

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 835

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: Appropriations, General Government, if favorable, Rules, Calendar, and Operations of the House

April 18, 2019

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 G.S. 143-422.3 is repealed.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 applies 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 does 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



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1 shall (i) be in writing, (ii) state the facts upon which the allegation of an unlawful discriminatory
2 employment action is based, and (iii) contain such other information and be in such form as the
3 Commission requires. Within 10 days after receipt of the complaint, the Director of the
4 Commission shall serve on the respondent a copy of the complaint and a notice advising the
5 respondent of all procedural rights and obligations under this Article. Within 10 days after receipt
6 of the complaint, the Director of the Commission shall serve on the complainant a notice
7 acknowledging the filing of the complaint and informing the complainant of the time limits and
8 choice of forums under this Article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (1) An election for a civil action under this subsection shall be made no later than
27 20 days after an electing complainant or respondent receives the notice of
28 conciliation failure, or if the Commission makes the election, not more than
29 20 days after the notice of conciliation failure is issued. A complainant or
30 respondent who makes an election for a civil action pursuant to this subsection
31 shall give notice to the Commission. If the Commission makes an election, it
32 shall notify all complainants and respondents of the election.

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

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

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

50 (1) All hearings shall be conducted pursuant to the provisions of Article 3A of
51 Chapter 150B of the General Statutes, except that the case in support of the

1 complaint shall be presented at the hearing by the Commission's attorney or
2 agent, and G.S. 114-2 shall not apply. The parties to the complaint shall
3 otherwise be given an opportunity to participate in the hearing as provided in
4 G.S. 150B-40(a).

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

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

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

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

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

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

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

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

48 (2) Remand the case to the Commission for further proceedings.

49 (3) Grant to any party such temporary relief, restraining order, or other order as it
50 deems appropriate.

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

3 (n) If, within 30 days after service on the parties of the Commission's decision and order
4 following a hearing, no party has petitioned for judicial review, the Commission or the person
5 entitled to relief may file a certified copy of the Commission's final order with the clerk of
6 superior court in the county where the unlawful discriminatory employment action occurred.
7 Upon such a filing, the clerk of the court shall enter an order enforcing the Commission's final
8 order."

9 **SECTION 3.** There is appropriated from the General Fund to the Department of
10 Administration, Human Relations Commission, the sum of seven hundred eighty-eight thousand
11 seventy-six dollars (\$788,076) in recurring funds for the 2019-2020 fiscal year and the sum of
12 seven hundred eighty-eight thousand seventy-six dollars (\$788,076) in recurring funds for the
13 2020-2021 fiscal year. These funds shall be used to implement the provisions of Section 2 of this
14 act and to fund the following new positions within the Human Relations Commission:

- 15 (1) Program Assistant IV.
16 (2) Human Relations Specialist I.
17 (3) Human Relations Specialist I.
18 (4) Administrative Assistant.

19 **SECTION 4.** Section 3 of this act becomes effective July 1, 2019. The remainder of
20 this act becomes effective January 1, 2020.