

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 941*
Committee Substitute Favorable 4/25/01
Third Edition Engrossed 4/26/01

Short Title: County Antidiscrimination Ordinances.

(Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES IN NORTH CAROLINA
WITH POPULATIONS OF ONE HUNDRED THOUSAND OR MORE TO
ENACT ORDINANCES PROHIBITING DISCRIMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended
by adding a new section to read:

"§ 153A-451. Ordinances prohibiting discrimination.

(a) A county may adopt an ordinance designed to prohibit discrimination in employment, housing, and public accommodations. The bases of discrimination which may be prohibited are limited to race, color, religion, gender, national origin, age, disability, familial status as defined in G.S. 41A-3(1b), and veteran status.

(b) Any county that has adopted an ordinance under this section may, in that ordinance, adopt procedures and delegate powers to a Human Relations Commission ('Commission') which are necessary and proper for carrying out and enforcing the ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not limited to, the following powers:

(1) Receiving and reviewing complaints that allege a violation of the ordinance has occurred, is occurring, or is about to occur.

(2) Conducting investigations into the basis of complaints. In this regard, the Commission may issue subpoenas compelling the production of documents or compelling witnesses, or both, to appear before the Commission to give testimony and to take depositions and serve interrogatories in accordance with the North Carolina Rules of Civil Procedure. In the event any person refuses to comply with a subpoena or discovery request, the Commission may apply to the superior court for an order to compel compliance with the subpoena or discovery request. Information and records discovered by the Commission during

1 an investigation or conciliation may be maintained in confidence by
2 the Commission and are not subject to the provisions of G.S. 132-6
3 and G.S. 132-9 until and unless they are offered into evidence in a
4 judicial proceeding authorized by this section and an ordinance.

5 (3) Applying to the superior court for mandatory or prohibitory injunctive
6 relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil
7 Procedure if it determines, after a preliminary investigation, that
8 prompt judicial action is necessary to carry out the purposes of the
9 ordinance.

10 (4) Making a determination of whether or not there is reasonable cause to
11 believe that an unlawful discriminatory practice has occurred, is
12 occurring, or is about to occur.

13 (5) Dismissing complaints in such cases as the Commission determines
14 that reasonable cause does not exist.

15 (6) Issuing a right-to-sue letter to any complaining party upon request
16 after 60 days following receipt of a complaint.

17 (7) Attempting to conciliate a resolution of the complaint between the
18 parties.

19 (8) Entering into conciliation agreements in such instances where
20 conciliation efforts have been successful.

21 (9) Administrative cause determinations.

22 The county may, in enacting an ordinance, delegate the powers of the Commission
23 under this section and the ordinance to an administrative department of the county.

24 (c) The ordinance may provide that complainants who receive a right-to-sue
25 letter from the Commission may bring a civil action in superior court against the
26 respondent within one year of the issuance of the right-to-sue letter. The ordinance shall
27 provide that in a civil action filed which seeks damages from the respondent, either the
28 complainant or the respondent may request, and upon request, is entitled to a jury trial.
29 The superior court judge or jury, as appropriate, shall be authorized to impose
30 mandatory and prohibitory injunctive relief; compensatory damages; and, unless
31 otherwise prohibited by law, punitive damages; and any other appropriate relief,
32 provided that:

33 (1) Punitive damages may be ordered only if the fact finder finds that the
34 respondent engaged in a practice made unlawful under the ordinance
35 with malice or with reckless indifference to the protected rights of the
36 complainant; and

37 (2) In cases involving unlawful employment practices, the fact finder may
38 order reinstatement or hiring, with back pay.

39 In any action brought in the superior court pursuant to the ordinance, the court may
40 allow the prevailing party reasonable costs and attorneys' fees from the other party or
41 parties. Attorneys' fees, however, may not be awarded to the Commission, and a

1 prevailing respondent may be awarded court costs and reasonable attorneys' fees only
2 upon a showing that the case is frivolous, unreasonable, or without foundation.

3 (d) The governing body of any county within the State that has adopted an
4 ordinance may enter into work-sharing agreements with the State and the federal
5 government.

6 (e) If an ordinance is adopted by a county, the ordinance shall apply to any part
7 of the county not within a municipally incorporated city, town, or village in the county.
8 The governing board of a city, town, or village within the county adopting an ordinance
9 may, by resolution, permit an ordinance adopted by the county to be applicable within
10 its corporate boundaries. A city, town, or village may, by resolution, withdraw its
11 permission. If it does so, it shall give written notice to the county of its withdrawal of
12 permission. Thirty days after the date the county receives the permission withdrawal
13 notice, the ordinance ceases to be applicable within the city, town, or village.

