

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 721

Short Title: Durham City/County Discrimination.

(Local)

Sponsors: Representative Michaux.

Referred to: Local and Regional Government I.

April 11, 1991

A BILL TO BE ENTITLED

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

6 The General Assembly of North Carolina enacts:

7 Section 1. **Authority to adopt ordinances.** The governing board of a city or
8 county may adopt ordinances to prohibit discrimination in employment and public
9 accommodations based on race, color, national origin, religion, sex, handicap, or age
10 greater than or equal to 40 years. To assist in the enforcement of these ordinances, the
11 governing board may authorize or create an agency or commission (hereinafter called
12 Agency) of the city or county to take such actions and to have such powers as might be
13 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
17 to seek court enforcement of such orders.

18 This legislation 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
9 eliminate or reduce imbalance with respect to race, color, national
10 origin, religion, sex, handicap, or age;
- 11 (4) To provide technical assistance to persons subject to this act to further
12 compliance with this 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; and
- 16 (7) To admit or restore an aggrieved individual to a place of public
17 accommodation.

18 Sec. 2. **Definitions.** As used in this act:

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

42 Sec. 3. **Judicial review of Agency orders.** (a) Subject to the provision of
43 subsection (b) of this section, the provisions of Article 4 of Chapter 150B of the General
44 Statutes shall apply to judicial review of Agency orders.

- 1 (b) Notwithstanding any other provision of law:
2 (1) The term "agency", whenever used in Article 4 of Chapter 150B of the
3 General Statutes, means Agency as defined in this act; and
4 (2) Petitions for judicial review shall be filed in the Superior Court of
5 Durham County.

6 Sec. 4. **Enforcement of Agency orders.** (a) If within 60 days after entry of
7 an order of the Agency, a respondent has neither complied with nor sought review of
8 such order, any aggrieved person or the Agency may apply to the Superior Court of
9 Durham County for an order of the court enforcing the order of the Agency. The
10 application to the superior court must be filed no later than 120 days after entry of the
11 order of the Agency.

12 (b) Within 30 days after the court's receipt of the petition for enforcement of the
13 Agency's order or within such additional time as the court may allow, the Agency shall
14 transmit to the court the original or a certified copy of the entire record of the
15 proceedings leading to the order. With the permission of the court, the record may be
16 shortened by stipulation of all parties. Any party unreasonably refusing to stipulate to
17 limit the record may be taxed by the court for such additional costs as may be
18 occasioned by the refusal. The court in its discretion may require or permit subsequent
19 corrections or additions to the record.

20 (c) The hearing on the petition for enforcement of the Agency's order shall be
21 conducted by the court without a jury. The court shall hear oral arguments and receive
22 written briefs. Subject to the provisions of subsection (d) of this section, the court shall
23 take no evidence not offered at the Agency hearing.

24 (d) In cases:

- 25 (1) Of alleged irregularities in procedure before the Agency not shown in
26 the record; and
27 (2) Where no record was made of the proceeding or the record is
28 inadequate,

29 the judge in his discretion may hear all or part of the matter **de novo**.

30 (e) The court shall issue the order requiring compliance with the Agency's
31 order unless it finds that enforcement of the Agency's order would prejudice substantial
32 rights of the party against whom the order is sought to be enforced because the Agency's
33 findings, inferences, conclusions, or decisions:

- 34 (1) Violate constitutional provisions;
35 (2) Exceed the statutory authority or jurisdiction of the Agency;
36 (3) Are based upon unlawful procedure;
37 (4) Are erroneous as a matter of law;
38 (5) Are not supported by substantial evidence in view of the entire record
39 as submitted; or
40 (6) Are arbitrary or capricious.

41 (f) If the court declines to enforce the Agency's order for one of the reasons
42 specified in subsection (e) of this section, it shall either:

- 43 (1) Dismiss the petition;
44 (2) Modify the Agency's order and enforce it as modified; or

1 (3) Remand the case to the Agency for further proceedings.

2 (g) Any party to the hearing on the petition for enforcement of the Agency's
3 order may appeal the court's decision to the appellate division under the rules of
4 procedure applicable to other civil cases.

