

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

454S0398

SENATE COMMERCE AND ENERGY ENGROSSED NO. **SB 161** - 2/17/2011

Introduced by: Senators Buhl, Adelstein, Bradford, Frerichs, Maher, Peters, Sutton, Tieszen,
and Vehle and Representatives Kloucek, Abdallah, Blake, Bolin, Deelstra,
Elliott, Feinstein, Gibson, Lucas, Street, and Stricherz

1 FOR AN ACT ENTITLED, An Act to prohibit certain unfair or discriminatory practices based
2 on veteran or military status.

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:

14 (a) For purposes of §§ 20-13-10 to 20-13-17, inclusive, is unrelated to an



1 ~~individual's~~ a person's ability to perform the major duties of a particular job or
2 position, or is unrelated to ~~an individual's~~ a person's qualifications for
3 employment or promotion;

4 (b) For purposes of §§ 20-13-20 to 20-13-21.1, inclusive, is unrelated to ~~an~~
5 ~~individual's~~ a person's ability to acquire, rent, or maintain property;

6 (c) For purposes of §§ 20-13-22 to 20-13-25, inclusive, is unrelated to ~~an~~
7 ~~individual's~~ a person's ability to utilize and benefit from educational
8 opportunities, programs, and facilities at an educational institution.

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

12 (5) "Educational institution," any public or private institution of education and includes
13 an academy, college, elementary or secondary school, extension course, kindergarten,
14 nursery, school system, and any business, nursing, professional, secretarial, technical,
15 or vocational school, and includes any agent of such institutions;

16 (6) "Employee," any person who performs services for any employer for compensation,
17 whether in the form of wages, salary, commission, or otherwise;

18 (7) "Employer," any person within the State of South Dakota who hires or employs any
19 employee, and any person wherever situated who hires or employs any employee
20 whose services are to be partially or wholly performed in the State of South Dakota;

21 (8) "Employment agency," any person regularly undertaking, with or without
22 compensation, to procure employees for an employer or to procure for employees
23 opportunities to work for an employer and includes any agent of such a person;

24 (9) "Familial status," the relationship of individuals by birth, adoption, or guardianship

- 1 who are domiciled together;
- 2 (10) "Labor organization," includes any person, employee representation committee, plan
3 in which employees participate, or other organization which exists wholly or in part
4 for the purpose of dealing with employers concerning grievances, labor disputes,
5 wages, rates of pay, hours, or other terms or conditions of employment;
- 6 (11) "Person," includes one or more individuals, partnerships, associations, limited
7 liability companies, corporations, unincorporated organizations, mutual companies,
8 joint stock companies, trusts, agents, legal representatives, trustees, trustees in
9 bankruptcy, receivers, labor organizations, public bodies, public corporations, and
10 the State of South Dakota, and all political subdivisions and agencies thereof;
- 11 (12) "Public accommodations," any place, establishment, or facility of whatever kind,
12 nature, or class that caters or offers services, facilities, or goods to the general public
13 for a fee, charge, or gratuitously. Public accommodation does not mean any bona fide
14 private club or other place, establishment, or facility which is by its nature distinctly
15 private, except when such distinctly private place, establishment, or facility caters or
16 offers services, facilities, or goods to the general public for fee or charge or
17 gratuitously, it ~~shall be deemed~~ is a public accommodation during such period of use;
- 18 (13) "Public service," any public facility, department, agency, board, or commission,
19 owned, operated, or managed by or on behalf of the State of South Dakota, any
20 political subdivision thereof, or any other public corporation;
- 21 (14) "Real estate broker" and "real estate ~~salesman~~ salesperson," real estate broker and
22 real estate ~~salesman~~ salesperson as defined by ~~§ 36-21A-6~~ or as licensed pursuant to
23 ~~§ 36-21A-47~~ in chapter 36-21A;
- 24 (15) "Real property," any right, title, interest in or to the possession, ownership,

1 enjoyment, or occupancy of any parcel of land, any building situated thereon, or any
2 portion of such building;

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

10 (17) "Veteran or military status," a person's status as a member of the United States armed
11 forces or veteran as defined in § 33-17-1.

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

13 20-13-10. It is an unfair or discriminatory practice for any person, because of race, color,
14 creed, religion, sex, ancestry, veteran or military status, disability, or national origin, to fail or
15 refuse to hire, to discharge an employee, or to accord adverse or unequal treatment to any person
16 or employee with respect to application, hiring, training, apprenticeship, tenure, promotion,
17 upgrading, compensation, layoff, or any term or condition of employment.

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

19 20-13-11. It is an unfair or discriminatory practice for any employment agency, because of
20 race, color, creed, religion, sex, ancestry, veteran or military status, disability, or national origin,
21 to accord adverse or unequal treatment to any person in connection with any application for
22 employment, any referral, or any request for assistance in procurement of employees, or to
23 accept any listing of employment on such a basis.

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

1 20-13-12. It is an unfair or discriminatory practice for any labor organization, because of
2 race, color, creed, religion, sex, ancestry, veteran or military status, disability, or national origin,
3 to deny full and equal membership rights to an applicant for membership or to a member; to
4 expel, suspend, or otherwise discipline a member; or to accord adverse, unlawful, or unequal
5 treatment to any person with respect to that person's hiring, apprenticeship, training, tenure,
6 compensation, upgrading, layoff, or any term or condition of employment.

