

Questions and Answers about Senate Bill 2279

What is Senate Bill 2279?

It is a bill that adds sexual orientation and gender identity and expression to the already existing North Dakota Housing Discrimination Act and North Dakota Human Rights Act. Current law makes it illegal in North Dakota to discriminate on the basis of race, color, religion, sex, national origin, and age. This act would extend current law to prohibit unfair treatment on the basis of sexual orientation and gender identity and expression as well.

Why is it necessary?

North Dakota is competing for an educated and talented workforce in almost every industry. Lesbian, gay, bisexual and transgender (LGBT) North Dakotans tend to move to states that afford them these protections and many people discount North Dakota as a potential place to work or live in based on the lack of protections.

Through its Human Rights Act, North Dakota has adopted a policy requiring equal treatment of groups of citizens who face widespread social antagonism and unequal treatment. Unfortunately, LGBT North Dakotans are not explicitly protected by the law. There are several examples of North Dakotans experiencing unfair treatment in finding and holding jobs to support themselves and their families and numerous studies and surveys show that LGBT people continue to experience this form of discrimination.

Doesn't the law already protect lesbians and gay men?

Neither federal nor state law currently mandates equal treatment regardless of sexual orientation in employment, housing, public accommodations, credit or education. Gender identity and gender expression are also not covered, although courts in some parts of the country have viewed unfair treatment based on someone's gender identity as discrimination on the basis of "sex," which is already illegal. While we believe that the U.S. Constitution bars discrimination against LGBT people in many contexts, courts have not always agreed, and explicit legal protections are necessary to address ongoing discrimination.

Will this proposed law give gay people special rights?

No. All it does is create an equal playing field. This kind of law is the same tool state legislatures have used for decades to ensure equal treatment of certain groups of citizens who have historically been treated unequally. This law would protect all people, gay or straight, from unfair treatment on the basis of sexual orientation and gender identity, by giving the same protection that already exists under our state's law regarding discrimination on the basis of sex, race, or religion.

Will this law block employers from firing incompetent employees or dealing with disruptive behavior?

No. The law would prevent businesses from firing straight, gay or transgender employees based on their sexual orientation or gender identity alone. Employees who are not able to meet the requirements of their job, regardless of their sexual orientation, race, gender, age, etc. are not protected by this legislation.

Do employers support equal treatment for LGBT people?

Yes. In fact, corporations have taken the lead in acknowledging that firing people for being gay is wasteful and it is good for business to hire and retain employees based on the quality of their work. A growing number of North Dakota businesses, (Wells Fargo, Microsoft, U.S. Bank, Montana-Dakota Utilities, Wal-Mart, Sanford, NISC, Target, and many others) to smaller businesses, have adopted their own policies of non-discrimination on the basis of sexual orientation. While these policies reflect the good intentions of many employers around the country and in this state, they are not necessarily enforceable and do not apply in all workplaces. Only this type of law will ensure that LGBT employees receive equal treatment, no matter where they work.

Won't this law create a slippery slope towards banning discrimination on the basis of eye color?

No. The categories in the North Dakota Human Rights Act reflect identifiable social groups of citizens who, as a group, have faced a history of unequal treatment. They are not frivolously determined categories. No one can seriously deny that lesbian, gay, bisexual and transgender people face extensive societal and legal hostility.

Will this law mandate marriage for same-sex couples?

No. This act does not affect the domestic relations laws, which restrict marriage in this state to opposite-sex couples

How many other states have passed laws prohibiting discrimination on the basis of sexual orientation and/or gender identity?

As of January 2015, 21 states (plus D.C.) have laws prohibiting discrimination on the basis of sexual orientation and 18 states (plus D.C.) prohibit both sexual orientation and gender identity discrimination. More than 125 cities, towns, and counties have also passed laws prohibiting discrimination against both gay and transgender individuals.

Will this law require kids to be taught in school that it's okay to be gay?

No. This law does not address school curricula.

