

April 12, 1991

A BILL TO BE ENTITLED

CONFIDENTIAL

AN ACT TO PROHIBIT EMPLOYMENT DISCRIMINATION BASED ON THE USE AND ENJOYMENT OF TOBACCO PRODUCTS AND TO CLARIFY THE APPLICABILITY OF LAWS TO AVOID THEIR CONFLICTING INTERPRETATION.

The General Assembly of North Carolina enacts:

Section 1 of Article 49A of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 49A.

"Equal Employment Practices.

"Part I. General.

143-422.1. Short title.

This Article shall be known and may be cited as the Equal Employment Practices Act.

143-422.2. Legislative declaration.

It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general.

143-422.3. Investigations; conciliations.

The Human Relations Commission in the Department of Administration shall have the authority to receive charges of discrimination from the Equal Employment Opportunity Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this process, the agency shall use its good offices to effect an amicable resolution of the charges of discrimination."

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Sec. 2. Chapter 143 of the General Statutes is amended by adding to Article 49A immediately following Part I a new Part II to read:

"Part II. Discrimination In Employment Based On Use Of Tobacco Products.

"143-422.4. Declaration of public policy regarding discriminatory employment practice based on the use of tobacco products. The General Assembly declares that the practice of discriminating in employment on the basis of the use of tobacco products by a disparity of wages, hiring, promotion, or termination, or conditions of employment, discriminates against persons who use tobacco products; leads to low worker morale, high turnover, and labor unrest; discourages workers paid at the lesser rates from training for higher level jobs; curtails employment opportunities; decreases mobility of workers and increases labor costs; and prevents optimum utilization of the labor resources available to employers. It is declared to be the policy of the State of North Carolina to eliminate, by the exercise of the police power of this State, discriminatory wage and employment practices based upon the use of tobacco products.

143-422.5. Definitions. As used in this Part, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) `Employ` means to permit to work.
- (2) `Employee` means any individual employed by an employer, other than domestic employees, and includes individuals employed by the State or any of its political subdivisions, including public bodies.
- (3) `Employer` means any person employing one or more employees and acting directly or indirectly in the interest of an employer in relation to an employee. The term `employer` as used in this Part, means an employer who is engaged in intrastate or interstate commerce.
- (4) `Tobacco product` means any derivative of chiefly American plants of the nightshade family and of the genus Nicotiana. A product is typically prepared from the leaves of the plant and manufactured into items such as, but not limited to, smoking tobacco, cigars, cigarettes, snuff, and chewing tobacco.

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(5) `Use` of a tobacco product shall include, but not be limited to, the actual practice of smoking or chewing as well as possession of a lighted or unlighted product.

"143-422.6. Prohibition of discriminatory employment practices; penalty for discharge of or discrimination against complainant.

(a) No employer having employees subject to any provisions of this Part shall discriminate, within any establishment in which such employees are employed, between employees on the basis of the use or non-use of tobacco products outside the place of his or her employment for equal work in jobs which require equal skill, effort, and responsibility and which are performed under similar working conditions. Prohibited discrimination shall include, but not be limited to, taking into account an employee's use or non-use of tobacco products outside the place of his or her employment in any of the following activities:

(i) Paying wage rates to employees for equal work in jobs which require equal skill, effort, and responsibility and which are performed under similar working conditions;

(ii) Hiring, terminating, demoting, or promoting an employee;

(iii) Altering any conditions, privileges, or prerequisites of employment.

An employer who is paying a wage or benefits rate differential or otherwise discriminating with respect to employment in violation of this subsection shall not, in order to comply with this subsection, alter the wage or benefits rate or change any condition or employment of any employee.

(b) It shall be unlawful for any person to cause or attempt to cause an employer to discriminate against any employee in violation of this Part.

(c) It shall be unlawful for any person to discharge or in any manner discriminate against any employee covered by this Part because such employee has made a complaint to his employer or any other person or has instituted or caused to be instituted any proceeding or suit under or related to this Part or has testified or is about to testify in any such proceedings. Any person who violates any provision of this Part shall, upon conviction, be punished by a fine of not more than twenty-five dollars (\$25.00).

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143-422.7. Remedies of an aggrieved employee; when action may be commenced.

(a) Any employer who violates G.S. 143-422.6 shall be liable to the employee affected in the amount of his or her unpaid wages and shall be required to reinstate the aggrieved employee to the same or a similar position of employment.

