, or status with respect to
6 marriage or public assistance.

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

9 **14-02.4-16. Advertising public accommodations or services - Discriminatory**
10 **practices - Exceptions.**

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

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

19 **14-02.4-17. Credit transactions - Discriminatory practices.**

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

28 **SECTION 13. AMENDMENT.** Subsections 1 and 2 of section 14-02.5-02 of the North
29 Dakota Century Code are amended and reenacted as follows:

30 1. A person may not refuse to sell or rent, after the making of a bona fide offer, refuse to
31 negotiate for the sale or rental of, or in any other manner make unavailable or deny a

1 dwelling to an individual because of race, color, religion, sex, sexual orientation,
2 disability, age, familial status, national origin, or status with respect to marriage or
3 public assistance.

4 2. A person may not discriminate against an individual in the terms, conditions, or
5 privileges of sale or rental of a dwelling or in providing services or facilities in
6 connection with a sale or rental of a dwelling because of race, color, religion, sex,
7 sexual orientation, disability, age, familial status, national origin, or status with respect
8 to marriage or public assistance.

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

11 **14-02.5-03. Publication.**

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

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

19 **14-02.5-04. Inspection.**

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

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

26 **14-02.5-05. Entry into neighborhood.**

27 A person may not, for profit, induce or attempt to induce another to sell or rent a dwelling by
28 representations regarding the entry or prospective entry into a neighborhood of an individual of
29 a particular race, color, religion, sex, sexual orientation, disability, age, familial status, national
30 origin, or status with respect to marriage or public assistance.

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

3 **14-02.5-07. Residential real estate-related transaction.**

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

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

17 **14-02.5-08. Brokerage services.**

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

24 **SECTION 19. AMENDMENT.** Subsection 3 of section 14-02.5-10 of the North Dakota
25 Century Code is amended and reenacted as follows:

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

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

1 11. Refusing to insure risks. Refusing to insure risks solely because of race, color, creed,
2 sex, sexual orientation as defined in section 14-02.4-02, or national origin, or refusing
3 to continue to insure risks solely because an employer chooses to offer a health
4 maintenance organization option to employees in its health benefit plan.

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

7 1. The race, religion, nationality, ethnic group, disability, age, sex, sexual orientation as
8 defined in section 14-02.4-02, or marital status of the applicant or named insured,
9 except this subsection does not prohibit rating differentials based upon age, sex, or
10 marital status.

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

13 1. The race, religion, nationality, ethnic group, age, sex, sexual orientation as defined in
14 section 14-02.4-02, or marital status of the applicant or named insured.

15 **SECTION 23. AMENDMENT.** Subsection 1 of section 26.1-40-11 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 1. Based upon the race, religion, nationality, or ethnic group, or sexual orientation as
18 defined in section 14-02.4-02 of the applicant or named insured.

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

21 **26.1-47-04. Preferred provider participation requirements.**

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

28 **SECTION 25. AMENDMENT.** Section 27-09.1-02 of the North Dakota Century Code is
29 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.