

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 447*

Short Title: Asheville Antidiscrimination Act.

(Local)

Sponsors: Representative Nesbitt.

Referred to: Local Government I.

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF ASHEVILLE TO PROHIBIT ACTS OF DISCRIMINATION IN EMPLOYMENT BASED ON RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, DISABILITY, OR AGE.

The General Assembly of North Carolina enacts:

Section 1. Definition. – As used in this act, "person" means one or more individuals, governments, governmental agencies, political subdivisions, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees-in-bankruptcy, or receivers. Person does not include a bona fide private membership club other than a labor organization that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954.

Section 2. Authority to adopt ordinances. – (a) The City of Asheville ("City") may adopt ordinances to prohibit discrimination in employment based on race, color, national origin, religion, sex, disability, or having attained the age of 40 or more years. To assist in the enforcement of these ordinances, the City may, in these ordinances, adopt procedures and delegate powers to the Asheville-Buncombe Community Relations Council ("Council") that are necessary and proper for carrying out and enforcing these ordinances. The Council may:

- (1) Receive, initiate, and review complaints that allege a violation of the ordinance has occurred.

- 1 (2) Conduct investigations into the basis of complaints.
- 2 (3) Apply to the superior court for mandatory or prohibitory injunctive
- 3 relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil
- 4 Procedure if it determines, after a preliminary investigation, that prompt
- 5 judicial action is necessary to carry out the purposes of the ordinance.
- 6 (4) Make a determination of whether or not there is reasonable cause to
- 7 believe that an unlawful discriminatory practice has occurred.
- 8 (5) Dismiss complaints in these cases when the Council determines that
- 9 reasonable cause does not exist.
- 10 (6) Issue a right-to-sue letter to any complainant in those instances where
- 11 the Council has failed to make a determination of reasonable cause in a
- 12 timely manner, determines that reasonable cause does not exist, or
- 13 where conciliation efforts have failed.
- 14 (7) Attempt to conciliate a resolution of the complaint between the parties.
- 15 (8) Enter into conciliation agreements in instances where conciliation
- 16 efforts have been successful.

17 Section 2.(b) When conducting investigations pursuant to subdivision (2) of
18 subsection (a) of this section, the Council may:

- 19 (1) Subpoena witnesses, administer oaths, and compel the production of
- 20 evidence.
- 21 (2) Take depositions and serve interrogatories in accordance with Chapter
- 22 1A of the General Statutes, the Rules of Civil Procedure.

23 Section 2.(c) In the event any person refuses to comply with a subpoena or
24 discovery request under subsection (b) of this section, the Council may apply to the
25 Buncombe County Superior Court for an order to compel compliance with the subpoena
26 or discovery request. No testimony of any witness before the Council pursuant to a
27 subpoena issued under this section may be used against the witness in the trial of any
28 criminal action other than a prosecution for false swearing committed on the
29 examination.

30 Section 2.(d) The General Assembly does not intend to expand the authority or
31 powers of the Council beyond those prescribed by federal laws or regulations with
32 respect to a specific employer. The Council may, as part of an enforcing order, require
33 any person to cease and desist from unlawful practices and to engage in all of the
34 following additional remedial actions as may be appropriate, including, but not limited to,
35 requiring the person to:

- 36 (1) Hire, reinstate, or upgrade aggrieved individuals, with or without back
- 37 pay.
- 38 (2) Admit aggrieved individuals to or to allow aggrieved individuals to
- 39 participate in guidance programs, apprenticeship training programs, on-
- 40 the-job training programs, or other occupational training programs; and
- 41 to use objective criteria in the admission of any individual to these
- 42 programs.

- 1 (3) Submit to the Council, for approval or disapproval, plans to eliminate or
- 2 reduce imbalance with respect to race, color, national origin, religion,
- 3 sex, disability, or age.
- 4 (4) Provide technical assistance to aggrieved individuals.
- 5 (5) Report as to the manner of compliance with this act.
- 6 (6) Post notices in conspicuous places in the form prescribed by the
- 7 Council.

8 Section 3. Judicial review of Council order. – (a) Except as provided in subsection
9 (b) of this section, judicial review of Council orders shall be in accordance with Article 4
10 of Chapter 150B of the General Statutes.

11 Section 3.(b) Notwithstanding the provisions of G.S. 150B-45, petitions for
12 judicial review shall be filed in the Buncombe County Superior Court.

13 Section 3.(c) For purposes of this section, the term "agency", whenever used in
14 Article 4 of Chapter 150B of the General Statutes, shall have the same meaning as
15 "Council" under this act.

16 Section 4. Enforcement of Council orders. – (a) If within 60 days after entry of an
17 order of the Council, a respondent has neither complied with nor sought review of that
18 order, any aggrieved person or the Council may apply to the Buncombe County Superior
19 Court for an order of the court to enforce the order of the Council. The application to
20 superior court must be filed not later than 120 days after entry of the order of the Council.

21 Section 4.(b) Within 30 days after the court's receipt of the petition for
22 enforcement of the Council's order or within such additional time as the court may allow,
23 the Council shall transmit to the court the original or a certified copy of the entire record
24 of the proceedings leading to the order. With the permission of the court, the record may
25 be shortened by stipulation of all parties. Any party unreasonably refusing to stipulate to
26 limit the record may be taxed by the court for any additional costs as may be occasioned
27 by the refusal. The court, in its discretion, may require or permit subsequent corrections
28 or additions to the record.

