

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

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**SENATE BILL 657**

Short Title: Omnibus Civil Rights Act. (Public)

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Sponsors: Senators Dannelly and Lucas.

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Referred to: Judiciary II (Criminal).

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March 12, 2007

A BILL TO BE ENTITLED  
AN ACT TO ENACT THE OMNIBUS CIVIL RIGHTS ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** Recodifications. – The following recodifications are made to integrate existing laws into the North Carolina Omnibus Civil Rights Act as enacted by this act and the Revisor of Statutes may make changes in the General Statutes that will reflect the results of these recodifications:

- (1) Chapter 41A of the General Statutes is recodified as Article 4 of Chapter 169 of the General Statutes (entitled "State Fair Housing Act."). The Revisor of Statutes is authorized to delete any reference to the North Carolina Human Relations Commission or derivative thereof in any portion of the General Statutes. Any affected Session Law of local applicability shall be construed to replace any reference to the North Carolina Human Relations Commission or derivative thereof with the phrase Division of Fair Housing and Public Accommodations or the appropriate derivative, consistent with the provisions of this act.
- (2) G.S. 143B-391 and G.S. 143B-392 are recodified as Part 6 of Article 2 of Chapter 169 of the General Statutes (entitled "Human Relations Commission."). The Revisor of Statutes is authorized to delete any reference to the North Carolina Human Relations Commission of the Department of Administration or derivative thereof in any portion of the General Statutes. Any affected Session Law of local applicability shall be construed to replace any reference to the North Carolina Human Relations Commission or derivative thereof with the phrase North Carolina Agency for Civil Rights or the appropriate derivative, consistent with the provisions of this act.
- (3) G.S. 143B-426.34A and G.S. 143B-426.34B are recodified as Part 7 of Article 2 of Chapter 169 of the General Statutes (entitled "Martin Luther King, Jr. Commission."). The Revisor of Statutes is authorized

1 to delete any reference to the Martin Luther King, Jr. Commission of  
2 the Department of Administration or derivative thereof in any portion  
3 of the General Statutes. Any affected Session Law of local  
4 applicability shall be construed to replace any reference to the Martin  
5 Luther King, Jr. Commission of the Department of Administration or  
6 derivative thereof with the phrase Martin Luther King, Jr. Commission  
7 of the North Carolina Agency for Civil Rights or the appropriate  
8 derivative, consistent with the provisions of this act.

9 (4) G.S. 7A-759 is recodified as G.S. 169-2-10 in Part 3 of Article 2 of  
10 Chapter 169 of the General Statutes. The Revisor of Statutes is  
11 authorized to delete any reference to the Office of Administrative  
12 Hearings, the Chief Administrative Law Judge, and the Civil Rights  
13 Division of the Office of Administrative Hearings or derivative thereof  
14 in any portion of the General Statutes. Any affected Session Law of  
15 local applicability shall be construed to replace the Office of  
16 Administrative Hearings, the Chief Administrative Law Judge, and the  
17 Civil Rights Division of the Office of Administrative Hearings, or  
18 derivative thereof, with the phrases Division of Fair Employment  
19 Practices, Commissioner of the North Carolina Agency for Civil  
20 Rights, and Director of the Division of Fair Employment or the  
21 appropriate derivatives, consistent with the provisions of this act.

22 (5) Chapter 99D of the General Statutes is recodified as Article 5 of  
23 Chapter 169 of the General Statutes (entitled "Interference With Civil  
24 Rights."). The Revisor of Statutes is authorized to delete any reference  
25 to the North Carolina Human Relations Commission or derivative  
26 thereof in any portion of the General Statutes. Any affected Session  
27 Law of local applicability shall be construed to replace the North  
28 Carolina Human Relations Commission, or derivative thereof, with the  
29 phrase Division of Community Relations and Hate Crimes or the  
30 appropriate derivative, consistent with the provisions of this act.

31 **SECTION 1.(b)** Transfers of Agencies, Powers, and Duties. – The statutory  
32 authority, powers, duties, functions, records, personnel, property, and unexpended  
33 balances of appropriations, allocations, or other funds of the State agencies and subunits  
34 listed in this subsection are transferred from those entities to the North Carolina Agency  
35 for Civil Rights created by this act with all of the elements of a Type I transfer as  
36 defined by G.S. 143A-6:

- 37 (1) Civil Rights Division, from the Office of Administrative Hearings;  
38 (2) Human Relations Commission, from the Department of  
39 Administration; and  
40 (3) Martin Luther King Commission, from the Department of  
41 Administration.

42 The Community Relations section previously within the Department of  
43 Administration's Human Relations Commission (including staff, funding, grants, and

1 other allocated resources) is hereby transferred to the Division of Community Relations  
2 and Hate Crimes.

3 All power and authority previously conferred upon the North Carolina  
4 Human Relations Commission with respect to the enforcement of the State Fair Housing  
5 Act and its designation as a deferral agency, including any and all related contracts and  
6 administrative regulations, are hereby transferred to the Division of Fair Housing and  
7 Public Accommodations of the Agency for Civil Rights, except that the North Carolina  
8 Human Relations Commission shall retain its powers as to final agency decisions and  
9 contested case hearings under Chapter 150B of the General Statutes.

10 The Division of Fair Employment Practices is authorized and directed to  
11 carry out the responsibilities conferred upon it by Article 6 of Chapter 126 of the  
12 General Statutes, as the successor to the former Civil Rights Division of the Office of  
13 Administrative Hearings.

14 The rights, duties, and responsibilities conferred upon the Division of Fair  
15 Employment Practices by this act replace all grants of authority previously granted the  
16 North Carolina Human Relations Commission under G.S. 143-422.3 with regard to the  
17 investigation and resolution of charges of employment discrimination.

18 Except as otherwise expressly provided by law, the Commissioner of the  
19 North Carolina Agency for Civil Rights may enter into deferral agency agreements and  
20 cooperative agreements with the federal government, State agencies, or local  
21 governments, whether jointly or severally, in carrying out assigned functions and duties.

22 **SECTION 1.(c)** Any previous assignment of duties of a quasi-legislative and  
23 quasi-judicial nature by the Governor or General Assembly shall have continued  
24 validity with the transfer under this act of any affected commission, board, division, or  
25 office.

26 **SECTION 1.(d)** Repeals. – The following portions of the General Statutes  
27 are repealed:

28 (1) G.S. 143-422.1 is repealed.

29 **SECTION 2.** The General Statutes are amended by adding a new Chapter to  
30 read:

31 **"Chapter 169.**

32 **"Omnibus Civil Rights Act.**

33 **"Article 1.**

34 **"General Provisions.**

35 **"Part 1. Definitions.**

36 **"§ 169-1-1. Definitions.**

37 (a) Except as otherwise specifically provided, the following definitions apply in  
38 this Chapter:

39 (1) Agency. – The North Carolina Agency for Civil Rights.

40 (2) Commissioner. – The Commissioner of the North Carolina Agency for  
41 Civil Rights.

42 (3) Complaining party or charging party. – Includes the Divisions of the  
43 Agency, the Commissioner, the General Counsel of the Agency; and  
44 any person who files a complaint or charge with the Agency.

- 1           (4)    Constituent entity. – One of the offices, divisions, commissions, and  
2           boards transferred to, or created under, the auspices of the Agency.  
3           (5)    DCRHC. – The Agency's Division of Community Relations and Hate  
4           Crimes.  
5           (6)    Demonstrates. – Meets the burden of production and persuasion.  
6           (7)    DFEP. – The Agency's Division of Fair Employment Practices.  
7           (8)    DFHPA. – The Agency's Division of Fair Housing and Public  
8           Accommodations.  
9           (9)    Disability. – Any physical or mental condition or characteristic that  
10          renders a person a person with a disability or results in a person being  
11          perceived as a person with a disability.  
12          (10) Disabling condition. – Any condition or characteristic that renders a  
13          person a person with a disability.  
14          (11) Hate crime. – As defined in G.S. 14-3(c), G.S. 14-12.2 through  
15          14-12.11, G.S. 14-12.12(a) and (b), G.S. 14-12.13 through 14-12.15,  
16          G.S. 14-49(bl), G.S. 14-62.2, G.S. 14-401.14,  
17          G.S. 15A-1340.16(d)(17), or any other statutes designated or enacted  
18          as hate crimes by the General Assembly.  
19          (12) Hate-motivated action. – Acts of ethnic or racial intimidation or acts  
20          motivated by animosity based upon a person's actual or perceived race,  
21          color, national origin, religion, age, sex, or physical or mental  
22          disability.  
23          (13) National origin. – Includes ancestry.  
24          (14) Reasonable accommodation. – As defined in G.S. 168A-3.  
25          (15) Undue hardship. – As defined in G.S. 168A-3.

26                                   "Part 2. General Provisions.

27    **§ 169-1-2. Title; purpose.**

28       (a)    This Chapter shall be known and may be cited as the North Carolina  
29       Omnibus Civil Rights Act.

30       (b)    The purpose of this Chapter is to ensure that every individual within North  
31       Carolina is afforded an equal opportunity to enjoy a full and productive life by  
32       providing the means to address and attempt to remedy the harmful effects of unlawful  
33       discrimination and to eradicate discriminatory practices.