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

8 20-13-20. It is an unfair or discriminatory practice for any owner of rights to housing or real
9 property, or any person acting for an owner, with or without compensation, including any person
10 licensed as a real estate broker or ~~salesman~~ salesperson, attorney, auctioneer, agent, or
11 representative by power of attorney or appointment, or to any person acting under court order,
12 deed of trust, or will:

- 13 (1) To refuse to sell, rent, lease, assign, sublease, or otherwise transfer any real property
14 or housing accommodation or part, portion, or interest therein, to any person because
15 of the race, color, creed, religion, sex, ancestry, veteran or military status, disability,
16 familial status, or national origin of the person or persons intending to reside there;
- 17 (2) To discriminate against any person because of that person's race, color, creed,
18 religion, sex, ancestry, veteran or military status, disability, familial status, or
19 national origin, in the terms, conditions, or privileges of the sale, rental, lease,
20 assignment, sublease, or other transfer of any real property or housing
21 accommodation or any part, portion, or interest therein;
- 22 (3) To directly or indirectly advertise, or to indicate or publicize in any other manner that
23 the purchase, rental, lease, assignment, sublease, or other transfer of any real property
24 or housing accommodation or any part, portion or interest therein, by persons of any

1 particular race, color, creed, religion, sex, ancestry, veteran or military status,
2 disability, familial status, or national origin, is unwelcome, objectionable, not
3 acceptable, or not solicited;

4 (4) To refuse to permit, at the expense of the disabled person, reasonable modifications
5 of existing property that may be necessary to afford full enjoyment of property. The
6 landlord may, where it is reasonable to do so, condition permission for a modification
7 on the renter's agreeing to restore the premises to the condition that existed prior to
8 the modification, reasonable wear and tear excepted.

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

12 This section does not apply to dormitory residences maintained by public or private schools,
13 colleges, and universities for the educational benefit and convenience of unmarried students or
14 to dwellings occupied by fraternities or sororities officially recognized by such institutions.
15 Nothing in this statute may be construed to displace federal, state, or local guidelines setting
16 reasonable standards governing maximum numbers of occupants.

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

18 20-13-20.1. For the purposes of determining discrimination based on familial status, a
19 family is one or more ~~individuals~~ persons under the age of eighteen who are domiciled with
20 their parent, legal custodian, or person granted custody with permission of the parent or
21 custodian. This definition includes a person who is pregnant or in the process of securing
22 custody of a person under the age of eighteen years. Discrimination based on familial status
23 applies to housing accommodations only.

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

1 20-13-21. It is an unfair or discriminatory practice for any person, bank, banking
2 organization, mortgage company, insurance company, or other financial institution or lender to
3 whom application is made for financial assistance for the purchase, lease, acquisition,
4 construction, rehabilitation, repair, or maintenance of any real property or any agent or employee
5 thereof, to discriminate against any person or group of persons, because of the race, color, creed,
6 religion, sex, ancestry, veteran or military status, disability, or national origin of such person or
7 group of persons or of the prospective occupants or tenants of such real property in the granting,
8 withholding, extending, modifying, renewing, or in the rates, terms, conditions, or privileges
9 of any such financial assistance or in the extension of services in connection therewith.

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

11 20-13-22. It is an unfair or discriminatory practice for any educational institution:

- 12 (1) To discriminate in any manner in its full use or in its benefits, or in its services
13 against any ~~individual~~ person because of race, color, creed, religion, sex, ancestry,
14 veteran or military status, disability, or national origin.
- 15 (2) To include, expel, limit, or otherwise discriminate against any ~~individual~~ person
16 seeking admission as a student, or an individual enrolled as a student because of race,
17 color, creed, religion, sex, ancestry, veteran or military status, disability, or national
18 origin.
- 19 (3) To make or use a written or oral inquiry, or form of application for admission that
20 elicits or attempts to elicit information, or to make or keep a record, concerning the
21 race, color, creed, religion, ancestry, disability, or national origin of an applicant for
22 admission except as may be permitted by ~~regulations~~ rules of the commission of
23 human rights.

24 Segregation by sex of athletic activities offered by an educational institution does not

1 constitute discrimination on the basis of sex in violation of this chapter if the opportunity to
2 participate in athletic activities offered by the educational institution is substantially equal for
3 both sexes.

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

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

7 20-13-23. It ~~shall~~ is be an unfair or discriminatory practice for any person engaged in the
8 provision of public accommodations because of race, color, creed, religion, sex, ancestry,
9 veteran or military status, disability, or national origin, to fail or refuse to provide to any person
10 access to the use of and benefit from the services and facilities of such public accommodations;
11 or to accord adverse, unlawful, or unequal treatment to any person with respect to the
12 availability of such services and facilities, the price or other consideration therefor, the scope
13 and equality thereof, or the terms and conditions under which the same are made available,
14 including terms and conditions relating to credit, payment, warranties, delivery, installation, and
15 repair.

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

17 20-13-24. It is an unfair or discriminatory practice for any person engaged in the provision
18 of public services, by reason of race, color, creed, religion, sex, ancestry, veteran or military
19 status, disability, or national origin, to fail or refuse to provide to any person access to the use
20 of and benefit thereof, or to provide adverse or unequal treatment to any person in connection
21 therewith.

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

23 20-13-25. It is an unfair or discriminatory practice for any person directly or indirectly to
24 advertise or in any other manner indicate or publicize that the patronage of persons of any

1 particular race, color, creed, religion, sex, ancestry, veteran or military status, disability, or
2 national origin is unwelcome, objectionable, not acceptable, or not solicited.

3 Section 12. Nothing in this Act prohibits preferential treatment toward any veteran.