

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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1

HOUSE BILL 555

Short Title: Fair Employment Act.

(Public)

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Sponsors: Representatives Kennedy; Barnhill, Cunningham, Holt, H. Hunter, Oldham, and Wainwright.

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Referred to: Economic Expansion.

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April 1, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF  
3 RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, OR  
4 DISABILITY.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 143 of the General Statutes is amended by adding the  
7 following new Article:

8 **"ARTICLE 62.**

9 **"EMPLOYMENT DISCRIMINATION.**

10 **"§ 143-575. Title.**

11 This Article may be cited as the North Carolina Fair Employment Act.

12 **"§ 143-576. Intent.**

13 Discrimination in employment because of race, color, religion, sex, national origin,  
14 age, or disability substantially and adversely affects the interest of employees,  
15 employers, and the public in general; deprives North Carolina of the fullest use of its  
16 citizens; and limits the State's development. The General Assembly hereby declares  
17 that the practice of employment discrimination against people because of race, color,  
18 religion, sex, national origin, age, or disability is unlawful and in conflict with the ideals  
19 of North Carolina. The General Assembly charges the North Carolina Human Relations  
20 Commission with the task of seeking to eliminate and prevent such discrimination. It is  
21 the intent of the General Assembly that, as much as is practicable, the provisions of this  
22 Article should be interpreted consistently with the provisions of the Civil Rights Act of  
23 1964, as amended (42 U.S.C. §§ 2000e, et seq.), the Age Discrimination in

1 Employment Act of 1967, as amended (29 U.S.C. §§ 621, et seq.), and the Americans  
2 with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.).

3 **"§ 143-577. Definitions.**

4 As used in this Article, unless the context requires otherwise:

- 5 (1) 'Because of age' or 'on the basis of age' applies to persons 40 years of  
6 age or older.
- 7 (2) 'Because of sex' or 'on the basis of sex' includes, but is not limited to,  
8 because of or on the basis of pregnancy, childbirth, or related medical  
9 conditions. Women affected by pregnancy, childbirth, or related  
10 medical conditions shall be treated the same for all employment-  
11 related purposes, including receipt of benefits under fringe benefit  
12 programs, as other persons not so affected but similar in their ability or  
13 inability to work.
- 14 (3) 'Commission' means the North Carolina Human Relations  
15 Commission.
- 16 (4) 'Compensation, terms, conditions, or privileges of employment' mean  
17 all employee benefits, including such benefits provided pursuant to a  
18 bona fide employee benefit plan.
- 19 (5) 'Complainant' means a person who has filed a written, sworn  
20 complaint with the Commission pursuant to G.S. 143-580.
- 21 (6) 'Covered entity' means an employer, employment agency, labor  
22 organization, or joint labor-management committee.
- 23 (7) 'Direct threat' means a significant risk to the health or safety of others  
24 that cannot be eliminated by reasonable accommodation.
- 25 (8) 'Disability' means, with respect to an individual:  
26 a. A physical or mental impairment that substantially limits one or  
27 more of the major life activities of such individual;  
28 b. A record of such an impairment; or  
29 c. Being regarded as having an impairment as described in a. or b.  
30 of this subdivision.
- 31 (9) 'Drug' means a controlled substance as defined by section 202 of the  
32 Controlled Substances Act (21 U.S.C. § 812).
- 33 (10) 'Employer' means a person engaged in an industry affecting commerce  
34 who has 15 or more employees for each working day in each of 20 or  
35 more calendar weeks in the current or preceding calendar year, and  
36 any agent of such a person. Employer does not include:  
37 a. The State of North Carolina, any of its agencies or departments,  
38 or any of its political subdivisions;  
39 b. The United States or a corporation wholly owned by the  
40 government of the United States;  
41 c. An Indian tribe; or  
42 d. A bona fide private membership club (other than a labor  
43 organization) which is exempt under section 501(c) of the  
44 Internal Revenue Code of 1986.

- 1           (11) 'Employment agency' means any person regularly undertaking with or  
2           without compensation to procure employees for an employer or to  
3           procure for employees opportunities to work for an employer and  
4           includes an agent of such a person.
- 5           (12) 'Executive Director' means the Executive Director of the North  
6           Carolina Human Relations Commission or his designee.
- 7           (13) 'Illegal use of drugs' means the use of drugs, the possession or  
8           distribution of which is unlawful under the Controlled Substances Act  
9           (21 U.S.C. § 812). Such term does not include the use of a drug taken  
10          under supervision by a licensed health care professional, or other uses  
11          authorized by the Controlled Substances Act or other provisions of  
12          federal law.
- 13          (14) 'Labor organization' means a labor organization and any agent of such  
14          an organization, and includes any organization of any kind, any  
15          agency, or employee representation committee, group, association, or  
16          plan so engaged in which employees participate and which exists for  
17          the purpose, in whole or in part, of dealing with employers concerning  
18          grievances, labor disputes, wages, rates of pay, hours, or other terms or  
19          conditions of employment, and any conference, general committee,  
20          joint or system board, or joint council so engaged which is subordinate  
21          to a national or international labor organization.
- 22          (15) 'Person' means any individual, association, corporation, partnership,  
23          labor union, legal representative, mutual company, joint stock  
24          company, trust, trustee in bankruptcy, unincorporated organization,  
25          other legal or commercial entity, or organized group of persons.
- 26          (16) 'Qualified individual with a disability' means an individual with a  
27          disability who, with or without reasonable accommodation, can  
28          perform the essential functions of the employment position that the  
29          individual holds, desires, or held. Evidence of the essential function of  
30          the employment position is:
- 31                a. The employer's judgment as to what functions of the job are  
32                essential, and
- 33                b. If an employer has prepared a written description before  
34                advertising or interviewing applicants for the job, this  
35                description is evidence of the essential functions of the job.
- 36          (17) 'Reasonable accommodation' means:
- 37                a. Making existing facilities used by employees readily accessible  
38                to and usable by individuals with disabilities; and
- 39                b. Job restructuring; part-time or modified work schedules;  
40                reassignment to a vacant position; acquisition or modification  
41                of equipment or devices; appropriate adjustment or  
42                modification of examination, training materials, or policies;  
43                providing qualified readers or interpreters; and other similar  
44                accommodations for individuals with disabilities.