34    **§ 169-1-3. Findings and declaration of civil rights.**

35       (a)    The General Assembly finds that the opportunity for all to obtain  
36       employment without discrimination because of an individual's or group's actual or  
37       perceived race, color, national origin, religion, age, sex, or physical or mental disability  
38       is in the best interests of all of the people of the State and hereby establishes a statutory  
39       civil right to fair employment where the employer regularly employs 15 or more  
40       employees.

41       (b)    The General Assembly finds that the opportunity for all to obtain the use,  
42       occupancy, or ownership of housing without discrimination because of an individual's  
43       or group's actual or perceived race, color, national origin, religion, sex, physical or

1 mental disability, or familial status, as to housing, is in the best interest of all the people  
2 of the State and hereby establishes a statutory civil right to fair housing.

3 (c) The General Assembly finds that the opportunity for all to obtain the full and  
4 equal use, accommodations, and advantages of any place of public accommodation, as  
5 defined in Article 5 of this Act, without discrimination because of an individual's or  
6 group's actual or perceived race, color, national origin, religion, sex, physical or mental  
7 disability is hereby established as a statutory civil right to use of public  
8 accommodations.

9 (d) The General Assembly finds that the opportunity for all to live and visit in  
10 this State without fear of victimization from the commission, attempted commission, or  
11 threat of commission of a hate crime on account of an individual's actual or perceived  
12 race, color, national origin, religion, sex, physical or mental disability is hereby  
13 established as a statutory civil right.

14 **"§ 169-1-4. Retaliation prohibited.**

15 It shall be unlawful for any person, organization, or agency covered by this Chapter  
16 to discriminate against or retaliate against any individual because the individual has  
17 opposed any practice made unlawful under this Chapter or because the individual has  
18 made a charge or has testified, assisted, or participated in any manner in an  
19 investigation, proceeding, inquiry, or hearing under this Chapter.

20 **"§ 169-1-5. Limited waiver of sovereign immunity.**

21 The sovereign immunity of the State is waived for the limited purpose of allowing  
22 actions authorized by this Chapter, including the granting of injunctive relief, awarding  
23 of damages and other appropriate relief, and issuance and enforcement of subpoenas  
24 and contempt orders. Consistent with the waiver limitation in G.S. 143-300.35, the  
25 monetary relief in employment actions against the State pursuant to this Chapter shall  
26 not exceed the amounts authorized under G.S. 143-299.2 or the amount authorized  
27 under 42 U.S.C. § 2000e, et seq., as amended, whichever is less.

28 "Article 2.

29 "North Carolina Agency for Civil Rights.

30 "Part 1. Creation and Functions.

31 **"§ 169-2-1. Agency for Civil Rights created; purpose.**

32 (a) There is created the North Carolina Agency for Civil Rights. The Agency is  
33 established as an independent agency to ensure that (i) charges of discrimination are  
34 provided a fair and impartial review and (ii) the civil rights of individuals in this State  
35 are respected and protected to the fullest extent of the law.

36 The Agency shall have all powers reasonably necessary to accomplish its purposes,  
37 including:

- 38 (1) Enforcement and oversight of those statutory duties enumerated in this  
39 Chapter.
- 40 (2) Development of compliance standards applicable to public and private  
41 entities covered by this Chapter.
- 42 (3) Tasks related to any duties as may be periodically assigned by the  
43 General Assembly or requested by the Governor.

- 1           (4) Activities it deems necessary to fulfill the enumerated and assigned  
2           duties to advance the declared purpose of this Chapter.
- 3       (b) The Agency shall be organized into at least the following divisions:
- 4           (1) Community Relations and Hate Crimes.
- 5           (2) Fair Employment Practices.
- 6           (3) Fair Housing and Public Accommodations.

7 **"§ 169-2-2. Commission, council, and board appointments; qualifications; terms;**  
8 **compensation; removal.**

9       All appointments and removals of chairs and members of commissions and boards  
10 transferred to this Chapter shall continue to be made in the same manner as before the  
11 transfer authorized in the Chapter, consistent with the provisions of G.S. 143B-13 and  
12 143B-16; and members of commissions shall be compensated in the same manner as  
13 provided in General Statutes 143B-15.

14 **"§ 169-2-3. Seal; identification and badges.**

15       (a) The Agency shall adopt an official seal which shall be used on letterhead and  
16 all official communications of the Agency and its constituent Divisions and programs.

17       (b) The Agency's official seal shall be used to authenticate the Agency's acts and  
18 proceedings, and the courts shall take judicial notice thereof. The certificate of the  
19 Commissioner under the seal of the Agency for Civil Rights and attested by the Senior  
20 Administrative Clerk shall be accepted in evidence in any administrative or judicial  
21 proceedings in any court of this State as adequate and sufficient proof of the acts and  
22 proceedings therein.

23       (c) Any field agent, examiner, investigator, or other personnel of the Agency for  
24 Civil Rights who is authorized by this Chapter to collect documents, audit books,  
25 inspect premises of individuals or business firms, or engage in any other field  
26 investigative activities shall be furnished with a badge and identification card signed by  
27 the Commissioner of the Agency for Civil Rights.

28 **"§ 169-2-4. Public records; confidentiality.**

29       (a) All privileged patient medical records in the possession of the Agency and its  
30 constituent commissions and boards shall neither be made nor considered public records  
31 pursuant to G.S. 132-1.

32       (b) The standards of confidentiality established by federal statute or regulation  
33 for discrimination charges and as provided hereinafter in this Chapter shall apply to all  
34 cases investigated by the Agency.

35       (c) Nothing in this section shall be construed as limiting the authority or right of  
36 any federal agency to act under federal statute or regulation.

37       (d) Any officer or employee of the Agency who violates this section shall be  
38 subject to disciplinary action up to and including dismissal from employment.

39 **"§ 169-2-5. Copies of public records.**

40       Upon request and at such reasonable charges as the Commissioner prescribes,  
41 Division Directors and the Commissioner shall furnish, pursuant to written requests,  
42 photostatic or other copies of any document which is a matter of public record as  
43 determined by the exclusions and confidentiality provisions set forth in this Chapter and

1 other applicable statutory provisions. A certified copy may be provided for an additional  
2 charge.

3 **"§ 169-2-6. Agency and commission investigations and orders; subpoenas.**

4 (a) Unless otherwise prohibited by law, the Agency through its Commissioner  
5 and divisions, and any Commission or board covered by this Chapter, may order an  
6 investigation into areas of concern over which it has been granted investigative  
7 authority and may issue subpoenas for the appearance of witnesses and the production  
8 of documents as provided in this Chapter.

9 (b) In proceedings before the Agency, its divisions or any commission or board  
10 covered by this Chapter, when a person refuses to respond to a subpoena or refuses to  
11 take an oath or affirmation as a witness or thereafter refuses to be examined or refuses  
12 to obey any lawful order of a covered commission or board contained in this Chapter,  
13 the Commissioner of the Agency may apply to the Superior Court of Wake County, or  
14 to the superior court of the county where the proceedings are held, for an order directing  
15 that person to take the requisite action. Any person's willful failure to comply with an  
16 order so issued by the court may result in the person being found in civil or criminal  
17 contempt.

18 **"§ 169-2-7. Misrepresentation and fraud; penalties.**

19 Whoever shall misrepresent, falsify, or provide fraudulent information or evidence  
20 or whoever shall forcibly resist, oppose, impede, intimidate, or interfere with a duly  
21 authorized agent, representative, or investigator of the Agency while engaged in the  
22 performance of duties under this Chapter shall be subject to the assessment of civil  
23 penalties of not more than one thousand dollars (\$1,000) per incident.

24 "Part 2. Commissioner of the Agency.

25 **"§ 169-2-8. Commissioner; functions; duties.**

26 (a) The Agency shall have a Commissioner as its ranking administrative officer,  
27 who shall be nominated by the Governor, subject to approval by the General Assembly,  
28 for a term of eight years. The salary of the Commissioner shall be the same as that fixed  
29 from time to time for superior court judges. The term of the initial Commissioner shall  
30 begin July 1, 2007. An individual may serve more than one term as Commissioner.

31 The Commissioner, as the State's principal civil rights official, shall have the  
32 following powers and duties:

- 33 (1) To coordinate the State's efforts and information in the several areas of  
34 civil rights oversight and enforcement governed by this Chapter and  
35 otherwise under the Agency's purview.
- 36 (2) To coordinate the Agency's advocacy, community relations, and  
37 education functions as established by this Chapter.
- 38 (3) To ensure that rules are adopted by the Agency in accordance with  
39 Chapter 150B of the General Statutes, the Administrative Procedure  
40 Act.
- 41 (4) To formulate and administer the policies of the Agency and its  
42 constituent entities.
- 43 (5) To prepare an annual unified budget request for the Agency and its  
44 constituent entities.

1           (6) To present a report on the status of civil rights in this State to the  
2           General Assembly and Governor beginning in May 2009, and not less  
3           than every two years thereafter.

4           (7) To serve as a liaison with State, local, and federal governmental  
5           entities involved in advocacy and enforcement of civil rights.

6           (b) The Commissioner shall appoint deputy commissioners, a General Counsel as  
7           provided by Part 8 of this Article, division directors, examiners, investigators, and other  
8           employees and agents necessary to carry out the charge of the Agency. The  
9           Commissioner shall fix the compensation of Agency employees. Except for the deputy  
10           commissioners and the General Counsel, employees of the Agency are subject to the  
11           provisions of Chapter 126 of the General Statutes, the State Personnel Act.

