

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE DRS35160-LB-204 (3/28)

Short Title: City/County Antidiscrimination Ordinances.

(Public)

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Sponsors: Senator Kinnaird.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES TO ENACT ORDINANCES  
PROHIBITING DISCRIMINATION.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

a. Compelling the production of documents; or

1           b. Compelling witnesses to appear before the Commission to give  
2           testimony.

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

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

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

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

26           (6) Attempting to conciliate a resolution of the complaint between the  
27           parties.

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

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

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

43           In any action brought in the superior court pursuant to the ordinance, the court may  
44           allow the prevailing party reasonable costs and attorneys' fees from the other party or

1 parties. Attorneys' fees, however, shall not be awarded to the Commission, and a  
2 prevailing respondent may be awarded court costs and reasonable attorneys' fees only  
3 upon a showing that the case is frivolous, unreasonable, or without foundation.

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

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

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

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

22 **"§ 160A-199. Ordinances prohibiting discrimination.**

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

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

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

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

42 a. Compelling the production of documents; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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