

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 2584

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DATE	D-PG	OFFICIAL STATUS
03/10/2016	4965	Introduction and first reading Referred to Judiciary
03/17/2016	5125	Author added Limmer
04/11/2016		Comm report: To pass as amended Second reading

A bill for an act

1.1 relating to human rights; establishing requirements for disability discrimination
 1.2 claims related to architectural barriers; requiring certain notices in building
 1.3 inspection reports; amending Minnesota Statutes 2014, sections 326B.16, by
 1.4 adding a subdivision; 363A.28, subdivision 3; proposing coding for new law
 1.5 in Minnesota Statutes, chapter 363A.
 1.6

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2014, section 326B.16, is amended by adding a
 1.9 subdivision to read:

1.10 Subd. 5. **Notice of scope of compliance assessment.** If compliance with
 1.11 accessibility requirements under law, as defined in section 363A.331, subdivision 1, is
 1.12 not included as part of a state or local building inspection report issued to a place of
 1.13 public accommodation, the report must:

1.14 (1) inform the recipient that the report does not contain an assessment of compliance
 1.15 with those requirements; and

1.16 (2) refer the recipient to the Web site of the State Council on Disability for
 1.17 information and resources regarding accessibility requirements.

1.18 **EFFECTIVE DATE.** This section is effective August 1, 2017.

1.19 Sec. 2. Minnesota Statutes 2014, section 363A.28, subdivision 3, is amended to read:

1.20 Subd. 3. **For filing claim; filing options.** (a) A claim of an unfair discriminatory
 1.21 practice must be brought as a civil action pursuant to section 363A.33, subdivision 1, filed
 1.22 in a charge with a local commission pursuant to section 363A.07, subdivision 3, or filed in
 1.23 a charge with the commissioner within one year after the occurrence of the practice.

2.1 **(b)** The running of the one-year limitation period is suspended during the time a
 2.2 potential charging party and respondent are voluntarily engaged in a dispute resolution
 2.3 process involving a claim of unlawful discrimination under this chapter, including
 2.4 arbitration, conciliation, mediation or grievance procedures pursuant to a collective
 2.5 bargaining agreement or statutory, charter, ordinance provisions for a civil service or
 2.6 other employment system or a school board sexual harassment or sexual violence policy.
 2.7 A potential respondent who participates in such a process with a potential charging
 2.8 party before a charge is filed or a civil action is brought shall notify the department and
 2.9 the charging party in writing of the participation in the process and the date the process
 2.10 commenced and shall also notify the department and the charging party of the ending date
 2.11 of the process. A respondent who fails to provide this notification is barred from raising
 2.12 the defense that the statute of limitations has run unless one year plus a period of time
 2.13 equal to the suspension period has passed.

2.14 **(c)** The running of the one-year limitation period is suspended during the time period
 2.15 provided for in the notice under section 363A.331, subdivision 2.

2.16 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.17 Sec. 3. **[363A.331] ACTIONS INVOLVING ARCHITECTURAL BARRIERS**
 2.18 **THAT LIMIT ACCESSIBILITY.**

2.19 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this
 2.20 section.

2.21 (b) "Accessibility requirements under law" means requirements governing removal
 2.22 of architectural barriers that limit access to public accommodations by persons with
 2.23 disabilities under the following laws or rules:

2.24 (1) section 363A.11, subdivision 3, clause (4) or (5);

2.25 (2) United States Code, title 42, section 12182, paragraph (b), clause (2),
 2.26 subparagraph (A), subclause (iv) or (v); or

2.27 (3) Code of Federal Regulations, title 28, section 36.304 or 36.305.

2.28 (c) "Certified professional" means:

2.29 (1) an individual who is certified under section 326B.133, subdivision 3a, paragraph

2.30 (d); or

2.31 (2) a licensed, registered, or otherwise certified professional with demonstrated
 2.32 knowledge of accessibility requirements under law.

2.33 (d) "Easily accomplishable" means the types of barriers that are enumerated in Code
 2.34 of Federal Regulations, title 28, section 36.304, paragraph (b).

3.1 Subd. 2. **Notice of architectural barrier.** (a) A notice sent before filing a civil
3.2 action with the court by an attorney representing a person who alleges that a person
3.3 required to comply with section 363A.11, subdivision 3, has violated an accessibility
3.4 requirement under law when a remedy is easily accomplishable must:

3.5 (1) specify the architectural barrier that is the subject of the alleged violation and its
3.6 location on the premises;

3.7 (2) cite the law alleged to be violated; and

3.8 (3) provide a reasonable time to respond, which must be no less than 30 days.

3.9 (b) A notice described in paragraph (a) must not include a request or demand for
3.10 money or an offer or agreement to accept money, but may offer to engage in settlement
3.11 negotiations before litigation.

3.12 (c) This subdivision does not apply to:

3.13 (1) a person who is not represented by an attorney; or

3.14 (2) attorneys representing the state or a political subdivision of the state.

3.15 Subd. 3. **When civil action may be filed or pursued.** (a) If a notice has been sent
3.16 under subdivision 2, a civil action may not be filed or pursued by the person alleging the
3.17 violation if, within 60 days of receipt of the notice, the person required to comply with
3.18 section 363A.11, subdivision 3:

3.19 (1) produces a barrier removal audit report prepared by a certified professional
3.20 finding that the alleged architectural barrier does not violate accessibility requirements
3.21 under law or that compliance with accessibility requirements under law is not readily
3.22 achievable or cannot be accomplished by alternative means; or

3.23 (2) removes the architectural barrier in a manner that complies with accessibility
3.24 requirements under law and provides reasonable proof of the removal to the attorney
3.25 representing the person alleging the violation. If extenuating circumstances make it
3.26 impossible to remove the barrier within 60 days of receipt of the notice, the plaintiff and
3.27 the defendant may agree on a deadline for removal of the barrier. If the plaintiff and the
3.28 defendant cannot agree, the civil action may proceed.

3.29 (b) The plaintiff is entitled to reasonable attorney fees for the provision of the notice
3.30 and investigation of the validity of the claim.

3.31 (c) Nothing in this subdivision or subdivision 2 bars a person from bringing an
3.32 action if:

3.33 (1) a plaintiff believes a potential defendant has failed to comply with a timetable for
3.34 completion of a plan to remove an architectural barrier;

3.35 (2) a person is challenging a finding contained in an audit prepared by a certified
3.36 professional;

4.1 (3) a person has a claim for damages resulting from an injury; or

4.2 (4) a person is filing charges pursuant to section 363A.28.

4.3 Subd. 4. **Affirmative defense; challenging audit.** (a) In a civil action brought
4.4 against a person required to comply with section 363A.11, subdivision 3, for the failure to
4.5 remove an architectural barrier that can be removed in an easily accomplishable manner,
4.6 the defendant has an affirmative defense to the action if the defendant demonstrates that:

4.7 (1) the architectural barrier has been removed in a manner that complies with
4.8 accessibility requirements under law;

4.9 (2) compliance with the accessibility requirements under law is not readily
4.10 achievable or cannot be accomplished by alternative means; or

4.11 (3) the alleged architectural barrier does not violate accessibility requirements
4.12 under law.

4.13 (b) In a civil action brought against a person required to comply with section
4.14 363A.11, subdivision 3, a plaintiff challenging a finding in an audit, performed by a
4.15 certified professional, that an alleged architectural barrier complies with accessibility
4.16 requirements under law, or that compliance is not readily achievable or alternative means
4.17 cannot be employed, has the burden to show that the architectural barrier does not comply
4.18 with those accessibility requirements or that compliance is readily achievable or can be
4.19 accomplished by alternative means.

4.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.