

(15) Transportation costs incurred solely for obtaining emergency medical care or transportation costs incurred by nonambulatory persons in obtaining emergency or nonemergency medical care when paid directly to an ambulance company, common carrier, or other recognized providers of transportation services. For the purpose of this clause, a person who is incapable of transport by taxicab or bus shall be considered to be nonambulatory;

(16) To the extent authorized by rule of the state agency, costs of bus or taxicab transportation incurred by any ambulatory eligible person for obtaining nonemergency medical care;

(17) Personal care attendant services provided by an individual, not a relative, who is qualified to provide the services, where the services are prescribed by a physician in accordance with a plan of treatment and are supervised by a registered nurse. Payments to personal care attendants shall be adjusted annually to reflect changes in the cost of living or of providing services by the average annual adjustment granted to vendors such as nursing homes and home health agencies; ~~and~~

(18) Any other medical or remedial care licensed and recognized under state law unless otherwise prohibited by law, except licensed chemical dependency treatment programs or primary treatment or extended care treatment units in hospitals that are covered under Laws 1986, chapter 394, sections 8 to 20. The commissioner shall include chemical dependency services in the state medical assistance plan for federal reporting purposes, but payment must be made under Laws 1986, chapter 394, sections 8 to 20; and

(19) Hospice care services under Public Law Number 99-272, section 9505, to the extent authorized by rule.

**Sec. 2. EFFECTIVE DATE.**

Section 1 is effective July 1, 1988.

Approved June 2, 1987

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**CHAPTER 375—H.F.No. 1419**

*An act relating to human rights; requiring the Indian affairs council to develop certain programs; changing certain procedures in cases before the department of human rights; amending Minnesota Statutes 1986, sections 3.922, subdivision 6; 363.05, subdivision 1; 363.06, subdivisions 1 and 4; and 363.071.*

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

Section 1. Minnesota Statutes 1986, section 3.922, subdivision 6, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 6. **DUTIES.** The primary duties of the council shall be to:

(1) clarify for the legislature and state agencies the nature of tribal governments, the relationship of tribal governments to the Indian people of Minnesota;

(2) assist the secretary of state in establishing an election of at large members of the council;

(3) make recommendations to members of the legislature on desired and needed legislation for the benefit of the statewide Indian community and communicate to the members of the legislature when legislation has or will have an adverse effect on the statewide Indian community;

(4) provide, through the elected apparatus of the council, an effective conduit for programs, proposals and projects to the legislature submitted by tribal governments, organizations, committees, groups or individuals;

(5) provide a continuing dialogue with members of the appropriate tribal governments in order to improve their knowledge of the legislative process, state agencies and governmental due process;

(6) assist in establishing Indian advisory councils in cooperation with state agencies delivering services to the Indian community;

(7) assist state agencies in defining what groups, organizations, committees, councils or individuals are eligible for delivery of their respective services;

(8) assist in providing resources, tribal and other, in the delivery of services to the statewide Indian community;

(9) act as a liaison between local, state and national units of government in the delivery of services to the Indian population of Minnesota;

(10) assist state agencies in the implementation and updating of studies of services delivered to the Indian community;

(11) provide, for the benefit of all levels of state government, a continuing liaison between those governmental bodies and duly elected tribal governments and officials;

(12) interreact with private organizations involved with Indian concerns in the development and implementation of programs designed to assist Indian people, insofar as they affect state agencies and departments; ~~and~~

(13) act as an intermediary, when requested and if necessary between Indian interests and state agencies and departments when questions, problems or conflicts exist or arise;

(14) provide information for and direction to a program designed to assist Indian citizens to assume all the rights, privileges, and duties of citizenship, and to coordinate and cooperate with local, state, and national private agencies providing services to the Indian people;

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(15) develop educational programs, community organization programs, leadership development programs, motivational programs, and business development programs for the benefit of Indian persons who have been, are, or will be subject to prejudice and discrimination; and

(16) cooperate and consult with appropriate commissioners and agencies to develop plans and programs to most effectively serve the needs of Indians.

