

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 537
SENATE BILL 712

AN ACT TO AUTHORIZE THE CITY OF DURHAM AND DURHAM COUNTY TO APPLY TO THE SUPERIOR COURT FOR COMPENSATORY AND PUNITIVE DAMAGES IN CASES WHERE INTENTIONAL DISCRIMINATION IS FOUND IN EMPLOYMENT PRACTICES AND TO AUTHORIZE PARTIES TO ELECT BETWEEN HAVING A HEARING IN SUPERIOR COURT OR BEFORE THE ENFORCEMENT AGENCY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 227 of the 1993 Session Laws reads as rewritten:

"Sec. 2. Authority to adopt ordinances. – A city or county may adopt ordinances to prohibit discrimination in employment and public accommodations based on race, color, national origin, religion, sex, disability, or having attained the age of 40 or more years. To assist in the enforcement of these ordinances, a city or county may create an agency or commission of the city or county ('the Agency') to take any actions and to have any powers as are appropriate and necessary to implement these ordinances including, but not limited to, the powers to: receive; initiate; investigate; seek to conciliate; hold hearings on and pass upon complaints; mediate alleged violations of these ordinances; issue orders against persons it finds, after notice and hearing, to have violated these ordinances; and to seek enforcement of the orders by a court.

The General Assembly does not intend to expand the authority or powers of the Agency beyond those prescribed by federal laws or regulations with respect to a specific employer or public accommodation. The Agency may, as part of an enforcing order, require any person to cease and desist from unlawful practices and to engage in additional remedial action as may be appropriate, including, but not limited to, require the person:

- (1) To hire, reinstate, or upgrade aggrieved individuals, with or without back pay;
- (2) To admit aggrieved individuals or to allow aggrieved individuals to participate in guidance programs, apprenticeship training programs, on-the-job training programs, or other occupational training or retraining programs; and to use objective criteria in the admission of any individual to these programs;
- (3) To submit to the Agency, for approval or disapproval, plans to eliminate or reduce imbalance with respect to race, color, national origin, religion, sex, disability, or age;

- (4) To provide technical assistance to aggrieved individuals;
- (5) To report as to the manner of compliance with this act;
- (6) To post notices in conspicuous places in the form prescribed by the Agency;
- (7) To admit or restore an aggrieved individual to a place of public accommodation.

When the Commission determines that a respondent has engaged in unlawful intentional discrimination in an employment practice (not an employment practice that is unlawful because of its disparate impact), the Commission may enforce an ordinance adopted pursuant to this act by applying to the superior court of the county in which the city is predominantly located for any appropriate legal and equitable remedies, including, but not limited to, mandatory and prohibitory injunctions and orders of abatement, attorneys' fees, compensatory and punitive damages, and the court may grant such remedies. A complainant shall not recover punitive damages against a respondent unless the complainant demonstrates that the respondent engaged in a discriminatory practice with malice or with reckless indifference to the protected rights of an aggrieved individual under an ordinance adopted pursuant to this act.

No compensatory damages shall be awarded for back pay, interest on back pay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(g), as amended.

If a complainant seeks compensatory or punitive damages in an action brought under an ordinance adopted pursuant to this act, any party may demand a trial by jury."

Sec. 2. Chapter 227 of the 1993 Session Laws is amended by adding a new section to read:

"Sec. 2.1. Election of forum. Any ordinance adopted by the city pursuant to this act shall permit either party in a cause filed with the Agency, after efforts at conciliation have failed, to elect between having a hearing on the matter in the Durham County Superior Court or before the Agency.

If the court, in a case filed pursuant to an election made under the ordinance and this section, finds that the respondent has engaged in or is engaging in an unlawful employment or public accommodations practice charged in the complaint, the court may enjoin the respondent from engaging in the unlawful employment or public accommodations practice and order any action set forth in Section 2 of this act, and, in the case of intentional discrimination in an employment practice, the court may award any appropriate legal and equitable remedies, including, but not limited to, mandatory and prohibitory injunctions and orders of abatement, attorneys' fees, and compensatory and punitive damages. The provisions of Sections 3 and 5 of this act apply to any person electing to have a hearing before the Agency."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives