

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

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**SENATE BILL 1007**

Short Title: State Government EEO.

(Public)

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Sponsors: Senators Gulley; Dorsett, Kinnaird, and Lucas.

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Referred to: Judiciary I.

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April 3, 2003

A BILL TO BE ENTITLED  
AN ACT AMENDING THE STATE PERSONNEL ACT TO INCLUDE SEXUAL  
ORIENTATION TO THE LIST OF CLASSIFICATIONS COVERED BY THE  
STATE'S EQUAL EMPLOYMENT OPPORTUNITY LAW.

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, 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, 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  
3                   discrimination on account of the employee's age, sex, race,  
4                   color, national origin, religion, creed, political affiliation, sexual  
5                   orientation, or handicapping condition as defined by Chapter  
6                   168A of the General Statutes.
- 7                   (3)    Retaliation against an employee, as proscribed by G.S. 126-17, for  
8                   protesting an alleged violation of G.S. 126-16.
- 9                   (4)    Denial of the veteran's preference granted in accordance with Article  
10                  13 of this Chapter in initial State employment or in connection with a  
11                  reduction in 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  
14                  employee as 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  
17                  by 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  
21                  violation of 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  
24                  violation 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, or handicapping condition,  
27                  whether the harassment is based upon the creation of a hostile work  
28                  environment or upon a quid pro quo.
- 29                  (11)   Violation of any of the following federal statutes as applied to the  
30                  employee:
- 31                   a.     The Fair Labor Standards Act, 29 U.S.C. § 201, et seq.
- 32                   b.     The Age Discrimination in Employment Act, 29 U.S.C. § 621,  
33                   et seq.
- 34                   c.     The Family Medical Leave Act, 29 U.S.C. § 2601, et seq.
- 35                   d.     The Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
- 36                  (b)    An applicant for initial State employment may file in the Office of  
37                  Administrative Hearings a contested case under Article 3 of Chapter 150B of the  
38                  General Statutes based upon:
- 39                   (1)    Alleged denial of employment in violation of G.S. 126-16.
- 40                   (2)    Denial of the applicant's request for removal of allegedly inaccurate or  
41                   misleading information from the personnel file as provided by G.S.  
42                   126-25.
- 43                   (3)    Denial of equal opportunity for employment and compensation on  
44                   account of the employee's age, sex, race, color, national origin,

1 religion, creed, political affiliation, sexual orientation or handicapping  
2 condition as defined by Chapter 168A of the General Statutes. This  
3 subsection with respect to equal opportunity as to age shall be limited  
4 to persons who are at least 40 years of age. An applicant may not,  
5 however, file a contested case where political affiliation was the reason  
6 for the person's nonselection for (i) an exempt policymaking position  
7 as defined in G.S. 126-5(b)(3), (ii) a chief deputy or chief  
8 administrative assistant position under G.S. 126-5(c)(4), or (iii) a  
9 confidential assistant or confidential secretary position under G.S.  
10 126-5(c)(2).

11 (4) Denial of the veteran's preference in initial State employment provided  
12 by Article 13 of this Chapter, for an eligible veteran as defined by G.S.  
13 126-81.

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

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

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

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

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

30 "**§ 126-36. Appeal of unlawful State employment practice.**

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

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

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

9           **SECTION 4.** This act is effective when it becomes law.