5 Sec. 5. (a) **Civil action for unlawful employment or public**
6 **accommodations program.** An ordinance adopted pursuant to this act may permit any
7 complainant dissatisfied with the Agency's final disposition of a matter to bring a civil
8 action in the Superior Court of Durham County against the person allegedly engaging in
9 the unlawful practice. Such civil action for unlawful employment or public
10 accommodations may not be brought:

11 (1) More than one year after a charge thereof was filed with the Agency;
12 or

13 (2) More than 60 days after the complainant's receipt of notification of the
14 Agency's final disposition of the matter,

15 whichever is later.

16 (b) **Injunctions; equitable relief.** If the court finds that the respondent has
17 engaged in or is engaging in an unlawful employment or public accommodations
18 practice charged in the complaint, the court may enjoin the respondent from engaging in
19 such unlawful employment or public accommodations practice, and order such action as
20 may be appropriate, which may include, but is not limited to:

21 (1) Admission or restoration to a place of public accommodations,

22 (2) Reinstatement or hiring of employees, with or without back pay,
23 payable by the person responsible for the unlawful practice, or

24 (3) Any other equitable relief the court deems appropriate.

25 Back pay shall not accrue from a date more than two years prior to the filing of a charge
26 with the Agency. Interim earnings or amounts earnable with reasonable diligence by
27 the person discriminated against shall operate to reduce the back pay otherwise
28 allowable. No order of the court shall require the admission or restoration of an
29 individual to a place of public accommodation or the admission or reinstatement of an
30 individual as a member of a union, or the hiring, reinstatement, or promotion of an
31 individual as an employee, or the payment to him of any back pay, if such individual
32 was refused admission; suspended or expelled; refused employment or advancement; or
33 suspended or discharged for any reason other than discrimination based on race, color,
34 religion, sex, national origin, handicap, or age or in violation of an ordinance adopted
35 pursuant to this act.

36 (c) **Attorneys' fees.** In any action or proceeding under an ordinance adopted
37 pursuant to this act, the court, in its discretion, may allow the prevailing party
38 reasonable attorneys' fees as part of the costs.

39 Sec. 6. Discrimination based on opposition to unlawful practices or
40 participation in investigation, proceeding, or hearing. It shall be an unlawful
41 employment practice and an unlawful public accommodation practice:

42 (1) For any employer to discriminate against any of his employees or
43 applicants for employment or to discriminate against any individual; or

1 (2) For a labor organization to discriminate against any member thereof or
2 applicant for membership,

3 for the reason that such employee, applicant, individual, or member:

4 (1) Has opposed any practice made an unlawful employment practice or
5 an unlawful public accommodation practice by an ordinance adopted
6 pursuant to this act; or

7 (2) Has made a charge, testified, assisted, or participated in any manner in
8 an investigation, proceeding, or hearing pursuant to such an ordinance.

9 **Sec. 7. Additional authority of Agency.** To further assist in enforcement of
10 ordinances authorized by this act, and in the investigations of violations of such
11 ordinances, the Agency may subpoena witnesses, administer oaths, and compel the
12 production of evidence. If a person fails to refuses to obey a subpoena issued by the
13 Agency, the Agency may apply to the appropriate division of the General Court of
14 Justice for an order requiring that its order be obeyed, and the court shall have
15 jurisdiction to issue such orders after notice to all proper parties. No testimony of any
16 witness before the Agency pursuant to a subpoena issued in accordance with this section
17 may be used against him in the trial of any criminal action other than a prosecution for
18 false swearing committed on the examination.

19 **Sec. 8. Access to records.** The Agency at all reasonable times, for the
20 purposes of examination, shall have access to, and the right to copy, any evidence of
21 any person being investigated that relates to an unlawful employment or public
22 accommodations practice under an ordinance adopted pursuant to the act and relevant to
23 the charge under investigation. Information discovered during such an investigation
24 shall not be made public by the Agency until offered into evidence in an administrative
25 hearing or judicial proceeding.

26 **Sec. 9. Public records.** Public records concerning the investigation,
27 conciliation, or mediation of alleged violations of an ordinance enacted pursuant to this
28 act are not subject to the provisions of G.S. 132-6 or G.S. 132-9.

29 **Sec. 10.** An ordinance adopted by a county under this act applies within the
30 corporate limits of a municipality located in that county.

31 **Sec. 11.** This act applies only to the City of Durham and the County of
32 Durham.

33 **Sec. 12.** This act is effective upon ratification.