

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **863**

02/08/2021 Authored by Hollins
The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law
03/04/2021 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time
05/17/2021 Pursuant to Rule 4.20, returned to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act

1.2 relating to human rights; making a conforming change; making certain changes
1.3 to the Human Rights Act; amending Minnesota Statutes 2020, sections 13.552, by
1.4 adding a subdivision; 363A.02, subdivision 1; 363A.28, subdivisions 1, 6; 363A.31,
1.5 subdivision 2; 363A.33, subdivision 3; 363A.36, subdivisions 1, 4, by adding a
1.6 subdivision; 363A.44, subdivision 9.

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

1.8 Section 1. Minnesota Statutes 2020, section 13.552, is amended by adding a subdivision
1.9 to read:

1.10 Subd. 8. **Certificate of compliance for public contracts.** Access to data relating to
1.11 certificates of compliance for public contracts is governed by section 363A.36.

1.12 Sec. 2. Minnesota Statutes 2020, section 363A.02, subdivision 1, is amended to read:

1.13 Subdivision 1. **Freedom from discrimination.** (a) It is the public policy of this state to
1.14 secure for persons in this state, freedom from discrimination:

1.15 (1) in employment because of race, color, creed, religion, national origin, sex, marital
1.16 status, disability, status with regard to public assistance, sexual orientation, familial status,
1.17 and age;

1.18 (2) in housing and real property because of race, color, creed, religion, national origin,
1.19 sex, marital status, disability, status with regard to public assistance, sexual orientation, and
1.20 familial status;

1.21 (3) in public accommodations because of race, color, creed, religion, national origin,
1.22 sex, sexual orientation, and disability;

(4) in public services because of race, color, creed, religion, national origin, sex, marital status, disability, sexual orientation, and status with regard to public assistance; and

(5) in education because of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, and age.

(b) Such discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy. It is also the public policy of this state to protect all persons from wholly unfounded charges of discrimination. Nothing in this chapter shall be interpreted as restricting the implementation of positive action programs to combat discrimination.

Sec. 3. Minnesota Statutes 2020, section 363A.28, subdivision 1, is amended to read:

Subdivision 1. **Actions.** Any person aggrieved by a violation of this chapter may bring a civil action as provided in section 363A.33, subdivision 1, or may file a verified charge with the commissioner or the commissioner's designated agent. A charge filed with the commissioner must be in writing by hand, or electronically with an unsworn declaration under penalty of perjury, on a form provided by the commissioner and signed by the charging party. The charge must state the name of the person alleged to have committed an unfair discriminatory practice and set out a summary of the details of the practice complained of. The commissioner may require a charging party to provide the address of the person alleged to have committed the unfair discriminatory practice, names of witnesses, documents, and any other information necessary to process the charge. The commissioner may dismiss a charge when the charging party fails to provide required information. The commissioner within ten days of the filing shall serve a copy of the charge and a form for use in responding to the charge upon the respondent personally, electronically with the receiving party's consent, or by mail. The respondent shall file with the department a written response setting out a summary of the details of the respondent's position relative to the charge within ~~20~~ 30 days of receipt of the charge. If the respondent fails to respond with a written summary of the details of the respondent's position within 30 days after service of the charge, and service was consistent with rule 4 of the Rules of Civil Procedure, the commissioner, on behalf of the complaining party, may bring an action for default in district court pursuant to rule 55.01 of the Rules of Civil Procedure.

Sec. 4. Minnesota Statutes 2020, section 363A.28, subdivision 6, is amended to read:

Subd. 6. **Charge processing.** (a) Consistent with paragraph (h), the commissioner shall promptly inquire into the truth of the allegations of the charge. The commissioner shall

3.1 make an immediate inquiry when a charge alleges actual or threatened physical violence.
3.2 The commissioner shall also make an ~~immediate~~ inquiry when it appears that a charge is
3.3 frivolous or without merit and shall dismiss those charges.

