

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1989**

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**HOUSE BILL 907**

Short Title: Durham Discrimination Ordinances.

(Local)

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Sponsors: Representatives S. Thompson; Miller and Michaux.

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Referred to: Government.

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March 27, 1989

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW THE CITY OF DURHAM TO PROHIBIT ACTS OF  
2 DISCRIMINATION IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS  
3 BASED ON RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX,  
4 HANDICAP OR AGE.  
5

6 The General Assembly of North Carolina enacts:

7 Section 1. Authority to Adopt Ordinances. The City Council of the City of  
8 Durham may adopt ordinances to prohibit discrimination in employment and public  
9 accommodations based on race, color, national origin, religion, sex, handicap or attained  
10 age of 40 or more years. To assist in the enforcement of these ordinances, the City  
11 Council may authorize or create an agency or commission of the City of Durham  
12 (hereafter called "The Agency" ) to take such actions and to have such powers as might  
13 be appropriate and necessary to implement said ordinances including, but not limited to,  
14 the power to receive, initiate, investigate, seek to conciliate, hold hearings on and pass  
15 upon complaints, to mediate alleged violations of such ordinances, to issue orders  
16 against persons it finds, after notice and hearing, to have violated such ordinances and to  
17 seek court enforcement of such orders.

18 This act is not intended to expand the authority or powers of the local  
19 enforcing agency beyond those covering any specific employer or public  
20 accommodation by federal laws, rules or regulations in effect at the time in question.  
21 The agency may, as part of such order, require any such person to cease and desist from  
22 unlawful practices and to engage in such additional remedial action as may be  
23 appropriate including, but not limited to, requiring such person to do the following:

- 1 (1) To hire, reinstate or upgrade aggrieved individuals, with or without  
2 back pay;
- 3 (2) To admit aggrieved individuals or to allow such individuals to  
4 participate in guidance programs, apprenticeship training programs,  
5 on-the-job training programs, or other occupational training or  
6 retraining programs, and to utilize objective criteria in the admission of  
7 such individuals in such programs;
- 8 (3) To submit to the agency for approval or disapproval, plans to eliminate  
9 or reduce imbalance with respect to race, color, national origin,  
10 religion, sex, handicap, or age;
- 11 (4) To provide technical assistance to persons subject to this act to further  
12 compliance with the act;
- 13 (5) To report as to the manner of compliance;
- 14 (6) To post notices in conspicuous places in the form prescribed by the  
15 agency;
- 16 (7) To admit or restore an aggrieved individual to a place of public  
17 accommodation.

18 Sec. 2. Definitions:

19 (a) As used in this act:

- 20 (1) The word "Person" includes one or more individuals, governments,  
21 governmental agencies, political subdivisions, labor organizations,  
22 partnerships, associations, corporations, legal representatives, mutual  
23 companies, joint stock companies, trusts, unincorporated organizations  
24 (except a bona fide private membership club other than a labor  
25 organization which is exempt from taxation under §501(c) of the  
26 Internal Revenue Code of 1954), trustees, trustees-in-bankruptcy, or  
27 receivers; and
- 28 (2) "Place of public accommodations" means any place in or through  
29 which any business or professional activity is conducted that is open  
30 to, accepts, or solicits the patronage of or offers goods or services to  
31 the general public. It does not include those clubs, associations,  
32 corporations, or other organizations that:
  - 33 a. Are organized by and for a regular dues-paying membership;
  - 34 b. Are formed for noncommercial, nonprofit purposes;
  - 35 c. Have policies determined by their members; and
  - 36 d. Have facilities and services that are available only to their  
37 members and their bona fide guests or to similar organizations.

38 Sec. 3. Judicial Review of Agency Orders. Judicial review of agency orders  
39 shall be in accordance with Article 4 of Chapter 150B of the North Carolina General  
40 Statutes provided, however, that the provisions of G.S. 150B-45 notwithstanding,  
41 petitions for judicial review shall be filed in the Superior Court of Durham County. The  
42 term "Agency," whenever used in Article 4 of Chapter 150B of the North Carolina  
43 General Statutes, shall mean the agency as authorized or created by the Durham City  
44 Council under the authority of this act.

1           Sec. 4. Enforcement of Agency Orders.

2           (a) If within 60 days after entry of an order of the agency, a respondent has  
3 neither complied with nor sought review of such order, any aggrieved person or the  
4 agency may apply to the Superior Court of Durham County for an order of the court  
5 enforcing the order of the agency. The application to the Superior Court must be filed  
6 not later than 120 days after entry of the order of the agency.

7           (b) Within 30 days after the court's receipt of the petition for enforcement of the  
8 agency's order or within such additional time as the court may allow the agency shall  
9 transmit to the court the original or a certified copy of the entire record of the  
10 proceedings leading to the order. With the permission of the court, the record may be  
11 shortened by stipulation of all parties. Any party unreasonably refusing to stipulate to  
12 limit the record may be taxed by the court for such additional costs as may be  
13 occasioned by the refusal. The court may require or permit subsequent corrections or  
14 additions to the record when deemed desirable.

15           (c) The hearing on the petition for enforcement of the agency's order shall be  
16 conducted by the court without a jury. The court shall hear oral arguments and receive  
17 written briefs, but shall take no evidence not offered at the agency hearing; except that  
18 in cases of alleged irregularities in procedure before the agency not shown in the record,  
19 testimony thereon may be taken by the court; and except that where no record was made  
20 of the proceeding or the record is inadequate, the judge in his discretion may hear all or  
21 part of the matter **de novo**.

