

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 587*

Short Title: Employment Discrimination Act.

(Public)

Sponsors: Representatives Kennedy, Stamey; and S. Thompson.

Referred to: Commerce.

March 15, 1989

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

4 The General Assembly of North Carolina enacts:

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

7 **“ARTICLE 62.**

8 **“EMPLOYMENT DISCRIMINATION.**

9 **“§ 143-575. Intent.**

10 Discrimination in employment because of race, color, religion, sex, national origin,
11 and age substantially and adversely affects the interest of employees, employers, and the
12 public in general; deprives North Carolina of the fullest use of its citizens; and limits the
13 State's development. The General Assembly hereby declares that the practice of
14 employment discrimination against any individual because of race, color, religion, sex,
15 national origin, or age is unlawful and in conflict with the ideals of North Carolina. The
16 General Assembly charges the North Carolina Human Relations Council with the task
17 of seeking to eliminate and prevent such discrimination.

18 **“§ 143-576. Definitions.**

19 (a) As used in this Article:

20 (1) ‘Because of age’ or ‘on the basis of age’ applies to persons 40 years of
21 age or older.

22 (2) ‘Because of sex’ or ‘on the basis of sex’ include, but are not limited to,
23 because of or on the basis of pregnancy, childbirth or related medical
24 conditions; and women affected by pregnancy, childbirth, or related

1 medical conditions shall be treated the same for all employment-
2 related purposes, including receipt of benefits under fringe benefit
3 programs, as other persons not so affected but similar in their ability or
4 inability to work.

5 (3) 'Council' means the North Carolina Human Relations Council.

6 (4) 'Complainant' means a person who has filed a complaint with the
7 Council pursuant to G.S. 143-578(a).

8 (5) 'Employer' means a person engaged in an industry or business who has
9 15 or more employees for each working day in each of 20 or more
10 calendar weeks in the current or preceding calendar year, and any
11 agent of such a person; However, such term does not include (i) an
12 Indian tribe, (ii) a bona fide private membership club (other than a
13 labor organization) which is exempt from taxation under section
14 501(c) of the Internal Revenue Code of 1954, or (iii) the State of North
15 Carolina, any of its agencies or departments, of any of its political
16 subdivisions.

17 (6) 'Employment Agency' means any person regularly undertaking with or
18 without compensation to procure employees for an employer or to
19 procure for employees opportunities to work for an employer and
20 includes an agent of such a person.

21 (7) 'Executive Director' means the Executive Director of the North
22 Carolina Human Relations Council or his designee.

23 (8) 'Labor Organization' means a labor organization and any agent of such
24 an organization and includes any organization of any kind, any agency,
25 or employee representation committee, group, association, or plan so
26 engaged in which employees participate and which exists for the
27 purpose, in whole or in part, of dealing with employers concerning
28 grievances, labor disputes, wages, rates of pay, hours, or other terms or
29 conditions of employment, and any conference, general committee,
30 joint or system board, or joint council so engaged which is subordinate
31 to a national or international labor organization.

32 (9) 'Person' means any individual, association, corporation, partnership,
33 labor union, legal representative, mutual company, joint stock
34 company, trust, trustee in bankruptcy, unincorporated organization, or
35 other legal or commercial entity.

36 (10) 'Religion' means all aspects of religious observance and practice, as
37 well as belief, unless an employer demonstrates that he is unable to
38 reasonably accommodate to an employee's or prospective employee's
39 religious observance or practice without undue hardship on the
40 conduct of the employer's business.

41 (11) 'Respondent' means an employer, employment agency, or labor
42 organization against whom a complaint of an unlawful employment
43 practice is filed.

1 (12) 'Unlawful Employment Practice' means an act which has the purpose
2 or effect of discriminating and which is prohibited by G.S. 143-577.

3 **"§ 143-577. Unlawful Employment Practices.**

4 (a) It is unlawful for an employer:

5 (1) To fail or refuse to hire or to discharge any individual, or otherwise to
6 discriminate against any individual with respect to his compensation,
7 terms, conditions, or privileges of employment, because of such
8 individual's race, color, religion, sex, national origin or age; or

9 (2) To limit, segregate or classify his employees or applicants for
10 employment in any way which would deprive or tend to deprive any
11 individual of employment opportunities or otherwise adversely affect
12 his status as an employee, because of such individual's race, color,
13 religion, sex, national origin, or age.

14 (b) It is unlawful for an employment agency to fail or refuse to refer for
15 employment, or otherwise to discriminate against, any individual because of his race,
16 color, religion, sex, national origin or age, or to classify or refer for employment any
17 individual on the basis of his race, color, religion, sex, national origin, or age.

