

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 843

Short Title: Nondiscrimination in State Employment. (Public)

Sponsors: Senators Albertson; Atwater, Berger of Franklin, Boseman, Clodfelter, Kinnaird, Purcell, Stein, and Weinstein.

Referred to: Judiciary II.

March 25, 2009

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE NONDISCRIMINATION AND EQUAL OPPORTUNITY
3 PROVISIONS OF THE STATE PERSONNEL ACT TO COVER SEXUAL
4 ORIENTATION AND CLARIFYING THE PERSONNEL POLICIES OF THE
5 GENERAL ASSEMBLY.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 7 of Chapter 120 of the General Statutes is amended by
8 adding a new section to read:

9 **"§ 120-32.04. Legislative personnel nondiscrimination policy.**

10 The General Assembly shall not discriminate in any of its personnel policies, practices, or
11 benefits on the basis of race, religion, color, national origin, age, sex, sexual orientation, or
12 disability."

13 **SECTION 2.** G.S. 126-16 reads as rewritten:

14 **"§ 126-16. Equal opportunity for employment and compensation by State departments**
15 **and agencies and local political subdivisions.**

16 All State departments and agencies and all local political subdivisions of North Carolina
17 shall give equal opportunity for employment and compensation, without regard to race,
18 religion, color, creed, national origin, sex, age, sexual orientation, or handicapping condition as
19 defined in G.S. 168A-3 to all persons otherwise qualified, except where specific age, sex or
20 physical requirements constitute bona fide occupational qualifications necessary to proper and
21 efficient administration. This section with respect to equal opportunity as to age shall be limited
22 to individuals who are at least 40 years of age."

23 **SECTION 3.** G.S. 126-34.1 reads as rewritten:

24 **"§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

25 (a) A State employee or former State employee may file in the Office of Administrative
26 Hearings a contested case under Article 3 of Chapter 150B of the General Statutes only as to
27 the following personnel actions or issues:

28 (1) Dismissal, demotion, or suspension without pay based upon an alleged
29 violation of G.S. 126-35, if the employee is a career State employee.

30 (2) An alleged unlawful State employment practice constituting discrimination,
31 as proscribed by G.S. 126-36, including:

32 a. Denial of promotion, transfer, or training, on account of the
33 employee's age, sex, race, color, national origin, religion, creed,
34 political affiliation, sexual orientation, or handicapping condition as
35 defined by Chapter 168A of the General Statutes.



- 1 b. Demotion, reduction in force, or termination of an employee in
2 retaliation for the employee's opposition to alleged discrimination on
3 account of the employee's age, sex, race, color, national origin,
4 religion, creed, political affiliation, sexual orientation, or
5 handicapping condition as defined by Chapter 168A of the General
6 Statutes.
- 7 (3) Retaliation against an employee, as proscribed by G.S. 126-17, for protesting
8 an alleged violation of G.S. 126-16.
- 9 (4) Denial of the veteran's preference granted in accordance with Article 13 of
10 this Chapter in initial State employment or in connection with a reduction in
11 force, for an eligible veteran as defined by G.S. 126-81.
- 12 (5) Denial of promotion for failure to post or failure to give priority
13 consideration for promotion or reemployment, to a career State employee as
14 required by G.S. 126-7.1 and G.S. 126-36.2.
- 15 (6) Denial of an employee's request for removal of allegedly inaccurate or
16 misleading information from the employee's personnel file as provided by
17 G.S. 126-25.
- 18 (7) Any retaliatory personnel action that violates G.S. 126-85.
- 19 (8) Denial of promotion in violation of G.S. 126-14.2, where an initial
20 determination found probable cause to believe there has been a violation of
21 G.S. 126-14.2.
- 22 (9) Denial of employment in violation of G.S. 126-14.2, where an initial
23 determination found probable cause to believe that there has been a violation
24 of G.S. 126-14.2.
- 25 (10) Harassment in the workplace based upon age, sex, race, color, national
26 origin, religion, creed, sexual orientation, or handicapping condition,
27 whether the harassment is based upon the creation of a hostile work
28 environment or upon a quid pro quo.
- 29 (11) Violation of any of the following federal statutes as applied to the employee:
30 a. The Fair Labor Standards Act, 29 U.S.C. § 201, et seq.
31 b. The Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq.
32 c. The Family Medical Leave Act, 29 U.S.C. § 2601, et seq.
33 d. The Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
- 34 (b) An applicant for initial State employment may file in the Office of Administrative
35 Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:
36 (1) Alleged denial of employment in violation of G.S. 126-16.
37 (2) Denial of the applicant's request for removal of allegedly inaccurate or
38 misleading information from the personnel file as provided by G.S. 126-25.
39 (3) Denial of equal opportunity for employment and compensation on account
40 of the employee's age, sex, race, color, national origin, religion, creed,
41 political affiliation, sexual orientation, or handicapping condition as defined
42 by Chapter 168A of the General Statutes. This subsection with respect to
43 equal opportunity as to age shall be limited to persons who are at least 40
44 years of age. An applicant may not, however, file a contested case where
45 political affiliation was the reason for the person's nonselection for (i) an
46 exempt policymaking position as defined in G.S. 126-5(b)(3), (ii) a chief
47 deputy or chief administrative assistant position under G.S. 126-5(c)(4), or
48 (iii) a confidential assistant or confidential secretary position under G.S.
49 126-5(c)(2).
- 50 (4) Denial of the veteran's preference in initial State employment provided by
51 Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.