Sec. 2. Minnesota Statutes 1986, section 363.05, subdivision 1, is amended to read:

Subdivision 1. **FORMULATION OF POLICIES.** The commissioner shall formulate policies to effectuate the purposes of this chapter and shall:

(1) exercise leadership under the direction of the governor in the development of human rights policies and programs, and make recommendations to the governor and the legislature for their consideration and implementation;

~~(2) cooperate and consult with appropriate commissioners and agencies in developing plans and programs to most effectively serve the needs of Indians, to assist women and to fulfill the purposes of this chapter;~~

(3) establish and maintain a principal office in St. Paul, and any other necessary branch offices at any location within the state;

~~(4)~~ (3) meet and function at any place within the state;

(5) ~~(4)~~ employ ~~such hearing examiners,~~ attorneys, clerks and other employees and agents as the commissioner may deem necessary and prescribe their duties;

(6) ~~(5)~~ to the extent permitted by federal law and regulation, utilize the records of the department of jobs and training of the state when necessary to effectuate the purposes of this chapter;

~~(7)~~ (6) obtain upon request and utilize the services of all state governmental departments and agencies;

~~(8)~~ (7) adopt suitable rules for effectuating the purposes of this chapter;

(9) ~~(8)~~ issue complaints, receive and investigate charges alleging unfair discriminatory practices, and determine whether or not probable cause exists for hearing;

~~(10)~~ (9) subpoena witnesses, administer oaths, take testimony, and require the production for examination of any books or papers relative to any matter under investigation or in question; ~~authorize hearing examiners to exercise the authority conferred by this clause;~~

~~(11)~~ (10) attempt, by means of education, conference, conciliation, and persuasion to eliminate unfair discriminatory practices as being contrary to the public policy of the state;

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~~(12) conduct research and study discriminatory practices;~~

~~(13) publish and distribute the results of research and study when in the judgment of the commissioner the purposes of this chapter, will be served thereby;~~

~~(14) (11) develop and conduct programs of formal and informal education designed to eliminate discrimination and intergroup conflict by use of educational techniques and programs the commissioner deems necessary;~~

~~(15) (12) make a written report of the activities of the commissioner to the governor each year and to the legislature by November 15 of each even-numbered year;~~

~~(16) (13) accept gifts, bequests, grants or other payments public and private to help finance the activities of the department;~~

~~(17) (14) create such local and statewide advisory committees as will in the commissioner's judgment aid in effectuating the purposes of the department of human rights;~~

~~(18) appoint a hearing examiner to preside at a public hearing on any complaint;~~

~~(19) (15) develop such programs as will aid in determining the compliance throughout the state with the provisions of this chapter, and in the furtherance of such duties, conduct research and study discriminatory practices based upon race, color, creed, religion, national origin, sex, age, disability, marital status, status with regard to public assistance, familial status, or other factors and develop accurate data on the nature and extent of discrimination and other matters as they may affect housing, employment, public accommodations, schools, and other areas of public life;~~

~~(20) (16) develop and disseminate technical assistance to persons subject to the provisions of this chapter, and to agencies and officers of governmental and private agencies;~~

~~(21) (17) provide staff services to such advisory committees as may be created in aid of the functions of the department of human rights;~~

~~(22) (18) make grants in aid to the extent that appropriations are made available for that purpose in aid of carrying out duties and responsibilities; but no grant in aid shall be made without first obtaining the advice and consent of the board; and~~

~~(23) develop educational programs, community organization programs, leadership development programs, motivational programs, and business development programs for the benefit of those persons theretofore and hereafter subject to prejudice and discrimination;~~

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(24) ~~provide information for and direction to a program designed to assist Indian citizens to assume all the rights, privileges, and duties of citizenship; and to coordinate and cooperate with local, state and national and private agencies providing services to the Indian people; and~~

(25) (19) cooperate and consult with the commissioner of labor and industry regarding the investigation of violations of, and resolution of complaints regarding section 363.03, subdivision 9.

In performing these duties, the commissioner shall give priority to those duties in clauses (8), (9), and (10) and to the duties in section 363.073.

