

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2955

03/10/2016 Authored by Smith, Kresha, Swedzinski, Fischer, Vogel and others
The bill was read for the first time and referred to the Committee on Civil Law and Data Practices
03/23/2016 Adoption of Report: Placed on the General Register as Amended
Read Second Time

1.1 A bill for an act
1.2 relating to human rights; establishing requirement for demand letter involving
1.3 architectural barriers limiting accessibility; providing for accessibility audits;
1.4 amending Minnesota Statutes 2014, section 363A.28, subdivision 3; proposing
1.5 coding for new law in Minnesota Statutes, chapter 363A.

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

1.7 Section 1. Minnesota Statutes 2014, section 363A.28, subdivision 3, is amended to read:

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

1.12 (b) The running of the one-year limitation period is suspended during the time a
1.13 potential charging party and respondent are voluntarily engaged in a dispute resolution
1.14 process involving a claim of unlawful discrimination under this chapter, including
1.15 arbitration, conciliation, mediation or grievance procedures pursuant to a collective
1.16 bargaining agreement or statutory, charter, ordinance provisions for a civil service or
1.17 other employment system or a school board sexual harassment or sexual violence policy.
1.18 A potential respondent who participates in such a process with a potential charging
1.19 party before a charge is filed or a civil action is brought shall notify the department and
1.20 the charging party in writing of the participation in the process and the date the process
1.21 commenced and shall also notify the department and the charging party of the ending date
1.22 of the process. A respondent who fails to provide this notification is barred from raising
1.23 the defense that the statute of limitations has run unless one year plus a period of time
1.24 equal to the suspension period has passed.

2.1 (c) The running of the one-year limitation period is suspended during the time period
2.2 provided for in a demand letter under section 363A.331, subdivision 3.

2.3 **Sec. 2. [363A.331] ACTIONS INVOLVING ARCHITECTURAL BARRIERS**
2.4 **THAT LIMIT ACCESSIBILITY.**

2.5 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms
2.6 have the meanings given.

2.7 (b) "Accessibility requirements under law" means requirements governing removal
2.8 of architectural barriers that limit access to public accommodations by persons with
2.9 disabilities under the following laws and rules:

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

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

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

2.14 (c) "Certified professional" means:

2.15 (1) an individual who is certified under section 326B.133, subdivision 3a, paragraph
2.16 (d); or

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

2.19 Subd. 2. **Affirmative defense; challenging audit.** (a) In a civil action brought
2.20 against an entity required to comply with section 363A.11, subdivision 3, for the failure to
2.21 remove an architectural barrier, the defendant has an affirmative defense to the action if
2.22 the defendant:

2.23 (1) demonstrates that the defendant has removed the architectural barrier in a manner
2.24 that complies with accessibility requirements under law;

2.25 (2) demonstrates that compliance with the accessibility requirements under law is
2.26 not readily achievable or cannot be accomplished by alternative means; or

2.27 (3) produces a barrier removal audit report prepared or developed by a certified
2.28 professional that:

2.29 (i) contains a remedial plan, with a reasonable timetable for completion, for removal
2.30 of the architectural barrier and compliance with accessibility requirements under law; and

2.31 (ii) demonstrates compliance with the remedial plan.

2.32 (b) In a civil action brought against an entity required to comply with section
2.33 363A.11, subdivision 3, a plaintiff challenging an audit, performed by a certified
2.34 professional, that an alleged architectural barrier complies with accessibility requirements
2.35 under law, or that compliance is not readily achievable or alternative means cannot be

3.1 employed, has the burden to show that the architectural barrier does not comply with those
3.2 accessibility requirements or that compliance is readily achievable or can be accomplished
3.3 by alternative means.

3.4 Subd. 3. Demand letter seeking removal of an architectural barrier. (a) A
3.5 demand letter that is sent prior to filing a civil action with the court by an attorney
3.6 representing a person who alleges that an entity required to comply with section 363A.11,
3.7 subdivision 3, has violated an accessibility requirement under law must:

- 3.8 (1) specify the architectural barrier that is the subject of the alleged violation;
3.9 (2) cite the law alleged to be violated;
3.10 (3) provide a reasonable time to respond, which must be no less than 30 days; and
3.11 (4) not include a request or demand for money or an offer or agreement to accept
3.12 money.

3.13 The demand letter may offer to engage in settlement negotiations prior to litigation. This
3.14 paragraph does not apply to an unrepresented plaintiff.

3.15 (b) When a demand letter has been sent pursuant to paragraph (a), a civil action may
3.16 not be filed or pursued by a plaintiff if, within the response time provided in the demand
3.17 letter, the entity required to comply with section 363A.11, subdivision 3:

3.18 (1) removes the architectural barrier in a manner that complies with accessibility
3.19 requirements under law and provides reasonable proof of the removal to the attorney
3.20 representing the person alleging the violation;

3.21 (2) demonstrates that the business has scheduled a barrier removal audit to be
3.22 conducted at the earliest time that a certified accessibility specialist or other certified
3.23 professional is available and agrees to produce the audit report as soon as practicable after
3.24 it is completed and, if the report contains a remedial plan, comply with the plan; or

3.25 (3) produces a barrier removal audit report prepared by a certified professional:

3.26 (i) finding that the alleged architectural barrier does not violate accessibility
3.27 requirements under law or that compliance with accessibility requirements under law is
3.28 not readily achievable or cannot be accomplished by alternative means; or

3.29 (ii) containing a remedial plan, with a reasonable timetable for completion, for
3.30 removal of the architectural barrier and compliance with accessibility requirements
3.31 under law.

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

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

3.35 (2) if a person is challenging a finding or remedial plan under paragraph (b), clause
3.36 (3);

- 4.1 (3) if a person has a claim for damages resulting from an injury; or
- 4.2 (4) if a person is filing charges pursuant to section 363A.28.
- 4.3 (d) The requirements of this subdivision do not apply to attorneys representing the
- 4.4 state or a political subdivision of the state.