- 1           (18) 'Religion' means all aspects of religious observance and practice, as  
2           well as belief, which an employer is able to demonstrate that he is  
3           unable to reasonably accommodate to an employee's or prospective  
4           employee's religious observance or practice without undue hardship on  
5           the conduct of the employer's business.
- 6           (19) 'Respondent' means an employer, employment agency, labor  
7           organization, or joint labor-management committee against whom a  
8           complaint of an unlawful employment practice is filed.
- 9           (20) 'Undue hardship' means an action requiring significant difficulty or  
10          expense, when considered in light of the following factors:
- 11          a.     The nature and cost of the accommodation needed pursuant to  
12          this Article;
- 13          b.     The overall financial resources of the facility involved in the  
14          provision of the reasonable accommodation; the number of  
15          persons employed at such facility; the effect on expenses and  
16          resources, or the impact otherwise of such accommodation upon  
17          the operation of the facility;
- 18          c.     The overall financial resources of the covered entity; the overall  
19          size of the business of a covered entity with respect to the  
20          number of its employees; the number, type, and location of its  
21          facilities; and
- 22          d.     The type of operation of the covered entity, including the  
23          composition, structure, and functions of the work force of such  
24          entity; the geographic separateness, administrative, or fiscal  
25          relationship of the facility to the covered entity.

26 **"§ 143-578. Unlawful employment practices.**

- 27       (a)   It is unlawful for an employer:
- 28           (1)   To fail or refuse to hire or to discharge any individual, or otherwise to  
29           discriminate against any individual with respect to his compensation,  
30           terms, conditions, or privileges of employment, because of the  
31           individual's race, color, religion, sex, national origin, or age;
- 32           (2)   To limit, segregate, or classify his employees or applicants for  
33           employment in any way which would deprive or tend to deprive any  
34           individual of employment opportunities or otherwise adversely affect  
35           his status as an employee, because of the individual's race, color,  
36           religion, sex, national origin, or age; or
- 37           (3)   To reduce the wage rate of any employee in order to comply with this  
38           Article.
- 39       (b)   It is unlawful for an employment agency to fail or refuse to refer for  
40       employment, or otherwise to discriminate against, any individual because of his race,  
41       color, religion, sex, national origin, or age, or to classify or refer for employment any  
42       individual on the basis of his race, color, religion, sex, national origin, or age.
- 43       (c)   It is unlawful for a labor organization to:

- 1           (1) Exclude or to expel from its membership, or otherwise to discriminate  
2 against, any individual because of the individual's race, color, religion,  
3 sex, national origin, or age;
- 4           (2) Limit, segregate, or classify its membership or applicants for  
5 membership, or to classify or fail or refuse to refer for employment  
6 any individual, in any way which would deprive or tend to deprive any  
7 individual of employment opportunities, or would limit such  
8 employment opportunities or otherwise adversely affect his status as  
9 an employee or as an applicant for employment, because of the  
10 individual's race, color, religion, sex, national origin, or age; or
- 11           (3) Cause or attempt to cause an employer to discriminate against an  
12 individual in violation of this Article.

13           (d) It is unlawful for any employer, labor organization, or joint labor-  
14 management committee controlling apprenticeship or other training or retraining,  
15 including on-the-job training programs, to discriminate against any individual because  
16 of the individual's race, color, religion, sex, national origin, or age in admission to, or  
17 employment in, any program established to provide apprenticeship or other training.

18           (e) It is unlawful for an employer, labor organization, employment agency, or  
19 joint labor-management committee controlling apprenticeship or other training or  
20 retraining, including on-the-job training programs, to print or publish or cause to be  
21 printed or published any notice or advertisement relating to employment by such an  
22 employer or membership in or any classification or referral for employment by such a  
23 labor organization, or relating to any classification or referral for employment by such  
24 an employment agency, or relating to admission to, or employment in, any program  
25 established to provide apprenticeship or other training by such a joint labor-  
26 management committee, indicating any preference, limitation, specification, or  
27 discrimination, based on race, color, religion, sex, national origin, or age, except that  
28 such a notice or advertisement may indicate a preference, limitation, specification, or  
29 discrimination based on religion, sex, national origin, or age when religion, sex, national  
30 origin or age is a bona fide occupational qualification for employment.

31           (f) It is unlawful for an employer to discriminate against any of his employees or  
32 applicants for employment, for an employment agency, or joint labor-management  
33 committee controlling apprenticeship or other training or retraining, including on-the-  
34 job training programs, to discriminate against any individual, or for a labor organization  
35 to discriminate against any member thereof or applicant for membership, because he has  
36 opposed any practice made an unlawful employment practice by this Article, or because  
37 he has made a complaint, testified, assisted, or participated in any manner in an  
38 investigation, proceeding, or hearing under this Article. It is unlawful to coerce,  
39 intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or  
40 on account of his having exercised or enjoyed, or on account of his having aided or  
41 encouraged any other individual in the exercise or enjoyment of, any right granted or  
42 protected by this Article.

43           (g) It is unlawful for a covered entity to discriminate against a qualified  
44 individual with a disability because of the disability of such individual in regard to job

1 application procedures, the hiring, advancement, or discharge of employees, employee  
2 compensation, job training, and other terms, conditions, and privileges of employment.  
3 As used in this subsection, the term 'discriminate' includes:

- 4 (1) Limiting, segregating, or classifying a job applicant or employee in a  
5 way that adversely affects the opportunities or status of such applicant  
6 or employee because of the disability of the applicant or employee;
- 7 (2) Participating in a contractual or other relationship that has the effect of  
8 subjecting a covered entity's qualified applicant or employee with a  
9 disability to the discrimination prohibited by this Article. Such  
10 relationship includes a relationship with an employment or referral  
11 agency, labor union, an organization providing fringe benefits to an  
12 employee of the covered entity, or an organization providing training  
13 and apprenticeship programs;
- 14 (3) Using standards, criteria, or methods of administration that:
  - 15 a. Have the effect of discrimination on the basis of disability; or
  - 16 b. Perpetuate the discrimination of others who are subject to  
17 common administrative control;
- 18 (4) Excluding or otherwise denying jobs or benefits to a qualified  
19 individual because of the known disability of an individual with whom  
20 the qualified individual is known to have a relationship or association;
- 21 (5) Not making reasonable accommodations to the known physical or  
22 mental limitations of an otherwise qualified individual with a disability  
23 who is an applicant or employee, unless such covered entity can  
24 demonstrate that the accommodation would impose an undue hardship  
25 on the operation of the business of such covered entity. Nothing in  
26 this Article shall be construed to require an individual with a disability  
27 to accept an accommodation, aid, service, opportunity, or benefit  
28 which such individual chooses not to accept;
- 29 (6) Denying employment opportunities to a job applicant or employee  
30 who is an otherwise qualified individual with a disability, if such  
31 denial is based on the need of such covered entity to make reasonable  
32 accommodation to the physical or mental impairments of the employee  
33 or applicant;
- 34 (7) Using qualification standards, employment tests or other criteria that  
35 screen out or tend to screen out or otherwise deny a job or benefit to an  
36 individual with a disability or a class of individuals with disabilities. It  
37 is a defense to a complaint of discrimination under this subdivision if  
38 the covered entity shows that the standard, test or other selection  
39 criteria, as used by the covered entity, is job related for the position in  
40 question, is consistent with business necessity, and such performance  
41 cannot be accomplished by reasonable accommodation, as required  
42 under this Article;
- 43 (8) Failing to select and administer tests concerning employment in the  
44 most effective manner to ensure that, when such test is administered to

