

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 712

Short Title: Durham/Employment Discrimination.

(Local)

Sponsors: Senators Lucas and Gulley.

Referred to: Judiciary II/Election Laws

April 13, 1995

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE CITY OF DURHAM AND DURHAM COUNTY TO
2 APPLY TO THE SUPERIOR COURT FOR COMPENSATORY AND PUNITIVE
3 DAMAGES IN CASES WHERE INTENTIONAL DISCRIMINATION IS FOUND
4 IN EMPLOYMENT PRACTICES AND TO AUTHORIZE PARTIES TO ELECT
5 BETWEEN HAVING A HEARING IN SUPERIOR COURT OR BEFORE THE
6 ENFORCEMENT AGENCY.
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8 The General Assembly of North Carolina enacts:

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

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

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

- 6 (1) To hire, reinstate, or upgrade aggrieved individuals, with or without
7 back pay;
- 8 (2) To admit aggrieved individuals or to allow aggrieved individuals to
9 participate in guidance programs, apprenticeship training programs, on-
10 the-job training programs, or other occupational training or retraining
11 programs; and to use objective criteria in the admission of any
12 individual to these programs;
- 13 (3) To submit to the Agency, for approval or disapproval, plans to eliminate
14 or reduce imbalance with respect to race, color, national origin, religion,
15 sex, disability, or age;
- 16 (4) To provide technical assistance to aggrieved individuals;
- 17 (5) To report as to the manner of compliance with this act;
- 18 (6) To post notices in conspicuous places in the form prescribed by the
19 Agency;
- 20 (7) To admit or restore an aggrieved individual to a place of public
21 accommodation.

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

33 No compensatory damages shall be awarded for back pay, interest on back pay, or any
34 other type of relief authorized under section 706(g) of the Civil Rights Act of 1964,
35 42 U.S.C. § 2000e-5(g), as amended.

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

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

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

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

11 Sec. 3. This act is effective upon ratification.