

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 807

Short Title: Orange Antidiscrimination.

(Local)

Sponsors: Senator Lee.

Referred to: Local Government and Regional Affairs.

April 12, 1993

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE ORANGE COUNTY CIVIL RIGHTS AUTHORIZING LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. Part 2, Section 6, of Chapter 246 of the 1991 Session Laws is repealed.

Sec. 2. Orange County Civil Rights Ordinance. – (a) The Board of Commissioners of Orange County (Board of Commissioners) may adopt an ordinance (the Ordinance) to prohibit discrimination in employment, housing, and public accommodations on the basis of race, color, religion, sex, national origin, age, disability, marital status, familial status, and veteran status.

The Board of Commissioners may, in the Ordinance, prohibit language or conduct that:

- (1) Is directed at an individual or at a group of individuals based on that individual's or group of individuals' actual or perceived race, color, religion, sex, national origin, age, disability, marital status, familial status, or veteran status;
- (2) Is communicated in a threatening manner; and
- (3) Incites imminent lawless action or tends to incite an immediate breach of the peace.

(b) The Board of Commissioners may, in the Ordinance, adopt procedures and delegate powers to the Orange County Human Relations Commission (the Commission) that are necessary and proper for carrying out and enforcing the Ordinance. To assist in the enforcement of the Ordinance, the Commission may:

- 1 (1) Receive and review complaints that allege a violation of the Ordinance
2 has occurred, is occurring, or is about to occur.
- 3 (2) Conduct investigations into the bases of complaints, including issuing
4 subpoenas compelling the production of documents or compelling
5 witnesses to appear before the Commission to give testimony and
6 taking depositions and serving interrogatories in accordance with the
7 Rules of Civil Procedure of North Carolina. In the event any person
8 refuses to comply with a subpoena or discovery request, the
9 Commission may apply to the Orange County Superior Court
10 (Superior Court) for an order to compel compliance with the subpoena
11 or discovery request. Information and records discovered by the
12 Commission during an investigation or conciliation shall not be
13 subject to the provisions of G.S. 132-6 and G.S. 132-9 until and unless
14 they are offered into evidence in an administrative hearing conducted
15 by the Office of Administrative Hearings or offered into evidence in a
16 judicial proceeding authorized by this section.
- 17 (3) Apply to the Superior Court for mandatory or prohibitory injunctive
18 relief pursuant to Rule 65 of the Rules of Civil Procedure of North
19 Carolina if it determines, after a preliminary investigation, that prompt
20 judicial action is necessary to carry out the purposes of this section.
- 21 (4) Make a determination as to whether there is reasonable cause to
22 believe that an unlawful discriminatory practice has occurred, is
23 occurring, or is about to occur; and if it is determined that there is no
24 reasonable cause, dismiss the complaint.
- 25 (5) Issue a right-to-sue letter to any complainant in instances where the
26 Commission has failed to make a determination on the issue of
27 reasonable cause in a timely manner; determines that reasonable cause
28 does not exist; or where conciliation efforts have failed.
- 29 (6) Attempt to conciliate a resolution of the complaint between the parties.
- 30 (7) Enter into conciliation agreements in instances where conciliation
31 efforts have been successful.
- 32 (8) After conciliation efforts have failed, make application, in its
33 discretion, to the Office of Administrative Hearings for the designation
34 of an administrative law judge to preside over a hearing in cases
35 involving allegedly unlawful employment practices, unlawful public
36 accommodations, or other conduct made unlawful by subsection (a) of
37 this section.
- 38 (9) Make application to the North Carolina Office of Administrative
39 Hearings for the designation of an administrative law judge to preside
40 over a hearing in cases involving allegedly unlawful housing practices.
- 41 (c) The Ordinance may provide that in any case that is referred to the Office of
42 Administrative Hearings, the administrative law judge shall make written findings of
43 fact and conclusions of law and shall issue a recommended decision to the Commission,

1 which decision shall become final and binding unless the Commission acts within 30
2 days of the date of the recommended decision to modify or reverse it.

3 The Ordinance may also provide, in cases where the Commission has
4 determined that reasonable cause exists to believe that a discriminatory housing practice
5 has occurred, is occurring, or is about to occur, that the complainant or the respondent
6 may elect to have the issues decided in a civil action in lieu of an administrative
7 hearing.

8 (d) Subject to subsection (e) of this section, the administrative law judge may
9 recommend the imposition of mandatory and prohibitory injunctive relief,
10 compensatory damages (which, as provided by the 1991 Civil Rights Act, include
11 emotional pain, humiliation, embarrassment, and inconvenience), punitive damages, and
12 any other relief the administrative law judge deems appropriate.

13 (e) Punitive damages may be recommended only if the administrative law
14 judge finds that the respondent engaged in a practice made unlawful under the
15 ordinance with malice or with reckless indifference to the protected rights of the
16 complainant. In cases involving unlawful employment practices, the administrative law
17 judge may recommend reinstatement, hiring, or back pay.

18 (f) In all cases in which the Commission applies to the Office of
19 Administrative Hearings for the designation of an administrative law judge, the
20 Commission shall be the complainant and the case in support of the Commission shall
21 be presented by the Commission's attorney. The administrative law judge has the
22 discretion to recommend that the respondent be awarded reasonable costs and attorneys'
23 fees in the event the respondent prevails.

24 (g) Judicial review of any final agency decision shall be in accordance with
25 Article 4, Chapter 150B of the General Statutes. All petitions for judicial review shall
26 be filed in the Superior Court. The term "agency", whenever used in Article 4 of
27 Chapter 150B, means the Commission.

28 (h) The Ordinance may provide that complainants who receive a right-to-sue
29 letter from the Commission may file an action in the Superior Court against the
30 respondent. In such actions, the Superior Court may impose mandatory and prohibitory
31 injunctive relief, compensatory damages, and punitive damages, and any other
32 appropriate relief to the same extent and subject to the same limitations as applies to any
33 recommended decision made by an administrative law judge.

34 In any action brought in the Superior Court pursuant to the Ordinance, the
35 court may allow the prevailing party reasonable costs and attorneys' fees from the other
36 party or parties. Attorneys' fees shall not be awarded to the Commission. A prevailing
37 respondent may be awarded court costs and reasonable attorneys' fees only upon a
38 showing that the case is frivolous, unreasonable, or without foundation.

39 (i) The Ordinance shall apply to any part of Orange County not within a
40 municipally incorporated city, town, or village. The governing board of a city, town, or
41 village within Orange County may, by resolution, permit an Orange County ordinance
42 adopted pursuant to this act to be applicable within its corporate boundaries. A city,
43 town, or village may, by resolution, withdraw its permission to enforce such an
44 ordinance. If it does so, it shall give written notice to Orange County of its withdrawal

1 of permission. Thirty days after the date Orange County receives the permission
2 withdrawal notice, the county ordinance ceases to be applicable within the city, town, or
3 village.

4 Sec. 3. This section applies only to Orange County.

5 Sec. 4. This act is effective upon ratification.