1 a job applicant or employee who has a disability that impairs sensory,  
2 manual, or speaking skills, the test results accurately reflect the skills,  
3 aptitude, or whatever other factor of the applicant or employee that  
4 such test purports to measure, rather than reflecting the impaired  
5 sensory, manual, or speaking skills of the employee or applicant,  
6 except where such skills are the factors that the test purports to  
7 measure;

8 (9) Conducting a medical examination or making inquiries of a job  
9 applicant as to whether such applicant is an individual with a disability  
10 or as to the nature or severity of such disability. However, a covered  
11 entity may make preemployment inquiries into the ability of an  
12 applicant to perform job-related functions, may require a medical  
13 examination after an offer of employment has been made to a job  
14 applicant and prior to the commencement of the employment duties of  
15 the applicant, and may condition an offer of employment on the results  
16 of the examination, if:

17 a. All entering employees are subjected to such an examination  
18 regardless of disability;

19 b. Information obtained regarding the medical condition or history  
20 of the applicant is collected and maintained on separate forms  
21 and in separate medical files and is treated as a confidential  
22 medical record, except that:

23 1. Supervisors and managers may be informed regarding  
24 necessary restrictions on the work or duties of the  
25 employee and necessary accommodations;

26 2. First aid and safety personnel may be informed, when  
27 appropriate, if the disability might require emergency  
28 treatment; and

29 3. Government officials investigating compliance with this  
30 Article shall be provided relevant information on  
31 request;

32 c. The results of the examination are used only in accordance with  
33 this Article.

34 (10) Requiring a medical examination or making inquiries of an employee  
35 as to whether such employee is an individual with a disability or as to  
36 the nature or severity of the disability, unless the examination or  
37 inquiry is shown to be job-related and consistent with business  
38 necessity. A covered entity may make inquiries into the ability of an  
39 employee to perform job-related functions, and may conduct voluntary  
40 medical examinations, including voluntary medical histories, which  
41 are part of an employee health program available to employees at the  
42 work site. Information obtained in such medical examinations or  
43 medical histories is subject to the same restrictions and requirements  
44 as information obtained pursuant to preemployment medical

1 examinations, as described in sub-subdivisions (9)b. and (9)c. of this  
2 subsection.

3 (h) (1) Except as provided in this subsection, it shall be unlawful  
4 for an employer, an employment agency, a labor organization, or any  
5 combination thereof to establish or maintain an employee pension  
6 benefit plan which requires or permits:

7 a. In the case of a defined benefit plan, the cessation of an  
8 employee's benefit accrual, or the reduction of the rate of an  
9 employee's benefit accrual, because of age; or

10 b. In the case of a defined contribution plan, the cessation of  
11 allocations to an employee's account, or the reduction of the  
12 rate at which amounts are allocated to an employee's account,  
13 because of age.

14 (2) Nothing in this subsection shall be construed to prohibit an employer,  
15 employment agency, or labor organization from observing any  
16 provision of an employee pension benefit plan to the extent that such  
17 provision imposes, without regard to age, a limitation on the amount of  
18 benefits that the plan provides or a limitation on the number of years of  
19 service or years of participation which are taken into account for  
20 purposes of determining benefit accrual under the plan.

21 (3) In the case of any employee who, as of the end of any plan year under  
22 a defined benefit plan, has attained normal retirement age under such  
23 plan:

24 a. If distribution of benefits under the plan with respect to the  
25 employee has commenced as of the end of the plan year, then  
26 any requirement of this subsection for continued accrual of  
27 benefits under the plan with respect to the employee during the  
28 plan year shall be treated as satisfied to the extent of the  
29 actuarial equivalent of in-service distribution of benefits, and;

30 b. If distribution of benefits under the plan with respect to the  
31 employee has not commenced as of the end of the year in  
32 accordance with section 206(a)(3) of the Employee Retirement  
33 Income Security Act of 1974 and section 401(a)(14)(C) of the  
34 Internal Revenue Code of 1986, and the payment of benefits  
35 under the plan with respect to the employee is not suspended  
36 during the plan year pursuant to section 203(a)(3)(B) of the  
37 Employment Retirement Income Security Act of 1974 or  
38 section 411(a)(3)(B) of the Internal Revenue Code of 1986,  
39 then any requirement of this subsection for continued accrual of  
40 benefits under the plan with respect to the employee during the  
41 plan year shall be treated as satisfied to the extent of any  
42 adjustment in the benefit payable under the plan during the plan  
43 year attributable to the delay in the distribution of benefits after  
44 attainment of normal retirement age.



1           The provisions of this subdivision apply in accordance with  
2           regulations of the United States Secretary of the Treasury, pursuant to  
3           29 U.S.C. § 623(i)(3).

4           (4) Compliance with the requirements of this subsection with respect to an  
5           employee pension benefit plan shall constitute compliance with the  
6           requirements of this subsection relating to benefit accrual under such  
7           plan.

8           (5) Subdivision (1) of this subsection does not apply to any employee who  
9           is a highly compensated employee within the meaning of section  
10           414(q) of the Internal Revenue Code of 1986 to the extent provided in  
11           regulations prescribed by the United States Secretary of the Treasury  
12           for purposes of precluding discrimination in favor of highly  
13           compensated employees within the meaning of subchapter D of  
14           chapter 1 of the Internal Revenue Code of 1986.

15           (6) A plan shall not be treated as failing to meet the requirements of  
16           subdivision (1) of this subsection solely because the subsidized portion  
17           of any early retirement benefit is disregarded in determining benefit  
18           accruals.

