

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 871

Short Title: Durham City Antidiscrimination.

(Local)

Sponsors: Representatives Michaux; Luebke and Weiss.

Referred to: Local Government I.

March 29, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE THE CITY OF DURHAM TO PROHIBIT
3 DISCRIMINATION IN EMPLOYMENT, PUBLIC ACCOMMODATIONS, AND
4 HOUSING BASED ON CRITERIA IN ADDITION TO RACE, COLOR,
5 NATIONAL ORIGIN, RELIGION, SEX, DISABILITY, AND AGE, AND TO
6 PRESCRIBE THE PROCEDURE FOR THE ADOPTION OF ANY SUCH
7 ORDINANCE.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** The full title of Chapter 227 of the 1993 Session Laws reads as
10 rewritten:

11 "AN ACT TO AUTHORIZE THE CITY OF DURHAM AND DURHAM COUNTY
12 TO PROHIBIT ACTS OF DISCRIMINATION IN EMPLOYMENT AND PUBLIC
13 ACCOMMODATIONS BASED ON RACE, COLOR, NATIONAL ORIGIN,
14 RELIGION, SEX, DISABILITY, OR ~~AGE~~. AGE AND TO AUTHORIZE THE CITY
15 OF DURHAM TO PROHIBIT DISCRIMINATION IN EMPLOYMENT, PUBLIC
16 ACCOMMODATIONS, AND HOUSING BASED ON CRITERIA IN ADDITION TO
17 RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, DISABILITY, AND AGE,
18 AND TO PRESCRIBE THE PROCEDURE FOR THE ADOPTION OF ANY SUCH
19 ORDINANCE."

20 **SECTION 2.** Section 2 of Chapter 227 of the 1993 Session Laws, as
21 amended by Chapter 537 of the 1995 Session Laws, reads as rewritten:

22 "Sec. 2. Authority to adopt ordinances. – A city or county may adopt ordinances to
23 prohibit discrimination in employment and public accommodations based on race, color,
24 national origin, religion, sex, disability, ~~or~~ having attained the age of 40 or more ~~years~~.
25 years, or any other criteria prescribed in an ordinance pursuant to Section 2.2 of this act.
26 To assist in the enforcement of these ordinances, a city or county may create an agency
27 or commission of the city or county ('the Agency') to take any actions and to have any
28 powers as are appropriate and necessary to implement these ordinances including, but

1 not limited to, the powers to: receive; initiate; investigate; seek to conciliate; hold
2 hearings on and pass upon complaints; mediate alleged violations of these ordinances;
3 issue orders against persons it finds, after notice and hearing, to have violated these
4 ordinances; and to seek enforcement of the orders by a court.

5 The General Assembly does not intend to expand the authority or powers of the
6 Agency beyond those prescribed by federal laws or regulations with respect to a specific
7 employer or public accommodation. The Agency may, as part of an enforcing order,
8 require any person to cease and desist from unlawful practices and to engage in
9 additional remedial action as may be appropriate, including, but not limited to, require
10 the person:

- 11 (1) To hire, reinstate, or upgrade aggrieved individuals, with or without
12 back pay;
- 13 (2) To admit aggrieved individuals or to allow aggrieved individuals to
14 participate in guidance programs, apprenticeship training programs,
15 on-the-job training programs, or other occupational training or
16 retraining programs; and to use objective criteria in the admission of
17 any individual to these programs;
- 18 (3) To submit to the Agency, for approval or disapproval, plans to
19 eliminate or reduce imbalance with respect to race, color, national
20 origin, religion, sex, disability, or age;
- 21 (4) To provide technical assistance to aggrieved individuals;
- 22 (5) To report as to the manner of compliance with this act;
- 23 (6) To post notices in conspicuous places in the form prescribed by the
24 Agency;
- 25 (7) To admit or restore an aggrieved individual to a place of public
26 accommodation.