Could this law result in straight people suing their employers for mistaking them for gay or transgender, or gay people suing because they were "perceived" as straight?

A confused perception of a person's sexual orientation, gender identity, or gender expression is not a ground for claiming discrimination. The word "perceived" in this law ensures that discrimination is illegal if it was based on a belief that someone was gay (or straight), whether that belief was right or wrong. No employer is required to guess an employee's sexual orientation or gender identity. This law just makes sure that employers treat all their employees equally on the basis of job performance and qualifications, not on whether they seem gay, straight, or transgender.

Unlike other protected characteristics, some people say sexual orientation is a behavior/ "is a choice"—why should we be protecting people based on their behavior/"choice"?

For the purpose of anti-discrimination protection it does not matter if a characteristic is 'inborn' or 'acquired'. Current federal law protects people from discrimination on a number of characteristics, such as race, national origin, sex, and religion. Religion is a belief system

that requires certain behaviors, and people may change their religion or start religious practice as adults. Like religion, sexual orientation and gender identity are irrelevant to a person's job performance, regardless of whether you think people have any control over these aspects of their identity.

Why do we need this? What proof is there that people are being discriminated against based on sexual orientation or gender identity in our community?

There is plenty of evidence that this kind of discrimination hurts people across the country. The Williams Institute at UCLA School of Law determined in 2008 that 20% to 57% of transgender people surveyed since the mid-1990s had reported having experienced unfair employment practices based on their gender identity. Similarly, they found that 42% of lesbian, gay, and bisexual people reported that they had experienced work-related unfair treatment at some point in their lives, with 27% having experienced problems between just 2003 and 2008. Without legal protections, lesbian, gay, bisexual and transgender people can be and are fired just because of who they are and not because of how well they do their job.

Why can't the cities that want this just pass local ordinances?

Housing and employment law is left to the state legislature. The cities of Grand Forks and Fargo have passed LGBT-inclusive workplace policies for city employees, only. However, they have no jurisdiction over other employers within the boundaries of their city. The city of Grand Forks passed an ordinance outlawing discrimination based on sexual orientation or gender identity in rentals, which they are able to do through their rental registry. The city of Bismarck has expressed its support for 2279.

Cities and counties are limited in their ability to develop LGBT-inclusive ordinances. This means that their employees are protected from discrimination only when working for the city, not at another job or in the home they rent.

Will this cause costly lawsuits and uncertainty for businesses that will drive investment and drive out of our community?

No. The many cities, companies and states that have implemented LGBT-inclusive protections against employment discrimination have not seen any significant surge in litigation. Another recent Williams Institute study found that in states with laws like this, complaints of discrimination on the basis of sexual orientation were filed at an average rate of three to four per year for every ten thousand lesbian, gay, or bisexual employees, which is equivalent to the rate of racial discrimination complaints and lower than the rate of gender discrimination complaints. The costs of these occasional lawsuits to enforce protections are far outweighed by the advantages to society, including reduced recruitment and training costs for businesses, of ensuring that all Americans have equal opportunity. As far as compliance with the law is concerned, treating people fairly, on the basis of their job performance does not impose any additional expenses on businesses.

In 2000, former New York Mayor Ed Koch asked the mayors of jurisdictions that prohibit discrimination against transgender people about their cities' experiences with these types of laws—and none of the mayors reported that implementing the law had caused problems or a rash of lawsuits. Just as in other places where the implementation of the same law did not cause problems, businesses here have nothing to fear from improved nondiscrimination protection

Do North Dakotan's support Senate Bill 2279?

According to a January 2015 poll, 59% of North Dakota voters would vote for SB2279. Many North Dakota organizations also support this bill, those include:

North Dakota Realtors Association
North Dakota State Board of Higher Education
North Dakota United
AFL-CIO
City of Bismarck
City of Fargo
University of North Dakota Student Senate
North Dakota State University Student Senate
North Dakota State University Faculty Senate
North Dakota Human Rights Coalition
ACLU of North Dakota
North Dakota Women's Network