19           (7) Any regulations prescribed by the United States Secretary of the  
20           Treasury pursuant to clause (v) of section 411(b)(1)(H) of the Internal  
21           Revenue Code of 1986 and subparagraphs (C) and (D) of section  
22           411(b)(2) of the Internal Revenue Code apply to the requirements of  
23           this subsection in the same manner and to the same extent as such  
24           regulations apply to the requirements of sections 411(b)(1)(H) and  
25           411(b)(2).

26           (8) A plan shall not be treated as failing to meet the requirements of this  
27           subsection solely because the plan provides a normal retirement age  
28           described in section 3(24)(B) of the Employee Retirement Income  
29           Security Act of 1974 and section 411(a)(8)(B) of the Internal Revenue  
30           Code of 1986.

31           (9) A seniority system or employee benefit plan must comply with this  
32           Article regardless of the date of adoption of such system or plan.

33           (10) For purposes of this subsection:

34           a. 'Defined contribution plan', 'employee pension benefit plan', and  
35           'normal retirement age' have the same meanings provided in  
36           section 3 of the Employee Retirement Security Act of 1974 (29  
37           U.S.C. § 1002).

38           b. 'Compensation' has the same meaning provided in section  
39           414(s) of the Internal Revenue Code of 1986.

40           **"§ 143-579. Exemptions; defenses.**

41           (a) Notwithstanding any other provision of this Article, it is not unlawful for:

42           (1) An employer to hire and employ employees,

43           (2) An employment agency to classify or refer for employment any  
44           individual,

1           (3) A labor organization to classify its membership or to classify or refer  
2 for employment any individual, or

3           (4) An employer, labor organization, or joint labor-management  
4 committee controlling apprenticeship or other training or retraining  
5 programs

6 to admit or employ any individual in any such program, on the basis of his religion, sex,  
7 national origin, or age in those certain instances where religion, sex, national origin, or  
8 age is a bona fide occupational qualification reasonably necessary to the normal  
9 operation of that particular business or enterprise. Notwithstanding any other provision  
10 of this Article, it is not unlawful for a school, college, university, or other educational  
11 institution or institution of learning to hire and employ employees of a particular  
12 religion if such school, college, university, or other educational institution or institution  
13 of learning is, in whole or in substantial part, owned, supported, controlled, or managed  
14 by a particular religion or by a particular religious corporation, association, or society,  
15 or if the curriculum of such school, college, university, or other educational institution  
16 or institution of learning is directed toward the propagation of a particular religion.

17       (b) With regard to discrimination based on race, color, religion, sex, or national  
18 origin, it is not unlawful for an employer to apply different standards of compensation,  
19 or different terms, conditions, or privileges of employment pursuant to a bona fide  
20 seniority or merit system, or a system which measures earnings by quantity or quality of  
21 production or to employees who work in different locations, so long as the differences  
22 are not the result of an intention to discriminate because of race, color, religion, sex,  
23 national origin. It is not unlawful for an employer to give and to act upon the results of  
24 any professionally developed ability test provided that the test, its administration, or  
25 action upon the results is not designed, intended, or used to discriminate because of  
26 race, color, religion, sex, or national origin. It is not unlawful for any employer to  
27 differentiate upon the basis of sex in determining the amount of the wages or  
28 compensation paid or to be paid to employees of the employer if the differentiation is  
29 authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as  
30 amended (29 U.S.C. § 206(d).

31       (c) In any case in which an individual has an infectious or communicable disease  
32 that is:

33           (1) Transmitted to others through the handling of food,

34           (2) Included on the list developed by the Secretary of the United States  
35 Department of Health and Human Services pursuant to section 103(d)  
36 of the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101,  
37 et seq.), and

38           (3) Cannot be eliminated by reasonable accommodation,

39 a covered entity may refuse to assign or continue to assign the individual to a job  
40 involving food handling. Nothing in this subsection shall be construed to preempt,  
41 modify, or amend any State, county, or local law, ordinance, or regulation applicable to  
42 food handling.

43       (d) The provisions of this Article do not apply to any employee or applicant who  
44 is currently engaging in the illegal use of drugs, when the covered entity acts on the

1 basis of that use. However, an individual shall not be excluded as a qualified individual  
2 with a disability if he:

- 3       (1) Has successfully completed a supervised drug rehabilitation program  
4 and is no longer engaging in the illegal use of drugs, or has otherwise  
5 been rehabilitated successfully and is no longer engaging in such use;  
6       (2) Is participating in a supervised rehabilitation program and is no longer  
7 engaging in such use; or  
8       (3) Is erroneously regarded as engaging in such use.

9 It is not a violation of this Article for a covered entity to adopt or administer reasonable  
10 policies or procedures, including but not limited to drug testing, designed to ensure that  
11 an individual described in subdivision (1) or (2) of this subsection is no longer  
12 engaging in the illegal use of drugs.

13       (e) A covered entity may:

- 14       (1) Prohibit the illegal use of drugs and the use of alcohol at the workplace  
15 by employees;  
16       (2) Require that employees shall not be under the influence of alcohol or  
17 be engaging in the illegal use of drugs at the workplace;  
18       (3) Require that employees behave in conformance with the requirements  
19 established under the Drug-Free Workplace Act of 1988 (41 U.S.C. §§  
20 701 et seq.);  
21       (4) Hold an employee who engages in the illegal use of drugs or who is an  
22 alcoholic to the same qualification standards for employment or job  
23 performance and behavior that the entity holds other employees, even  
24 if any unsatisfactory performance or behavior is related to the drug use  
25 or alcoholism of the employee; and  
26       (5) With respect to federal regulations regarding alcohol and the illegal  
27 use of drugs, require that:  
28       a. Employees comply with the standards established in federal  
29 regulations of the Department of Defense, if the employees of  
30 the covered entity are employed in an industry subject to those  
31 regulations, including complying with regulations, if any, that  
32 apply to employment in sensitive positions in such an industry,  
33 in the case of employees of the covered entity who are  
34 employed in those positions, as defined in the regulations of the  
35 Department of Defense;  
36       b. Employees comply with the standards established in federal  
37 regulations of the Nuclear Regulatory Commission, if the  
38 employees of the covered entity are employed in an industry  
39 subject to those regulations, including complying with  
40 regulations, if any, that apply to employment in sensitive  
41 positions in such an industry, in the case of employees of the  
42 covered entity who are employed in those positions, as defined  
43 in the regulations of the Nuclear Regulatory Commission; and

1           c. Employees comply with the standards established in federal  
2 regulations of the United States Department of Transportation,  
3 if the employees of the covered entity are employed in a  
4 transportation industry subject to those regulations, including  
5 complying with those regulations, if any, that apply to  
6 employment in sensitive positions in such an industry, in the  
7 case of employees of the covered entity who are employed in  
8 those positions, as defined in the regulations of the Department  
9 of Transportation.