27 When the Commission determines that a respondent has engaged in unlawful
28 intentional discrimination in an employment practice (not an employment practice that
29 is unlawful because of its disparate impact), the Commission may enforce an ordinance
30 adopted pursuant to this act by applying to the superior court of the county in which the
31 city is predominantly located for any appropriate legal and equitable remedies,
32 including, but not limited to, mandatory and prohibitory injunctions and orders of
33 abatement, attorneys' fees, compensatory and punitive damages, and the court may grant
34 such remedies. A complainant shall not recover punitive damages against a respondent
35 unless the complainant demonstrates that the respondent engaged in a discriminatory
36 practice with malice or with reckless indifference to the protected rights of an aggrieved
37 individual under an ordinance adopted pursuant to this act.

38 No compensatory damages shall be awarded for back pay, interest on back pay, or
39 any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964,
40 42 U.S.C. § 2000e-5(g), as amended.

41 If a complainant seeks compensatory or punitive damages in an action brought under
42 an ordinance adopted pursuant to this act, any party may demand a trial by jury."

1 **SECTION 3.** Chapter 227 of the 1993 Session Laws, as amended by
2 Chapter 537 of the 1995 Session Laws, is further amended by adding a new section to
3 read:

4 "Sec. 2.2. An ordinance adopted pursuant to Section 2 of this act may prohibit
5 discrimination in employment and public accommodations based on any criteria in
6 addition to race, color, national origin, religion, sex, disability, or having attained the
7 age of 40 or more years, provided the following procedure is followed with respect to
8 each additional criteria:

- 9 (1) The Agency, created pursuant to Section 2 of this act, shall compile a
10 report in which the Agency documents the facts, events, or
11 occurrences that, in the opinion of the Agency, indicate the need for
12 the additional criteria upon which prohibition of discrimination shall
13 be based.
- 14 (2) The Agency shall make the report available for public inspection and
15 shall hold at least one public hearing at which persons who wish to
16 comment on the report may do so.
- 17 (3) The report, together with any amendments to the report that the
18 Agency may make based upon comments received at the public
19 hearing, shall be transmitted to the city council.
- 20 (4) The city council may consider the report and may cause a proposed
21 ordinance to be prepared that prohibits discrimination based on the
22 criteria specified in the report.
- 23 (5) The city council shall cause the report and the proposed ordinance to
24 be made available for public inspection in the office of the city clerk at
25 least 10 days prior to the date of the public hearing specified in
26 subdivision (6) of this section.
- 27 (6) The city council shall hold at least one public hearing on the proposed
28 ordinance. The public hearing shall be held no sooner than 10 days
29 after the proposed ordinance is made available for public inspection
30 pursuant to subdivision (5) of this section. A notice of the public
31 hearing shall be given at least once in a newspaper having general
32 circulation in the city. The notice shall be published no fewer than five
33 and no more than 10 days before the date of the public hearing.
- 34 (7) If after considering the Agency's report, the proposed ordinance, and
35 the comments made at the public hearing, the city council finds that it
36 is in the public interest to adopt the proposed ordinance, or the
37 proposed ordinance with such amendments as the city council may
38 deem advisable, then the city council may adopt the ordinance or the
39 amended ordinance.
- 40 (8) An ordinance adopted pursuant to this section shall provide that the
41 ordinance will terminate at a time no later than five years after
42 adoption unless extended by further action of the city council. A
43 termination of the ordinance pursuant to this subdivision shall not
44 terminate any action or proceeding under the ordinance that was

1 pending at the time the ordinance terminated. An ordinance extending
2 the effectiveness of the first ordinance need not contain a further
3 termination date and may be adopted without the necessity of
4 following the procedure prescribed in this section."

