

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H

1

HOUSE BILL 1049

Short Title: Nondiscrimination in State/Teacher Emp. (Public)

Sponsors: Representatives Luebke, Bryant, M. Alexander, Womble (Primary Sponsors);  
Bell, Cotham, Fisher, Hall, Harrell, Harrison, Insko, Lucas, Mackey, Parmon,  
Ross, and Weiss.

Referred to: Education, if favorable, State Government/State Personnel.

April 6, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE PERSONNEL ACT TO INCLUDE SEXUAL  
ORIENTATION AND GENDER IDENTITY OR EXPRESSION TO THE LIST OF  
CLASSIFICATIONS COVERED BY THE STATE'S EQUAL EMPLOYMENT  
OPPORTUNITY LAW AND REQUIRING LOCAL BOARDS OF EDUCATION TO  
ADOPT POLICIES FOR NONDISCRIMINATION IN EMPLOYMENT INCLUDING  
SEXUAL ORIENTATION AND GENDER IDENTITY OR EXPRESSION AMONG THE  
COVERED CLASSIFICATIONS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

(1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.

(2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:

a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, sexual orientation, gender identity or expression, or handicapping condition as defined by Chapter 168A of the General Statutes.



- 1                   b.       Demotion, reduction in force, or termination of an employee in  
2                   retaliation for the employee's opposition to alleged discrimination on  
3                   account of the employee's age, sex, race, color, national origin,  
4                   religion, creed, political affiliation, sexual orientation, gender  
5                   identity or expression, or handicapping condition as defined by  
6                   Chapter 168A of the General Statutes.
- 7                   (3)       Retaliation against an employee, as proscribed by G.S. 126-17, for protesting  
8                   an alleged violation of G.S. 126-16.
- 9                   (4)       Denial of the veteran's preference granted in accordance with Article 13 of  
10                  this Chapter in initial State employment or in connection with a reduction in  
11                  force, for an eligible veteran as defined by G.S. 126-81.
- 12                  (5)       Denial of promotion for failure to post or failure to give priority  
13                  consideration for promotion or reemployment, to a career State employee as  
14                  required by G.S. 126-7.1 and G.S. 126-36.2.
- 15                  (6)       Denial of an employee's request for removal of allegedly inaccurate or  
16                  misleading information from the employee's personnel file as provided by  
17                  G.S. 126-25.
- 18                  (7)       Any retaliatory personnel action that violates G.S. 126-85.
- 19                  (8)       Denial of promotion in violation of G.S. 126-14.2, where an initial  
20                  determination found probable cause to believe there has been a violation of  
21                  G.S. 126-14.2.
- 22                  (9)       Denial of employment in violation of G.S. 126-14.2, where an initial  
23                  determination found probable cause to believe that there has been a violation  
24                  of G.S. 126-14.2.
- 25                  (10)       Harassment in the workplace based upon age, sex, race, color, national  
26                  origin, religion, creed, sexual orientation, gender identity or expression, or  
27                  handicapping condition, whether the harassment is based upon the creation  
28                  of a hostile work environment or upon a quid pro quo.
- 29                  (11)       Violation of any of the following federal statutes as applied to the employee:  
30                   a.       The Fair Labor Standards Act, 29 U.S.C. § 201, et seq.  
31                   b.       The Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq.  
32                   c.       The Family Medical Leave Act, 29 U.S.C. § 2601, et seq.  
33                   d.       The Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
- 34                  (b)       An applicant for initial State employment may file in the Office of Administrative  
35                  Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:  
36                   (1)       Alleged denial of employment in violation of G.S. 126-16.  
37                   (2)       Denial of the applicant's request for removal of allegedly inaccurate or  
38                   misleading information from the personnel file as provided by G.S. 126-25.  
39                   (3)       Denial of equal opportunity for employment and compensation on account  
40                   of the employee's age, sex, race, color, national origin, religion, creed,  
41                   political affiliation, sexual orientation, gender identity or expression, or  
42                   handicapping condition as defined by Chapter 168A of the General Statutes.  
43                   This subsection with respect to equal opportunity as to age shall be limited  
44                   to persons who are at least 40 years of age. An applicant may not, however,  
45                   file a contested case where political affiliation was the reason for the  
46                   person's nonselection for (i) an exempt policymaking position as defined in  
47                   G.S. 126-5(b)(3), (ii) a chief deputy or chief administrative assistant position  
48                   under G.S. 126-5(c)(4), or (iii) a confidential assistant or confidential  
49                   secretary position under G.S. 126-5(c)(2).
- 50                  (4)       Denial of the veteran's preference in initial State employment provided by  
51                  Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.

1 (5) Denial of employment in violation of G.S. 126-14.2, where an initial  
2 determination found probable cause to believe that there has been a violation  
3 of G.S. 126-14.2.

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

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

12 (e) Any issue for which appeal to the State Personnel Commission through the filing of  
13 a contested case under Article 3 of Chapter 150B of the General Statutes has not been  
14 specifically authorized by this section shall not be grounds for a contested case under Chapter  
15 126."

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

17 "**§ 126-36. Appeal of unlawful State employment practice.**

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

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

29 (1) Harassment in the workplace based upon age, sex, race, color, national  
30 origin, religion, creed, sexual orientation, gender identity or expression, or  
31 handicapping condition, whether the harassment is based upon the creation  
32 of a hostile work environment or upon a quid pro quo.

33 (2) Retaliation for opposition to harassment in the workplace based upon age,  
34 sex, race, color, national origin, religion, creed, sexual orientation, gender  
35 identity or expression, or handicapping condition, whether the harassment is  
36 based upon the creation of a hostile work environment or upon a quid pro  
37 quo."

38 **SECTION 4.** Article 22 of Chapter 115C of the General Statutes is amended by  
39 adding a new part to read:

40 "Part 9. Nondiscrimination in School Employment.

41 "**§ 115C-335.10. School personnel nondiscrimination policy.**

42 (a) Each local board of education shall adopt a policy of nondiscrimination in its  
43 personnel policies and practices on the basis of race, religion, color, national origin, age, sex,  
44 sexual orientation, gender identity or expression, or disability.

45 (b) For the purposes of this section, the term "school personnel" means any (i)  
46 employee of a local board of education whether full-time or part-time or (ii) independent  
47 contractor or employee of an independent contractor of a local board of education, if the  
48 independent contractor carries out duties customarily performed by school personnel, whether  
49 paid with federal, State, local, or other funds. The term includes substitute teachers, driver  
50 training teachers, bus drivers, clerical staff, and custodians."

1           **SECTION 5.** Nothing in this act shall be construed as requiring the State, or any  
2 employer, employment agency, or labor organization to give preferential treatment or special  
3 rights based on sexual orientation, gender identity or expression, or to implement special  
4 affirmative action policies or programs based on sexual orientation, gender identity or  
5 expression.

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