18 (c) It is unlawful for a labor organization to:

19 (1) Exclude or to expel from its membership, or otherwise to discriminate
20 against, any individual because of his race, color, religion, sex,
21 national origin, or age;

22 (2) Limit, segregate, or classify its membership or applicants for
23 membership, or to classify or fail or refuse to refer for employment
24 any individual, in any way which would deprive or tend to deprive any
25 individual of employment opportunities or would limit such
26 employment opportunities or otherwise adversely affect his status as
27 an employee or as an applicant for employment, because of such
28 individual's race, color, religion, sex, national origin, or age; or

29 (3) Cause or attempt to cause an employer to discriminate against an
30 individual in violation of this Chapter.

31 (d) It is unlawful for any employer, labor organization, or joint labor-
32 management committee controlling apprenticeship or other training or retraining,
33 including on-the-job training programs to discriminate against any individual because of
34 his race, color, religion, sex, national origin, or age in admission to, or employment in,
35 any program established to provide apprenticeship or other training.

36 (e) It is unlawful for an employer, labor organization, employment agency, or
37 joint labor-management committee controlling apprenticeship or other training or
38 retraining, including on-the-job training programs, to print or publish or cause to be
39 printed or published any notice or advertisement relating to employment by such an
40 employer or membership in or any classification or referral for employment by such a
41 labor organization, or relating to any classification or referral for employment by such
42 an employment agency, or relating to admission to, or employment in, any program
43 established to provide apprenticeship or other training by such a joint labor-
44 management committee, indicating any preference, limitation, specification, or

1 discrimination, based on race, color, religion, sex, national origin, or age, except that
2 such a notice or advertisement may indicate a preference, limitation, specification, or
3 discrimination based on religion, sex, national origin or age when religion, sex, national
4 origin or age is a bona fide occupational qualification for employment.

5 (f) It is unlawful for an employer to discriminate against any of his employees or
6 applicants for employment, for an employment agency, or joint labor-management
7 committee controlling apprenticeship or other training or retraining, including on-the-
8 job training programs, to discriminate against any individual, or for a labor organization
9 to discriminate against any member thereof or applicant for membership, because he has
10 opposed any practice made an unlawful employment practice by this Chapter, or
11 because he has made a charge, testified, assisted, or participated in any manner in an
12 investigation, proceeding, or hearing under this Chapter.

13 (g) Notwithstanding any other provisions of this Chapter:

14 (1) It is not unlawful for an employer to hire and employ employees, for
15 an employment agency to classify, or refer for employment any
16 individual, for a labor organization to classify its membership or to
17 classify or refer for employment any individual, or for an employer,
18 labor organization, or joint labor-management committee controlling
19 apprenticeship or other training or restraining programs to admit or
20 employ any individual in any such program, on the basis of his
21 religion, sex, national origin, or age in those certain instances where
22 religion, sex, national origin, or age is a bona fide occupational
23 qualification reasonably necessary to the normal operation of that
24 particular business or enterprise; and

25 (2) It shall not be an unlawful employment practice for a school, college,
26 university, or other educational institution or institution of learning to
27 hire and employ employees of a particular religion if such school,
28 college, university, or other educational institution or institution of
29 learning is, in whole or in substantial part, owned, supported,
30 controlled, or managed by a particular religion or by a particular
31 religious corporation, association, or society, or if the curriculum of
32 such school, college, university, or other educational institution or
33 institution of learning is directed toward the propagation of a particular
34 religion.

35 (h) Notwithstanding any other provision of this Chapter, it is not unlawful for an
36 employer to apply different standards of compensation, or different terms, conditions, or
37 privileges of employment pursuant to a bona fide seniority or merit system, or a system
38 which measures earnings by quantity or quality of production or to employees who
39 work in different locations, provided that such differences are not the result of an
40 intention to discriminate because of race, color, religion, sex, national origin, or age nor
41 shall it be an unlawful employment practice for an employer to give and to set upon the
42 results of any professionally developed ability test provided that such test, its
43 administration or action upon the results is not designed, intended or used to
44 discriminate because of race, color, religion, sex, national origin or age.

1 (i) Nothing contained in this Chapter shall apply to any business or enterprise on
2 or near an Indian reservation with respect to any publicly announced employment
3 practice of such business or enterprise under which a preferential treatment is given to
4 any individual because he is an Indian living on or near a reservation.

5 (j) Nothing contained in this Chapter shall apply to a religious corporation,
6 association, educational institution, or society with respect to the employment of
7 individuals of a particular religion to perform work connected with the carrying on by
8 such corporation, association, educational institution, or society of its activities.