12           **"§ 169-2-9. Organizational matters; public hearings; subpoenas; injunctions.**

13           (a) The Commissioner shall be responsible for management functions of the  
14           constituent entities under the Agency's auspices, including responsibility for staffing,  
15           reorganization, assignment of functions, management, custody of records, budget  
16           preparation and reporting, and preparation of plans and reports in the manner set forth  
17           G.S. 143B-9, 143B-10, and 143B-12.

18           (b) The Commissioner may hold public hearings and consult with and use the  
19           services of other State agencies, employ staff and consultants, and appoint advisory and  
20           technical committees to assist in the preparation of reports to the General Assembly and  
21           the Governor on legislative, budgetary, and administrative matters related to the  
22           accomplishment of the work of the Agency.

23           (c) Employees of the Agency designated by the Commissioner shall, in  
24           investigating charges assigned to the respective divisions under this Chapter, have the  
25           authority to administer oaths and affirmations, and, under specific authorization of the  
26           Commissioner and this Chapter, issue subpoenas.

27           (d) Where the Commissioner of the Agency concludes, at any time following the  
28           filing of a complaint under this Chapter, that prompt judicial action is necessary to  
29           prevent immediate and irreparable harm, the Commissioner may commence a civil  
30           action in the Superior Court of Wake County or any other court of competent  
31           jurisdiction, and that court may grant an appropriate preliminary or special injunction  
32           pending final disposition of the complaint. Any order or relief shall be granted in  
33           accordance with Chapter 1A-1, Rule 65 of the North Carolina Rules of Civil Procedure  
34           and any applicable local rules. Where the State or other public entity is involved, the  
35           highest ranking official of that entity shall be named as the respondent for purposes of  
36           any motions to compel or injunctions. This grant of authority is in addition to the  
37           authority of the Agency to file actions and seek injunctive relief as set forth elsewhere  
38           in this Chapter.

39                                   "Part 3. Division of Fair Employment Practices.

40           **"§ 169-2-10. Division of Fair Employment Practices; deferral agency.**

41           (a) The Agency is designated to serve as the State's deferral agency for cases  
42           deferred by the U. S. Equal Employment Opportunity Commission as provided in  
43           Section 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, the Age  
44           Discrimination in Employment Act, 29 U.S.C. § 621, et seq., and the Americans with



1 Disabilities Act, 42 U.S.C. § 12101, et seq., for charges filed by employees covered  
2 under Article 3 of this Chapter, the State Fair Employment Act, and shall have all the  
3 powers and authority necessary to function as a deferral agency.

4 (b) There is created the Division of Fair Employment Practices within the North  
5 Carolina Agency for Civil Rights to execute the functions of a deferral agency.

6 **"§ 169-2-11. Prevention.**

7 The Agency, through its Division of Fair Employment Practices, is empowered as  
8 provided in Article 3 of this Chapter to prevent any person from engaging in any  
9 employment practice declared unlawful in this Chapter.

10 **"§ 169-2-12. Director of the Division of Fair Employment Practices; power and**  
11 **duties.**

12 (a) The head of the Division of Fair Employment Practices is a Director  
13 appointed by the Commissioner of the Agency.

14 (b) As authorized by the Commissioner, the Director may from time to time  
15 make, amend, and rescind any rules, forms, and orders necessary to carry out the  
16 provisions of Article 3 of this Chapter.

17 (c) The Director shall contract with the U.S. Equal Employment Opportunity  
18 Commission for the Agency for Civil Rights to serve as a deferral agency. The Director  
19 shall provide a copy of each contract to the Commissioner.

20 (d) The Director shall have responsibility within budget limitations to hire and  
21 maintain a sufficient staff of employees to carry out the duties and functions of the  
22 Division of Fair Employment Practices regarding the receipt and investigation of  
23 charges of employment discrimination and the filing of actions in State courts as  
24 provided in Article 3 of this Chapter.

25 (e) The Director shall provide for educational, promotional, and technical  
26 training and outreach activities by staff of the Division and the Agency in the area of  
27 compliance with Article 3 of this Chapter for the general benefit of employees,  
28 employers, and the public.

29 **"§ 169-2-13. Access to records.**

30 In investigating charges filed pursuant to Article 3 of this Chapter, an employee of  
31 the Division of Fair Employment Practices shall have access at reasonable times to  
32 premises, records, and documents relevant to the charge and shall have the right to  
33 examine, photograph, and copy evidence. Any challenge to the deferred charge under  
34 investigation shall not constitute grounds for denial or refusal to produce or allow  
35 access to the investigative evidence.

36 **"§ 169-2-14. Initial determinations, cause determinations, and final agency**  
37 **decisions.**

38 (a) The Division of Fair Employment Practices shall make an Initial  
39 Determination as to whether reasonable cause exists to believe that the charge is true as  
40 promptly as possible, and so far as practicable, not later than 160 days from the filing of  
41 the charge under Article 3 of this Chapter.

42 (b) Where the Division of Fair Employment Practices determines, after  
43 investigation, that there is not reasonable cause to believe that the charge is true, it shall  
44 issue a No Cause Determination on the charge with findings, which shall constitute the

1 final agency action on the charge and shall promptly notify the person claiming to be  
2 aggrieved and the respondent of its action.

3 (c) Where the Division of Fair Employment Practices determines after  
4 investigation that reasonable cause exists to believe that the charge is true, the Division  
5 shall issue a Cause Determination and notify the charging party and the respondent.  
6 Thereafter, the Division shall endeavor to eliminate any such alleged unlawful  
7 employment practice by informal methods of conference, conciliation, and persuasion.

8 (d) In the event that informal endeavors fail to settle or resolve the alleged  
9 unlawful employment practice, the Director of the DFEP shall refer the Cause  
10 Determination to the Office of General Counsel for further consideration. The charging  
11 party and the respondent shall receive formal notice of the referral. The notice of  
12 referral shall indicate that a Final Agency Decision will be issued by the Commissioner  
13 of the Agency as promptly as possible, and so far as practicable, within 60 days from  
14 the date of the referral to the Agency's Office of General Counsel.

15 (e) The Commissioner of the Agency shall issue Final Agency Decisions on  
16 Cause Determinations which are binding on the parties. The Commissioner may order  
17 whatever remedial action is appropriate to give full relief consistent with the  
18 requirements of federal statutes or regulations or State statutes or regulations. In  
19 addition, the Commissioner may monitor compliance with any negotiated settlement,  
20 conciliation, and agreement entered into.

21 **"§ 169-2-15. Administrative rules and policies.**

22 The Director of the Division of Fair Employment Practices shall develop  
23 administrative rules and policies, as assigned by the Commissioner, to carry out the  
24 duties and responsibilities of the Division under Article 3 of this Chapter.

25 **"§ 169-2-16. State court actions; sovereign immunity waiver.**

26 (a) The Director of the Division of Fair Employment Practices may file actions in  
27 State court on behalf of one or more affected employees. Any person aggrieved shall  
28 have the right to intervene in that action.

29 (b) In any actions filed pursuant to subsection (a) of this section, the court may  
30 restrain and enjoin future acts, may compel compliance, and may award damages to the  
31 injured person to the same extent permissible in actions brought directly by applicants,  
32 employees, and former employees. Where the State or other public entity is involved,  
33 the highest ranking official of the public entity shall be named as the respondent for  
34 purposes of any motions to compel or injunctions. Sovereign immunity shall not be  
35 available as a defense in these actions.

36 (c) In any action in which an employer fails to comply with a final order or  
37 judgment issued in a civil action brought pursuant to Article 3 of this Chapter by or on  
38 behalf of an aggrieved person, the DFEP, or the Agency, the DFEP may commence  
39 proceedings to compel compliance with the order or judgment. Where the State or other  
40 public entity is involved, the highest ranking official of the public entity shall be named  
41 as the respondent for purposes of any motions to compel or injunctions. Sovereign  
42 immunity shall not be available as a defense in such actions.

43 **"§ 169-2-17. Injunctive relief; sovereign immunity waiver.**

1 Whenever, after a charge is filed with the Division of Fair Employment Practices,  
2 the Director of the Division concludes that prompt judicial action is necessary to carry  
3 out the purposes of the State Fair Employment Act, the Division may bring an action for  
4 appropriate temporary or preliminary relief pending the final agency disposition of such  
5 charge. Any order granting temporary or preliminary relief shall be issued in accordance  
6 with Rule 65 of the North Carolina Rules of Civil Procedure, and it shall be the duty of  
7 the State courts having jurisdiction over proceedings under this Chapter to assign cases  
8 for hearing at the earliest practicable date and to cause such cases to be expedited in  
9 every way. Where the State or other public entity is involved, the highest ranking  
10 official of that entity shall be named as the defendant for purposes of any motions to  
11 compel or injunctions. Sovereign immunity shall not be available as a defense in these  
12 actions.

13 "Part 4. Division of Fair Housing and Public Accommodations.

14 **"§ 169-2-19. Deferral agency; establishment of division; transfer of authority.**

15 (a) The North Carolina Agency for Civil Rights is designated to serve as the  
16 State's deferral agency for cases deferred by the U.S. Department of Housing and Urban  
17 Development as provided in Title VIII of the Civil Rights Act of 1968 as amended (42  
18 U.S.C. § 3601, et seq.) and in Article 4 of this Chapter and shall have all the powers and  
19 authority necessary to function as a deferral agency.