14 (f) This section applies to counties with a population of 100,000 or more, as
15 determined by the most recent federal decennial census."

16 **SECTION 2.** Article 8 of Chapter 160A of the General Statutes is amended
17 by adding a new section to read:

18 **"§ 160A-199. Ordinances prohibiting discrimination.**

19 (a) A city may adopt an ordinance designed to prohibit discrimination in
20 employment, housing, and public accommodations. The bases of discrimination which
21 may be prohibited are limited to race, color, religion, gender, national origin, age,
22 disability, familial status as defined in G.S. 41A-3(1b), and veteran status.

23 (b) Any city that has adopted an ordinance under this section may, in that
24 ordinance, adopt procedures and delegate powers to a Human Relations Commission
25 ('Commission') which are necessary and proper for carrying out and enforcing the
26 ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not
27 limited to, the following powers:

28 (1) Receiving and reviewing complaints that allege a violation of the
29 ordinance has occurred, is occurring, or is about to occur.

30 (2) Conducting investigations into the basis of complaints. In this regard,
31 the Commission may issue subpoenas compelling the production of
32 documents or compelling witnesses, or both, to appear before the
33 Commission to give testimony and to take depositions and serve
34 interrogatories in accordance with the North Carolina Rules of Civil
35 Procedure. In the event any person refuses to comply with a subpoena
36 or discovery request, the Commission may apply to the superior court
37 for an order to compel compliance with the subpoena or discovery
38 request. Information and records discovered by the Commission during
39 an investigation or conciliation may be maintained in confidence by
40 the Commission and are not subject to the provisions of G.S. 132-6
41 and G.S. 132-9 until and unless they are offered into evidence in a
42 judicial proceeding authorized by this section and an ordinance.

- 1 (3) Applying to the superior court for mandatory or prohibitory injunctive
2 relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil
3 Procedure if it determines, after a preliminary investigation, that
4 prompt judicial action is necessary to carry out the purposes of the
5 ordinance.
- 6 (4) Making a determination of whether or not there is reasonable cause to
7 believe that an unlawful discriminatory practice has occurred, is
8 occurring, or is about to occur.
- 9 (5) Dismissing complaints in such cases as the Commission determines
10 that reasonable cause does not exist.
- 11 (6) Issuing a right-to-sue letter to any complaining party upon request
12 after 60 days following receipt of a complaint.
- 13 (7) Attempting to conciliate a resolution of the complaint between the
14 parties.
- 15 (8) Entering into conciliation agreements in such instances where
16 conciliation efforts have been successful.
- 17 (9) Administrative cause determinations.

18 The city may, in enacting an ordinance, delegate the powers of the Commission
19 under this section and the ordinance to an administrative department of the city.

20 (c) The ordinance may provide that complainants who receive a right-to-sue
21 letter from the Commission may bring a civil action in superior court against the
22 respondent within one year of the issuance of the right-to-sue letter. The ordinance shall
23 provide that in a civil action filed which seeks damages from the respondent, either the
24 complainant or the respondent may request, and upon request, is entitled to a jury trial.
25 The superior court judge or jury, as appropriate, shall be authorized to impose
26 mandatory and prohibitory injunctive relief; compensatory damages; and, unless
27 otherwise prohibited by law, punitive damages; and any other appropriate relief,
28 provided that:

- 29 (1) Punitive damages may be ordered only if the fact finder finds that the
30 respondent engaged in a practice made unlawful under the ordinance
31 with malice or with reckless indifference to the protected rights of the
32 complainant; and
- 33 (2) In cases involving unlawful employment practices, the fact finder may
34 order reinstatement or hiring, with back pay.

35 In any action brought in the superior court pursuant to the ordinance, the court may
36 allow the prevailing party reasonable costs and attorneys' fees from the other party or
37 parties. Attorneys' fees, however, may not be awarded to the Commission, and a
38 prevailing respondent may be awarded court costs and reasonable attorneys' fees only
39 upon a showing that the case is frivolous, unreasonable, or without foundation.

40 (d) The governing body of any city within the State that has adopted an
41 ordinance may enter into work-sharing agreements with the State and the federal
42 government.

1 (e) This section applies to cities with a population of 100,000 or more, as
2 determined by the most recent federal decennial census."

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