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State of Minnesota
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

1.1 A bill for an act
1.2 relating to human rights; establishing demand letter requirements for disability
1.3 discrimination actions related to accessibility; providing for accessibility audits
1.4 or plans; appropriating money; amending Minnesota Statutes 2014, section
1.5 363A.28, subdivision 3; proposing coding for new law in Minnesota Statutes,
1.6 chapter 363A.

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

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

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

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

2.1 (c) The running of the one-year limitation period is also suspended during the time
2.2 period provided for a response to a demand letter under section 363A.331, subdivision 2.

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

2.5 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this
2.6 section.

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

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 accessibility specialist" means an individual who is certified under
2.15 section 326B.133, subdivision 3a, paragraph (d).

2.16 Subd. 2. **Demand letter seeking removal of architectural barriers.** (a) Before
2.17 bringing a civil action under section 363A.33, an attorney representing a person who
2.18 alleges that a business has violated accessibility requirements under state or federal law
2.19 must provide a demand letter to the business.

2.20 (b) The demand letter:

2.21 (1) must specify the architectural barrier that is the subject of the alleged violation;

2.22 (2) must cite the state or federal law alleged to have been violated;

2.23 (3) must provide a reasonable time for a response, which must be at least 30 days;

2.24 (4) may offer to engage in prelitigation settlement negotiations; and

2.25 (5) must not include a request or demand for money or an offer or agreement to
2.26 accept money.

2.27 Subd. 3. **Prerequisite to civil action against business for failure to remove**
2.28 **architectural barriers.** (a) A civil action must not be brought under section 363A.33
2.29 against a business for failure to remove an architectural barrier alleged to violate
2.30 accessibility requirements under state and federal law if, within the response period
2.31 provided in the demand letter, the business:

2.32 (1) removes the architectural barrier in a manner that complies with accessibility
2.33 requirements under state and federal law and provides reasonable proof of the removal to
2.34 the attorney representing the person alleging the violation;

3.1 (2) produces a barrier removal audit report prepared by a certified accessibility
 3.2 specialist or developed by a licensed, registered, or otherwise certified professional with
 3.3 demonstrated knowledge of accessibility requirements under state and federal law:

3.4 (i) finding that the alleged architectural barrier does not violate accessibility
 3.5 requirements under state and federal law or that compliance with accessibility
 3.6 requirements is not readily achievable or cannot be accomplished by alternative means; or

3.7 (ii) containing a remedial plan, with a reasonable timetable for completion, for
 3.8 removal of the architectural barrier and compliance with accessibility requirements under
 3.9 state and federal law; or

3.10 (3) demonstrates that the business has scheduled a barrier removal audit to be
 3.11 conducted at the earliest time that a certified accessibility specialist or other certified
 3.12 professional is available and agrees to produce the audit report as soon as practicable after
 3.13 it is completed and, if the report contains a remedial plan, comply with the plan.

3.14 (b) This subdivision does not bar a person from bringing an action if:

3.15 (1) the business fails to comply with a timetable for completion of a plan to remove
 3.16 an architectural barrier; or

3.17 (2) the person is challenging a finding or remedial plan under paragraph (a), clause
 3.18 (2) or (3).

3.19 Subd. 4. **Affirmative defenses.** It is an affirmative defense in a civil action against a
 3.20 business for failure to remove an architectural barrier if the defendant:

3.21 (1) demonstrates that the defendant has removed the architectural barrier in a manner
 3.22 that complies with accessibility requirements under state and federal law;

3.23 (2) produces a barrier removal audit report prepared by a certified accessibility
 3.24 specialist or developed by a licensed, registered, or otherwise certified professional with
 3.25 demonstrated knowledge of accessibility requirements under state and federal law that:

3.26 (i) contains a remedial plan, with a reasonable timetable for the completion, removal
 3.27 of the architectural barrier, and compliance with accessibility requirements under state
 3.28 and federal law; and

3.29 (ii) demonstrates compliance with the remedial plan; or

3.30 (3) demonstrates that compliance with accessibility requirements is not readily
 3.31 achievable or cannot be accomplished by alternative means.

3.32 Subd. 5. **Challenging audit.** A plaintiff who challenges a finding in an audit by
 3.33 a certified accessibility specialist or by another certified professional that an alleged
 3.34 architectural barrier complies with accessibility requirements under state and federal law,
 3.35 or that compliance is not readily achievable or alternative means cannot be employed, has
 3.36 the burden to show that the architectural barrier does not comply with those accessibility

4.1 requirements or that compliance is readily achievable or can be accomplished by
4.2 alternative means.

4.3 Subd. 6. **Effect on other actions.** This section does not preclude a person from
4.4 filing charges under section 363A.28 or from bringing an action for damages resulting
4.5 from injury.

4.6 Subd. 7. **Exemptions.** (a) This section does not apply to attorneys representing, and
4.7 actions involving, the state or a political subdivision of the state.

4.8 (b) Subdivisions 2 and 3 do not apply to a person who is not represented by an
4.9 attorney.

4.10 Sec. 3. **OUTREACH AND EDUCATION APPROPRIATION.**

4.11 \$..... in fiscal year 2017 is appropriated from the general fund to the Minnesota
4.12 State Council on Disability to provide outreach and education to small businesses
4.13 concerning requirements under state or federal law governing removal of architectural
4.14 barriers that limit access to public accommodations by persons with disabilities and
4.15 resources that are available to comply with those requirements.