Sec. 3. Minnesota Statutes 1986, section 363.06, subdivision 1, is amended to read:

Subdivision 1. **CHARGE FILING ACTIONS.** Any person aggrieved by a violation of this chapter may bring a civil action as provided in section 363.14, subdivision 1, clause (a), or may file a verified charge with the commissioner or the commissioner's designated agent; ~~stating.~~ A charge filed with the commissioner must be in writing on a form provided by the commissioner and signed by the charging party. The charge must state the name and address of the person alleged to have committed an unfair discriminatory practice, setting and set out a summary of the details of the practice complained of and, if applicable, providing. 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 required by the commissioner necessary to process the charge. The commissioner may dismiss a charge when the charging party fails to provide required information. The commissioner within ~~five~~ ten days of the filing shall serve a copy of the charge and a request for a response and a form for use in responding to the charge upon the respondent personally or by ~~registered or certified~~ mail. ~~After the filing of a charge the commissioner shall notify the charging party in writing of any change in the status of the charge. A copy of the notice shall be mailed to the respondent. The respondent shall file with the department a written response to the charge within 20 days of receipt of the charge.~~

Sec. 4. Minnesota Statutes 1986, section 363.06, subdivision 4, is amended to read:

Subd. 4. **INQUIRY INTO CHARGE.** (1) Consistent with clause (7), the commissioner shall promptly inquire into the truth of the allegations of the charge. The commissioner shall make an immediate inquiry when a charge alleges actual or threatened physical violence. The commissioner shall also make an immediate inquiry when it appears that a charge is frivolous or without merit and shall dismiss those charges.

The commissioner shall ~~then~~ give priority to investigating and processing those charges, in the order below, which the commissioner determines have ~~one~~ or ~~more~~ of the following characteristics:

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

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

(c) ~~there is potential for broadly promoting the policies of this chapter;~~

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

~~(d) (c)~~ a significant number of recent charges have been filed against the respondent;

(e) (d) the respondent is a government entity;

~~(f) the charge is supported by substantial documentation, witnesses, or other evidence~~

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

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

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

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

(2) If the commissioner determines after investigation that no probable cause exists to credit the allegations of the unfair discriminatory practice, the commissioner shall, within ten days of the determination, serve upon the charging party and respondent written notice of the determination. Within ten days after receipt of notice, the charging party may request in writing, on forms prepared by the department, that the commissioner reconsider the determination. The request shall contain a brief statement of the reasons for and new evidence in support of the request for reconsideration. At the time of submission of the request to the commissioner, the charging party shall deliver or mail to the respondent a copy of the request for reconsideration. The commissioner shall either reaffirm or reverse the determination of no probable cause within 20 days after receipt of the request for reconsideration, and shall within ten days notify in writing the charging party and respondent of the decision to reaffirm or reverse.

A decision by the commissioner that no probable cause exists to credit the allegations of an unfair discriminatory practice shall not be appealed to the court of appeals pursuant to section 363.072 or sections 14.63 to 14.68.

(3) If the commissioner determines after investigation that probable cause

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exists to credit the allegations of unfair discriminatory practices, the commissioner shall serve on the respondent and the respondent's attorney if the respondent is represented by counsel, by first class mail, a notice setting forth a short plain written statement of the alleged facts which support the finding of probable cause and an enumeration of the provisions of law allegedly violated. If the commissioner determines that attempts to eliminate the alleged unfair practices through conciliation pursuant to subdivision 5 have been or would be unsuccessful or unproductive, the commissioner shall issue a complaint and serve on the respondent, by registered or certified mail, a written notice of hearing together with a copy of the complaint, requiring the respondent to answer the allegations of the complaint at a hearing before a hearing examiner an administrative law judge at a time and place specified in the notice, not less than ten days after service of said complaint. A copy of the notice shall be furnished to the charging party and the attorney general.

(4) If, at any time after the filing of a charge, the commissioner has reason to believe that a respondent has engaged in any unfair discriminatory practice, the commissioner may file a petition in the district court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this chapter, including an order or decree restraining the respondent from doing or procuring an act tending to render ineffectual an order the commissioner may enter with respect to the complaint. The court shall have power to grant temporary relief or a restraining order as it deems just and proper, but no relief or order extending beyond ten days shall be granted except by consent of the respondent or after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice. Except as modified by this section, the Minnesota rules of civil procedure shall apply to an application, and the district court shall have authority to grant or deny the relief sought on conditions as it deems just and equitable. All hearings under this section shall be given precedence as nearly as practicable over all other pending civil actions.

