

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE DRH10708-LR-62B (03/11)

Short Title: Nondiscrimination in State/Teacher Emp. (Public)

Sponsors: Representatives Luebke, Bryant, M. Alexander, and Womble (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE PERSONNEL ACT TO INCLUDE SEXUAL ORIENTATION AND GENDER IDENTITY OR EXPRESSION TO THE LIST OF CLASSIFICATIONS COVERED BY THE STATE'S EQUAL EMPLOYMENT OPPORTUNITY LAW AND REQUIRING LOCAL BOARDS OF EDUCATION TO ADOPT POLICIES FOR NONDISCRIMINATION IN EMPLOYMENT INCLUDING SEXUAL ORIENTATION AND GENDER IDENTITY OR EXPRESSION AMONG THE COVERED CLASSIFICATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 126-16 reads as rewritten:

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

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

SECTION 2. G.S. 126-34.1 reads as rewritten:

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

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

- (1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.
- (2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:
 - a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, sexual orientation, gender identity or expression, or handicapping condition as 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, gender
5 identity or expression, or handicapping condition as defined by
6 Chapter 168A of the General 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, gender identity or expression, or
27 handicapping condition, whether the harassment is based upon the creation
28 of a hostile work 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, gender identity or expression, or
42 handicapping condition as defined by Chapter 168A of the General Statutes.
43 This subsection with respect to equal opportunity as to age shall be limited
44 to persons who are at least 40 years of age. An applicant may not, however,
45 file a contested case where political affiliation was the reason for the
46 person's nonselection for (i) an exempt policymaking position as defined in
47 G.S. 126-5(b)(3), (ii) a chief deputy or chief administrative assistant position
48 under G.S. 126-5(c)(4), or (iii) a confidential assistant or confidential
49 secretary position under G.S. 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 3.** 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, gender identity or expression,
23 or handicapping condition as defined by G.S. 168A-3 except where specific age, sex or physical
24 requirements constitute a bona fide occupational qualification necessary to proper and efficient
25 administration, shall have 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, gender identity or expression,
31 or handicapping condition, whether the harassment is based upon the creation
32 of a hostile work 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, sexual orientation, gender
35 identity or expression, or handicapping condition, whether the harassment is
36 based upon the creation of a hostile work environment or upon a quid pro
37 quo."

38 **SECTION 4.** Article 22 of Chapter 115C of the General Statutes is amended by
39 adding a new part to read:

40 "Part 9. Nondiscrimination in School Employment.

41 "**§ 115C-335.10. School personnel nondiscrimination policy.**

42 (a) Each local board of education shall adopt a policy of nondiscrimination in its
43 personnel policies and practices on the basis of race, religion, color, national origin, age, sex,
44 sexual orientation, gender identity or expression, or disability.

45 (b) For the purposes of this section, the term "school personnel" means any (i)
46 employee of a local board of education whether full-time or part-time or (ii) independent
47 contractor or employee of an independent contractor of a local board of education, if the
48 independent contractor carries out duties customarily performed by school personnel, whether
49 paid with federal, State, local, or other funds. The term includes substitute teachers, driver
50 training teachers, bus drivers, clerical staff, and custodians."

1 **SECTION 5.** Nothing in this act shall be construed as requiring the State, or any
2 employer, employment agency, or labor organization to give preferential treatment or special
3 rights based on sexual orientation, gender identity or expression, or to implement special
4 affirmative action policies or programs based on sexual orientation, gender identity or
5 expression.

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