3.4 (b) The commissioner shall give priority to investigating and processing those charges,
3.5 in the order below, which the commissioner determines have the following characteristics:

3.6 (1) there is evidence of irreparable harm if immediate action is not taken;

3.7 (2) there is evidence that the respondent has intentionally engaged in a reprisal;

3.8 (3) a significant number of recent charges have been filed against the respondent;

3.9 (4) the respondent is a government entity;

3.10 (5) there is potential for broadly promoting the policies of this chapter; or

3.11 (6) the charge is supported by substantial and credible documentation, witnesses, or
3.12 other evidence.

3.13 The commissioner shall inform charging parties of these priorities and shall tell each
3.14 party if their charge is a priority case or not.

3.15 On other charges the commissioner shall make a determination within 12 months after
3.16 the charge was filed as to whether or not there is probable cause to credit the allegation of
3.17 unfair discriminatory practices.

3.18 (c) If the commissioner determines after investigation that no probable cause exists to
3.19 credit the allegations of the unfair discriminatory practice, the commissioner shall, within
3.20 ten days of the determination, serve upon the charging party and respondent written notice
3.21 of the determination. Within ~~ten~~ 30 days after receipt of notice, the charging party may
3.22 request in writing, on forms prepared by the department, that the commissioner reconsider
3.23 the determination. The request shall contain a brief statement of the reasons for and new
3.24 evidence in support of the request for reconsideration. At the time of submission of the
3.25 request to the commissioner, the charging party shall deliver or mail to the respondent a
3.26 copy of the request for reconsideration. The commissioner shall reaffirm, reverse, or vacate
3.27 and remand for further consideration the determination of no probable cause within 20 days
3.28 after receipt of the request for reconsideration, and shall within ten days notify in writing
3.29 the charging party and respondent of the decision to reaffirm, reverse, or vacate and remand
3.30 for further consideration.

4.1 A decision by the commissioner that no probable cause exists to credit the allegations
4.2 of an unfair discriminatory practice shall not be appealed to the court of appeals pursuant
4.3 to section 363A.36 or sections 14.63 to 14.68.

4.4 (d) If the commissioner determines after investigation that probable cause exists to credit
4.5 the allegations of unfair discriminatory practices, the commissioner shall serve on the
4.6 respondent and the respondent's attorney if the respondent is represented by counsel, by
4.7 first class mail, or electronically with the receiving party's consent, a notice setting forth a
4.8 short plain written statement of the alleged facts which support the finding of probable cause
4.9 and an enumeration of the provisions of law allegedly violated. Within 30 days after receipt
4.10 of notice, the respondent may request in writing, on forms prepared by the department, that
4.11 the commissioner reconsider the determination. If the commissioner determines that attempts
4.12 to eliminate the alleged unfair practices through conciliation pursuant to subdivision 8 have
4.13 been or would be unsuccessful or unproductive, the commissioner ~~shall~~ may issue a complaint
4.14 and serve on the respondent, by registered or certified mail, or electronically with the
4.15 receiving party's consent, a written notice of hearing together with a copy of the complaint,
4.16 requiring the respondent to answer the allegations of the complaint at a hearing before an
4.17 administrative law judge at a time and place specified in the notice, not less than ten days
4.18 after service of said complaint. A copy of the notice shall be furnished to the charging party
4.19 and the attorney general.

4.20 (e) If, at any time after the filing of a charge, the commissioner has reason to believe
4.21 that a respondent has engaged in any unfair discriminatory practice, the commissioner may
4.22 file a petition in the district court in a county in which the subject of the complaint occurs,
4.23 or in a county in which a respondent resides or transacts business, seeking appropriate
4.24 temporary relief against the respondent, pending final determination of proceedings under
4.25 this chapter, including an order or decree restraining the respondent from doing or procuring
4.26 an act tending to render ineffectual an order the commissioner may enter with respect to
4.27 the complaint. The court shall have power to grant temporary relief or a restraining order
4.28 as it deems just and proper, but no relief or order extending beyond ten days shall be granted
4.29 except by consent of the respondent or after hearing upon notice to the respondent and a
4.30 finding by the court that there is reasonable cause to believe that the respondent has engaged
4.31 in a discriminatory practice. Except as modified by subdivisions 1 to 9 and section 363A.06,
4.32 subdivision 4, the Minnesota Rules of Civil Procedure shall apply to an application, and
4.33 the district court shall have authority to grant or deny the relief sought on conditions as it
4.34 deems just and equitable. All hearings under subdivisions 1 to 9 and section 363A.06,