29 Section 4.(c) Subject to subsection (d) of this section, the hearing on the petition
30 for enforcement of the Council's order shall be conducted by the court without a jury.
31 The court shall hear oral arguments and receive written briefs, but shall not take evidence
32 that was not offered at the Council hearing.

33 Section 4.(d) In cases of alleged irregularities in procedure before the Council not
34 shown in the record, testimony may be taken by the court regarding the alleged
35 irregularities. The judge in his or her discretion may hear all or part of the matter de
36 novo where no record was made of the proceeding or where the record is inadequate.

37 Section 4.(e) The court shall issue the order requiring compliance with the
38 Council's order unless the court finds that enforcement of the Council's order would
39 prejudice substantial rights of the party against whom the order is sought to be enforced.
40 The Council's order would prejudice substantial rights of the party against whom the
41 order is sought if the Council's findings, inferences, conclusions, or decisions do any of
42 the following:

- 43 (1) Are in violation of constitutional provisions.

- 1 (2) Are in excess of the statutory authority or jurisdiction of the Council.
- 2 (3) Are made upon unlawful procedure.
- 3 (4) Are affected by other error of law.
- 4 (5) Are unsupported by substantial evidence in view of the entire record as
- 5 submitted.
- 6 (6) Are arbitrary or capricious.

7 Section 4.(f) If the court declines to require compliance with the Council's
8 order, the court shall do one of the following:

- 9 (1) Dismiss the petition.
- 10 (2) Modify the Council's order and enforce it as modified.
- 11 (3) Remand the case to the Council for further proceedings.

12 Section 4.(g) Any party to the hearing on the petition for enforcement of the
13 Council's order may appeal the court's decision to the appellate division pursuant to the
14 North Carolina Rules of Appellate Procedure.

15 Section 5. Civil action for unlawful employment practice. – (a) An ordinance
16 adopted pursuant to this act may permit any complainant dissatisfied with the Council's
17 final disposition of a matter to bring a civil action in the Buncombe County Superior
18 Court against the person allegedly engaging in the unlawful practice. A civil action for
19 an unlawful employment practice shall not be brought more than one year after a charge
20 of discrimination was filed with the Council or more than 60 days after the complainant's
21 receipt of notification of the Council's final disposition of the matter, whichever is later.

22 Section 5.(b) If the court finds that the respondent has engaged in or is engaging in
23 an unlawful employment practice charged in the complaint, the court may enjoin the
24 respondent from engaging in an unlawful employment practice and order any action as
25 may be appropriate, which may include, but is not limited to: reinstatement or hiring of
26 employees, with or without back pay by the person, firm, corporation, or association
27 responsible for the unlawful practice; or any other equitable relief as the court deems
28 appropriate. Back pay shall not accrue from a date more than two years prior to the filing
29 of a charge with the Council. Interim earnings or amounts earnable with reasonable
30 diligence by the person discriminated against shall operate to reduce the back pay
31 otherwise allowable. No order of the court shall require any remedies under this act, if
32 the individual was refused employment or advancement or was suspended or discharged
33 for any reason other than discrimination based on race, color, religion, sex, national
34 origin, disability, or age in violation of an ordinance adopted pursuant to this act.

35 Section 5.(c) In any action or proceeding under an ordinance adopted pursuant to
36 this act, the court, in its discretion, may award the prevailing party reasonable attorneys'
37 fees as part of the costs.

38 Section 6. Discrimination based on opposition to unlawful practices or
39 participation in an investigation, proceeding, or hearing. – It shall be an unlawful
40 employment practice for any employer to discriminate against any employees or
41 applicants for employment or to discriminate against any individual, or for a union labor
42 organization to discriminate against any member of its union or applicant for
43 membership, because the individual opposed an unlawful employment practice adopted

1 by ordinance pursuant to this act or because the individual has made a charge, testified,
2 assisted, or participated in any manner in an investigation, proceeding, or hearing under
3 such an ordinance.

4 Section 7. Cases deferred by Equal Employment Opportunity Commission. –
5 The City may authorize the Council to serve as a deferral agency for cases deferred by
6 the Equal Employment Opportunity Commission as provided in section 706 of the Civil
7 Rights Act of 1964, 42 U.S.C. § 20000e-5, the Age Discrimination in Employment Act,
8 29 U.S.C. § 621, et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101, et
9 seq.

10 Section 8. Access to records. – The Council, at all reasonable times, shall
11 have access to and the right to copy any evidence of any person being investigated that
12 relates to an unlawful employment practice under an ordinance adopted pursuant to the
13 act and relevant to the charge under investigation. Information discovered during such an
14 investigation shall not be made public by the Council until offered into evidence in an
15 administrative hearing or judicial proceeding.

16 Section 9. Public records. – The provisions of G.S. 132-6 and G.S. 132-9
17 shall not apply to records concerning the investigation, conciliation, or mediation of
18 alleged violations of an ordinance enacted pursuant to this act.

19 Section 10. This act applies only to the City of Asheville.

20 Section 11. This act is effective when it becomes law.