5 **SECTION 4.** Section 121 of the Charter of the City of Durham, being
6 Chapter 671 of the 1975 Session Laws, added by Chapter 373 of the 1983 Session Laws
7 and as rewritten by Section 1 of Chapter 379 of the 1991 Session Laws, reads as
8 rewritten:

9 "Sec. 121. Equal Housing. The City Council may adopt ordinances prohibiting
10 discrimination in real estate transactions on the basis of race, color, sex, religion,
11 national origin, age, familial status, ~~or handicap in real estate transactions.~~ handicap, or
12 any other criteria prescribed in an ordinance pursuant to Section 121.1 of this Charter.
13 Such ordinances may regulate or prohibit any act, practice, activity or procedure related,
14 directly or indirectly to the sale or rental of public or private housing, which affects or
15 may tend to affect the availability or desirability of housing on an equal basis to all
16 persons; may provide that violations constitute a misdemeanor, and shall be punishable
17 under G.S. 14-4; may subject the offender to civil penalties; and may provide that the
18 City may enforce the ordinances by application to the General Court of Justice, Superior
19 Court Division, for appropriate legal and equitable remedies, including but not limited
20 to, mandatory and prohibitory injunctions and orders of abatement, attorney's fees and
21 not more than one thousand dollars (\$1,000) punitive damages, and the court shall have
22 jurisdiction to grant such remedies."

23 **SECTION 5.** The Charter of the City of Durham, enacted as Chapter 671 of
24 the 1975 Session Laws, as amended, is further amended by adding a new section to
25 read:

26 "Sec. 121.1. An ordinance adopted pursuant to Section 121 of this Charter may
27 prohibit discrimination in real estate transactions based on any criteria in addition to
28 race, color, sex, religion, familial status, or handicap, provided the following procedure
29 is followed with respect to each additional criteria:

- 30 (1) The Committee, created pursuant to Section 123 of this Charter, shall
31 compile a report in which the Committee documents the facts, events,
32 or occurrences that, in the opinion of the Committee, indicate the need
33 for the additional criteria upon which prohibition of discrimination
34 shall be heard.
- 35 (2) The Committee shall make the report available for public inspection
36 and shall hold at least one public hearing at which persons who wish to
37 comment on the report may do so.
- 38 (3) The report, together with any amendments to the report that the
39 Committee may make based upon comments received at the public
40 hearing, shall be transmitted to the city council.
- 41 (4) The city council may consider the report and may cause a proposed
42 ordinance to be prepared that prohibits discrimination based on the
43 criteria specified in the report.

- 1 (5) The city council shall cause the report and the proposed ordinance to
2 be made available for public inspection in the office of the city clerk at
3 least 10 days prior to the date of the public hearing specified in
4 subdivision (6) of this section.
- 5 (6) The city council shall hold at least one public hearing on the proposed
6 ordinance. The public hearing shall be held no fewer than 10 days after
7 the proposed ordinance is made available for public inspection
8 pursuant to subdivision (5) of this section. A notice of the public
9 hearing shall be given at least once in a newspaper having general
10 circulation in the city. The notice shall be published no fewer than five
11 and no more than 10 days before the date of the public hearing.
- 12 (7) If after considering the Committee's report, the proposed ordinance,
13 and the comments made at the public hearing, the city council finds
14 that it is in the public interest to adopt the proposed ordinance, or the
15 proposed ordinance with such amendments as the city council may
16 deem advisable, then the city council may adopt the ordinance.
- 17 (8) An ordinance adopted pursuant to this section shall provide that the
18 ordinance will terminate at a time no later than five years after
19 adoption unless extended by further action of the council. A
20 termination of the ordinance pursuant to this subdivision shall not
21 terminate any action or proceeding under the ordinance that was
22 pending at the time the ordinance terminated. An ordinance extending
23 the effectiveness of the initial ordinance need not contain a further
24 termination date and may be adopted without the necessity of
25 following the procedure prescribed in this section."

26 **SECTION 6.** This act applies to the City of Durham only.

27 **SECTION 7.** This act is effective when it becomes law.