20 (b) There is hereby established the Division of Fair Housing and Public  
21 Accommodations to execute the functions of a deferral agency as provided in Article 4  
22 of this Chapter.

23 **"§ 169-2-20. Purpose.**

24 The Division shall function in its own name and on behalf of the Agency to enforce  
25 the State Fair Housing Act, to carry out the Agency's function as a deferral agency, and  
26 to enforce and administer the provisions of Articles 4 and 5 of this Chapter.

27 **"§ 169-2-21. Prevention.**

28 The Agency, through its Division of Fair Housing and Public Accommodations, is  
29 empowered to prevent any person from engaging in housing and public  
30 accommodations practices and actions declared unlawful by this Civil Rights Act  
31 Chapter 169 of the General Statutes through the enforcement of its provisions and to  
32 seek redress and accountability for such unlawful practices and actions as authorized by  
33 this Act.

34 **"§ 169-2-22. Director of the Division of Fair Housing and Public Accommodations;**  
35 **power and duties.**

36 (a) The head of the Division of Fair Housing and Public Accommodations is a  
37 Director appointed by the Commissioner of the Agency. The Director shall be  
38 responsible for hiring and maintaining employees to carry out the functions of the  
39 Agency related to the enforcement of Articles 4 and 5 of this Chapter.

40 (b) The Director of the DFHPA has the powers and duties conferred on that  
41 position by Articles 4 and 5 of this Chapter and the laws of this State and, as authorized  
42 by the Commissioner, may from time to time make, amend, and rescind rules, forms,  
43 and orders necessary to carry out the provisions of Articles 4 and 5 of this Chapter.

1       (c) The Director of the DFHPA is authorized and directed to contract with the  
2 U.S. Department of Housing and Urban Development for the Agency for Civil Rights to  
3 serve as a deferral agency. The Director shall provide a copy of each such contract to  
4 the Commissioner of the Agency for Civil Rights.

5       (d) The Commissioner of the Agency for Civil Rights is authorized to make  
6 available to assist the Director of the DFHPA in carrying out the responsibilities  
7 assigned to the Division such additional resources and staff of the Agency, including the  
8 Office of General Counsel, as deemed necessary.

9       (e) The Director of the DFHPA shall oversee the provision of educational and  
10 technical training and outreach activities by staff of the DFHPA and the Agency in the  
11 area of compliance with Articles 4 and 5 of this Chapter.

12               "Part 5. Division of Community Relations and Hate Crimes.

13 **"§ 169-2-24. Division of Community Relations and Hate Crimes.**

14       (a) There is hereby established within the Agency the Division of Community  
15 Relations and Hate Crimes.

16       (b) In addition to those responsibilities set forth elsewhere in this Chapter, the  
17 Agency shall function as a resource for resolving community conflicts and tensions  
18 arising from differences of race, color, sex, religion, and national origin. The Agency,  
19 through its Community Relations and Hate Crimes Division, shall provide to State and  
20 local governments, public and private organizations, and community groups community  
21 relations services to assist in the prevention and resolution of racial, religious, gender,  
22 and ethnic tensions, incidents and civil disorders; to educate students, law enforcement,  
23 and the community; and to assist in the restoration of stability and harmony. The  
24 primary functions of the DCRHC are as follows:

25           (1) To provide assistance to communities and individuals in resolving  
26 disputes, disagreements, difficulties, or other serious conflicts based on  
27 racial, religious, or ethnic issues which impair the rights of persons in  
28 those communities under the Constitution or laws of North Carolina.

29           (2) To conduct investigations and in appropriate cases file suit as provided  
30 in Article 6 of this Chapter for interference with civil rights.

31           (3) To conduct preliminary investigations of hate crimes and  
32 hate-motivated actions and take any other actions as may be authorized  
33 by this Chapter.

34 The DCRHC may offer its community relations services in cases where there are  
35 serious disputes, disagreements, or other conflicts when, in the judgment of the DCRHC  
36 Director, harmonious relations among the citizens of the communities involved, or with  
37 the State, or both, are threatened. The Agency may offer these services either (i) upon  
38 its own initiative as determined by the Director of the Division of Community Relations  
39 and Hate Crimes or by the Commissioner of the Agency or (ii) upon the request of an  
40 appropriate State or local official or other interested person, including district attorneys,  
41 police chiefs, mayors, school superintendents, religious organizations, and other local or  
42 State authorities, and members of the General Assembly.

43 **"§ 169-2-25. Director of the Division of Community Relations and Hate Crimes.**

1       (a) To carry out the functions assigned to the Division of Community Relations  
2 and Hate Crimes, a Director shall be appointed by the Commissioner of the Agency.  
3 The Director of DCRHC shall serve as the senior administrative officer of the Division  
4 and shall be responsible for hiring and maintaining employees to carry out the functions  
5 of the Agency related to the enforcement of Articles 6 and 7 of this Chapter.

6       (b) As authorized by the Commissioner, the Director of DCRHC may from time  
7 to time make, amend, and rescind the rules, forms, and orders necessary to carry out the  
8 provisions of Articles 6 and 7 of this Chapter.

9       (c) The Director of DCRHC shall assist the Human Relations Commission in  
10 furtherance of the Commission's duties under this Chapter by assignment of community  
11 relations staff to work with and assist in the development of local good neighbor  
12 councils and human relations commissions.

13       (d) The Director of DCRHC shall oversee the provision of educational and  
14 technical training and outreach activities by staff of the Division and the Agency in the  
15 area of compliance with Articles 6 and 7 of this Chapter.

16 **"§ 169-2-26. Cooperation with other agencies; assistance and information as**  
17 **confidential.**

18       The Director of the Division of Community Relations and Hate Crimes shall,  
19 whenever possible, seek and utilize the cooperation of appropriate public entities. In  
20 providing community relations services, the activities of all employees of the Division  
21 shall be conducted in confidence and without publicity. Preliminary investigations  
22 regarding alleged hate crimes shall be conducted in accordance with the provisions of  
23 Article 7 of this Chapter. Except as provided by law, no DCRHC or Agency employee  
24 or agent shall make public, in any manner, information gathered or received while  
25 providing community relations services or conducting preliminary investigations. Public  
26 announcements may be made consistent with protections provided in this Chapter, as  
27 deemed appropriate by the Commissioner of the Agency or the DCRHC Director.

28                       "Part 6. Human Relations Commission.

29                       "Part 7. Martin Luther King, Jr. Commission.

30                       "Part 8. Office of General Counsel.

31 **"§ 169-2-28. Office of General Counsel.**

32       (a) There is established within the Agency an Office of General Counsel. The  
33 General Counsel shall be appointed by the Commissioner of the Agency and is exempt  
34 from the State Personnel Act. With the approval of the Commissioner, the General  
35 Counsel may appoint staff attorneys for the Agency's Divisions.

36       (b) Notwithstanding the provisions of G.S. 114-2, the Agency and each of its  
37 constituent entities shall be represented by the Agency's General Counsel or a staff  
38 attorney assigned by the General Counsel.

39                       "Article 3.

40                       "State Fair Employment Act.

41                       "Part 1. Title and Legislative Findings.

42 **"§ 169-3-1. Title of Article.**

43       This Article shall be known and may be cited as the "State Fair Employment Act."

44 **"§ 169-3-2. Legislative findings; effect of precedent.**

1       (a) The General Assembly finds that the practice of denying employment  
2 opportunity and discriminating in the terms and conditions of employment because of a  
3 person's or group's actual or perceived race, color, national origin, religion, age, sex, or  
4 physical or mental disability foments domestic strife and unrest, substantially and  
5 adversely affects the interests of employees, employers, and the public in general, and  
6 deprives the State of the fullest utilization of its capacities for advancement and  
7 development. It is the public policy of this State to protect and safeguard the right and  
8 opportunity of all persons to seek, obtain, and hold employment without discrimination  
9 or abridgement in violation of law by covered employers and to support the  
10 enforcement of the civil rights laws of this State prohibiting employment discrimination.

11       (b) The General Assembly finds that the State's Fair Employment Practices Act is  
12 an adaptation of portions of Title VII of the Civil Rights Act of 1964; the Civil Rights  
13 Act of 1991, 42 U.S.C. § 1981a.; and 42 U.S.C. § 2000e, et seq., as amended, with the  
14 purpose and intention of creating one uniform, comprehensive standard applicable to all  
15 covered employers in North Carolina.

16       (c) The General Assembly finds that legal precedent from State and federal  
17 courts interpreting and applying the civil rights laws cited in subsection (b) of this  
18 section provide relevant guidance in the construction of this Article except where  
19 exclusions or omissions have been made or where the context establishes the application  
20 of precedent would be contrary to the public policy of this State as set forth in this  
21 Chapter.

22                               "Part 2. Unlawful Employment Practices.