9 **"§ 143-578. Enforcement.**

10 (a) Any person who claims to have been injured by an unlawful employment
11 practice or who reasonably believes that he will be injured by an unlawful employment
12 practice may file a complaint with the Council. Complaints shall be in writing, shall
13 state the facts upon which the allegation of an unlawful employment practice is based,
14 shall be signed by the complainant and verified, and shall contain such other
15 information and be in such form as the Council requires. Council employees shall assist
16 complainants in reducing complaints to writing and shall assist in setting forth the
17 information in the complaint as may be required by the Council.

18 (b) A complaint under subsection (a) shall be filed not later than 180 days after
19 the cessation of the unlawful employment practice.

20 (c) The Executive Director shall serve a copy of the complaint upon the
21 respondent within 10 days after the complaint is filed with the Council.

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

25 (e) With the leave of the Executive Director, which shall be granted whenever it
26 would be reasonable and fair to do so, the complaint and the answer may be amended at
27 any time. Amendments shall be signed and verified. An amendment shall be
28 considered to have been filed on the date on which the original complaint or answer was
29 filed. Amendments to complaints may add to, correct, or delete the information
30 contained in the original complaint, and may add or delete the names of respondents.
31 The Executive Director shall serve a copy of all amended complaints upon all
32 respondents, and shall provide the respondents a reasonable amount of time to respond.
33 Any respondent added by an amendment to a complaint shall be given a reasonable
34 amount of time to file an answer.

35 (f) The Council, through its Executive Director and his employees and agents,
36 shall investigate the complaint to ascertain the facts relating to the alleged unlawful
37 employment practice. In conducting an investigation, the Executive Director and his
38 employees and agents shall have access at all reasonable times to premises, records,
39 documents, individuals, and other evidence or possible sources of evidence and may
40 examine, record, and copy such materials and take and record the testimony or
41 statements of such persons as reasonably necessary for the furtherance of the
42 investigation.

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

- 1 (1) Issue subpoenas compelling access to or production of documents,
2 materials, or other evidence;
- 3 (2) Issue subpoenas compelling witnesses, including any party, to appear
4 and give testimony before a Council employee;
- 5 (3) Issue subpoenas compelling witnesses, including any party, to appear
6 and give testimony at a deposition;
- 7 (4) Take depositions of witnesses, including any party; and
- 8 (5) Issue interrogatories to a respondent.

9 Subpoenas issued by the Executive Director shall be issued in accordance with the same
10 rules of notice and service as govern the issuance of subpoenas in the aid of civil actions
11 in the general court of justice. The Executive Director may take depositions and issue
12 interrogatories to the same extent and subject to the same limitations as would apply if
13 the deposition was taken or the interrogatories were issued in aid of a civil action in the
14 general court of justice, except that the Executive Director may require that a
15 respondent serve a copy of answers to interrogatories within 15 days after service of the
16 interrogatories on the respondent.

17 (h) Upon written application to the Executive Director, a respondent shall be
18 entitled to the issuance of a reasonable number of subpoenas for the taking of deposition
19 and the production of evidence subject to the same limitations as subpoenas issued by
20 the Executive Director. Subpoenas issued at the request of a respondent shall show on
21 their face the name and address of such respondent and shall state that they were issued
22 at his request.

23 (i) In the case of refusal to obey a subpoena, answer an interrogatory, answer a
24 question propounded in a deposition, or answer a question propounded during an
25 interview conducted by a Council employee pursuant to subsection (g) (2) of this
26 section, the Council or the respondent may make a motion compelling a person to obey
27 such subpoena, answer such interrogatory, or answer such question. A motion made
28 pursuant to this subsection shall be made in the superior court for the district in which
29 the person to whom the subpoena, interrogatory, or question was directed resides, was
30 served, or transacts business. The court may, in its discretion, issue an order granting or
31 denying the motion in whole or in part. If a person fails to obey an order issued
32 pursuant to this subsection, the court may apply any or all of the sanctions available in
33 Rule 37 of the North Carolina Rules of Civil Procedure.

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

38 (k) If the complaint is not sooner resolved, upon completion of the investigation
39 the Executive Director shall determine whether there is reasonable cause to believe that
40 an unlawful employment practice has occurred or is going to occur. The Executive
41 Director shall make a determination within 180 days after the complaint was filed with
42 the council, unless the Executive Director determines that good cause exists for delay.

43 (l) If the Executive Director determines that there is not reasonable cause to
44 believe that an unlawful employment practice has occurred or is going to occur, he shall

1 dismiss the complaint and so notify the complainant and the respondent. At the same
2 time the Executive Director shall issue to the complainant a right-to-sue letter which
3 will enable the complainant to bring a civil action in superior court.

4 (m) If the Executive Director determines that there is reasonable cause to believe
5 that an unlawful employment practice has occurred is going to occur, he shall notify the
6 complainant and the respondent and shall attempt to resolve the complaint by
7 conciliation and persuasion. A conciliation agreement signed by the parties is an
8 enforceable contract. The Council may be a party to conciliation agreements which
9 resolve complaints. The Executive Director may sign conciliation agreements on behalf
10 of the Council.

