

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

850R0247

HOUSE BILL NO. 1144

Introduced by: Representatives Peters, Blake, Cutler, Dennert, Engels, Fargen, Gibson, Hunhoff (Bernie), Krebs, McLaughlin, Romkema, Solberg, Thompson, Turbiville, Vanderlinde, and Wismer and Senators Turbak Berry, Abdallah, Adelstein, Bradford, Jerstad, Maher, Merchant, Nelson, Nesselhuf, and Tieszen

1 FOR AN ACT ENTITLED, An Act to revise the Human Relations Act to include additional
2 categories of persons.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 20-13-1 be amended to read as follows:

5 20-13-1. Terms used in this chapter mean:

- 6 (1) "Commission," the South Dakota State Commission of Human Rights;
- 7 (2) "Commissioner," a member of the commission;
- 8 (3) "Court," the circuit court in and for the judicial circuit of the State of South Dakota
9 in which the alleged unfair or discriminatory practice occurred;
- 10 (4) "Disability," a physical or mental impairment of a person resulting from disease,
11 injury, congenital condition of birth, or functional disorder which substantially limits
12 one or more of the person's major life functions; a record of having such an
13 impairment; or being regarded as having such an impairment which:



- 1 (a) For purposes of §§ 20-13-10 to 20-13-17, inclusive, is unrelated to ~~an~~
2 ~~individual's~~ a person's ability to perform the major duties of a particular job or
3 position, or is unrelated to ~~an individual's~~ a person's qualifications for
4 employment or promotion;
- 5 (b) For purposes of §§ 20-13-20 to 20-13-21.1, inclusive, is unrelated to ~~an~~
6 ~~individual's~~ a person's ability to acquire, rent, or maintain property;
- 7 (c) For purposes of §§ 20-13-22 to 20-13-25, inclusive, is unrelated to ~~an~~
8 ~~individual's~~ a person's ability to utilize and benefit from educational
9 opportunities, programs, and facilities at an educational institution.

10 This term does not include current illegal use of or addiction to marijuana as defined
11 in subdivision 22-42-1(7) or a controlled substance as defined in subdivision 22-42-
12 1(1);

- 13 (5) "Educational institution," any public or private institution of education and includes
14 an academy, college, elementary or secondary school, extension course, kindergarten,
15 nursery, school system, and any business, nursing, professional, secretarial, technical,
16 or vocational school, and includes any agent of such institutions;
- 17 (6) "Employee," any person who performs services for any employer for compensation,
18 whether in the form of wages, salary, commission, or otherwise;
- 19 (7) "Employer," any person within the State of South Dakota who hires or employs any
20 employee, and any person wherever situated who hires or employs any employee
21 whose services are to be partially or wholly performed in the State of South Dakota;
- 22 (8) "Employment agency," any person regularly undertaking, with or without
23 compensation, to procure employees for an employer or to procure for employees
24 opportunities to work for an employer and includes any agent of such a person;

- 1 (9) "Familial status,"the relationship of individuals by birth, adoption, or guardianship
2 who are domiciled together;
- 3 (9A) "Gender identity," the gender-related identity of a person, regardless of the person's
4 assigned sex at birth;
- 5 (10) "Labor organization," includes any person, employee representation committee, plan
6 in which employees participate, or other organization which exists wholly or in part
7 for the purpose of dealing with employers concerning grievances, labor disputes,
8 wages, rates of pay, hours, or other terms or conditions of employment;
- 9 (11) "Person," includes one or more individuals, partnerships, associations, limited
10 liability companies, corporations, unincorporated organizations, mutual companies,
11 joint stock companies, trusts, agents, legal representatives, trustees, trustees in
12 bankruptcy, receivers, labor organizations, public bodies, public corporations, and
13 the State of South Dakota, and all political subdivisions and agencies thereof;
- 14 (12) "Public accommodations," any place, establishment, or facility of whatever kind,
15 nature, or class that caters or offers services, facilities, or goods to the general public
16 for a fee, charge, or gratuitously. Public accommodation does not mean any bona fide
17 private club or other place, establishment, or facility which is by its nature distinctly
18 private, except when such distinctly private place, establishment, or facility caters or
19 offers services, facilities, or goods to the general public for fee or charge or
20 gratuitously, it ~~shall be deemed~~ is a public accommodation during such period of use;
- 21 (13) "Public service," any public facility, department, agency, board, or commission,
22 owned, operated, or managed by or on behalf of the State of South Dakota, any
23 political subdivision thereof, or any other public corporation;
- 24 (14) "Real estate broker" and "real estate ~~salesman~~ salesperson," real estate broker and

