

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 798

Short Title: City/County Antidiscrimination Ordinances.

(Public)

Sponsors: Senator Kinnaird.

Referred to: Judiciary II.

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CITIES AND COUNTIES TO ENACT ORDINANCES
3 PROHIBITING DISCRIMINATION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended
6 by adding a new section to read:

7 "**§ 153A-451. Ordinances prohibiting discrimination.**

8 (a) A county may adopt an ordinance designed to prohibit discrimination in
9 employment, housing, and public accommodations. The bases of discrimination which
10 may be prohibited are limited to race, color, religion, gender, national origin, age,
11 disability, familial status as defined in G.S. 41A-3(lb), and veteran status. Acts of
12 discrimination prohibited by an ordinance adopted under this section shall be the same
13 acts prohibited under applicable federal law. A county may amend any ordinance
14 prohibiting discrimination that is adopted under this section to ensure that the ordinance
15 remains substantially equivalent to the applicable federal law.

16 (b) Any county that has adopted an ordinance under this section may, in that
17 ordinance, adopt procedures and delegate powers to a Human Relations Commission
18 ('Commission') which are necessary and proper for carrying out and enforcing the
19 ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not
20 limited to, the following powers:

21 (1) Receiving and reviewing complaints that allege a violation of the
22 ordinance has occurred, is occurring, or is about to occur.

23 (2) Conduction investigations into the basis of complaints. The
24 Commission may take dispositions and serve interrogatories in
25 accordance with the North Carolina Rules of Civil Procedure. The
26 Commission may issue subpoenas for either or both of the following:

27 a. Compelling the production of documents; or

28 b. Compelling witnesses to appear before the Commission to give
29 testimony.

1 In the event any person refuses to comply with a subpoena or
2 discovery request, the Commission may apply to the superior court for
3 an order to compel compliance with the subpoena or discovery request.
4 Information and records discovered by the Commission during an
5 investigation or conciliation shall be maintained in confidence by the
6 Commission and are not subject to the provision of G.S. 132-6 and
7 G.S. 132-9 until and unless they are offered into evidence in a judicial
8 proceeding authorized by this section and an ordinance.

9 (3) Applying to the superior court for mandatory or prohibitory injunctive
10 relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil
11 Procedure if it determines, after a preliminary investigation, that
12 prompt judicial action is necessary to carry out the purposes of the
13 ordinance.

14 (4) Making a determination of whether or not there is a reasonable cause
15 to believe that an unlawful discriminatory practice has occurred, is
16 occurring, or is about to occur. The determination shall be in writing.
17 The determination may recite facts derived from information and
18 records made confidential by subdivision (b)(2) of this section. The
19 written determination is not subject to the provisions of G.S. 132-6 and
20 G.S. 132-9 until and unless it is offered into evidence in a judicial
21 proceeding authorized by this section and an ordinance.

22 (5) Issuing a right-to-sue letter to any complaining party upon request
23 after 60 days following receipt of a complaint.

24 (6) Attempting to conciliate a resolution of the complaint between the
25 parties.

26 (7) Entering into conciliation agreements in such instances where
27 conciliation efforts have been successful.

28 The county may, in enacting an ordinance, delegate the powers of the Commission
29 under this section and the ordinance to an administrative department of the county.

30 (c) The ordinance may provide that complainants who receive a right-to-sue
31 letter from the Commission may bring a civil action in superior court against the
32 respondent within one year of the issuance of the right-to-sue letter. The ordinance shall
33 provide that in a civil action filed which seeks damages from the respondent, either the
34 complainant or the respondent may request, and upon request is entitled to, a jury trial.
35 The superior court judge or jury, as appropriate, shall be authorized to impose
36 mandatory and prohibitory injunctive relief; compensatory damages; and any other
37 appropriate relief; however, the superior court judge or jury shall not order punitive
38 damages unless punitive damages are provided as a remedy under existing State or
39 federal law. In cases involving unlawful employment practices, the fact finder may
40 order reinstatement or hiring, with back pay.

41 In any action brought in the superior court pursuant to the ordinance, the court may
42 allow the prevailing party reasonable costs and attorneys' fees from the other party or
43 parties. Attorneys' fees, however, shall not be awarded to the Commission, and a

1 prevailing respondent may be awarded court costs and reasonable attorneys' fees only
2 upon a showing that the case is frivolous, unreasonable, or without foundation.

3 (d) Recourse by complainants to the Commission is a jurisdictional prerequisite
4 to filing a suit under the Equal Employment Practices Act, Article 49A of Chapter 143
5 of the General Statutes, in those instances where, at the time that the claim arose, a
6 county ordinance prohibiting discrimination in employment pursuant to this section is in
7 effect.

8 (e) The governing body of any county within the State that has adopted an
9 ordinance may enter into work-sharing agreements with the State and the federal
10 government.

