

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 1789\***

Short Title: Nondiscrimination in State Employment. (Public)

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Sponsors: Representatives Luebke, Womble (Primary Sponsors); Adams, Alexander, Carney, Coleman, Cotham, Cunningham, Farmer-Butterfield, Fisher, Glazier, Goodwin, Hall, T. Harrell, Harrison, Insko, Jones, Martin, Mobley, Pierce, Ross, Wainwright, Weiss, and Wray.

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Referred to: State Personnel, if favorable, Judiciary I.

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April 19, 2007

A BILL TO BE ENTITLED

1 AN ACT AMENDING THE NONDISCRIMINATION AND EQUAL  
2 OPPORTUNITY PROVISIONS OF THE STATE PERSONNEL ACT TO COVER  
3 SEXUAL ORIENTATION AND CLARIFYING THE PERSONNEL POLICIES  
4 OF THE GENERAL ASSEMBLY.  
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6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 7 of Chapter 120 of the General Statutes is amended by  
8 adding a new section to read:

9 **"§ 120-32.04. Legislative personnel nondiscrimination policy.**

10 The General Assembly shall not discriminate in any of its personnel policies,  
11 practices, or benefits on the basis of race, religion, color, national origin, age, sex,  
12 sexual orientation, or disability."

13 **SECTION 2.** G.S. 126-16 reads as rewritten:

14 **"§ 126-16. Equal opportunity for employment and compensation by State**  
15 **departments and agencies and local political subdivisions.**

16 All State departments and agencies and all local political subdivisions of North  
17 Carolina shall give equal opportunity for employment and compensation, without regard  
18 to race, religion, color, creed, national origin, sex, age, sexual orientation, or  
19 handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified,  
20 except where specific age, sex or physical requirements constitute bona fide  
21 occupational qualifications necessary to proper and efficient administration. This  
22 section with respect to equal opportunity as to age shall be limited to individuals who  
23 are at least 40 years of age."

24 **SECTION 3.** G.S. 126-34.1 reads as rewritten:

25 **"§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

1 (a) A State employee or former State employee may file in the Office of  
2 Administrative Hearings a contested case under Article 3 of Chapter 150B of the  
3 General Statutes only as to the following personnel actions or issues:

- 4 (1) Dismissal, demotion, or suspension without pay based upon an alleged  
5 violation of G.S. 126-35, if the employee is a career State employee.
- 6 (2) An alleged unlawful State employment practice constituting  
7 discrimination, as proscribed by G.S. 126-36, including:
  - 8 a. Denial of promotion, transfer, or training, on account of the  
9 employee's age, sex, race, color, national origin, religion, creed,  
10 political affiliation, sexual orientation, or handicapping  
11 condition as defined by Chapter 168A of the General Statutes.
  - 12 b. Demotion, reduction in force, or termination of an employee in  
13 retaliation for the employee's opposition to alleged  
14 discrimination on account of the employee's age, sex, race,  
15 color, national origin, religion, creed, political affiliation, sexual  
16 orientation, or handicapping condition as defined by Chapter  
17 168A of the General Statutes.
- 18 (3) Retaliation against an employee, as proscribed by G.S. 126-17, for  
19 protesting an alleged violation of G.S. 126-16.
- 20 (4) Denial of the veteran's preference granted in accordance with Article  
21 13 of this Chapter in initial State employment or in connection with a  
22 reduction in force, for an eligible veteran as defined by G.S. 126-81.
- 23 (5) Denial of promotion for failure to post or failure to give priority  
24 consideration for promotion or reemployment, to a career State  
25 employee as required by G.S. 126-7.1 and G.S. 126-36.2.
- 26 (6) Denial of an employee's request for removal of allegedly inaccurate or  
27 misleading information from the employee's personnel file as provided  
28 by G.S. 126-25.
- 29 (7) Any retaliatory personnel action that violates G.S. 126-85.
- 30 (8) Denial of promotion in violation of G.S. 126-14.2, where an initial  
31 determination found probable cause to believe there has been a  
32 violation of G.S. 126-14.2.
- 33 (9) Denial of employment in violation of G.S. 126-14.2, where an initial  
34 determination found probable cause to believe that there has been a  
35 violation of G.S. 126-14.2.
- 36 (10) Harassment in the workplace based upon age, sex, race, color, national  
37 origin, religion, creed, sexual orientation, or handicapping condition,  
38 whether the harassment is based upon the creation of a hostile work  
39 environment or upon a quid pro quo.
- 40 (11) Violation of any of the following federal statutes as applied to the  
41 employee:
  - 42 a. The Fair Labor Standards Act, 29 U.S.C. § 201, et seq.
  - 43 b. The Age Discrimination in Employment Act, 29 U.S.C. § 621,  
44 et seq.

