

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1203

Short Title: State Gov't Equal Employment Opportunity. (Public)

Sponsors: Representatives Luebke, Womble (Primary Sponsors); Adams, Alexander, B. Allen, Bell, Carney, Farmer-Butterfield, Fisher, Glazier, Harrison, Hunter, Insko, Jeffus, Jones, Ed Jones, Lucas, Michaux, Miller, Parmon, Pierce, Ross, Wainwright, and Weiss.

Referred to: Rules, Calendar, and Operations of the House.

April 13, 2005

A BILL TO BE ENTITLED

1 AN ACT AMENDING THE STATE PERSONNEL ACT TO INCLUDE SEXUAL
2 ORIENTATION TO THE LIST OF CLASSIFICATIONS COVERED BY THE
3 STATE'S EQUAL EMPLOYMENT OPPORTUNITY LAW.
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5 The General Assembly of North Carolina enacts:

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

7 "**§ 126-16. Equal opportunity for employment and compensation by State**
8 **departments and agencies and local political subdivisions.**

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

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

18 "**§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

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

- 22 (1) Dismissal, demotion, or suspension without pay based upon an alleged
23 violation of G.S. 126-35, if the employee is a career State employee.
24 (2) An alleged unlawful State employment practice constituting
25 discrimination, as proscribed by G.S. 126-36, including:

- 1 a. Denial of promotion, transfer, or training, on account of the
2 employee's age, sex, race, color, national origin, religion, creed,
3 political affiliation, sexual orientation, or handicapping
4 condition as defined by Chapter 168A of the General Statutes.
- 5 b. Demotion, reduction in force, or termination of an employee in
6 retaliation for the employee's opposition to alleged
7 discrimination on account of the employee's age, sex, race,
8 color, national origin, religion, creed, political affiliation, sexual
9 orientation, or handicapping condition as defined by Chapter
10 168A of the General Statutes.
- 11 (3) Retaliation against an employee, as proscribed by G.S. 126-17, for
12 protesting an alleged violation of G.S. 126-16.
- 13 (4) Denial of the veteran's preference granted in accordance with Article
14 13 of this Chapter in initial State employment or in connection with a
15 reduction in force, for an eligible veteran as defined by G.S. 126-81.
- 16 (5) Denial of promotion for failure to post or failure to give priority
17 consideration for promotion or reemployment, to a career State
18 employee as required by G.S. 126-7.1 and G.S. 126-36.2.
- 19 (6) Denial of an employee's request for removal of allegedly inaccurate or
20 misleading information from the employee's personnel file as provided
21 by G.S. 126-25.
- 22 (7) Any retaliatory personnel action that violates G.S. 126-85.
- 23 (8) Denial of promotion in violation of G.S. 126-14.2, where an initial
24 determination found probable cause to believe there has been a
25 violation of G.S. 126-14.2.
- 26 (9) Denial of employment in violation of G.S. 126-14.2, where an initial
27 determination found probable cause to believe that there has been a
28 violation of G.S. 126-14.2.
- 29 (10) Harassment in the workplace based upon age, sex, race, color, national
30 origin, religion, creed, sexual orientation, or handicapping condition,
31 whether the harassment is based upon the creation of a hostile work
32 environment or upon a quid pro quo.
- 33 (11) Violation of any of the following federal statutes as applied to the
34 employee:
- 35 a. The Fair Labor Standards Act, 29 U.S.C. § 201, et seq.
- 36 b. The Age Discrimination in Employment Act, 29 U.S.C. § 621,
37 et seq.
- 38 c. The Family Medical Leave Act, 29 U.S.C. § 2601, et seq.
- 39 d. The Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
- 40 (b) An applicant for initial State employment may file in the Office of
41 Administrative Hearings a contested case under Article 3 of Chapter 150B of the
42 General Statutes based upon:
- 43 (1) Alleged denial of employment in violation of G.S. 126-16.