(5) If a lessor, after engaging in a discriminatory practice defined in section 363.03, subdivision 2, clause (1), (a), leases or rents a dwelling unit to a person who has no knowledge of the practice or of the existence of a charge with respect to the practice, the lessor shall be liable for actual damages sustained by a person by reason of a final order as provided in this section requiring the person to be evicted from the dwelling unit.

(6) In any complaint issued under this section, the commissioner may seek relief for a class of individuals affected by an unfair discriminatory practice occurring on or after a date 300 days prior to the filing of the charge from which the complaint originates.

(7) The commissioner may adopt policies to determine which charges are processed and the order in which charges are processed based on their particular

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social or legal significance, administrative convenience, difficulty of resolution, or other standard consistent with the provisions of this chapter.

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

Sec. 5. Minnesota Statutes 1986, section 363.071, is amended to read:

### 363.071 HEARINGS.

Subdivision 1. **CONDUCT OF HEARINGS.** A complaint issued by the commissioner shall be heard as a contested case, except that the report of the ~~hearing examiner~~ administrative law judge shall be binding on all parties to the proceeding and if appropriate shall be implemented by an order as provided for in subdivision 2. The hearing shall be conducted at a place designated by the commissioner, within the county where the unfair discriminatory practice occurred or where the respondent resides or has a principal place of business. The hearing shall be conducted in accordance with sections 14.57 to 14.62, and is subject to appeal in accordance with sections 14.63 to 14.68.

Subd. 1a. **HEARINGS 180 DAYS AFTER CHARGE.** At any time after 180 days from the filing of a charge, if there has been neither a finding of probable cause nor of no probable cause, the charging party may file a request with the commissioner to appear at a hearing on the party's own behalf or through a private attorney. The amount of time during which a case is involved in significant settlement negotiations, is being investigated by another enforcement agency under a work sharing agreement, or has been referred to mediation or to a local human rights commission for no fault grievance processing is not counted in computing the 180 days. Tolling of the time during settlement negotiations requires written approval of the charging party or the party's attorney. The right of a charging party to file a request for hearing does not apply in cases that have been certified as complex by the commissioner within 60 days of the filing of the charge. A case may not be certified as complex unless it involves multiple parties or issues, presents complex issues of law or fact, or presents substantially new issues of law in the discrimination area. Within five days of certifying a case as complex, the commissioner shall give notice of the certification to the charging party and the respondent. The commissioner shall make a determination of probable cause or no probable cause within one year of the filing of a case in which the time has not been counted or a case certified as complex. Upon receipt of the request, the commissioner shall review the documents and information held in the department's files concerning the charge and shall release to the charging party and respondent all documents and information that is are accessible to the charging party and respondent under sections 13.01 to 13.87. The commissioner shall forward the request for hearing to the office of administrative hearings, which shall promptly set the matter for hearing. If the charging party prevails at this hearing, the ~~hearing examiner~~ adminis-

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trative law judge may require the respondent to reimburse the charging party for reasonable attorney's fees.