23 **"§ 169-3-3. Unlawful employment practices; motivating factors.**

24       (a) It shall be an unlawful employment practice for an employer covered by this  
25 Chapter to:

- 26               (1) Fail or refuse to hire or promote, or to discharge any individual or  
27 otherwise discriminate against any individual with respect to  
28 compensation, terms, conditions, benefits, or privileges of  
29 employment, because of such individual's race, color, sex, religion,  
30 national origin, age, or physical or mental disability.
- 31               (2) Limit, segregate, or classify employees or applicants for employment  
32 in any way that would deprive or tend to deprive any individual of  
33 employment opportunities or otherwise adversely affect an employee's  
34 status because of the individual's race, color, sex, religion, national  
35 origin, age, or physical or mental disability.
- 36               (3) Discriminate against any of his or her employees or applicants for  
37 employment, because the employee or applicant has opposed any  
38 practice made an unlawful employment practice by this Chapter, or  
39 because the employee or applicant has participated in any manner in an  
40 investigation, proceeding, or hearing under this Chapter.
- 41               (4) Control an apprenticeship or other training or retraining, including  
42 on-the-job training programs, in order to discriminate against any  
43 qualified individual because of the individual's race, color, religion,  
44 sex, age, national origin, or physical or mental disability in admission

1 to or employment in any program established to provide  
2 apprenticeship or other training.

3 (5) Print, publish, or cause to be printed or published any notice or  
4 advertisement relating to employment by the employer or relating to  
5 any classification or referral for employment by an employment  
6 agency, indicating any preference, limitation, specification, or  
7 discrimination based on race, color, religion, sex, or national origin,  
8 except that such a notice or advertisement may indicate a preference,  
9 limitation, specification, or discrimination based on religion, sex, or  
10 national origin when religion, sex, or national origin is a bona fide  
11 occupational qualification for employment.

12 (b) It shall be an unlawful employment practice for an employer, including an  
13 employment agency, in connection with the selection or referral of applicants or  
14 candidates for employment or promotion, to adjust the scores of, use different cutoff  
15 scores for, or otherwise alter the results of employment-related tests on the basis of race,  
16 color, religion, sex, national origin, or physical or mental disability.

17 (c) It shall be an unlawful employment practice for an employment agency to fail  
18 or refuse to refer for employment or otherwise discriminate against any individual  
19 because of his race, color, sex, religion, national origin, age, or physical or mental  
20 disability.

21 (d) Except as otherwise provided in this Article, an unlawful employment  
22 practice is established when the complaining party demonstrates that race, color,  
23 religion, sex, national origin, age, or disability was a motivating factor for any  
24 employment practice, even though other factors also motivated the practice.

25 **"§ 169-3-4. Disparate impact.**

26 (a) An unlawful employment practice claim based on disparate impact under this  
27 Article shall be subject to the following proof requirements:

28 (1) An unlawful employment practice based on disparate impact is  
29 established under this Article only if:

30 a. A complaining party demonstrates that a respondent uses a  
31 particular employment practice that causes a disparate impact  
32 on the basis of race, color, religion, sex, or national origin and  
33 the respondent fails to demonstrate that the challenged practice  
34 is job-related for the position in question and consistent with  
35 business necessity; or

36 b. The complaining party makes the demonstration described in  
37 subsection (c) of this section with respect to an alternative  
38 employment practice and the respondent refuses to adopt such  
39 alternative employment practice.

40 (b) With respect to demonstrating that a particular employment practice causes a  
41 disparate impact as described in subdivision (1) of subsection (a) of this section:

42 (1) The complaining party shall demonstrate that each particular  
43 challenged employment practice causes a disparate impact, except that  
44 if the complaining party can demonstrate that the elements of a

1            respondent's decision-making process are not capable of separation for  
2            analysis, the decision-making process may be analyzed as one  
3            employment practice.

4            (2) If the respondent demonstrates that a specific employment practice  
5            does not cause the disparate impact, the respondent shall not be  
6            required to demonstrate that the practice is required by business  
7            necessity.

8            (c) A demonstration that an employment practice is required by business  
9            necessity may not be used as a defense against a claim of intentional discrimination  
10           under this Chapter.

11           **"§ 169-3-5. Exemptions; limitations.**

12           (a) Nothing in this Article shall apply to any business or enterprise on or near an  
13           Indian reservation with regard to any publicly announced employment practice of that  
14           business or enterprise under which a preferential treatment is given to any individual  
15           because he or she is an Indian living on or near a reservation.

16           (b) Nothing in this Article shall apply to a religious corporation, association,  
17           educational institution, or society with regard to the employment of individuals of a  
18           particular religion to perform work connected with the carrying on by such corporation,  
19           association, educational institution, or society of its activities.

20           (c) It shall not be an unlawful employment practice:

21           (1) For an employer to hire and employ employees, for an employment  
22           agency to classify, or refer for employment any individual, or for an  
23           employer or training or retraining programs to admit or employ any  
24           individual in any such program on the basis that the individual's  
25           religion, sex, age, or national origin is a bona fide occupational  
26           qualification reasonably necessary to the normal operation of that  
27           particular business or enterprise.

28           (2) For a school, college, university, or other educational institution or  
29           institution of learning to hire and employ employees of a particular  
30           religion if the school, college, university, or other educational  
31           institution or institution of learning is, in whole or in substantial part,  
32           owned, supported, controlled, or managed by a particular religion or  
33           by a particular religious corporation, association, or society, or if the  
34           curriculum of the school, college, university, or other educational  
35           institution or institution of learning is directed toward the propagation  
36           of that religion.

37           (d) It shall not be an unlawful employment practice for an employer or  
38           employment agency to fail or refuse to hire and employ any individual for any position  
39           or for an employer to discharge any individual from any position if (i) the occupancy of  
40           that position, or access to the premises in or upon which any part of the duties of that  
41           position is performed or is to be performed, is subject to any requirements imposed in  
42           the interest of the national security of the United States under any security program in  
43           effect pursuant to or administered under any statute of the United States or any



1 Executive Order of the President and (ii) the individual has not fulfilled or has ceased to  
2 fulfill that requirement.

3 (e) It shall not be an unlawful employment practice for an employer to:

4 (1) Apply different standards of compensation or different terms,  
5 conditions, or privileges of employment pursuant to a bona fide  
6 seniority or merit system, or a system which measures earnings by  
7 quantity or quality of production or to employees who work in  
8 different locations, if the differences are not the result of an intention  
9 to discriminate because of race, color, religion, sex, age, national  
10 origin, or disability.

11 (2) Give and to act upon the results of any professionally developed ability  
12 test provided that the test, its administration, or action upon the results  
13 is not designed, intended, or used to discriminate because of race,  
14 color, religion, sex, age, national origin, or disability.

15 (3) Differentiate upon the basis of sex in determining the amount of wages  
16 or compensation paid or to be paid to employees of such employer if  
17 such differentiation is authorized by the provisions of Section 6(d) of  
18 the Fair Labor Standards Act of 1938, as amended.

19 (f) Nothing in this Chapter shall be construed to require any employer or  
20 employment agency to grant preferential treatment to any individual or to any group  
21 because of the race, color, religion, sex, age, national origin, or disability of the  
22 individual or group on account of an imbalance which may exist with respect to the total  
23 number or percentage of persons of any race, color, religion, sex, age, national origin, or  
24 disabled condition employed by any employer, referred or classified for employment by  
25 any employment agency, or admitted to, or employed in, any apprenticeship or other  
26 training program, in comparison with the total number or percentage of persons of such  
27 race, color, religion, sex, age, national origin, or disabled conditions in this State, or any  
28 community thereof.

29 (g) This Article does not prohibit an employer or employment agency from  
30 developing and using programs aimed at targeted recruitment of qualified applicants to  
31 address disparities in total number or percentages of individuals within its workforce  
32 and applicant pools with respect to race, color, religion, sex, age, national origin, or  
33 disability.

34 (h) An employment practice that implements, and is within, the scope of a  
35 litigated or consent judgment or order that resolves a claim of employment  
36 discrimination under the Constitution of the United States, the North Carolina  
37 Constitution, or under a federal or State civil rights law may not be challenged:

38 (1) By a person who, prior to the entry of that judgment or order had:

39 a. Actual notice of the proposed judgment or order sufficient to  
40 apprise the person that the judgment or order might adversely  
41 affect the interests and legal rights of that person and that an  
42 opportunity was available to present objections to the judgment  
43 or order by a future date certain; and