1 (5) Denial of employment in violation of G.S. 126-14.2, where an initial
2 determination found probable cause to believe that there has been a violation
3 of G.S. 126-14.2.

4 (c) In the case of a dispute as to whether a State employee's position is properly
5 exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office
6 of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General
7 Statutes.

8 (d) A State employee or applicant for State employment may file in the Office of
9 Administrative Hearings a contested case under Article 3 of Chapter 150B of the General
10 Statutes based upon a false accusation regarding, or disciplinary action relating to, the
11 employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

12 (e) Any issue for which appeal to the State Personnel Commission through the filing of
13 a contested case under Article 3 of Chapter 150B of the General Statutes has not been
14 specifically authorized by this section shall not be grounds for a contested case under Chapter
15 126."

16 **SECTION 4.** G.S. 126-36 reads as rewritten:

17 "**§ 126-36. Appeal of unlawful State employment practice.**

18 (a) Any State employee or former State employee who has reason to believe that
19 employment, promotion, training, or transfer was denied the employee or that demotion, layoff,
20 transfer, or termination of employment was forced upon the employee in retaliation for
21 opposition to alleged discrimination or because of the employee's age, sex, race, color, national
22 origin, religion, creed, political affiliation, sexual orientation, or handicapping condition as
23 defined by G.S. 168A-3 except where specific age, sex or physical requirements constitute a
24 bona fide occupational qualification necessary to proper and efficient administration, shall have
25 the right to appeal directly to the State Personnel Commission.

26 (b) Subject to the requirements of G.S. 126-34, any State employee or former State
27 employee who has reason to believe that the employee has been subjected to any of the
28 following shall have the right to appeal directly to the State Personnel Commission:

29 (1) Harassment in the workplace based upon age, sex, race, color, national
30 origin, religion, creed, sexual orientation, or handicapping condition,
31 whether the harassment is based upon the creation of a hostile work
32 environment or upon a quid pro quo.

33 (2) Retaliation for opposition to harassment in the workplace based upon age,
34 sex, race, color, national origin, religion, creed, or handicapping condition,
35 whether the harassment is based upon the creation of a hostile work
36 environment or upon a quid pro quo."

37 **SECTION 5.** G.S. 12-3 is amended by adding a new subdivision to read:

38 "(14) 'Sexual orientation.' – The phrase 'sexual orientation' means actual or
39 perceived heterosexuality, homosexuality, or bisexuality, or a person's
40 gender-related identity or expression."

41 **SECTION 6.** This act is effective when it becomes law.