11 (f) If an ordinance is adopted by a county, the ordinance shall apply to any part
12 of the county not within a municipally incorporated city, town, or village in the county.
13 The governing board of a city, town, or village within the county adopting an ordinance
14 may, by resolution, permit an ordinance adopted by the county to be applicable within
15 its corporate boundaries. A city, town, or village may, by resolution, withdraw its
16 permission. If it does so, it shall give written notice to the county of its withdrawal of
17 permission. Thirty days after the date the county receives the permission withdrawal
18 notice, the ordinance ceases to be applicable within the city, town, or village."

19 **SECTION 2.** Article 8 of Chapter 160A of the General Statutes is amended
20 by adding a new section to read:

21 **"§ 160A-199. Ordinances prohibiting discrimination.**

22 (a) A city may adopt an ordinance designed to prohibit discrimination in
23 employment, housing, and public accommodations. The bases of discrimination which
24 may be prohibited are limited to race, color, religion, gender, national origin, age,
25 disability, familial status as defined in G.S. 41A-3(b), and veteran status. Acts of
26 discrimination prohibited by an ordinance adopted under this section shall be the same
27 acts prohibited under applicable federal law. A city may amend any ordinance
28 prohibiting discrimination that is adopted under this section to ensure that the ordinance
29 remains substantially equivalent to the applicable federal law.

30 (b) Any city that has adopted an ordinance under this section may, in that
31 ordinance, adopt procedures and delegate powers to a Human Relations Commission
32 ('Commission') which are necessary and proper for carrying out and enforcing the
33 ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not
34 limited to, the following powers:

35 (1) Receiving and reviewing complaints that allege a violation of the
36 ordinance has occurred, is occurring, or is about to occur.

37 (2) Conducting investigations into the basis of complaints. The
38 Commission may take dispositions and serve interrogatories in
39 accordance with the North Carolina Rules of Civil Procedure. The
40 Commission may issue subpoenas for either or both of the following:

41 a. Compelling the production of documents; or

42 b. Compelling witnesses to appear before the Commission to give
43 testimony.

1 In the event any person refuses to comply with a subpoena or
2 discovery request, the Commission may apply to the superior court for
3 an order to compel compliance with the subpoena or discovery request.
4 Information and records discovered by the Commission during an
5 investigation or conciliation shall be maintained in confidence by the
6 Commission and are not subject to the provisions of G.S. 132-6 and
7 G.S. 132-9 until and unless they are offered into evidence in a judicial
8 proceeding authorized by this section and an ordinance.

9 (3) Applying to the superior court for mandatory or prohibitory injunctive
10 relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil
11 Procedure if it determines, after a preliminary investigation, that
12 prompt judicial action is necessary to carry out the purposes of the
13 ordinance.

14 (4) Making a determination of whether or not there is reasonable cause to
15 believe that an unlawful discriminatory practice has occurred, is
16 occurring, or is about to occur. The determination shall be in writing.
17 The determination may recite facts derived from information and
18 records made confidential by subdivision (b)(2) of this section. The
19 written determination is not subject to the provisions of G.S. 132-6 and
20 G.S. 132-9 until and unless it is offered into evidence in a judicial
21 proceeding authorized by this section and an ordinance.

22 (5) Issuing a right-to-sue letter to any complaining party upon request
23 after 60 days following receipt of a complaint.

24 (6) Attempting to conciliate a resolution of the complaint between the
25 parties.

26 (7) Entering into conciliation agreements in such instances where
27 conciliation efforts have been successful.

28 The city, may, in enacting an ordinance, delegate the powers of the Commission
29 under this section and the ordinance to an administrative department of the city.

30 (c) The ordinance may provide that complainants who receive a right-to-sue
31 letter from the Commission may bring a civil action in superior court against the
32 respondent within one year of the issuance of the right-to-sue letter. The ordinance shall
33 provide that in a civil action filed which seeks damages from the respondent, either the
34 complainant or the respondent may request, and upon request is entitled to, a jury trial.
35 The superior court judge or jury, as appropriate, shall be authorized to impose
36 mandatory and prohibitory injunctive relief; compensatory damages; and any other
37 appropriate relief; however, the superior court judge or jury shall not order punitive
38 damages unless punitive damages are provided as a remedy under existing State or
39 federal law. In cases involving unlawful employment practices, the fact finder may
40 order reinstatement or hiring, with back pay.

41 In any action brought in the superior court pursuant to the ordinance, the court may
42 allow the prevailing party reasonable costs and attorneys' fees from the other party or
43 parties. Attorneys' fees, however, may not be awarded to the Commission, and a

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2 upon a showing that the case is frivolous, unreasonable, or without foundation.

3 (d) Recourse by complainants to the Commission is a jurisdictional prerequisite
4 to filing a suit under the Equal Employment Practices Act, Article 49A of Chapter 143
5 of the General Statutes, in those instances where, at the time that the claim arose, a city
6 ordinance prohibiting discrimination in employment pursuant to this section is in effect.

7 (e) The governing body of any city within the State that has adopted an
8 ordinance may enter into work-sharing agreements with the State and the federal
9 government."

10 **SECTION 3.** This act is effective when it becomes law.