

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 178

Short Title: Expand Human Relations Commn. EEOC Authority. (Public)

Sponsors: Representative Floyd.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III, if favorable, Appropriations

February 23, 2017

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE HUMAN RELATIONS COMMISSION TO SEEK EQUAL
EMPLOYMENT OPPORTUNITY STATUS AS A FAIR EMPLOYMENT PRACTICE
AGENCY PURSUANT TO TITLE VII OF THE FEDERAL CIVIL RIGHTS ACT OF 1964.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-422.3 is repealed.

SECTION 2. Article 49A of Chapter 143 of the General Statutes is amended by
adding two new sections to read:

"§ 143-422.4. Role as deferral agency.

(a) The Human Relations Commission is designated to serve as the State's deferral agency for cases deferred by the Equal Employment Opportunity Commission to the Human Relations Commission as provided in Section 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, for charges filed by an employee of an employer that regularly employs 15 or more employees.

(b) The Human Relations Commission is authorized and directed to contract with the Equal Employment Opportunity Commission to serve as a deferral agency and to carry out the functions of a deferral agency. As provided in the contract between the Human Relations Commission 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 person employed and alleges an unlawful employment practice prohibited under federal law. A deferred charge may be filed with either agency. The date a deferred charge is filed with either agency is considered to be a commencement of proceedings under State law for purposes of 42 U.S.C. § 2000e-5(c) or (d).

(c) The standards of confidentiality established by federal statute or regulation for discrimination charges shall apply to deferred cases investigated or heard by the Human Relations Commission. Nothing in this section shall be construed as limiting the authority or right of any federal agency to act under any federal statute or regulation.

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

(e) This section shall not apply to charges filed by State or local government employees covered under Chapter 126 of the General Statutes.

"§ 143-422.5. Enforcement.

(a) Any person who claims to have been injured by an unlawful discriminatory employment action may file a complaint with the Human Relations Commission. Complaints shall be in writing, shall state the facts upon which the allegation of an unlawful discriminatory employment action is based, and shall contain such other information and be in such form as the Commission requires. Within 10 days after receipt of the complaint, the Director of the



1 Commission shall serve on the respondent a copy of the complaint and a notice advising the
2 respondent of all procedural rights and obligations under this Article. Within 10 days after receipt
3 of the complaint, the Director of the Commission shall serve on the complainant a notice
4 acknowledging the filing of the complaint and informing the complainant of the time limits and
5 choice of forums under this Article.

6 (b) No complaint may be filed with the Commission under this section during any period
7 in which the Commission is not authorized to act as a deferral agency as provided in Section 706
8 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5.

9 (c) A complaint under subsection (a) of this section shall be filed within 180 days after the
10 date the alleged unlawful discriminatory employment action occurred. A respondent may file an
11 answer to the complaint within 10 days after receiving a copy of the complaint. With the leave of
12 the Commission, which shall be granted whenever it would be reasonable and fair to do so, the
13 complaint and the answer may be amended at any time. Complaints and answers shall be verified.
14 The Commission shall dismiss an untimely complaint.

15 (d) Complaints may be resolved at any time by informal conference, conciliation, or
16 persuasion. Nothing said or done in the course of such informal procedure may be made public by
17 the Commission or used as evidence in a subsequent proceeding under this Article without the
18 written consent of the person concerned.

19 (e) Within 30 days after the filing of the complaint, the Commission shall commence an
20 investigation of the complaint to ascertain the facts relating to the alleged unlawful discriminatory
21 employment action. If the complaint is not resolved before the investigation is complete, upon
22 completion of the investigation, the Commission shall determine whether or not there are
23 reasonable grounds to believe that an unlawful discriminatory employment action has occurred.
24 The Commission shall make a determination within 90 days after the filing of the complaint. If the
25 Commission is unable to complete the investigation and issue a determination within 90 days after
26 the filing of the complaint, the Commission shall notify the complainant and respondent in writing
27 of the reasons for not doing so. If the Commission concludes at any time following the filing of a
28 complaint under this section that prompt judicial action is necessary to carry out the purposes of
29 this Article, the Commission may commence a civil action for, and the court may grant,
30 appropriate temporary or preliminary relief pending final disposition of the complaint. Any
31 temporary restraining order or other order granting preliminary or temporary relief shall be issued
32 in accordance with G.S. 1A-1, et seq., Rules of Civil Procedure. The commencement of a civil
33 action under this subsection does not affect the continuation of the Commission's investigation or
34 the initiation of a separate civil action pursuant to other subsections of this section.

