

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 779

Short Title: Durham City/County Antidiscrimination.

(Local)

Sponsors: Representative Michaux.

Referred to: Judiciary I.

April 7, 1993

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF DURHAM AND DURHAM COUNTY TO PROHIBIT ACTS OF DISCRIMINATION IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS BASED ON RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR AGE.

The General Assembly of North Carolina enacts:

Section. 1. Definitions. As used in this act:

(1) " Person" means one or more individuals, governments, governmental agencies, political subdivisions, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees-in-bankruptcy, or receivers. Person does not include a bona fide private membership club other than a labor organization that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954.

(2) " Place of public accommodations" means any place in or through which any business or professional activity is conducted that is open to, accepts, or solicits the patronage of or offers goods or services to the general public. It does not include those clubs, associations, corporations, or other organizations that:

- a. Are organized by and for a regular dues-paying membership;
- b. Are formed for noncommercial, nonprofit purposes;
- c. Have policies determined by their members; and

1 d. Have facilities and services that are available only to their
2 members and their bona fide guests or to similar organizations.

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

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

- 20 (1) To hire, reinstate, or upgrade aggrieved individuals, with or without
21 back pay;
- 22 (2) To admit aggrieved individuals or to allow aggrieved individuals to
23 participate in guidance programs, apprenticeship training programs,
24 on-the-job training programs, or other occupational training or
25 retraining programs; and to use objective criteria in the admission of
26 any individual to these programs;
- 27 (3) To submit to the Agency, for approval or disapproval, plans to
28 eliminate or reduce imbalance with respect to race, color, national
29 origin, religion, sex, handicap, or age;
- 30 (4) To provide technical assistance to aggrieved individuals;
- 31 (5) To report as to the manner of compliance with this act;
- 32 (6) To post notices in conspicuous places in the form prescribed by the
33 Agency;
- 34 (7) To admit or restore an aggrieved individual to a place of public
35 accommodation.

36 Sec. 3. Judicial review of Agency orders. – (a) Except as provided in subsection
37 (b) of this section, judicial review of Agency orders shall be in accordance with Article
38 4 of Chapter 150B of the General Statutes.

39 (b) Notwithstanding the provisions of G.S. 150B-45, petitions for judicial review
40 shall be filed in the superior court of the county, or in the case of a city, in the superior
41 court of the county where the city is predominantly located.

42 (c) The term "agency", whenever used in Article 4 of Chapter 150B of the
43 General Statutes, shall have the same meaning as Agency pursuant to this Article.

1 Sec. 4. Enforcement of Agency orders. – (a) If within 60 days after entry of an order
2 of the Agency, a respondent has neither complied with nor sought review of such order,
3 any aggrieved person or the Agency may apply to the superior court of the county, or in
4 the case of a city, in the superior court of the county where the city is predominantly
5 located for an order of the court to enforce the order of the Agency. The application to
6 superior court must be filed not later than 120 days after entry of the order of the
7 Agency.

8 (b) Within 30 days after the court's receipt of the petition for enforcement of the
9 Agency's order or within such additional time as the court may allow, the Agency shall
10 transmit to the court the original or a certified copy of the entire record of the
11 proceedings leading to the order. With the permission of the court, the record may be
12 shortened by stipulation of all parties. Any party unreasonably refusing to stipulate to
13 limit the record may be taxed by the court for such additional costs as may be
14 occasioned by the refusal. The court, in its discretion, may require or permit subsequent
15 corrections or additions to the record.

16 (c) Subject to subsection (d) of this section, the hearing on the petition for
17 enforcement of the Agency's order shall be conducted by the court without a jury. The
18 court shall hear oral arguments and receive written briefs, but shall not take evidence
19 that was not offered at the Agency hearing.

20 (d) In cases of alleged irregularities in procedure before the Agency not shown in
21 the record, testimony may be taken by the court regarding the alleged irregularities. The
22 judge in his discretion may hear all or part of the matter **de novo** where no record was
23 made of the proceeding or the record is inadequate.

24 (e) The court shall issue the order requiring compliance with the Agency's
25 order unless the court finds that enforcement of the Agency's order would prejudice
26 substantial rights of the party against whom the order is sought to be enforced. The
27 Agency's order would prejudice substantial rights of the party against whom the order is
28 sought if the Agency's findings, inferences, conclusions, or decisions are:

- 29 (1) In violation of constitutional provisions;
- 30 (2) In excess of the statutory authority or jurisdiction of the Agency;
- 31 (3) Made upon unlawful procedure;
- 32 (4) Affected by other error of law;
- 33 (5) Unsupported by substantial evidence in view of the entire record as
34 submitted; or
- 35 (6) Arbitrary or capricious.