1 c. The Family Medical Leave Act, 29 U.S.C. § 2601, et seq.  
2 d. The Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.  
3 (b) An applicant for initial State employment may file in the Office of  
4 Administrative Hearings a contested case under Article 3 of Chapter 150B of the  
5 General Statutes based upon:

- 6 (1) Alleged denial of employment in violation of G.S. 126-16.  
7 (2) Denial of the applicant's request for removal of allegedly inaccurate or  
8 misleading information from the personnel file as provided by  
9 G.S. 126-25.  
10 (3) Denial of equal opportunity for employment and compensation on  
11 account of the employee's age, sex, race, color, national origin,  
12 religion, creed, political affiliation, sexual orientation, or handicapping  
13 condition as defined by Chapter 168A of the General Statutes. This  
14 subsection with respect to equal opportunity as to age shall be limited  
15 to persons who are at least 40 years of age. An applicant may not,  
16 however, file a contested case where political affiliation was the reason  
17 for the person's nonselection for (i) an exempt policymaking position  
18 as defined in G.S. 126-5(b)(3), (ii) a chief deputy or chief  
19 administrative assistant position under G.S. 126-5(c)(4), or (iii) a  
20 confidential assistant or confidential secretary position under  
21 G.S. 126-5(c)(2).  
22 (4) Denial of the veteran's preference in initial State employment provided  
23 by Article 13 of this Chapter, for an eligible veteran as defined by  
24 G.S. 126-81.  
25 (5) Denial of employment in violation of G.S. 126-14.2, where an initial  
26 determination found probable cause to believe that there has been a  
27 violation of G.S. 126-14.2.

28 (c) In the case of a dispute as to whether a State employee's position is properly  
29 exempted from the State Personnel Act under G.S. 126-5, the employee may file in the  
30 Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of  
31 the General Statutes.

32 (d) A State employee or applicant for State employment may file in the Office of  
33 Administrative Hearings a contested case under Article 3 of Chapter 150B of the  
34 General Statutes based upon a false accusation regarding, or disciplinary action relating  
35 to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

36 (e) Any issue for which appeal to the State Personnel Commission through the  
37 filing of a contested case under Article 3 of Chapter 150B of the General Statutes has  
38 not been specifically authorized by this section shall not be grounds for a contested case  
39 under Chapter 126."

40 **SECTION 4.** G.S. 126-36 reads as rewritten:

41 **"§ 126-36. Appeal of unlawful State employment practice.**

42 (a) Any State employee or former State employee who has reason to believe that  
43 employment, promotion, training, or transfer was denied the employee or that demotion,  
44 layoff, transfer, or termination of employment was forced upon the employee in

1 retaliation for opposition to alleged discrimination or because of the employee's age,  
2 sex, race, color, national origin, religion, creed, political affiliation, sexual orientation,  
3 or handicapping condition as defined by G.S. 168A-3 except where specific age, sex or  
4 physical requirements constitute a bona fide occupational qualification necessary to  
5 proper and efficient administration, shall have the right to appeal directly to the State  
6 Personnel Commission.

7 (b) Subject to the requirements of G.S. 126-34, any State employee or former  
8 State employee who has reason to believe that the employee has been subjected to any  
9 of the following shall have the right to appeal directly to the State Personnel  
10 Commission:

- 11 (1) Harassment in the workplace based upon age, sex, race, color, national  
12 origin, religion, creed, sexual orientation, or handicapping condition,  
13 whether the harassment is based upon the creation of a hostile work  
14 environment or upon a quid pro quo.
- 15 (2) Retaliation for opposition to harassment in the workplace based upon  
16 age, sex, race, color, national origin, religion, creed, or handicapping  
17 condition, whether the harassment is based upon the creation of a  
18 hostile work environment or upon a quid pro quo."

19 **SECTION 5.** G.S. 12-3 is amended by adding a new subdivision to read:

20 "(14) 'Sexual orientation.' – The phrase 'sexual orientation' means actual or  
21 perceived heterosexuality, homosexuality, or bisexuality, or a person's  
22 gender-related identity or expression."

23 **SECTION 6.** This act is effective when it becomes law.