22           (d) The court shall issue the order requiring compliance with the agency's order  
23 unless it finds that enforcement of the agency's order would prejudice substantial rights  
24 of the party against whom the order is sought to be enforced because the agency's  
25 findings, inferences, conclusions, or decisions are:

- 26           (1) In violation of constitutional provisions; or  
27           (2) In excess of the statutory authority or jurisdiction of the agency; or  
28           (3) Made upon unlawful procedure; or  
29           (4) Affected by other error of law; or  
30           (5) Unsupported by substantial evidence in view of the entire record as  
31 submitted; or  
32           (6) Arbitrary or capricious.

33           (e) If the court declines to enforce the agency's order for one of the reasons  
34 specified in paragraph (d) of this section, it shall either:

- 35           (1) Dismiss the petition; or  
36           (2) Modify the agency's order and enforce it as modified; or  
37           (3) Remand the case to the agency for further proceedings.

38           (f) Any party to the hearing on the petition for enforcement of the agency's  
39 order may appeal the court's decision to the appellate division under the rules of  
40 procedure applicable to other civil cases.

41           Sec. 5. Procedure.

42           (a) Civil Action for Unlawful Employment of Public Accommodations Program.  
43 An ordinance adopted pursuant to this act may permit any complainant dissatisfied with  
44 the agency's final disposition of a matter to bring a civil action in the Superior Court of

1 the General Court of Justice of Durham County against the person allegedly engaging in  
2 the unlawful practice. Such civil action for an unlawful employment or public  
3 accommodations may not be brought more than one year after a charge thereof was filed  
4 with the agency or more than 60 days after the complainant's receipt of notification of  
5 the agency's final disposition of the matter, whichever is later.

6 (b) Injunctions; Equitable Relief. If the court finds that the respondent has  
7 engaged in or is engaging in an unlawful employment or public accommodations  
8 practice charged in the complaint, the court may enjoin the respondent from engaging in  
9 such unlawful employment or public accommodations practice, and order such action as  
10 may be appropriate, which may include, but is not limited to, admission or restoration to  
11 a place of public accommodations, reinstatement or hiring of employees, with or  
12 without back pay (payable by the person, firm, corporation or association as the case  
13 may be, responsible for the unlawful practice), or any other equitable relief as the court  
14 deems appropriate. Back pay liability shall not accrue from a date more than two years  
15 prior to the filing of a charge with the agency. Interim earnings or amounts earnable  
16 with reasonable diligence by the person or persons discriminated against shall operate to  
17 reduce the back pay otherwise allowable. No order of the court shall require the  
18 admission or restoration of an individual to a place of public accommodation or the  
19 admission or reinstatement of an individual as a member of a union, or the hiring,  
20 reinstatement, or promotion of an individual as an employee, or the payment to him of  
21 any back pay, if such individual was refused admission, suspended, or expelled, or was  
22 refused employment or advancement or was suspended or discharged for any reason  
23 other than discrimination on account of race, color, religion, sex, national origin,  
24 handicap or age or in violation of an ordinance adopted pursuant to this act.

25 (c) Attorney's Fees. In any action or proceeding under an ordinance adopted  
26 pursuant to this act, the court, in its discretion, may allow the prevailing party a  
27 reasonable attorney's fee as part of the costs.

28 Sec. 6. Discrimination on Account of Opposition to Unlawful Practices or  
29 Participation in Investigation, Proceeding, or Hearing. It shall be an unlawful  
30 employment practice and an unlawful public accommodation practice for any employer  
31 to discriminate against any of his employees or applicants for employment, to  
32 discriminate against any individual, or for a labor organization to discriminate against  
33 any member thereof or applicant for membership, because he has opposed any practice  
34 made an unlawful employment practice or unlawful public accommodation practice by  
35 an ordinance adopted pursuant to this act or because he has made a charge, testified,  
36 assisted, or participated in any manner in an investigation, proceeding or hearing under  
37 such an ordinance.

38 Sec. 7. Additional Authority of Agency. To further assist in enforcement of  
39 ordinances authorized by this act, and in the investigations of violations of said  
40 ordinances, the agency may subpoena witnesses, administer oaths, and compel the  
41 production of evidence. If a person fails or refuses to obey a subpoena issued by the  
42 agency, the agency may apply to the General Court of Justice for an order requiring that  
43 its order be obeyed, and the court shall have jurisdiction to issue such orders after notice  
44 to all proper parties. No testimony of any witness before the agency pursuant to a

1 subpoena issued in exercise of the power conferred by this section may be used against  
2 him on the trial of any criminal action other than a prosecution for false swearing  
3 committed on the examination.

4           Sec. 8. Access to Records. The agency at all reasonable times, for the  
5 purposes of examination, shall have access to, and the right to copy, any evidence of  
6 any person being investigated that relates to an unlawful employment or public  
7 accommodations practice under an ordinance adopted pursuant to this act and relevant  
8 to the charge under investigation. Information discovered during such an investigation  
9 shall not be made public by the agency until offered into evidence in an administrative  
10 hearing or judicial proceeding.

11           Sec. 9. Public Records. Public records concerning the investigation,  
12 conciliation or mediation of alleged violations of an ordinance enacted pursuant to this  
13 section are not subject to the provisions of G.S. 132-6 and G.S. 132-9.

14           Sec. 10. This act is effective upon ratification.