35 (f) If the Commission finds no reasonable ground to believe that an unlawful
36 discriminatory employment action has occurred, it shall dismiss the complaint and issue to the
37 complainant a right-to-sue letter which will entitle the complainant to bring a civil action in
38 superior court in accordance with the provisions of subsection (j) of this section.

39 (g) If the Commission finds reasonable grounds to believe that an unlawful discriminatory
40 employment action has occurred or is about to occur, it shall proceed to try to resolve the dispute
41 by informal conference, conciliation, or persuasion. Each conciliation agreement arising out of
42 conciliation efforts by the Commission, whether reached before or after the Commission makes a
43 determination of the complaint pursuant to subsection (e) of this section, shall be:

44 (1) An agreement between the respondent and the complainant and shall be subject
45 to the approval of the Commission. The Commission may also be a party to
46 such conciliation agreements; and

47 (2) Made public unless the complainant and respondent otherwise agree, and the
48 Commission determines that disclosure is not required to further the purposes
49 of this Article.

50 (h) If the Commission is unable to resolve the allegations set forth in the complaint, it shall
51 notify the parties in writing that conciliation efforts have failed.

1 (i) A complainant may make a written request to the Commission for a right-to-sue letter
2 under either of the following circumstances:

3 (1) Within 10 days following the receipt of a notice of conciliation failure.

4 (2) After 130 days following the filing of a complaint, if the Commission has not
5 issued a notice of conciliation failure.

6 Upon receipt of a timely request, the Commission shall issue to the complainant a right-to-sue
7 letter which will enable the complainant to bring a civil action in superior court in accordance with
8 the provisions of subsection (j) of this section.

9 (j) A civil action brought by a complainant pursuant to subsection (f) or (i) of this section
10 shall be commenced within one year after the right-to-sue letter is issued. The court may grant
11 relief as it deems appropriate, including any permanent or temporary injunction, temporary
12 restraining order, or other order. The court may also award actual and punitive damages to the
13 plaintiff and court costs and reasonable attorneys' fees to the prevailing party; provided, however,
14 that a prevailing respondent may be awarded court costs and reasonable attorneys' fees only upon
15 a showing that the case is frivolous, unreasonable, or without foundation.

16 (k) After the Commission has issued a notice of conciliation failure pursuant to subsection
17 (h) of this section and if the complainant does not request a right-to-sue letter pursuant to
18 subsection (i) of this section, the complainant, the respondent, or the Commission may elect to
19 have the claims and issues asserted in the reasonable grounds determination decided in a civil
20 action commenced and maintained by the Commission.

21 (1) An election for a civil action under this subsection shall be made no later than
22 20 days after an electing complainant or respondent receives the notice of
23 conciliation failure, or if the Commission makes the election, not more than 20
24 days after the notice of conciliation failure is issued. A complainant or
25 respondent who makes an election for a civil action pursuant to this subsection
26 shall give notice to the Commission. If the Commission makes an election, it
27 shall notify all complainants and respondents of the election.

28 (2) If an election is made under this subsection, no later than 60 days after the
29 election is made, the Commission shall commence a civil action in superior
30 court in its own name on behalf of the complainant. In such an action, the
31 Commission shall be represented by an attorney employed by the Commission,
32 and G.S. 114-2 shall not apply.

33 In a civil action brought under this subsection, the court may grant relief as it deems appropriate,
34 including any permanent or temporary injunction, temporary restraining order, or other equitable
35 relief and may award to any person aggrieved by an unlawful discriminatory employment action
36 compensatory and punitive damages. Parties to a civil action brought pursuant to this Chapter shall
37 have the right to a jury trial as provided for by the North Carolina Rules of Civil Procedure.

38 (l) After the Commission has issued a notice of conciliation failure pursuant to subsection
39 (h) of this section, if the complainant does not request a right-to-sue letter pursuant to subsection
40 (i) of this section, and if an election for a civil action is not made pursuant to subsection (k) of this
41 section, the Commission shall apply to the Director of the Office of Administrative Hearings for
42 the designation of an administrative law judge to preside at a hearing of the case. Upon receipt of
43 the application, the Director of the Office of Administrative Hearings shall, without undue delay,
44 assign an administrative law judge to hear the case.