- 1           b. A reasonable opportunity to present objections to the judgment  
2           or order; or
- 3           (2) By a person whose interests were adequately represented by another  
4           person who had previously challenged the judgment or order on the  
5           same legal grounds and with a similar factual situation, unless there  
6           has been an intervening change in law or fact.
- 7           (i) Nothing in this Article shall be construed to:
- 8           (1) Alter the standards for intervention under North Carolina Rules of  
9           Civil Procedure or apply to the rights of successful interveners.
- 10          (2) Apply to the rights of parties to the action in which a litigated or  
11          consent judgment or order was entered, or of members of a class  
12          represented or sought to be represented in such action, or of members  
13          of a group on whose behalf relief was sought in such action by the Fair  
14          Employment Practices Division or the Equal Employment Opportunity  
15          Commission.
- 16          (3) Prevent challenges to a litigated or consent judgment or order on the  
17          grounds that such judgment or order was obtained through collusion or  
18          fraud or is transparently invalid or was entered by a court lacking  
19          subject matter jurisdiction.
- 20          (4) Authorize or permit the denial to any person of the due process of law  
21          required by the Constitution.
- 22          (j) Any action not precluded under this section that challenges an employment  
23          consent judgment or order shall be brought in the court, and if possible before the judge,  
24          that entered that judgment or order. Nothing in this subsection shall preclude a transfer  
25          of an action pursuant to applicable change of venue rules where appropriate.
- 26          (k) Nothing in this Chapter shall be construed to repeal or modify any federal,  
27          State, or local law creating special rights or preferences for veterans.
- 28          (l) Nothing in this Article or Article 4 shall be construed to reduce or eliminate  
29          any rights or preferences conferred with respect to employment and employment  
30          discrimination by Chapter 168 of the General Statutes, Handicapped Persons, and  
31          Chapter 168A of the General Statutes, the Persons with Disabilities Act.
- 32          **"§ 169-3-6. Filing period; dual filing.**
- 33          (a) Applicants, employees, or former employees covered under this Article shall  
34          have 180 days from the date of the alleged violation to file a charge of unlawful  
35          employment discrimination as specified in G.S. 169-3-3. Thereafter, up to the 300<sup>th</sup> day  
36          from the date of the alleged violation, covered individuals may file directly with the  
37          U.S. Equal Employment Opportunity Commission.
- 38          (b) Filing with the Agency's Division of Fair Employment Practices under this  
39          Article shall immediately affect a dual filing with the U.S. Equal Employment  
40          Opportunity Commission.
- 41          (c) Covered State employees may file with the Division of Fair Employment  
42          Practices under this Article without first filing an internal grievance, but the time for  
43          such internal filing with an agency is not tolled by filing under the State Fair  
44          Employment Act.

1 "Part 3. Enforcement Provisions.

2 **"§ 169-3-7. Enforcement provisions.**

3 (a) Whenever a charge is filed by or on behalf of a person claiming to be  
4 aggrieved, alleging that an employer or employment agency has engaged in an unlawful  
5 employment practice, the Division of Fair Employment shall serve a notice of the  
6 charge (including the date, place, and circumstances of the alleged unlawful  
7 employment practice) on such employer or employment agency (hereinafter referred to  
8 as the "respondent") within 10 days and shall make an investigation thereof. Charges  
9 shall be in writing under oath or affirmation and shall contain such information and be  
10 in such form as the Division of Fair Employment requires. Charges shall not be made  
11 public by the Division. If the Division determines after the investigation that there is not  
12 reasonable cause to believe that the charge is true, it shall dismiss the charge and  
13 promptly notify the person claiming to be aggrieved and the respondent of its action. If  
14 the Division determines after such investigation that there is reasonable cause to believe  
15 that the charge is true, the Division shall endeavor to eliminate any such alleged  
16 unlawful employment practice by informal methods of conference, conciliation, and  
17 persuasion. Nothing said or done during and as a part of such informal endeavors may  
18 be made public by the Division, its officers or employees, or used as evidence in a  
19 subsequent proceeding without the written consent of the persons concerned. Any  
20 person who makes public information in violation of this subsection shall be subject to  
21 civil penalties of not more than one thousand dollars (\$1,000) per violation. The  
22 Division shall make its determination on reasonable cause as promptly as possible and,  
23 so far as practicable, not later than 120 days from the filing of the charge.

24 (b) A charge under this section shall be filed within 180 days after the alleged  
25 unlawful employment practice occurred, and notice of the charge (including the date,  
26 place, and circumstances of the alleged unlawful employment practice) shall be served  
27 upon the person against whom such charge is made within 10 days thereafter. For  
28 purposes of this section, an unlawful employment practice occurs, with respect to a  
29 seniority system that has been adopted for an intentionally discriminatory purpose in  
30 violation of this title (whether or not that discriminatory purpose is apparent on the face  
31 of the seniority provision), when the seniority system is adopted, when an individual  
32 becomes subject to the seniority system, or when a person aggrieved is injured by the  
33 application of the seniority system or provision of the system.

34 (c) If within 30 days after a reasonable cause finding has been made following  
35 investigation of a charge filed with the Division of Fair Employment, the Division has  
36 been unable to secure from the respondent a conciliation agreement acceptable to the  
37 Division, the Division may bring a civil action against any respondent in any State  
38 superior court as provided in this Article. The person or persons aggrieved shall have  
39 the right to intervene in a civil action brought by the Division. If within 90 days from  
40 service upon the parties of notice of the reasonable cause finding, the Division has not  
41 filed a civil action under this section or has not entered into a conciliation agreement to  
42 which the person aggrieved is a party, the Division shall so notify the person aggrieved,  
43 and within 90 days after the giving of such notice, a civil action may be brought against  
44 the respondent named in the charge by the person claiming to be aggrieved. Upon

1 request, the court may, in its discretion, stay further proceedings for not more than 60  
2 days pending the termination of State or local proceedings or further efforts of the  
3 Division to obtain voluntary compliance. If the Division does not find reasonable cause  
4 following investigation of a filed charge, the person claiming to be aggrieved may file a  
5 civil action in State court against the respondent within 90 days after receipt of the  
6 notice of the decision of the Division of Fair Employment Practices.

7 (d) Whenever a charge is filed with the Division of Fair Employment and the  
8 Division concludes on the basis of a preliminary investigation that prompt judicial  
9 action is necessary to carry out the purposes of this Act, the Division may bring an  
10 action for appropriate temporary or preliminary relief pending final disposition of such  
11 charge. Any temporary restraining order or other order granting preliminary or  
12 temporary relief shall be issued in accordance with Rule 65 of the North Carolina Rules  
13 of Civil Procedure. It shall be the duty of the court having jurisdiction over proceedings  
14 under this subsection to assign cases for hearing at the earliest practicable date and to  
15 cause such cases to be in every way expedited.

16 **"§ 169-3-8. State court jurisdiction.**

17 (a) Each State superior court shall have jurisdiction over actions brought under  
18 this Article. The action may be brought in any judicial district in the State in which the  
19 unlawful employment practice is alleged to have been committed, in the judicial district  
20 in which the employment records relevant to the practice are maintained and  
21 administered, or in the judicial district in which the aggrieved person would have  
22 worked but for the alleged unlawful employment practice, but if the defendant is not  
23 found within that district, then the action may be brought within the judicial district in  
24 which the defendant has its principal office.

25 (b) It shall be the duty of the senior resident superior court judge in the judicial  
26 district in which the case is pending to designate immediately a judge in the district to  
27 hear and determine the case. In the event that no superior court judge in the district is  
28 available to hear and determine the case, the senior resident superior court judge shall  
29 certify this fact to the Office of Administration of the Courts for designation of a judge  
30 from another judicial district, a retired judge, or a special superior court judge approved  
31 by that Office, who shall hear and determine the case. It shall be the duty of the judge  
32 designated pursuant to this section to schedule the case for hearing at the earliest  
33 practicable date and to cause the case to be in every way expedited. If that judge has not  
34 scheduled the case for trial within 120 days after issue has been joined, that judge may  
35 appoint a referee pursuant to Rule 53 of the North Carolina Rules of Civil Procedure.

36 **"§ 169-3-9. Remedies in court actions.**

37 (a) If the court in which an action has been brought pursuant to this Act finds that  
38 the respondent has intentionally engaged in or is intentionally engaging in an unlawful  
39 employment practice charged in the complaint, the court may enjoin the respondent  
40 from engaging in such unlawful employment practice and order such affirmative action  
41 as may be appropriate, which may include, but is not limited to, reinstatement or hiring  
42 of employees, with or without back pay (payable by the employer or employment  
43 agency, as the case may be, responsible for the unlawful employment practice), or any  
44 other equitable relief as the court deems appropriate. Back pay liability shall not accrue

1 from a date more than two years prior to the filing of a charge with the Division. Interim  
2 earnings or amounts earnable with reasonable diligence by the person or persons  
3 discriminated against shall operate to reduce the back pay otherwise allowable.

4 (b) No order of the court shall require the hiring, reinstatement, or promotion of  
5 an individual as an employee, or the payment to that individual of any back pay, if that  
6 individual was refused employment or advancement or was suspended or discharged for  
7 any reason other than discrimination on account of race, color, religion, sex, national  
8 origin, age, or disability, or in violation of G.S. 169-3-3(b) of this Act.

9 (c) On a claim in which an individual proves a violation under G.S. 169-3-3(f) of  
10 this Act and a respondent demonstrates that the respondent would have taken the same  
11 action in the absence of the impermissible motivating factor, the court:

12 (1) May grant declaratory relief, injunctive relief (except as provided in  
13 subdivision (2) of this subsection), and attorneys' fees and costs  
14 demonstrated to be directly attributable only to the pursuit of a claim  
15 under G.S. 169-3-3(f) of this Act; and

16 (2) Shall not award damages or issue an order requiring any admission,  
17 reinstatement, hiring, promotion, or payment described in subsection  
18 (b) of this section.

19 (d) In any case in which an employer or employment agency fails to comply with  
20 an order of a court issued in a civil action brought under this Act, the Division may  
21 commence proceedings to compel compliance with such order.

22 (e) Any civil action brought under this section and any proceedings brought  
23 under subsection (i) of this section shall be subject to appeal as provided in the North  
24 Carolina Rules of Appellate Procedure for actions decided in and orders entered by  
25 superior courts in this State.