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

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

16 (2) Commence a civil action against the respondent in superior court in its
17 own name or in its own name on behalf of the complainant. In such an
18 action, the plaintiff or plaintiffs shall be represented by an attorney
19 employed by the Council and G.S. 114-2 shall not apply.

20 (o) If after 240 days after a complaint has been filed the Council has failed to
21 resolve the complaint or issue a right-to-sue letter, the Executive Director shall, upon
22 written request of the complainant, issue a right-to-sue letter to the complainant which
23 will enable him to bring a civil action in superior court. Issuance of a letter under this
24 subsection shall not prevent the Council from commencing a civil action in its own
25 name under subsection (n)(2) of this section, which action shall be consolidated with
26 any action filed by the complainant.

27 (p) In an action brought in superior court pursuant to this Article, the court may:

28 (1) Enjoining the defendant from engaging in unlawful practices;

29 (2) Order any equitable relief it deems appropriate and necessary for
30 carrying out the purposes of this Article, including but not limited to,
31 the hiring or reinstatement of employees;

32 (3) Award to a prevailing complainant in an action brought pursuant to
33 subsections (1), (n)(1), or (o) of this section, actual, compensatory, and
34 punitive damages, court costs, and attorney's fees;

35 (4) Award to a prevailing complainant in an action brought pursuant to
36 subsection (n)(2) of this section, actual, compensatory, and punitive
37 damages. The court may not award actual, compensatory, and punitive
38 damages to the Council, and it may not award court costs and
39 attorney's fees to the Council or the complainant in an action brought
40 pursuant to subsection (n)(2) of this section; and

41 (5) Award court costs and attorney's fees to a prevailing respondent only
42 upon a showing that the case is frivolous, unreasonable, or without
43 foundation.

1 (q) Whenever the Council concludes on the basis of a preliminary investigation
2 of a complaint that prompt judicial action is necessary to carry out the purposes of this
3 Article, the Council may bring an action in superior court for appropriate temporary or
4 preliminary relief pending final disposition of the complaint. Any temporary relief shall
5 be issued in accordance with Rule 65 of the North Carolina Rules of Civil Procedure. It
6 shall be the duty of a court having jurisdiction over proceedings under this subsection to
7 assign cases for hearing at the earliest practicable date and to cause such cases to be in
8 every way expedited.

9 (r) A civil action brought pursuant to this Article may not be filed more than one
10 year after the complainant filed the complaint with the Commission.

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

13 (t) Parties to a civil action brought pursuant to this Article shall have the right to
14 a jury trial.

15 **"§ 143-579. Local government authority.**

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

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

20 (2) Authorizing the governing body or a designated agency to enforce
21 such ordinances in a manner similar to the procedures described in
22 G.S. 143-578; and

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

25 (b) Whenever another agency of the State or any other unit of government of the
26 State has jurisdiction over the subject matter of any complaint filed under this Article,
27 and such agency or unit of government has legal authority equivalent to or greater than
28 the authority under this Article to investigate or act upon the complaint, the Council
29 shall be divested of jurisdiction over such complaint. The Council shall, within 30 days,
30 notify the agency or unit of government of the apparent unlawful employment practice,
31 and request that the complaint be investigated in accordance with such authority."

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

33 **"§ 143B-391. North Carolina Human Relations Council – creation; powers and**
34 **duties.**

35 There is hereby created the North Carolina Human Relations Council of the
36 Department of Administration. The North Carolina Human Relations Council shall have
37 the following functions and duties:

38 (1) To study problems concerning human relations;

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

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

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

42 (5) To encourage the employment of qualified people without regard to
43 race;

- 1 (6) To encourage youths to become better trained and qualified for
2 employment;
- 3 (7) To receive on behalf of the Department of Administration and to
4 recommend expenditure of gifts and grants from public and private
5 donors;
- 6 (8) To enlist the cooperation and assistance of all State and local
7 government officials in the attainment of the objectives of the Council;
- 8 (9) To assist local good neighborhood councils and biracial human
9 relations committees in promoting activities related to the functions of
10 the Council enumerated above;
- 11 (10) To advise the Secretary of Administration upon any matter the
12 Secretary may refer to it; ~~and~~
- 13 (11) To administer the provisions of the State Fair Housing Act as outlined
14 in Chapter 41A of the General Statutes;
- 15 (12) To administer the provisions of Article 62 of Chapter 143 of the
16 General Statutes; and
- 17 (13) To adopt rules to implement its functions and duties under Article 62
18 of Chapter 143 of the General Statutes."
- 19 Sec. 3. This act shall become effective October 1, 1989.