

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**HOUSE BILL 478\***

Short Title: Nondiscrimination in State/Employment. (Public)

Sponsors: Representatives Luebke, Brandon, Fisher, and Harrison (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Rules, Calendar, and Operations of the House.

March 29, 2011

A BILL TO BE ENTITLED  
AN ACT AMENDING THE NONDISCRIMINATION AND EQUAL OPPORTUNITY  
PROVISIONS OF THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 126-16 reads as rewritten:

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

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

**SECTION 2.** G.S. 126-34.1 reads as rewritten:

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

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

(1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.

(2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:

a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, sexual orientation, gender identity, or handicapping condition as defined by Chapter 168A of the General Statutes.

b. Demotion, reduction in force, or termination of an employee in retaliation for the employee's opposition to alleged discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, sexual orientation, gender identity, or handicapping condition as defined by Chapter 168A of the General Statutes.



- 1 (3) Retaliation against an employee, as proscribed by G.S. 126-17, for protesting  
2 an alleged violation of G.S. 126-16.
- 3 (4) Denial of the veteran's preference granted in accordance with Article 13 of  
4 this Chapter in initial State employment or in connection with a reduction in  
5 force, for an eligible veteran as defined by G.S. 126-81.
- 6 (5) Denial of promotion for failure to post or failure to give priority  
7 consideration for promotion or reemployment, to a career State employee as  
8 required by G.S. 126-7.1 and G.S. 126-36.2.
- 9 (6) Denial of an employee's request for removal of allegedly inaccurate or  
10 misleading information from the employee's personnel file as provided by  
11 G.S. 126-25.
- 12 (7) Any retaliatory personnel action that violates G.S. 126-85.
- 13 (8) Denial of promotion in violation of G.S. 126-14.2, where an initial  
14 determination found probable cause to believe there has been a violation of  
15 G.S. 126-14.2.
- 16 (9) Denial of employment in violation of G.S. 126-14.2, where an initial  
17 determination found probable cause to believe that there has been a violation  
18 of G.S. 126-14.2.
- 19 (10) Harassment in the workplace based upon age, sex, race, color, national  
20 origin, religion, creed, sexual orientation, gender identity, or handicapping  
21 condition, whether the harassment is based upon the creation of a hostile  
22 work environment or upon a quid pro quo.
- 23 (11) Violation of any of the following federal statutes as applied to the employee:  
24 a. The Fair Labor Standards Act, 29 U.S.C. § 201, et seq.  
25 b. The Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq.  
26 c. The Family Medical Leave Act, 29 U.S.C. § 2601, et seq.  
27 d. The Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
- 28 (b) An applicant for initial State employment may file in the Office of Administrative  
29 Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:  
30 (1) Alleged denial of employment in violation of G.S. 126-16.  
31 (2) Denial of the applicant's request for removal of allegedly inaccurate or  
32 misleading information from the personnel file as provided by G.S. 126-25.  
33 (3) Denial of equal opportunity for employment and compensation on account  
34 of the employee's age, sex, race, color, national origin, religion, creed,  
35 political affiliation, sexual orientation, gender identity, or handicapping  
36 condition as defined by Chapter 168A of the General Statutes. This  
37 subsection with respect to equal opportunity as to age shall be limited to  
38 persons who are at least 40 years of age. An applicant may not, however, file  
39 a contested case where political affiliation was the reason for the person's  
40 nonselection for (i) an exempt policymaking position as defined in  
41 G.S. 126-5(b)(3), (ii) a chief deputy or chief administrative assistant position  
42 under G.S. 126-5(c)(4), or (iii) a confidential assistant or confidential  
43 secretary position under G.S. 126-5(c)(2).
- 44 (4) Denial of the veteran's preference in initial State employment provided by  
45 Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.
- 46 (5) Denial of employment in violation of G.S. 126-14.2, where an initial  
47 determination found probable cause to believe that there has been a violation  
48 of G.S. 126-14.2.
- 49 (c) In the case of a dispute as to whether a State employee's position is properly  
50 exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office

1 of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General  
2 Statutes.

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

7 (e) Any issue for which appeal to the State Personnel Commission through the filing of  
8 a contested case under Article 3 of Chapter 150B of the General Statutes has not been  
9 specifically authorized by this section shall not be grounds for a contested case under Chapter  
10 126."

11 **SECTION 3.** G.S. 126-36 reads as rewritten:

12 "**§ 126-36. Appeal of unlawful State employment practice.**

13 (a) Any State employee or former State employee who has reason to believe that  
14 employment, promotion, training, or transfer was denied the employee or that demotion, layoff,  
15 transfer, or termination of employment was forced upon the employee in retaliation for  
16 opposition to alleged discrimination or because of the employee's age, sex, race, color, national  
17 origin, religion, creed, political affiliation, sexual orientation, gender identity, or handicapping  
18 condition as defined by G.S. 168A-3 except where specific age, sex or physical requirements  
19 constitute a bona fide occupational qualification necessary to proper and efficient  
20 administration, shall have the right to appeal directly to the State Personnel Commission.

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

24 (1) Harassment in the workplace based upon age, sex, race, color, national  
25 origin, religion, creed, sexual orientation, gender identity, or handicapping  
26 condition, whether the harassment is based upon the creation of a hostile  
27 work environment or upon a quid pro quo.

28 (2) Retaliation for opposition to harassment in the workplace based upon age,  
29 sex, race, color, national origin, religion, creed, sexual orientation, gender  
30 identity, or handicapping condition, whether the harassment is based upon  
31 the creation of a hostile work environment or upon a quid pro quo."

32 **SECTION 4.** Nothing in this act shall be construed as requiring the State or any  
33 employer, employment agency, or labor organization to give preferential treatment or special  
34 rights based on sexual orientation or gender identity or to implement special affirmative action  
35 policies or programs based on sexual orientation or gender identity.

36 **SECTION 5.** This act is effective when it becomes law.