CHAPTER 159--H.F.No. 2955

An act relating to human rights; establishing requirements for disability discrimination claims related to architectural barriers; requiring certain notices in building inspection reports;amending Minnesota Statutes 2014, section 363A.28, subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 363A.

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

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

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

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

(c) The running of the one-year limitation period is suspended during the time period provided for in the notice under section 363A.331, subdivision 2.

EFFECTIVE DATE. This section is effective the day following final enactment.

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

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

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

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

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

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

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(c) "Certified professional" means a licensed, registered, or otherwise certified professional with demonstrated knowledge of accessibility requirements under law.

Subd. 2. **Notice of architectural barrier.** (a) A notice sent before filing a civil action with the court by an attorney representing a person who alleges that a business establishment or place of public accommodation has violated an accessibility requirement under law must be dated and must:

(1) cite the law alleged to be violated;

(2) identify each architectural barrier that is the subject of an alleged violation and specify its location on the premises;

(3) provide a reasonable time for a response, which may not be less than 30 days; and

(4) comply with subdivision 3.

(b) A notice described in paragraph (a) must not include a request or demand for money or an offer or agreement to accept money, but may offer to engage in settlement negotiations before litigation. If a notice is sent, a civil action may not be filed before expiration of the period to respond provided in the notice.

Subd. 3. **Statutory short form; notice of architectural barrier.** A notice of an architectural barrier must be in the following, or a substantially similar, form:

"This notice is to advise you of a claim that [insert name of business establishment or place of public accommodation] is in violation of the Americans with Disabilities Act and/or the Minnesota Human Rights Act for failure to remove one or more architectural barriers limiting access to the premises by persons with disabilities.

Allegation of Violation

The undersigned attorney represents [insert client's name or organization], who alleges that [insert name of business establishment or place of public accommodation] is in violation of [insert citation of all statute(s) and rule(s) alleged to be violated] because [insert client's name] attempted on [insert date(s)] to access [insert name of business establishment or place of public accommodation] but was unable to or was deterred from doing so due to the following architectural barrier or barriers limiting access by persons with disabilities: [insert description of each architectural barrier that is the subject of the alleged violation and its location on the premises].

Accessibility Audit

Licensed, registered, or otherwise certified professionals with knowledge of the Americans with Disabilities Act and Minnesota Human Rights Act requirements regarding physical barriers to access may be available to conduct an audit of your business establishment or place of public accommodation to advise you regarding compliance with the law. For more information, contact the Minnesota State Council on Disability at 1-800-945-8913 or visit MSCOD's Web site at http://www.disability.state.mn.us.

Response

Please contact, or have your attorney contact, the undersigned attorney no later than [insert date by which response is required] to provide a response or if you would like to engage in prelitigation settlement negotiations. Failure to respond to this notice may result in a lawsuit being filed against you."

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Subd. 4. **Affirmative defense; challenging audit.** (a) In a civil action brought against a business establishment or place of public accommodation for violation of accessibility requirements under law, the defendant has an affirmative defense to the action if the defendant demonstrates that:

(1) the architectural barrier has been removed in a manner that complies with accessibility requirements under law;

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

(3) the alleged architectural barrier does not violate accessibility requirements under law.

(b) In a civil action brought against a business establishment or place of public accommodation for violation of accessibility requirements under law a plaintiff challenging a finding in an audit, performed by a certified professional, that an alleged architectural barrier complies with accessibility requirements under law, or that compliance is not readily achievable or alternative means cannot be employed, has the burden to show that the architectural barrier does not comply with those accessibility requirements or that compliance is readily achievable or can be accomplished by alternative means.

Subd. 5. **Exemptions.** (a) Subdivisions 2 and 3 do not apply to:

(1) a person who is not represented by an attorney; or

(2) attorneys representing the state or a political subdivision of the state.

(b) This section does not bar a person from bringing an action if the person:

(1) is challenging a finding contained in an audit prepared by a certified professional;

(2) has a claim for damages resulting from an injury; or

(3) has filed charges pursuant to section 363A.28.

EFFECTIVE DATE. This section is effective the day following final enactment.

Presented to the governor May 22, 2016

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