10       (f) For the purposes of this Article, a test to determine the illegal use of drugs  
11 shall not be considered a medical exam. Nothing in this Article shall be construed to  
12 encourage, prohibit, or authorize the conducting of drug testing for the illegal use of  
13 drugs by job applicants or employees or making employment decisions based on such  
14 test results.

15       (g) Nothing in this Article shall be construed to encourage, prohibit, restrict, or  
16 authorize the otherwise lawful exercise by entities subject to the jurisdiction of the  
17 United States Department of Transportation of authority to:

18           (1) Test employees of such entities in, and applicants, for positions  
19 involving safety-sensitive duties for the illegal use of drugs and for on-  
20 duty impairment by alcohol; and

21           (2) Remove such persons who test positive for illegal use of drugs and on-  
22 duty impairment by alcohol pursuant to subdivision (1) of this  
23 subsection from safety-sensitive duties in implementing subsection (e).

24       (h) The prohibitions in this Article against discrimination based upon disability  
25 shall not be construed to prohibit or restrict:

26           (1) An insurer, hospital or medical service company, health maintenance  
27 organization, or any agent, or entity that administers benefit plans, or  
28 similar organizations from underwriting risks, classifying risks, or  
29 administering such risks that are based on or not inconsistent with  
30 State law; or

31           (2) A person or organization covered by this Article from establishing,  
32 sponsoring, observing or administering the terms of a bona fide benefit  
33 plan that are based on underwriting risks, classifying risks, or  
34 administering those risks that are based on or not inconsistent with  
35 State law; or

36           (3) A person or organization covered by this Article from establishing,  
37 sponsoring, observing, or administering the terms of a bona fide  
38 benefit plan that is not subject to State laws that regulate insurance.

39 Subdivisions (1), (2), and (3) of this subsection shall not be used as a subterfuge to  
40 evade the purposes of this Article.

41       (i) It shall not be a violation of this Article for an employer to fail or refuse to  
42 hire and employ any individual for any position, for an employer to discharge any  
43 individual from any position, or for an employment agency to fail or refuse to refer any  
44 individual for employment in any position, or for a labor organization to fail or refuse to

1 refer any individual for employment in any position, if on the basis of race, color,  
2 religion, sex, or national origin:

3 (1) The occupancy of such position, or access to the premises in or upon  
4 which any part of the duties of such position is performed or is to be  
5 performed, is subject to any requirement imposed in the interest of the  
6 national security of the United States under any security program in  
7 effect pursuant to or administered under any statute of the United  
8 States or any Executive Order of the President; and

9 (2) Such individual has not fulfilled or has ceased to fulfill that  
10 requirement.

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

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

19 (l) Nothing contained in this Article shall be interpreted to require any employer,  
20 employment agency, labor organization, or joint labor-management committee subject  
21 to this Article to grant preferential treatment to any individual or to any group because  
22 of race, color, religion, sex, or national origin of such individual or group on account of  
23 an imbalance which may exist with respect to the total number or percentage of persons  
24 of any race, color, religion, sex, or national origin employed by any employer, referred  
25 or classified for employment by any employment agency or labor organization, admitted  
26 to membership or classified by any labor organization, or admitted to, or employed in,  
27 any apprenticeship or other training program, in comparison with the total number or  
28 percentage of persons of such race, color, religion, sex, or national origin in any  
29 community, state, section, or other area, or in the available work force in any  
30 community, state, section, or other area.

31 (m) With respect to discrimination based on age, it is not unlawful for an  
32 employer, employment agency, or labor organization to take any action otherwise  
33 prohibited under subsections (a), (b), (c), or (e) of G.S. 143-578:

34 (1) Where the differentiation is based on reasonable factors other than age;  
35 (2) Where such practices involve an employee in a workplace in a foreign  
36 country, and compliance with those subsections would cause such  
37 employer, or a corporation controlled by such employer, to violate the  
38 laws of the country in which such workplace is located; or

39 (3) To observe the terms of a bona fide seniority system that is not  
40 intended to evade the purposes of this Article, except that no such  
41 seniority system shall require or permit the involuntary retirement of  
42 any individual who is at least 40 years of age because of the age of  
43 such individual; or

44 (4) To observe the terms of a bona fide employee benefit plan:

- 1           a.     Where, for each benefit or benefit package, the actual amount  
2           of payment made or cost incurred on behalf of an older worker  
3           is no less than that made or incurred on behalf of a younger  
4           worker, as permissible under section 1625.10, Title 29, Code of  
5           Federal Regulations, as in effect on June 22, 1989; or  
6           b.     That is a voluntary early retirement incentive plan consistent  
7           with the relevant purpose of this Article.  
8           Notwithstanding the provision of sub-subdivision a. or b. of this  
9           subdivision, no employee benefit plan or voluntary early retirement  
10          incentive plan shall excuse the failure to hire any individual, and no  
11          such employee benefit plan shall require or permit the involuntary  
12          retirement of any individual age 40 or older, because of the age of such  
13          individual. An employer, employment agency, or labor organization  
14          acting under subdivision (3) or subdivision (4), shall have the burden  
15          of proving that such actions are lawful in any civil enforcement  
16          proceeding brought under this Article; or  
17          (5)    To discharge or otherwise discipline an individual for good cause.  
18          (n)    Notwithstanding the provisions of subdivision (4) of subsection (m) of this  
19          section:  
20          (1)    It is not a violation of subsection (a), (b), (c), or (e) of G.S. 143-578  
21          solely because:  
22               a.     An employee pension benefit plan, as defined in section 3(2) of  
23               the Employee Retirement Income Security Act of 1974 (29  
24               U.S.C. § 1002(2)), provides for the attainment of a minimum  
25               age as a condition of eligibility for normal or early retirement  
26               benefits; or  
27               b.     A defined benefit plan, as defined in section 3(35) of such Act,  
28               provides for:  
29                    1.     Payments that constitute the subsidized portion of an  
30                    early retirement benefit; or  
31                    2.     Social security supplements for plan participants that  
32                    commence before that age and terminate at the age  
33                    (specified by the plan) when participants are eligible to  
34                    receive reduced or unreduced old-age insurance benefits  
35                    under Title II of the Social Security Act (42 U.S.C. §§  
36                    401 et seq.), and that do not exceed such old-age  
37                    insurance benefits.  
38          (2)    a.     It is not a violation of subsection (a), (b), (c), or (e) of G.S. 143-578  
39          solely because, following a contingent event unrelated to age:  
40                    1.     The value of any retiree health benefits received by an  
41                    individual eligible for an immediate pension;  
42                    2.     The value of any additional pension benefits that are  
43                    made available solely as a result of the contingent event  
44                    unrelated to age and following which the individual is