26 (f) In any action or proceeding under this Article, the court, in its discretion, may  
27 allow the prevailing party, other than the Division and the Agency for Civil Rights, a  
28 reasonable attorneys' fee (including expert fees) as part of the costs, and the  
29 Commission and the United States shall be liable for other costs the same as a private  
30 person except that where an investigation or preliminary investigation by the Division  
31 prior to the filing of the action resulted in a finding of reasonable cause, the court shall  
32 be precluded from finding that the action filed was frivolous, unreasonable, or without  
33 foundation.

34 **"§ 169-3-10. Pattern and practice referrals.**

35 Whenever the Director of the Division of Fair Employment has reasonable cause to  
36 believe that any person or group of persons is engaged in a pattern or practice of  
37 resistance to the full enjoyment of any of the rights secured by this Article, and that the  
38 pattern or practice is of such a nature and is intended to deny the full exercise of the  
39 rights herein described, the Director shall refer the matter to the Equal Employment  
40 Opportunity Commission for investigation as a pattern and practice case.

41 **"§ 169-3-11. Investigations, inspections, records.**

42 (a) In connection with any investigation of a charge filed under this Article, the  
43 Division of Fair Employment Practices or its designated representative shall at all  
44 reasonable times have access to, for the purposes of examination, and the right to copy

1 any evidence of any person being investigated or proceeded against that relates to  
2 unlawful employment practices covered by this Article and is relevant to the charge  
3 under investigation.

4 (b) Every employer and employment agency subject to this Article shall:

5 (1) Make and keep records relevant to the determinations of whether  
6 unlawful employment practices have been or are being committed;

7 (2) Preserve the records and reports for those periods; and

8 (3) Make such reports therefrom as the Division of Fair Employment  
9 Practices may prescribe by regulation or order, after public hearing, as  
10 reasonable, necessary, or appropriate for the enforcement of this  
11 Article or rules adopted pursuant to this Article.

12 The Division of Fair Employment Practices shall adopt rules to require each employer  
13 and employment agency subject to this Article that controls an apprenticeship or other  
14 training program to maintain such records as are reasonably necessary to carry out the  
15 purposes of this Article, including, a list of applicants who wish to participate in the  
16 program (including the chronological order in which applications were received) and to  
17 furnish to the Division of Fair Employment Practices, upon request, a detailed  
18 description of the manner in which individuals are selected to participate in the  
19 apprenticeship or other training program. Any employer or employment agency which  
20 believes that the application to it of any rule or order issued under this subsection would  
21 result in undue hardship may apply to the Division of Fair Employment Practices for an  
22 exemption from the application of the rule or order, and, if the application for an  
23 exemption is denied, bring a civil action in the State superior court for the district where  
24 the records are kept. If the Division or the court, as appropriate, finds that the  
25 application of the regulation or order to the employer or employment agency in question  
26 would impose an undue hardship, the Division or the court, as the case may be, may  
27 grant appropriate relief. If any person required to comply with the provisions of this  
28 subsection fails or refuses to do so, the State superior court for the district in which such  
29 person is found, resides, or transacts business, shall, upon application of the Director of  
30 the Division of Fair Employment, have jurisdiction to issue to such person an order  
31 requiring him to comply.

32 (c) In prescribing requirements pursuant to this section, the Director of the DFEP  
33 shall consult with other interested State and federal agencies and shall endeavor to  
34 coordinate DFEP's requirements with those adopted by those agencies.

35 (d) It shall be unlawful for any officer or employee of the Division of Fair  
36 Employment Practices and the Agency to make public in any manner whatever any  
37 information obtained by the Division pursuant to its authority under this section prior to  
38 the institution of any proceeding under this Article involving such information. Any  
39 officer or employee of the Agency who shall make public in any manner whatever any  
40 information in violation of this subsection shall be guilty of a misdemeanor or shall be  
41 subject to the assessment of civil penalties of not more than one thousand dollars  
42 (\$1,000).

43 **"§ 169-3-12. Posting of notices; penalties.**

1 (a) Every employer and employment agency shall post and keep posted in  
2 conspicuous places upon its premises where notices to employees and applicants for  
3 employment are customarily posted a notice to be prepared or approved by the Division  
4 of Fair Employment setting forth excerpts from, or summaries of, the pertinent  
5 provisions of this Article, the State Fair Employment Act, and information pertinent to  
6 the filing of a complaint.

7 (b) Any person who willfully violates this section shall be subject to civil  
8 penalties of not more than one hundred dollars (\$100.00) for each separate violation.

9 "Part 4. Definitions.

10 **"§ 169-3-13. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Because of sex or on the basis of sex. – Includes because of or on the  
13 basis of pregnancy, childbirth, or related medical conditions; and  
14 women affected by pregnancy, childbirth, or related medical  
15 conditions shall be treated the same for fringe benefit programs, as  
16 other persons not so affected but similar in their ability or inability to  
17 work, and nothing in this Article shall be interpreted to permit  
18 otherwise.
- 19 (2) Commerce. – Trade, traffic, commerce, transportation, transmission, or  
20 communication within this State or between this State and any place  
21 outside the State.
- 22 (3) Employee. – An individual employed by an employer. The term  
23 "employee" does not include (i) any person elected to public office in  
24 this State, or a political subdivision of the State, by the qualified  
25 voters; (ii) any person chosen by an elected State or local officer to be  
26 on the officer's personal staff or an appointee chosen by the officer to  
27 serve on the policy-making level; (iii) an immediate adviser to a State  
28 officer with respect to the exercise of the constitutional or legal powers  
29 of that public office; (iv) persons employed by the State or any of its  
30 political subdivisions who are expressly excluded from the coverage of  
31 the State Personnel Act, Chapter 126 of the General Statutes; (v)  
32 federal employees; or (vi) persons employed by labor organizations.
- 33 (4) Employer. – A person engaged in an industry affecting commerce in  
34 this State who has 15 or more employees for each working day in each  
35 of 20 or more calendar weeks in the current or preceding calendar year  
36 and any agent of such a person. The term "employer" does not include  
37 (i) the United States or a corporation wholly owned by the government  
38 of the United States, (ii) an Indian tribe, or (iii) a bona fide private  
39 membership club which is exempt from taxation under Section 501(c)  
40 of Title 26 of the Internal Revenue Code of 1954.
- 41 (5) Employment agency. – Any person regularly undertaking with or  
42 without compensation to procure employees for an employer or to  
43 procure for employees opportunities to work for an employer and  
44 includes an agent for the person.





1       (c) The DFHPA, pursuant to procedures approved by the Commissioner of the  
2 Agency, may file a civil action on behalf of and with the consent of any person  
3 subjected to a violation of a right described in subsection (a) of this section. In these  
4 actions the court may restrain and enjoin future acts of illegal discrimination as to public  
5 accommodations and may award compensatory and punitive damages to the injured  
6 person. The filing of an action by the Division following an investigation and finding of  
7 reasonable cause precludes a finding by a court that a case is frivolous, unreasonable, or  
8 without foundation.

9 **"§ 169-5-3. Persons with disabilities acts not affected.**

10 Nothing contained in this Article shall be construed to reduce or eliminate any rights  
11 or preferences conferred with respect to use and accommodation for use of public  
12 accommodations and public services by persons with disabilities as provided in  
13 Chapters 168 and 168A of the General Statutes.

14 **"§ 169-5-4. State Fair Housing Act not affected.**

15 Nothing contained in this Article shall be construed to alter the coverage or  
16 exemptions provided under the State Fair Housing Act as provided in Article 4 of this  
17 Chapter.

18 **"§ 169-5-5. Definitions.**

19 The following definitions apply in this Article:

- 20       (1) Facility. – All or any portion of buildings, structures, sites, complexes,  
21 equipment, rolling stock or other conveyances, roads, walks,  
22 passageways, parking lots, or other real or personal property, including  
23 the site where the building, property, structure, or equipment is  
24 located.
- 25       (2) Place of public accommodation. – A facility, operated by a private  
26 entity, whose operations affect commerce, including, but not limited  
27 to, any place, facility, or other retail establishment, restaurant, hotel or  
28 motel, theater, retail store, shopping mall, pharmacy, doctor's office,  
29 hospital, museum, library, park, amusement park, office building, or  
30 health spa which supplies goods or services, facilities, privileges on  
31 the premises to the public or which solicits or accepts the patronage,  
32 commerce, or trade of any person. The term does not include:
- 33       a. Entities controlled by religious organizations including  
34 churches, synagogues, and mosques.
- 35       b. Private clubs, as defined in Title 11 of the Civil Rights Act of  
36 1964, except to the extent that the facilities of a private club are  
37 made available to customers as a place of public  
38 accommodation.
- 39       (3) Private entity. – A person or entity other than a public entity.
- 40       (4) Public accommodation. –The term covers the private sector and does  
41 not include services offered by public entities, or facilities operated by  
42 public entities, including but not limited to public schools, prisons and  
43 jails, and public mental health facilities.

1           (5) Public entity. – The State or any local government; and any  
2           department, agency, special purpose district, or other instrumentality  
3           of the State or any local government.

4                           "Article 6.

5                           "Interference With Civil Rights.

6                           "Article 7.

7                           "Hate Crime Investigations.

8           **"§ 169-7-1. Hate crimes; rights; investigations.**

9           (a) All individuals in this State have the right to live and visit in this State  
10           without fear of victimization from the commission, attempted commission, or threat of  
11           commission of a hate crime or hate-motivated action.