45 (1) All hearings shall be conducted pursuant to the provisions of Article 3A of
46 Chapter 150B of the General Statutes, except that the case in support of the
47 complaint shall be presented at the hearing by the Commission's attorney or
48 agent, and G.S. 114-2 shall not apply. The parties to the complaint shall
49 otherwise be given an opportunity to participate in the hearing as provided in
50 G.S. 150B-40(a).

1 (2) The administrative law judge assigned to hear a case pursuant to this subsection
2 shall sit in place of the Commission and shall have the authority of a presiding
3 officer in a contested case under Article 3A of Chapter 150B of the General
4 Statutes. The administrative law judge shall make a proposal for decision,
5 which shall contain proposed findings of fact, proposed conclusions of law, and
6 proposed relief, if appropriate. The Commission may make its final decision
7 only after carefully reviewing and considering the administrative law judge's
8 proposal for decision, and after a copy of that proposal for decision is served on
9 the parties and an opportunity is given each party to file exceptions and
10 proposed findings of fact and to present oral and written arguments to the
11 Commission.

12 (3) The Commission's final decision may be made by a panel consisting of three
13 Commission members appointed by the chairperson of the Commission. If the
14 Commission, in its final decision, finds that a respondent has violated or is
15 about to violate this Chapter, it may order such relief as may be appropriate,
16 including payment to the complainant by the respondent of compensatory
17 damages and injunctive or other equitable relief. The Commission's order may
18 also assess a civil penalty against the respondent:

19 a. In an amount not exceeding ten thousand dollars (\$10,000) if the
20 respondent has not been adjudged to have committed any prior unlawful
21 discriminatory employment actions;

22 b. In an amount not exceeding twenty-five thousand dollars (\$25,000) if
23 the respondent has been adjudged to have committed one other unlawful
24 discriminatory employment action during the five-year period ending on
25 the date of the filing of the complaint; or

26 c. In an amount not exceeding fifty thousand dollars (\$50,000) if the
27 respondent has been adjudged to have committed two or more unlawful
28 discriminatory employment actions during the seven-year period ending
29 on the date of the filing of the complaint.

30 If the acts constituting the unlawful discriminatory employment action that is
31 the object of the complaint are committed by the same natural person who has
32 been previously adjudged to have committed acts constituting an unlawful
33 discriminatory employment action, then the civil penalties set forth in
34 sub-subdivisions b. and c. of subdivision (3) of this subsection may be imposed
35 without regard to the period of time within which any subsequent
36 discriminatory employment action occurred. The clear proceeds of civil
37 penalties assessed pursuant to this subdivision shall be remitted to the Civil
38 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

39 (m) Any person aggrieved by the final agency decision following a hearing may petition for
40 judicial review in accordance with the provisions of G.S. 150B-43 through G.S. 150B-52. The
41 court in a review proceeding may:

42 (1) Affirm, modify, or reverse the Commission's decision in accordance with
43 G.S. 150B-51;

44 (2) Remand the case to the Commission for further proceedings;

45 (3) Grant to any party such temporary relief, restraining order, or other order as it
46 deems appropriate; or

47 (4) Issue an order to enforce the Commission's order to the extent that the order is
48 affirmed or modified.

49 (n) If, within 30 days after service on the parties of the Commission's decision and order
50 following a hearing, no party has petitioned for judicial review, the Commission or the person
51 entitled to relief may file a certified copy of the Commission's final order with the clerk of

1 superior court in the county where the unlawful discriminatory employment action occurred. Upon
2 such a filing, the clerk of the court shall enter an order enforcing the Commission's final order."

3 **SECTION 3.** There is appropriated from the General Fund to the Department of
4 Administration, Human Relations Commission, the sum of seven hundred eighty-eight thousand
5 seventy-six dollars (\$788,076) for the 2017-2018 fiscal year and the 2018-2019 fiscal year. Of the
6 funds appropriated by this section, the sum of two hundred forty-two thousand six hundred
7 sixty-nine dollars (\$242,669) shall be used to fund the following new positions:

- 8 (1) Program Assistant IV.
- 9 (2) Human Relations Specialist I.
- 10 (3) Human Relations Specialist I.
- 11 (4) Administrative Assistant.

12 **SECTION 4.** Section 3 of this act becomes effective July 1, 2017. The remainder of
13 this act becomes effective January 1, 2018.