- 1                                   eligible for not less than an immediate and unreduced  
2                                   pension; or  
3                                   3.     The sum of the values described in both subparts 1. and  
4                                   2. of this sub-subdivision  
5                                   are deducted from severance pay made available as a result of  
6                                   the contingent event unrelated to age.  
7                                   b.     For an individual who receives immediate pension benefits that  
8                                   are actuarially reduced under subpart a.1. of this subdivision,  
9                                   the amount of the deduction available pursuant to subpart a.1.  
10                                   shall be reduced by the same percentage as the reduction in the  
11                                   pension benefits.  
12                                   c.     For purposes of this subdivision, severance pay shall include  
13                                   that portion of supplemental unemployment compensation  
14                                   benefits, as described in section 501(c)(17) of the Internal  
15                                   Revenue Code of 1986, that:  
16                                   1.     Constitutes additional benefits of up to 52 weeks;  
17                                   2.     Has the primary purpose and effect of continuing  
18                                   benefits until an individual becomes eligible for an  
19                                   immediate and unreduced pension; and  
20                                   3.     Is discontinued once the individual becomes eligible for  
21                                   an immediate and unreduced pension.  
22                                   d.     For purposes of this subdivision and solely in order to make the  
23                                   deduction authorized under this paragraph, the term 'retiree  
24                                   health benefit' means benefits provided pursuant to a group  
25                                   health plan covering retirees, for which (determined as of the  
26                                   contingent event unrelated to age). The package of benefits  
27                                   provided by the employer:  
28                                   1.     For the retirees who are below age 65 is at least  
29                                   comparable to benefits provided under Title XVIII of the  
30                                   Social Security Act (42 U.S.C. §§ 1395 et seq.); or  
31                                   2.     For the retirees who are age 65 and above is at least  
32                                   comparable to that offered under a plan that provides a  
33                                   benefit package with one-fourth the value of benefits  
34                                   provided under Title XVIII of the Social Security Act;  
35                                   e.     1.     If the obligation of the employer to provide  
36                                   retiree health benefits is of limited duration, the value  
37                                   for each individual shall be calculated at a rate of three  
38                                   thousand dollars (\$3,000) per year for benefit years  
39                                   before age 65, and seven hundred fifty dollars  
40                                   (\$750.00) per year for benefit years beginning at age  
41                                   65 and above.  
42                                   2.     If the obligation of the employer to provide retiree health  
43                                   benefits is of unlimited duration, the value for each  
44                                   individual shall be calculated at a rate of forty-eight

- 1                                    thousand dollars (\$48,000) for individuals below age 65,  
2                                    and twenty-four thousand dollars (\$24,000) for  
3                                    individuals age 65 and above.
- 4                                    3.    The values described in subparts 1. and 2. of this sub-  
5                                    subdivision shall be calculated based on the age of the  
6                                    individual as of the date of the contingent event  
7                                    unrelated to age. The values are effective on the date of  
8                                    enactment of this subsection, and shall be adjusted on an  
9                                    annual basis, with respect to a contingent event that  
10                                   occurred subsequent to the first year after the date of  
11                                   enactment of this subsection, based on the medical  
12                                   component of the Consumer Price Index for all-urban  
13                                   consumers published by the United States Department of  
14                                   Labor.
- 15                                   4.    If an individual is required to pay a premium for retiree  
16                                   health benefits, the value calculated pursuant to this sub-  
17                                   subdivision shall be reduced by whatever percentage of  
18                                   the overall premium the individual is required to pay.
- 19                                   f.    If an employer that has implemented a deduction pursuant to  
20                                   sub-subdivision a. of this subdivision fails to fulfill the  
21                                   obligation described in sub-subdivision e., any aggrieved  
22                                   individual may bring an action for specific performance of the  
23                                   obligation described in sub-subdivision e. The relief shall be in  
24                                   addition to any other remedies provided under this Article.
- 25                                   (3)   It is not a violation of subsection (a), (b), (c), or (e) of G.S. 143-578  
26                                   solely because an employer provides a bona fide employee benefit  
27                                   plan under which long-term disability benefits received by an  
28                                   individual are reduced by any pension benefits, other than those  
29                                   attributable to employee contributions:
- 30                                   a.    Paid to the individual that the individual voluntarily elects to  
31                                   receive; or
- 32                                   b.    For which an individual who has attained the later of age 62 or  
33                                   normal retirement age is eligible.
- 34                                   (o)    (1)   If an employer controls a corporation whose place of  
35                                   incorporation is in a foreign country, any act of age discrimination  
36                                   by such corporation prohibited by this Article shall be presumed to  
37                                   be an act by that employer.
- 38                                   (2)   The prohibitions of this Article with respect to discrimination based on  
39                                   age do not apply where the employer is a foreign person not controlled  
40                                   by an American employer.
- 41                                   (3)   For the purpose of this subsection, the determination of whether an  
42                                   employer controls a corporation shall be based upon the:
- 43                                   a.    Interrelation of operations,
- 44                                   b.    Common management,



1 c. Centralized control of labor relations, and

2 d. Common ownership or financial control of the employer and  
3 the corporation.

4 (p) (1) Nothing in this Article shall be construed to prohibit  
5 compulsory retirement of any employee who has attained 65 years of  
6 age and who, for the two-year period immediately before retirement,  
7 is employed in a bona fide executive or high policy-making position,  
8 if such employee is entitled to an immediate nonforfeitable annual  
9 retirement benefit from a pension, profit-sharing, savings, or  
10 deferred compensation plan, or any combination of such plans, of  
11 the employer of such employee, which equals, in the aggregate, at  
12 least forty-four thousand dollars (\$44,000).

13 (2) In applying the retirement benefit test of subdivision (1) of this  
14 subsection, if any such retirement benefit is in a form other than a  
15 straight life annuity, with no ancillary benefits, or if employees  
16 contribute to any such plan or make rollover contributions, the benefit  
17 shall be adjusted in accordance with regulations prescribed by the  
18 Equal Employment Opportunity Commission, pursuant to 29 U.S.C. §  
19 631(c)(2), so that the benefit is the equivalent of a straight life annuity  
20 with no ancillary benefits under a plan to which employees do not  
21 contribute and under which no rollover contributions are made.