1 real estate ~~salesman~~ salesperson as defined by ~~§ 36-21A-6~~ or as licensed pursuant to
2 ~~§ 36-21A-47~~ in chapter 36-21A;

3 (15) "Real property," any right, title, interest in or to the possession, ownership,
4 enjoyment, or occupancy of any parcel of land, any building situated thereon, or any
5 portion of such building;

6 ~~(15A) "Sexual orientation," homosexuality, heterosexuality, or bisexuality;~~

7 (16) "Unfair or discriminatory practice," any act or attempted act which because of race,
8 color, creed, religion, age, sex, sexual orientation, gender identity, ancestry, veteran
9 or military status, disability, or national origin accords unequal treatment or
10 separation or segregation of any person, or denies, prevents, limits, or otherwise
11 adversely affects, or if accomplished would deny, prevent, limit, or otherwise
12 adversely affect, the benefit or enjoyment by any person of employment, labor union
13 membership, housing accommodations, property rights, education, public
14 accommodations, ~~and~~ or public services;

15 ~~(17) "Veteran or military status," a person's status as a member of the United States armed~~
16 ~~forces or veteran of the United States armed forces.~~

17 Section 2. That § 20-13-10 be amended to read as follows:

18 20-13-10. It is an unfair or discriminatory practice for any person, because of race, color,
19 creed, religion, age, sex, sexual orientation, gender identity, ancestry, veteran or military status,
20 disability, or national origin, to fail or refuse to hire, to discharge an employee, or to accord
21 adverse or unequal treatment to any person or employee with respect to application, hiring,
22 training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or any term or
23 condition of employment.

24 Section 3. That § 20-13-11 be amended to read as follows:

1 20-13-11. It is an unfair or discriminatory practice for any employment agency, because of
2 race, color, creed, religion, age, sex, sexual orientation, gender identity, ancestry, veteran or
3 military status, disability, or national origin, to accord adverse or unequal treatment to any
4 person in connection with any application for employment, any referral, or any request for
5 assistance in procurement of employees, or to accept any listing of employment on such a basis.

6 Section 4. That § 20-13-12 be amended to read as follows:

7 20-13-12. It is an unfair or discriminatory practice for any labor organization, because of
8 race, color, creed, religion, age, sex, sexual orientation, gender identity, ancestry, veteran or
9 military status, disability, or national origin, to deny full and equal membership rights to an
10 applicant for membership or to a member; to expel, suspend, or otherwise discipline a member;
11 or to accord adverse, unlawful, or unequal treatment to any person with respect to that person's
12 hiring, apprenticeship, training, tenure, compensation, upgrading, layoff, or any term or
13 condition of employment.

14 Section 5. That § 20-13-20 be amended to read as follows:

15 20-13-20. It is an unfair or discriminatory practice for any owner of rights to housing or real
16 property, or any person acting for an owner, with or without compensation, including any person
17 licensed as a real estate broker or ~~salesman~~ salesperson, attorney, auctioneer, agent, or
18 representative by power of attorney or appointment, or to any person acting under court order,
19 deed of trust, or will:

- 20 (1) To refuse to sell, rent, lease, assign, sublease, or otherwise transfer any real property
21 or housing accommodation or part, portion, or interest therein, to any person because
22 of the race, color, creed, religion, age, sex, sexual orientation, gender identity,
23 ancestry, veteran or military status, disability, familial status, or national origin of the
24 person or persons intending to reside there;

- 1 (2) To discriminate against any person because of that person's race, color, creed,
2 religion, age, sex, sexual orientation, gender identity, ancestry, veteran or military
3 status, disability, familial status, or national origin, in the terms, conditions, or
4 privileges of the sale, rental, lease, assignment, sublease, or other transfer of any real
5 property or housing accommodation or any part, portion, or interest therein;
- 6 (3) To directly or indirectly advertise, or to indicate or publicize in any other manner that
7 the purchase, rental, lease, assignment, sublease, or other transfer of any real property
8 or housing accommodation or any part, portion or interest therein, by persons of any
9 particular race, color, creed, religion, age, sex, sexual orientation, gender identity,
10 ancestry, veteran or military status, disability, familial status, or national origin, is
11 unwelcome, objectionable, not acceptable, or not solicited;
- 12 (4) To refuse to permit, at the expense of the disabled person, reasonable modifications
13 of existing property that may be necessary to afford full enjoyment of property. The
14 landlord may, where it is reasonable to do so, condition permission for a modification
15 on the renter's agreeing to restore the premises to the condition that existed prior to
16 the modification, reasonable wear and tear excepted.

17 The provisions of subdivisions (1), (2), and (4) do not apply to rooms or units in dwellings
18 that contain living quarters for no more than two families living independently of each other,
19 if the owner maintains and occupies one of the living quarters as the owner's residence.

