

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 1004

Short Title: State Personnel/Discrimination.

(Public)

Sponsors: Senator Shaw.

Referred to: Judiciary II.

March 24, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE PERSONNEL LAWS CONCERNING
EMPLOYMENT DISCRIMINATION AND AUTHORIZING THE CIVIL RIGHTS
DIVISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS TO ISSUE
SUBPOENAS AND TO SEEK COMPENSATORY AND PUNITIVE DAMAGES
AND INJUNCTIVE RELIEF.

The General Assembly of North Carolina enacts:

SECTION 2. G.S. 7A-759 reads as rewritten:

"§ 7A-759. Role as deferral agency.

(a) The Office of Administrative Hearings is designated to serve as the State's deferral agency for cases deferred by the Equal Employment Opportunity Commission to the Office of Administrative Hearings as provided in Section 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. for charges filed by State or local government employees covered under Chapter 126 of the General Statutes and shall have all of the powers and authority necessary to function as a deferral agency.

(b) The Chief Administrative Law Judge is authorized and directed to contract with the Equal Employment Opportunity Commission for the Office of Administrative Hearings to serve as a deferral agency and to establish and maintain a Civil Rights Division in the Office of Administrative Hearings to carry out the functions of a deferral agency.

(b1) As provided in the contract between the Office of Administrative Hearings and the Equal Employment Opportunity Commission, a deferred charge for purposes of 42 U.S.C. § 2000e-5(c) or (d) is a charge that is filed by a State or local government employee covered under Chapter 126 of the General Statutes and alleges an unlawful employment practice prohibited under that Chapter or any other State law. A deferred charge may be filed with either agency.

1 The date a deferred charge is filed with either agency is considered to be a
2 commencement of proceedings under State law for purposes of 42 U.S.C. § 2000e-5(c)
3 or (d). The filing of a deferred charge automatically tolls the time limit under
4 G.S. 126-7.2, 126-35, 126-38, and 150B-23(f) and any other State law that sets a time
5 limit for filing a contested case under Article 3 of Chapter 150B of the General Statutes
6 alleging an unlawful employment practice. These time limits are tolled until the
7 completion of the investigation and of any informal methods of resolution pursued
8 pursuant to subsection (d) of this section.

9 (b2) In investigating charges an employee of the Civil Rights Division of the
10 Office of Administrative Hearings specifically designated by an order of the Chief
11 Administrative Law Judge filed in the pending case may seek all relief as provided by
12 the Civil Rights Act of 1991.

13 (c) In investigating charges an employee of the Civil Rights Division of the
14 Office of Administrative Hearings specifically designated by an order of the Chief
15 Administrative Law Judge filed in the pending case may administer oaths and
16 ~~affirmations~~ affirmations and issue subpoenas.

17 (c1) In investigating charges, an employee of the Civil Rights Division shall have
18 access at reasonable times to State premises, records, and documents relevant to the
19 charge and shall have the right to examine, photograph, and copy evidence. Any
20 challenge to the Civil Rights Division to investigate the deferred charge shall not
21 constitute grounds for denial or refusal to produce or allow access to the investigative
22 evidence.

23 (d) Any charge not resolved by informal methods of conference, conciliation or
24 persuasion may be heard as a contested case as provided in Article 3 of Chapter 150B of
25 the General Statutes.

26 (e) Notwithstanding G.S. 150B-34 and G.S. 150B-36, an order entered by an
27 administrative law judge after a contested case hearing on the merits of a deferred
28 charge is a final agency decision and is binding on the parties. The administrative law
29 judge may order whatever remedial action is appropriate to give full relief consistent
30 with the requirements of federal statutes or regulations or State statutes or rules.

31 (f) In addition to the authority vested in G.S. 7A-756 and G.S. 150B-33, an
32 administrative law judge may monitor compliance with any negotiated settlement,
33 conciliation agreement or order entered in a deferred case.

34 (g) The standards of confidentiality established by federal statute or regulation
35 for discrimination charges shall apply to deferred cases investigated or heard by the
36 Office of Administrative Hearings.

37 (h) Nothing in this section shall be construed as limiting the authority or right of
38 any federal agency to act under any federal statute or regulation.

39 (i) This section shall be broadly construed to further the general purposes stated
40 in this section and the specific purposes of the particular provisions involved."

41 **SECTION 2.** Article 6 of Chapter 126 of the General Statutes is amended by
42 adding a new section to read:

43 **"§ 126-16.2. Notice of right to file discrimination action.**

1 All State departments and agencies and local political subdivisions of the State shall
2 notify all employees of their right to file an employment discrimination action. The
3 notice shall be posted in a conspicuous place open to the employees, and where policies
4 and procedures material is available for management, this operating material is to be
5 made available to all employees. This material shall contain in it all information for
6 filing an action of discrimination, including the time frame deadlines for filing an action
7 and the proper place where the action may be filed."

8 **SECTION 3.** This act is effective when it becomes law.