5.1 subdivision 4, shall be given precedence as nearly as practicable over all other pending civil
5.2 actions.

5.3 (f) If a lessor, after engaging in a discriminatory practice defined in section 363A.09,
5.4 subdivision 1, clause (1), leases or rents a dwelling unit to a person who has no knowledge
5.5 of the practice or of the existence of a charge with respect to the practice, the lessor shall
5.6 be liable for actual damages sustained by a person by reason of a final order as provided in
5.7 subdivisions 1 to 9 and section 363A.06, subdivision 4, requiring the person to be evicted
5.8 from the dwelling unit.

5.9 (g) In any complaint issued under subdivisions 1 to 9 and section 363A.06, subdivision
5.10 4, the commissioner may seek relief for a class of individuals affected by an unfair
5.11 discriminatory practice occurring on or after a date one year prior to the filing of the charge
5.12 from which the complaint originates.

5.13 (h) The commissioner may adopt policies to determine which charges are processed and
5.14 the order in which charges are processed based on their particular social or legal significance,
5.15 administrative convenience, difficulty of resolution, or other standard consistent with the
5.16 provisions of this chapter.

5.17 (i) The chief administrative law judge shall adopt policies to provide sanctions for
5.18 intentional and frivolous delay caused by any charging party or respondent in an investigation,
5.19 hearing, or any other aspect of proceedings before the department under this chapter.

5.20 Sec. 5. Minnesota Statutes 2020, section 363A.31, subdivision 2, is amended to read:

5.21 Subd. 2. **Rescission of waiver.** A waiver or release of rights or remedies secured by this
5.22 chapter which purports to apply to claims arising out of acts or practices prior to, or
5.23 concurrent with, the execution of the waiver or release may be rescinded within 15 calendar
5.24 days of its execution, except that a waiver or release given in settlement of a claim filed
5.25 with the department or with another administrative agency or judicial body is valid and final
5.26 upon execution. A waiving or releasing party shall be informed in writing of the right to
5.27 rescind the waiver or release. To be effective, the rescission must be in writing and delivered
5.28 to the waived or released party ~~either by hand,~~ electronically with the receiving party's
5.29 consent, or by mail within the 15-day period. If delivered by mail, the rescission must be:

5.30 (1) postmarked within the 15-day period;

5.31 (2) properly addressed to the waived or released party; and

5.32 (3) sent by certified mail return receipt requested.

Sec. 6. Minnesota Statutes 2020, section 363A.33, subdivision 3, is amended to read:

Subd. 3. **Summons and complaints in a civil action.** A charging party bringing a civil action shall mail by registered or certified mail, or electronically with the receiving party's consent, a copy of the summons and complaint to the commissioner, and upon their receipt the commissioner shall terminate all proceedings in the department relating to the charge. No charge shall be filed or reinstituted with the commissioner after a civil action relating to the same unfair discriminatory practice has been brought unless the civil action has been dismissed without prejudice.