12           (b) The Agency, through its Division of Community Relations and Hate Crimes  
13           shall undertake fact-finding and background investigations of alleged violations of hate  
14           crimes laws in order to protect the rights of individuals, as provided by subsection (a) of  
15           this section, to be free from victimization in hate crimes and to ensure the prompt,  
16           timely, and adequate examination of claims of alleged hate crimes or any other crime  
17           where race, color, age, sex, religion, mental or physical disability, or national origin was  
18           a factor in the selection of the victim.

19           **"§ 169-7-2. Cooperation with law enforcement; temporary assignment of**  
20           **investigators and attorneys.**

21           (a) The Agency shall work cooperatively with all law enforcement agencies  
22           through its Division of Community Relations and Hate Crimes to encourage the  
23           reporting and investigation of covered violations and hate crimes. In every instance, the  
24           Division shall take all steps necessary to ensure that its involvement does not  
25           compromise criminal investigations or the rights of those accused of the commission of  
26           hate crimes.

27           (b) The Director of the DCRHC may refer any evidence as is available  
28           concerning violations of this Chapter or of any rule or order hereunder to the proper  
29           district attorney for consideration of the institution of appropriate criminal proceedings  
30           under Chapter 14 of the General Statutes.

31           (c) For purposes of enforcing this Article, upon request of a district attorney  
32           following receipt of a Preliminary Report or reference from the Division, the DCRHC  
33           Director may, when practicable to do so, assign investigators of the Division to assist  
34           local law enforcement agencies in their investigations of alleged hate crimes. Such a  
35           special investigator shall have all the powers and duties prescribed by law for law  
36           enforcement agents regularly performing such duties for the district attorney.

37           (d) Upon receipt of a Preliminary Report or reference from the DCRHC, the  
38           district attorney may request that a duly employed attorney prosecute or assist in the  
39           prosecution of the hate crime violation or violations on behalf of the State. Upon  
40           approval of the Commissioner of the Agency when practicable to do so, the employee  
41           may be appointed a special prosecutor for the district attorney to prosecute or assist in  
42           the prosecution of the violations without receiving compensation from the district  
43           attorney. Such a special prosecutor shall have all the powers and duties prescribed by

1 law for district attorneys and such other powers and duties as are lawfully delegated to  
2 the special prosecutor by the district attorney in hate crime prosecutions.

3 **"§ 169-7-3. Preliminary reports.**

4 The findings and recommendations from all investigations, reviews, fact-finding,  
5 and background inquiries of alleged hate crime violations conducted by the Division of  
6 Community Relations and Hate Crimes will be set out in written form as Preliminary  
7 Reports. Such Preliminary Reports will minimally contain: summary of alleged  
8 violations, findings of fact, conclusions of law, initial determinations and  
9 recommendations for proceeding forward with further investigation by district attorney  
10 offices.

11 **"§ 169-7-4. Confidentiality.**

12 Except as required by law, no investigator, examiner, agent, or other representative  
13 of the Agency shall make public, in any manner, information gathered or received while  
14 conducting Preliminary Investigations under Articles 5 and 6 of this Chapter. The  
15 Preliminary Reports shall remain confidential and shall not be considered a public  
16 record so long as any related ongoing criminal investigation or prosecution is pending.  
17 The Director of the Division of Community Relations and Hate Crimes shall prescribe  
18 rules for the release of information and documents related to actions pursuant to this  
19 Article and shall have the discretion to seal or redact such portions of the reports as may  
20 reveal identities of minors, the salacious details of criminal acts, or as may otherwise be  
21 commonly held confidential by law enforcement agencies in this State pursuant to  
22 G.S. 132-1.4.

23 **"§ 169-7-5. Service of preliminary reports.**

24 The Commissioner shall serve a copy of the Agency's Preliminary Report upon the  
25 appropriate district attorney's office and upon the Office of the North Carolina Attorney  
26 General following each investigation authorized by this Article. The reports shall be  
27 served in the usual and customary manner for service of investigatory findings by the  
28 Agency.

29 "Article 8.

30 "Miscellaneous Provisions.

31 **"§ 169-8-1. State Personnel Act exemptions not affected.**

32 The provisions of this Chapter are not intended and shall not have the effect of  
33 amending the State Personnel Act, G.S. 126-5, and other sections, with respect to  
34 express exemptions of certain described categories of employees from coverage under  
35 the State Personnel Act.

36 **"§ 169-8-2. No effect on employee benefits.**

37 Except as provided in 42 U.S.C. § 2000e (k), nothing in this Chapter requires or  
38 precludes an employer from providing abortion benefits.

39 **"§ 169-8-3. Local deferral agencies not affected.**

40 (a) The provisions of this Chapter are not intended and shall not have the effect  
41 of interfering with, amending, or prohibiting contractual agreements between county  
42 and municipal government entities and nonprofits, through which those entities are:

- 43 (1) Designated as deferral agencies by the U.S. Equal Employment  
44 Opportunity Commission.

1           (2) Designated as deferral agencies by the U.S. Department of Housing  
2           and Urban Development.

3 **"§ 169-8-4. Criminal laws not affected.**

4           Unless as expressly stated, the provisions of this Chapter are not intended, and shall  
5 not be construed, to affect the criminal laws contained in Chapter 14 of the General  
6 Statutes.

7 **"§ 169-8-5. Grants.**

8           The Agency, through its Commissioner and constituent entities, may receive gifts  
9 and grants from public and private sources for use in accomplishing its responsibilities  
10 under this Chapter. The receipt, expenditure, and record keeping for any grants and gifts  
11 shall be in compliance with the State Budget Act and shall be accounted for as a part of  
12 the Commissioner's bi-annual report to the General Assembly.

13 **"§ 169-8-6. Civil penalties.**

14           The clear proceeds of civil penalties assessed pursuant to this Chapter shall be  
15 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

16 **"§ 169-8-7. Severability.**

17           In the event any provision of this Chapter is held to be invalid, the court's holding as  
18 to that provision shall not affect the validity or operation of other provisions of the act,  
19 and to that end the provisions of this Chapter are severable."

20           **SECTION 3.(a)** Except as otherwise specifically provided in this act, each  
21 enumerated commission, board, office, or other subunit of State government transferred  
22 to Chapter 169 of the General Statutes as enacted by this act is a continuation of the  
23 former entity for purposes of succession to all the rights, powers, duties, and obligations  
24 of the former. Where the former entities are referred to by law, contract, or other  
25 document in their former name, that reference shall apply to the commission, board,  
26 office, or other subunit within the Agency for Civil Rights now exercising the functions  
27 of the former entity named in the document.

28           **SECTION 3.(b)** The Commissioner of the Agency shall report to the  
29 General Assembly at the start of the 2008 Regular Session, and periodically thereafter  
30 as deemed appropriate, on the status of the transition period established in Section 4 of  
31 this act and additional funds needed for position grade realignments, leases, and other  
32 expenditures found necessary for the accomplishment of the purposes of this act.

33           **SECTION 3.(c)** No action or proceeding pending at the time the North  
34 Carolina Omnibus Civil Rights Act takes effect brought by or against any State office,  
35 commission, council, or other governmental subunit whose functions, powers, and  
36 duties are transferred by this act to the North Carolina Agency for Civil Rights shall be  
37 affected by any provision of this act, but the same may be prosecuted or defended in the  
38 name of the Commissioner of the North Carolina Agency for Civil Rights. In these  
39 actions and proceedings, the Commissioner shall be substituted as a party upon proper  
40 application to the courts or other administrative or quasi-judicial bodies.

41           Any business or other matter undertaken or commanded by any State  
42 program or office or contract transferred by this act to the North Carolina Agency for  
43 Civil Rights, or by the commissioners or directors thereof, pertaining to or connected  
44 with the functions, powers, obligations, and duties set forth herein, which is pending on

1 January 1, 2008, may be conducted and completed by the North Carolina Agency for  
2 Civil Rights in the same manner and under the same terms and conditions and with the  
3 same effect as if conducted and completed by the original program, office, or  
4 commissioners, or directors thereof.

5 **SECTION 4.(a)** A six-month transition period from July 1, 2007, through  
6 December 31, 2007, shall include staffing activities and administrative and  
7 programmatic planning. Nomination and confirmation of the Commissioner of the  
8 North Carolina Agency for Civil Rights shall occur as soon as practicable after July 1,  
9 2007. The Commissioner may undertake necessary actions to ensure an orderly and  
10 efficient transfer of functions and personnel on or before January 1, 2008, including  
11 assembling a transition team and entering into leases on behalf of the Agency. The  
12 transition staff may include Deputy Commissioners, a General Counsel, Division  
13 Directors, administrative personnel, and other staff as appropriate. Office space may be  
14 obtained for the transition team. The Commissioner is further authorized to immediately  
15 begin the search for a location for the consolidated Agency for Civil Rights.

16 **SECTION 4.(b)** Sections 1(a), 1(b), and 1(c) of this act become effective  
17 July 1, 2007. The substantive provisions of Article 3, Article 5, and Article 7 of Chapter  
18 169 of the General Statutes as enacted in Section 2 hereof, and Section 1(d) this act,  
19 become effective January 1, 2008. The remainder of this act is effective when it  
20 becomes law.