20 This section does not apply to dormitory residences maintained by public or private schools,
21 colleges, and universities for the educational benefit and convenience of unmarried students or
22 to dwellings occupied by fraternities or sororities officially recognized by such institutions.

23 Nothing in this statute may be construed to displace federal, state, or local guidelines setting
24 reasonable standards governing maximum numbers of occupants.

1 Section 6. That § 20-13-20.1 be amended to read as follows:

2 20-13-20.1. For the purposes of determining discrimination based on familial status, a
3 family is one or more ~~individuals~~ persons under the age of eighteen who are domiciled with
4 their parent, legal custodian, or person granted custody with permission of the parent or
5 custodian. This definition includes a person who is pregnant or in the process of securing
6 custody of a person under the age of eighteen years. Discrimination based on familial status
7 applies to housing accommodations only.

8 Section 7. That § 20-13-21 be amended to read as follows:

9 20-13-21. It is an unfair or discriminatory practice for any person, bank, banking
10 organization, mortgage company, insurance company, or other financial institution or lender to
11 whom application is made for financial assistance for the purchase, lease, acquisition,
12 construction, rehabilitation, repair, or maintenance of any real property or any agent or employee
13 thereof, to discriminate against any person or group of persons, because of the race, color, creed,
14 religion, age, sex, sexual orientation, gender identity, ancestry, veteran or military status,
15 disability, or national origin of such person or group of persons or of the prospective occupants
16 or tenants of such real property in the granting, withholding, extending, modifying, renewing,
17 or in the rates, terms, conditions, or privileges of any such financial assistance or in the
18 extension of services in connection therewith.

19 Section 8. That § 20-13-22 be amended to read as follows:

20 20-13-22. It is an unfair or discriminatory practice for any educational institution:

21 (1) To discriminate in any manner in its full use or in its benefits, or in its services
22 against any ~~individual~~ person because of race, color, creed, religion, age, sex, sexual
23 orientation, gender identity, ancestry, veteran or military status, disability, or national
24 origin.

1 (2) To include, expel, limit, or otherwise discriminate against any ~~individual~~ person
2 seeking admission as a student, or an individual enrolled as a student because of race,
3 color, creed, religion, age, sex, sexual orientation, gender identity, ancestry, veteran
4 or military status, disability, or national origin.

5 (3) To make or use a written or oral inquiry, or form of application for admission that
6 elicits or attempts to elicit information, or to make or keep a record, concerning the
7 race, color, creed, religion, ancestry, sexual orientation, disability, or national origin
8 of an applicant for admission except as may be permitted by ~~regulations~~ rules of the
9 commission of human rights.

10 Segregation by sex of athletic activities offered by an educational institution does not
11 constitute discrimination on the basis of sex in violation of this chapter if the opportunity to
12 participate in athletic activities offered by the educational institution is substantially equal for
13 both sexes.

14 This section does not apply to any bona fide religious institution which has a qualification
15 based on religion if such qualification is related to a bona fide religious purpose.

16 Section 9. That § 20-13-23 be amended to read as follows:

17 20-13-23. It ~~shall be~~ is an unfair or discriminatory practice for any person engaged in the
18 provision of public accommodations because of race, color, creed, religion, age, sex, sexual
19 orientation, gender identity, ancestry, veteran or military status, disability, or national origin, to
20 fail or refuse to provide to any person access to the use of and benefit from the services and
21 facilities of such public accommodations; or to accord adverse, unlawful, or unequal treatment
22 to any person with respect to the availability of such services and facilities, the price or other
23 consideration therefor, the scope and equality thereof, or the terms and conditions under which
24 the same are made available, including terms and conditions relating to credit, payment,

1 warranties, delivery, installation, and repair.

2 Section 10. That § 20-13-24 be amended to read as follows:

3 20-13-24. It is an unfair or discriminatory practice for any person engaged in the provision
4 of public services, by reason of race, color, creed, religion, age, sex, sexual orientation, gender
5 identity, ancestry, veteran or military status, disability, or national origin, to fail or refuse to
6 provide to any person access to the use of and benefit thereof, or to provide adverse or unequal
7 treatment to any person in connection therewith.

8 Section 11. That § 20-13-25 be amended to read as follows:

9 20-13-25. It is an unfair or discriminatory practice for any person directly or indirectly to
10 advertise or in any other manner indicate or publicize that the patronage of persons of any
11 particular race, color, creed, religion, age, sex, sexual orientation, gender identity, ancestry,
12 veteran or military status, disability, or national origin is unwelcome, objectionable, not
13 acceptable, or not solicited.