Sec. 7. Minnesota Statutes 2020, section 363A.36, subdivision 1, is amended to read:

Subdivision 1. **Scope of application.** ~~(a) For all contracts for goods and services in excess of \$100,000, no department or agency of the state shall accept any bid or proposal for a contract or agreement from any business having more than 40 full-time employees within this state on a single working day during the previous 12 months, unless the commissioner is in receipt of the business' affirmative action plan for the employment of minority persons, women, and qualified disabled individuals. No department or agency of the state shall execute any such contract or agreement until the affirmative action plan has been approved by the commissioner. Receipt of a certificate of compliance issued by the commissioner shall signify that a firm or business has an affirmative action plan that has been approved by the commissioner. A certificate shall be valid for a period of four years. No department, agency of the state, the Metropolitan Council, or agency subject to section 473.143, subdivision 1, shall execute a contract for goods or services in excess of \$100,000 with a business that has 40 or more full-time employees in this state or a state where the business has its primary place of business on a single day during the prior 12 months, unless the business has a workforce certificate from the commissioner of human rights or has certified in writing that it is exempt. Determinations of exempt status shall be made by the commissioner of human rights. A certificate is valid for four years. A municipality as defined in section 466.01, subdivision 1, that receives state money for any reason is encouraged to prepare and implement an affirmative action plan for the employment of minority persons, people with disabilities, people of color, and women, and the qualified disabled and to submit the plan to the commissioner.~~

~~(b) This paragraph applies to a contract for goods or services in excess of \$100,000 to be entered into between a department or agency of the state and a business that is not subject to paragraph (a), but that has more than 40 full-time employees on a single working day during the previous 12 months in the state where the business has its primary place of~~

~~business. A department or agency of the state may not execute a contract or agreement with a business covered by this paragraph unless the business has a certificate of compliance issued by the commissioner under paragraph (a) or the business certifies that it is in compliance with federal affirmative action requirements.~~

~~(e)~~ (b) This section does not apply to contracts entered into by the State Board of Investment for investment options under section 356.645.

~~(d)~~ (c) The commissioner shall issue a certificate of compliance or notice of denial within 15 days of the application submitted by the business or firm.

EFFECTIVE DATE. This section is effective June 1, 2021, and applies to contracts entered into on or after that date.

Sec. 8. Minnesota Statutes 2020, section 363A.36, subdivision 4, is amended to read:

Subd. 4. **Revocation of contract.** A contract awarded by a department or agency of the state, the Metropolitan Council, or an agency subject to section 473.143, subdivision 1, may be terminated or abridged by the ~~department or agency~~ awarding entity because of suspension or revocation of a certificate based upon a contractor's failure to implement or make a good faith effort to implement an affirmative action plan approved by the commissioner under this section. If a contract is awarded to a person who does not have a contract compliance certificate required under subdivision 1, the commissioner may void the contract on behalf of the state.

EFFECTIVE DATE. This section is effective June 1, 2021, and applies to contracts entered into on or after that date.

Sec. 9. Minnesota Statutes 2020, section 363A.36, is amended by adding a subdivision to read:

Subd. 6. **Access to data.** Data submitted to the commissioner related to a certificate of compliance are private data on individuals or nonpublic data with respect to persons other than department employees. The commissioner's decision to issue, not issue, revoke, or suspend or otherwise penalize a certificate holder of a certificate of compliance is public data. Applications, forms, or similar documents submitted by a business seeking a certificate of compliance are public data. The commissioner may disclose data classified as private or nonpublic under this subdivision to other state agencies, statewide systems, and political subdivisions for the purposes of achieving compliance with this section.

8.1 Sec. 10. Minnesota Statutes 2020, section 363A.44, subdivision 9, is amended to read:

8.2 Subd. 9. **Access to data.** Data submitted to the commissioner related to equal pay
8.3 certificates are private data on individuals or nonpublic data with respect to persons other
8.4 than department employees. The commissioner's decision to issue, not issue, revoke, or
8.5 suspend or otherwise penalize a certificate holder of an equal pay certificate is public data.
8.6 Applications, forms, or similar documents submitted by a business seeking an equal pay
8.7 certificate are public data. The commissioner may disclose data classified as private or
8.8 nonpublic under this subdivision to other state agencies, statewide systems, and political
8.9 subdivisions for the purposes of achieving compliance with this section.