36 (f) If the court declines to require compliance with the Agency's order, the
37 court shall:

- 38 (1) Dismiss the petition;
- 39 (2) Modify the Agency's order and enforce it as modified; or
- 40 (3) Remand the case to the Agency for further proceedings.

41 (g) Any party to the hearing on the petition for enforcement of the Agency's
42 order may appeal the court's decision to the appellate division pursuant to the North
43 Carolina Rules of Appellate Procedure.

1 Sec. 5. Civil action for unlawful employment or public accommodations
2 program. – (a) An ordinance adopted pursuant to this act may permit any complainant
3 dissatisfied with the Agency's final disposition of a matter to bring a civil action in the
4 superior court of the county, or in the case of a city, in the superior court of the county
5 in which the city is predominantly located against the person allegedly engaging in the
6 unlawful practice. A civil action for an unlawful employment or public
7 accommodations shall not be brought more than one year after a charge of
8 discrimination was filed with the Agency or more than 60 days after the complainant's
9 receipt of notification of the Agency's final disposition of the matter, whichever is later.

10 (b) If the court finds that the respondent has engaged in or is engaging in an
11 unlawful employment or public accommodations practice charged in the complaint, the
12 court may enjoin the respondent from engaging in unlawful employment or public
13 accommodations practice, and order any action as may be appropriate, which may
14 include, but is not limited to: admission or restoration to a place of public
15 accommodations; reinstatement or hiring of employees, with or without back pay paid
16 by the person, firm, corporation, or association responsible for the unlawful practice; or
17 any other equitable relief as the court deems appropriate. Back pay shall not accrue
18 from a date more than two years prior to the filing of a charge with the Agency. Interim
19 earnings or amounts earnable with reasonable diligence by the person discriminated
20 against shall operate to reduce the back pay otherwise allowable. No order of the court
21 shall require any remedies under this act, if the individual was refused admission,
22 suspended, or expelled, or was refused employment or advancement or was suspended
23 or discharged for any reason other than discrimination based on race, color, religion,
24 sex, national origin, handicap, or age or in violation of an ordinance adopted pursuant to
25 this act.

26 (c) In any action or proceeding under an ordinance adopted pursuant to this act,
27 the court, in its discretion, may award the prevailing party reasonable attorney's fees as
28 part of the costs.

29 Sec. 6. Discrimination based on opposition to unlawful practices or
30 participation in an investigation, proceeding, or hearing. – It shall be an unlawful
31 employment practice and an unlawful public accommodation practice for any employer
32 to discriminate against any of his employees or applicants for employment or to
33 discriminate against any individual, or for a union labor organization to discriminate
34 against any member of its union or applicant for membership, because the individual
35 opposed an unlawful employment practice or unlawful public accommodation practice
36 adopted by ordinance pursuant to this act or because the individual has made a charge,
37 testified, assisted, or participated in any manner in an investigation, proceeding, or
38 hearing under such an ordinance.

39 Sec. 7. Additional authority of Agency. – To further assist in enforcement of
40 ordinances authorized by this act, and to assist in the investigations of violations of
41 these ordinances, the Agency may subpoena witnesses, administer oaths, and compel
42 the production of evidence. If a person fails or refuses to obey a subpoena issued by the
43 Agency, the Agency may apply to the General Court of Justice for an order requiring
44 that its order be obeyed. The court shall have jurisdiction to issue these orders. No

1 testimony of any witness before the Agency pursuant to a subpoena issued under this
2 section may be used against him on the trial of any criminal action other than a
3 prosecution for false swearing committed on the examination.

4 Sec. 8. Access to records. – The Agency, at all reasonable times, shall have
5 access to and the right to copy any evidence of any person being investigated that
6 related to an unlawful employment or public accommodations practice under an
7 ordinance adopted pursuant to the act and relevant to the charge under investigation.
8 Information discovered during such an investigation shall not be made public by the
9 Agency until offered into evidence in an administrative hearing or judicial proceeding.

10 Sec. 9. Public records. – The provisions of G.S. 132-6 and G.S. 132-9 shall
11 not apply to records concerning the investigation, conciliation, or mediation of alleged
12 violations of an ordinance enacted pursuant to this act.

13 Sec. 10. This act applies to the City of Durham and Durham County only.

14 Sec. 11. This act is effective upon ratification.