22 **"§ 143-580. Enforcement.**

23 (a) A complaint alleging an unlawful employment practice may be filed with the  
24 Commission by any person who claims to be aggrieved by an unlawful employment  
25 practice, any person who reasonably believes that he will be aggrieved by an unlawful  
26 employment practice, or a member of the Commission. Complaints shall be in writing,  
27 shall state the facts upon which the allegation of an unlawful employment practice is  
28 based, shall be signed by the complainant and verified, and shall contain such other  
29 information and be in a form as the Commission requires. Commission employees shall  
30 assist complainants in reducing complaints to writing and shall assist in setting forth the  
31 information in the complaint as may be required by the Commission.

32 (b) A complaint under subsection (a) may be filed no later than 180 days after the  
33 cessation of the unlawful employment practice. However, during any period in which  
34 the Commission is subject to a complaint deferral agreement with the Equal  
35 Employment Opportunity Commission pursuant to 42 U.S.C. § 2000e-(5)(c) and 42  
36 U.S.C. § 2000e-(8)(b), a complaint may be filed not later than 300 days after the  
37 cessation of the unlawful employment practice.

38 (c) The Executive Director shall serve a copy of the complaint upon the  
39 respondent within 10 days after the complaint is filed with the Commission.

40 (d) A respondent may file an answer to the complaint against him within 10 days  
41 after receiving a copy of the complaint. Answers shall be signed by the respondent and  
42 verified.

43 (e) With the leave of the Executive Director, the answer may be amended at any  
44 time. The Executive Director shall grant leave to amend the complaint whenever it

1 would be reasonable and fair to do so. Amendments shall be signed and verified. An  
2 amendment shall be considered to have been filed on the date on which the original  
3 complaint or answer was filed. Amendments to complaints may add to, correct, or  
4 delete the information contained in the original complaint, and may add or delete the  
5 names of respondents. The Executive Director shall serve a copy of all amended  
6 complaints upon all respondents, and shall provide the respondents a reasonable amount  
7 of time to respond. Any respondent added by an amendment to a complaint shall be  
8 given a reasonable amount of time to file an answer.

9 (f) The Commission, through its Executive Director and his employees and  
10 agents, shall investigate the complaint to ascertain the facts relating to the alleged  
11 unlawful employment practice. In conducting an investigation, the Executive Director  
12 and his employees and agents shall have access at all reasonable times to premises,  
13 records, documents, individuals, and other evidence or possible sources of evidence and  
14 may examine, record, and copy such materials and take and record the testimony or  
15 statements of such persons as reasonably necessary for the furtherance of the  
16 investigation.

17 (g) In conducting an investigation, the Executive Director may:

- 18 (1) Issue subpoenas compelling access to or production of documents,  
19 materials, or other evidence;
- 20 (2) Issue subpoenas compelling witnesses, including any party, to appear  
21 and give testimony before a Commission employee or agent;
- 22 (3) Issue subpoenas compelling witnesses, including any party, to appear  
23 and give testimony at a deposition;
- 24 (4) Take depositions of witnesses, including any party; and
- 25 (5) Issue interrogatories to a respondent.

26 Subpoenas issued by the Executive Director shall be issued in accordance with the same  
27 rules of notice and service as govern the issuance of subpoenas in civil actions. The  
28 Executive Director may take depositions and issue interrogatories to the same extent  
29 and subject to the same limitations as would apply if the deposition were taken or the  
30 interrogatories were issued in aid of a civil action. However, the Executive Director  
31 may require that a respondent:

- 32 (1) Serve a copy of answers to interrogatories within 15 days after service  
33 of the interrogatories on the respondent, and
- 34 (2) Allow access to or produce documents or other evidence within 15  
35 days after service of a request to do so.

36 (h) Upon written application to the Executive Director, a respondent shall be  
37 entitled to the issuance of a reasonable number of subpoenas for the taking of  
38 depositions and the production of evidence subject to the same limitations as subpoenas  
39 issued by the Executive Director. Subpoenas issued at the request of a respondent shall  
40 show on their face the name and address of such respondent and shall state that they  
41 were issued at his request.

42 (i) In the case of refusal to obey a subpoena, answer an interrogatory, answer a  
43 question propounded in a deposition, or answer a question propounded during an  
44 interview conducted by a Commission employee pursuant to subdivision (g)(2) of this

1 section, the Commission or the respondent may make a motion compelling a person to  
2 obey the subpoena, answer the interrogatory, or answer the question. A motion made  
3 pursuant to this subsection shall be made in the superior court for the district in which  
4 the person to whom the subpoena, interrogatory, or question was directed resides, was  
5 served, or transacts business. The court may, in its discretion, issue an order granting or  
6 denying the motion in whole or in part. If a person fails to obey an order issued  
7 pursuant to this subsection, the court may apply any or all of the sanctions available in  
8 Rule 37 of the North Carolina Rules of Civil Procedure.

9 (j) The complaint may be resolved at any time by conference, conciliation, and  
10 persuasion. Positions taken by a party in connection with such efforts toward  
11 conciliation shall not be made public or used against the interest of the witness in a  
12 subsequent proceeding.

13 (k) If the complaint is not sooner resolved, upon completion of the investigation  
14 the Executive Director shall determine whether there is reasonable cause to believe that  
15 an unlawful employment practice has occurred or is going to occur. The Executive  
16 Director shall make his determination on reasonable cause as promptly as possible and,  
17 so far as practicable, no later than 120 days after the complaint was filed.

18 (l) If the Executive Director determines that there is not reasonable cause to  
19 believe that an unlawful employment practice has occurred or is going to occur, he shall  
20 dismiss the complaint and so notify the complainant and the respondent. At the same  
21 time the Executive Director shall issue to the complainant a right-to-sue letter which  
22 will enable the complainant to bring a civil action in superior court.

23 (m) If the Executive Director determines that there is reasonable cause to believe  
24 that an unlawful employment practice has occurred or is going to occur, he shall notify  
25 the complainant and the respondent and shall attempt to resolve the complaint by  
26 conciliation and persuasion. A conciliation agreement signed by the parties is an  
27 enforceable contract. The Commission may be a party to conciliation agreements which  
28 resolve complaints. The Executive Director may sign conciliation agreements on behalf  
29 of the Commission.