- 1 (2) Denial of the applicant's request for removal of allegedly inaccurate or
2 misleading information from the personnel file as provided by
3 G.S. 126-25.
- 4 (3) Denial of equal opportunity for employment and compensation on
5 account of the employee's age, sex, race, color, national origin,
6 religion, creed, political affiliation, sexual orientation, or handicapping
7 condition as defined by Chapter 168A of the General Statutes. This
8 subsection with respect to equal opportunity as to age shall be limited
9 to persons who are at least 40 years of age. An applicant may not,
10 however, file a contested case where political affiliation was the reason
11 for the person's nonselection for (i) an exempt policymaking position
12 as defined in G.S. 126-5(b)(3), (ii) a chief deputy or chief
13 administrative assistant position under G.S. 126-5(c)(4), or (iii) a
14 confidential assistant or confidential secretary position under
15 G.S. 126-5(c)(2).
- 16 (4) Denial of the veteran's preference in initial State employment provided
17 by Article 13 of this Chapter, for an eligible veteran as defined by
18 G.S. 126-81.
- 19 (5) Denial of employment in violation of G.S. 126-14.2, where an initial
20 determination found probable cause to believe that there has been a
21 violation of G.S. 126-14.2.

22 (c) In the case of a dispute as to whether a State employee's position is properly
23 exempted from the State Personnel Act under G.S. 126-5, the employee may file in the
24 Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of
25 the General Statutes.

26 (d) A State employee or applicant for State employment may file in the Office of
27 Administrative Hearings a contested case under Article 3 of Chapter 150B of the
28 General Statutes based upon a false accusation regarding, or disciplinary action relating
29 to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

30 (e) Any issue for which appeal to the State Personnel Commission through the
31 filing of a contested case under Article 3 of Chapter 150B of the General Statutes has
32 not been specifically authorized by this section shall not be grounds for a contested case
33 under Chapter 126."

34 **SECTION 3.** G.S. 126-36 reads as rewritten:

35 "**§ 126-36. Appeal of unlawful State employment practice.**

36 (a) Any State employee or former State employee who has reason to believe that
37 employment, promotion, training, or transfer was denied the employee or that demotion,
38 layoff, transfer, or termination of employment was forced upon the employee in
39 retaliation for opposition to alleged discrimination or because of the employee's age,
40 sex, race, color, national origin, religion, creed, political affiliation, sexual orientation,
41 or handicapping condition as defined by G.S. 168A-3 except where specific age, sex or
42 physical requirements constitute a bona fide occupational qualification necessary to
43 proper and efficient administration, shall have the right to appeal directly to the State
44 Personnel Commission.

1 (b) Subject to the requirements of G.S. 126-34, any State employee or former
2 State employee who has reason to believe that the employee has been subjected to any
3 of the following shall have the right to appeal directly to the State Personnel
4 Commission:

5 (1) Harassment in the workplace based upon age, sex, race, color, national
6 origin, religion, creed, sexual orientation, or handicapping condition,
7 whether the harassment is based upon the creation of a hostile work
8 environment or upon a quid pro quo.

9 (2) Retaliation for opposition to harassment in the workplace based upon
10 age, sex, race, color, national origin, religion, creed, sexual orientation,
11 or handicapping condition, whether the harassment is based upon the
12 creation of a hostile work environment or upon a quid pro quo."

13 **SECTION 4.** G.S. 12-3 is amended by adding a new subdivision to read:

14 "(14) 'Sexual orientation'. – The words 'sexual orientation' mean actual or
15 perceived heterosexuality, homosexuality, or bisexuality, or
16 gender-related identity or expression."

17 **SECTION 5.** Nothing in this act shall be construed as requiring the State, or
18 any employer, employment agency, or labor organization to give preferential treatment
19 or special rights based on sexual orientation, as defined by G.S. 12-3(14), or to
20 implement special affirmative action policies or programs based on sexual orientation.

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