Subd. 2. **DETERMINATION OF DISCRIMINATORY PRACTICE.** The hearing examiner administrative law judge shall make findings of fact and conclusions of law, and if the hearing examiner administrative law judge finds that the respondent has engaged in an unfair discriminatory practice, the hearing examiner administrative law judge shall issue an order directing the respondent to cease and desist from the unfair discriminatory practice found to exist and to take such affirmative action as in the judgment of the examiner administrative law judge will effectuate the purposes of this chapter. ~~Such~~ The order shall be a final decision of the department. The examiner administrative law judge shall order any respondent found to be in violation of any provision of section 363.03 to pay a civil penalty to the state. This penalty is in addition to compensatory and punitive damages to be paid to an aggrieved party. The hearing examiner administrative law judge shall determine the amount of the civil penalty to be paid, taking into account the seriousness and extent of the violation, the public harm occasioned by the violation, whether the violation was intentional, and the financial resources of the respondent. Any penalties imposed under this provision shall be paid into the general fund of the state. In all cases where the examiner administrative law judge finds that the respondent has engaged in an unfair discriminatory practice the examiner administrative law judge shall order the respondent to pay an aggrieved party, who has suffered discrimination, compensatory damages in an amount up to three times the actual damages sustained. In all cases, the examiner administrative law judge may also order the respondent to pay an aggrieved party, who has suffered discrimination, damages for mental anguish or suffering and reasonable attorney's fees, in addition to punitive damages in an amount not more than \$6,000. Punitive damages shall be awarded pursuant to section 549.20. In any case where a political subdivision is a respondent the total of punitive damages awarded an aggrieved party may not exceed \$6,000 and in that case if there are two or more respondents the punitive damages may be apportioned among them. Punitive damages may only be assessed against a political subdivision in its capacity as a corporate entity and no regular or ex officio member of a governing body of a political subdivision shall be personally liable for payment of punitive damages pursuant to this subdivision. In addition to the aforesaid remedies, in a case involving discrimination in

(a) employment, the examiner administrative law judge may order the hiring, reinstatement or upgrading of an aggrieved party, who has suffered discrimination, with or without back pay, admission or restoration to membership in a labor organization, or admission to or participation in an apprenticeship training program, on-the-job training program, or other retraining program, or any other relief the examiner administrative law judge deems just and equitable.

(b) housing, the examiner administrative law judge may order the sale, lease, or rental of the housing accommodation or other real property to an aggrieved party, who has suffered discrimination, or the sale, lease or rental of a

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like accommodation or other real property owned by or under the control of the person against whom the complaint was filed, according to terms as listed with a real estate broker, or if no such listing has been made, as otherwise advertised or offered by the vendor or lessor, or any other relief the ~~examiner~~ administrative law judge deems just and equitable.

The ~~examiner~~ administrative law judge shall cause the findings of fact, conclusions of law, and order to be served on the respondent personally, on the charging party by registered or certified mail, and shall furnish copies to the attorney general and the commissioner.

Subd. 3. **DISMISSAL OF HEARING.** If the ~~examiner~~ administrative law judge makes findings of fact, conclusions of law, and an order in favor of the respondent, ~~such~~ the order shall be a final decision of the department.

Subd. 4. **RESPONDENTS SUBJECT TO STATE LICENSING OR REGULATORY POWER.** In the case of a respondent which is subject to the licensing or regulatory power of the state or any political subdivision or agency thereof, if the ~~hearing examiner~~ hearing examiner administrative law judge determines that the respondent has engaged in a discriminatory practice, and if the respondent does not cease to engage in such discriminatory practice, the commissioner may so certify to the licensing or regulatory agency. Unless such determination of discriminatory practice is reversed in the course of judicial review, a final determination is binding on the licensing or regulatory agency. Such agency may take appropriate administrative action, including suspension or revocation of the respondent's license or certificate of public convenience and necessity, if ~~such~~ the agency is otherwise authorized to take such action.

Subd. 5. **PUBLIC CONTRACTS.** In the case of a respondent which is a party to a public contract, if the ~~hearing examiner~~ hearing examiner administrative law judge determines that the respondent has engaged in a discriminatory practice, the commissioner may so certify to the contract letting agency. Unless ~~such~~ the finding of a discriminatory practice is reversed in the course of judicial review, a final determination is binding on the contract letting agency and ~~such~~ the agency may take appropriate administrative action, including the imposition of financial penalties or termination of the contract, in whole or in part, if ~~such~~ the agency is otherwise authorized to take ~~such~~ the action.

Subd. 6. **SUBPOENAS.** After the issuance of a complaint pursuant to section 363.06, subdivision 4, a charging party or a respondent may request that the ~~hearing examiner~~ hearing examiner administrative law judge issue subpoenas requiring the presence of witnesses or the production for examination of books or papers not privileged and relevant to any matter in question at the hearing.

Approved June 2, 1987

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