30 (n) If the Executive Director is unable to resolve the complaint, he may declare  
31 that conciliation efforts have failed. Upon making such a declaration, the Commission  
32 may:

33 (1) Dismiss the complaint and issue to the complainant a right-to-sue letter  
34 which will enable him to bring a civil action against the respondent in  
35 superior court; or

36 (2) Commence a civil action against the respondent in superior court in its  
37 own name or in its own name on behalf of the complainant. Such an  
38 action shall be commenced no later than 90 days after the declaration  
39 of conciliation failure. In such an action, the plaintiff or plaintiffs shall  
40 be represented by an attorney employed by the Commission and the  
41 provisions of G.S. 114-2 shall not apply.

42 (o) If more than 240 days have elapsed since a complaint was filed, the  
43 Commission has failed to resolve the complaint or issue a right-to-sue letter, the  
44 Executive Director shall, upon written request of the complainant, issue a right-to-sue

1 letter to the complainant which will enable him to bring a civil action in superior court.  
2 Issuance of a letter under this subsection shall not prevent the Commission from  
3 commencing a civil action in its own name under subsection (n)(2) of this section,  
4 which action shall be consolidated with any action filed by the complainant. Such an  
5 action by the Commission shall be filed no later than 90 days after the Commission  
6 issues the requested right-to-sue letter to the complainant.

7 (p) Civil actions brought by a complainant after the issuance of a right-to-sue  
8 letter by the Commission may be filed no later than 90 days after the issuance of the  
9 letter.

10 (q) All civil actions brought pursuant to this Article shall be commenced in the  
11 county where the alleged unlawful employment practice occurred.

12 (r) In an action brought in superior court pursuant to this Article, if the court  
13 finds that the defendant has committed an unlawful employment practice, the court may  
14 enjoin the defendant from engaging in unlawful employment practices, and order such  
15 affirmative action as may be appropriate, which may include, but is not not limited to,  
16 reinstatement or hiring or employees, with or without back pay payable by the  
17 defendant responsible for the unlawful employment practice, or any other equitable  
18 relief as the court deems appropriate. Back pay liability shall not accrue from a date  
19 more than two years prior to the filing of the complaint with the Commission. Interim  
20 earnings or amounts earnable with reasonable diligence by the person discriminated  
21 against shall operate to reduce the back pay otherwise allowable. Nor order of the court  
22 shall require the admission or reinstatement of an individual as a member of a union, or  
23 the hiring, reinstatement, or promotion of an individual as an employee, or the payment  
24 to him of any back pay, if such individual was refused admission, suspended, or  
25 expelled, or was refused employment or advancement or was suspended or discharged  
26 for any reason other than discrimination on account of race, color, religion, sex, national  
27 origin, age, disability, or in violation of G.S. 143-578(f). The court may award court  
28 costs and reasonable attorney's fees to the prevailing party with the following  
29 limitations:

30 (1) Attorney's fees may not be awarded to the Commission; and

31 (2) A prevailing respondent may be awarded court costs and reasonable  
32 attorney's fees only upon a showing that the case is frivolous,  
33 unreasonable, or without foundation.

34 (s) Whenever the Commission concludes on the basis of a preliminary  
35 investigation of a complaint that prompt judicial action is necessary to carry out the  
36 purposes of this Article, the Commission may bring an action in superior court for  
37 appropriate temporary or preliminary relief pending final disposition of the complaint.  
38 Any temporary relief shall be issued in accordance with Rule 65 of the North Carolina  
39 Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over  
40 proceedings under this subsection to assign cases for hearing at the earliest practicable  
41 date and to cause such cases to be in every way expedited. The commencement of a  
42 civil action under this subsection does not affect the continuation of the Commission's  
43 investigation or the initiation of a separate civil action pursuant to other subsections of  
44 this section.

1 **"§ 143-581. Local government authority.**

2 (a) The governing bodies of cities, towns, or counties are authorized to adopt  
3 ordinances:

4 (1) Prohibiting employment discrimination within their jurisdictions to the  
5 extent that it is prohibited by this Article;

6 (2) Authorizing the governing body or a designated agency to enforce  
7 such ordinances in a manner similar to the procedures described in this  
8 Article; and

9 (3) Providing for remedies for violations of such ordinances that are  
10 similar to the remedies described in this Article.

11 (b) Whenever another agency of the State or any unit of local government has  
12 jurisdiction over the subject matter of any complaint filed under this Article, and such  
13 agency or unit of local government has legal authority equivalent to or greater than the  
14 authority under this Article to investigate or act upon the complaint, the Commission  
15 shall be divested of jurisdiction over the complaint. The Commission shall, within 30  
16 days, notify the agency or unit of local government of the apparent unlawful  
17 employment practice, and request that the complaint be investigated in accordance with  
18 its authority."

19 Sec. 2. G.S. 143B-391 reads as rewritten:

20 **"§ 143B-391. North Carolina Human Relations Commission – creation; powers**  
21 **and duties.**

22 There is hereby created the North Carolina Human Relations Commission of the  
23 Department of Administration. The North Carolina Human Relations Commission shall  
24 have the following functions and duties:

25 (1) To study problems concerning human relations;

26 (2) To promote equality of opportunity for all citizens;

27 (3) To promote understanding, respect, and goodwill among all citizens;

28 (4) To provide channels of communication among the races;

29 (5) To encourage the employment of qualified people without regard to  
30 race;

31 (6) To encourage youths to become better trained and qualified for  
32 employment;

33 (7) To receive on behalf of the Department of Administration and to  
34 recommend expenditure of gifts and grants from public and private  
35 donors;

36 (8) To enlist the cooperation and assistance of all State and local  
37 government officials in the attainment of the objectives of the  
38 Commission;

39 (9) To assist local good neighborhood councils and biracial human  
40 relations committees in promoting activities related to the functions of  
41 the Commission enumerated above;

42 (10) To advise the Secretary of Administration upon any matter the  
43 Secretary may refer to it; ~~and~~

- 1           (11) To administer the provisions of the State Fair Housing Act as outlined  
2           in Chapter 41A of the General ~~Statutes~~ Statutes;
- 3           (12) To administer the provisions of Article 62 of Chapter 143 of the  
4           General Statutes; and
- 5           (13) To adopt rules to implement and interpret the provisions of Article 62  
6           of Chapter 143 of the General Statutes."

7           Sec. 3. The provisions of Article 62 of Chapter 143 of the General Statutes as  
8 enacted by Section 1 of this act regarding discrimination based upon disability become  
9 effective July 26, 1992. The remainder of this act becomes effective October 1, 1991.