(b) Court action pursuant to this Part may be commenced no later than two years after the cause of action accrues.

143-422.8. Application.

Except as otherwise provided herein, this Part shall supersede and prohibit the enactment of any other local laws, rules and regulations of state or local agencies, and local ordinances regulating the use of tobacco products, which are more restrictive than this Part.

Sec. 3. Chapter 14 of the General Statutes is amended to add a new Article to read:

"ARTICLE 61.

"Smoking in public places.

"14-458. Smoking in specific public places a misdemeanor.

(a) A person who smokes tobacco in any form in any of the following public places shall be guilty of a misdemeanor:

- (1) An enclosed elevator which is used by or open to the public and which is clearly designated by a no-smoking sign;
- (2) Any place on a public transportation vehicle which is used by the public and which is clearly designated by a no-smoking sign;
- (3) Any public library which is clearly designated by a no-smoking sign;
- (4) Any museum which is clearly designated by a no-smoking sign; or
- (5) Any area which is used by or open to the public and which is clearly designated by a no-smoking sign.

(b) A person convicted of violating subsection (a) of this section shall be punished by a fine of not more than twenty-five dollars (\$25.00).

"14-459. Legislative intent.

(a) It is the intent of the General Assembly to address the needs and concerns of both smokers and non-smokers in buildings which are used by and open to the public and by providing for designated smoking areas.

(b) As used in this Article, unless the context clearly provides otherwise, the following terms have the meaning specified:

(1) `Government` shall mean the State of North Carolina or any political subdivision thereof, any municipality, or any authority or body created by any statute, ordinance, or regulation of any such entity.

(2) `Public meeting` means all government and private meetings open to the public.

(3) `Public buildings` means the following enclosed indoor areas which are generally open to the licensed or invited public:

- (A) Lobby areas in arenas;
- (B) Lobby areas in auditoriums;
- (C) Government buildings;
- (D) ~~Jury waiting and deliberation rooms;~~
- (E) Nursing homes and Rest homes;
- (F) Restaurants;
- (G) Public mass transportation terminals;
- (H) Places of employment in government buildings; and
- (I) Tobacco manufacturing and processing facilities.

(4) `Restaurant` means any building, structure, or area, having a seating capacity of fifty or more patrons, where food is available for eating on the premises, in consideration of payment. In determining the extent of the seating capacity for purposes of this Article, the following shall not be included as seating capacity: (i) seats in any bar or lounge area of a restaurant and (ii) seats in any separate room or section of a restaurant which is used exclusively for private functions.

(5) `Smoking` means use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

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(6) `Smoking area` means any designated area meeting the requirements provided for in subsections (d) and (e) of this section; provided, however, that such area shall not include any area where smoking would not be permitted pursuant to the State minimum fire safety standards pursuant to Chapter 58, Chapter 153A, or Chapter 160A of the General Statutes.

(c) No adult person shall smoke in a public building or at a public meeting except in a designated smoking area. The person in charge of a public building or meeting may establish non-smoking areas. If non-smoking areas are established, at least twenty-five percent of the interior space of equal quality to that of the non-smoking space shall be designated as a smoking area; except that a restaurant may be designated a smoking area in its entirety or a non-smoking area in its entirety. Any non-profit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public shall be exempt from the provisions of this Article. Tobacco manufacturing and processing facilities shall be exempt from any prohibition against the use of tobacco products. Where a smoking area is designated, existing physical barriers and ventilation systems shall be used where appropriate to minimize smoke in adjacent non-smoking areas. This provision shall not be construed to require fixed structural or other physical modifications in providing these areas or to require installation or operation of any heating, ventilating, and air-conditioning system in any manner which adds expense.

(d) The person in charge of a public building shall conspicuously post or cause to be posted, in any area designated as a smoking or non-smoking area, signs stating that smoking is or is not permitted in such area.

(e) A person convicted of violating subsection (c) of this section shall be punished by a fine of not more than twenty-five dollars (\$25.00).

(f) Except as otherwise provided herein, this Article shall supersede and prohibit the enactment of any other local laws, rules and regulations of state or local agencies, and local ordinances regulating smoking and the use of unlighted tobacco products, which are more restrictive than this Article."

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SEVERABILITY CLAUSE

Sec. 4. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of the act which can be given effect without the invalid provision.

EFFECTIVE DATE

Sec. 5. This act shall become effective October 1, 1991.