

**SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION**

S.F. No. 2295

(SENATE AUTHORS: HOUSLEY, Benson, Newman, Anderson, P. and Limmer)

DATE	D-PG	OFFICIAL STATUS
03/11/2019	770	Introduction and first reading Referred to Judiciary and Public Safety Finance and Policy
03/13/2019	869	Author added Limmer
03/18/2019		Comm report: To pass as amended Second reading

1.1 A bill for an act

1.2 relating to human rights; clarifying the definition of sexual harassment; amending

1.3 Minnesota Statutes 2018, section 363A.03, subdivision 43.

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

1.5 **ARTICLE 1**

1.6 **INTENT**

1.7 Section 1. LEGISLATIVE INTENT; SEXUAL HARASSMENT.

1.8 (a) The legislature hereby declares its intent with regard to interpretation and application

1.9 of the law regarding sexual harassment as defined in the Minnesota Human Rights Act,

1.10 Minnesota Statutes, section 363A.03, subdivision 43:

1.11 (1) preventing and correcting sexual harassment is an important public policy of the

1.12 state;

1.13 (2) the legislature states its intent that courts should not be bound by prior federal case

1.14 law holding that conduct does not rise to the level of actionable sexual harassment if the

1.15 conduct described therein would be considered severe or pervasive in the state. The legislature

1.16 rejects the holdings of federal cases including Duncan v. General Motors Co., 300 F.3d 928

1.17 (Eighth Circuit 2002); LeGrand v. Arch, 394 F.3d 1098 (Eighth Circuit 2005); Anderson

1.18 v. Family Dollar Stores of Ark., Inc., 579 F.3d 858, 860 (Eighth Circuit 2009); and McMiller

1.19 v. Metro, 738 F.3d 185 (Eighth Circuit 2013), as inconsistent with the severe or pervasive

1.20 standard for sexual harassment under state law;

1.21 (3) the legislature affirms that state law is not a general civility code. Courts should not

1.22 be called upon to consider legal remedies for every incidence of inappropriate, rude, or

2.1 offensive behavior in an employment, public accommodations, public services, education,
 2.2 or housing environment; and

2.3 (4) the legislature affirms that the Minnesota Human Rights Act is not a strict liability
 2.4 statute and individuals and entities who are not aware of sexual harassment, or who in good
 2.5 faith take reasonable steps to prevent or promptly correct sexual harassment, should not be
 2.6 held liable for sexual harassment committed by others.

2.7 **EFFECTIVE DATE.** This section is effective January 1, 2020, and applies to causes
 2.8 of action arising on or after that date.

2.9 **ARTICLE 2**

2.10 **DEFINITION**

2.11 Section 1. Minnesota Statutes 2018, section 363A.03, subdivision 43, is amended to read:

2.12 Subd. 43. **Sexual harassment.** (a) "Sexual harassment" includes unwelcome sexual
 2.13 advances, requests for sexual favors, sexually motivated physical contact or other verbal or
 2.14 physical conduct or communication of a sexual nature when:

2.15 (1) submission to that conduct or communication is made a term or condition, either
 2.16 explicitly or implicitly, of obtaining employment, public accommodations or public services,
 2.17 education, or housing;

2.18 (2) submission to or rejection of that conduct or communication by an individual is used
 2.19 as a factor in decisions affecting that individual's employment, public accommodations or
 2.20 public services, education, or housing; or

2.21 (3) that conduct or communication has the purpose or effect of substantially interfering
 2.22 with an individual's employment, public accommodations or public services, education, or
 2.23 housing, or creating an intimidating, or hostile, ~~or offensive~~ employment, public
 2.24 accommodations, public services, educational, or housing environment.

2.25 (b) Harassing conduct or communication under paragraph (a), clause (3), must, under
 2.26 the totality of the circumstances, be: (1) objectively and subjectively harassing; and (2)
 2.27 sufficiently severe or pervasive to alter the terms or conditions of an individual's employment,
 2.28 public accommodations, public services, education, or housing and create an abusive
 2.29 environment. Severe or pervasive sexual harassment may arise from a single significant
 2.30 instance of harassing conduct or communication, or a series of instances of harassing conduct
 2.31 or communications.

3.1 (c) In any action under paragraph (a), clause (3), unless the harassment resulted in a
3.2 tangible adverse action, an employer that knew or should have known of an employee's
3.3 sexual harassment must not be liable if the employer exercised reasonable care to prevent
3.4 or promptly correct sexual harassment or the employee unreasonably failed to take advantage
3.5 of preventative or corrective opportunities provided by the employer.

3.6 **EFFECTIVE DATE.** This section is effective January 1, 2020, and applies to causes
3.7 of action arising on or after that date.