

## 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

03/23/2016 Adoption of Report: Placed on the General Register as Amended  
Read Second Time

05/09/2016 Calendar for the Day, Amended  
Read Third Time as Amended  
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

1.1 A bill for an act  
1.2 relating to human rights; establishing requirement for demand letter involving  
1.3 architectural barriers limiting accessibility; providing for accessibility audits;  
1.4 amending Minnesota Statutes 2014, section 363A.28, subdivision 3; proposing  
1.5 coding for new law in Minnesota Statutes, chapter 363A.

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

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

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

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

2.1 (c) The running of the one-year limitation period is suspended during the time period  
2.2 provided for in a demand letter under section 363A.331, subdivision 3.

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

2.5 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms  
2.6 have the meanings given.

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

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 professional" means:

2.15 (1) an individual who is certified under section 326B.133, subdivision 3a, paragraph  
2.16 (d); or

2.17 (2) a licensed, registered, or otherwise certified professional with demonstrated  
2.18 knowledge of accessibility requirements under law.

2.19 Subd. 2. **Affirmative defense; challenging audit.** (a) In a civil action brought  
2.20 against an entity required to comply with section 363A.11, subdivision 3, for the failure to  
2.21 remove an architectural barrier, the defendant has an affirmative defense to the action if  
2.22 the defendant:

2.23 (1) demonstrates that the defendant has removed the architectural barrier in a manner  
2.24 that complies with accessibility requirements under law;

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

2.27 (3) demonstrates that the alleged architectural barrier does not violate accessibility  
2.28 standards under law.

2.29 (b) In a civil action brought against an entity required to comply with section  
2.30 363A.11, subdivision 3, a plaintiff challenging an audit, performed by a certified  
2.31 professional, that an alleged architectural barrier complies with accessibility requirements  
2.32 under law, or that compliance is not readily achievable or alternative means cannot be  
2.33 employed, has the burden to show that the architectural barrier does not comply with those  
2.34 accessibility requirements or that compliance is readily achievable or can be accomplished  
2.35 by alternative means.

3.1 Subd. 3. Demand letter seeking removal of an architectural barrier. (a) Before  
3.2 bringing a civil action under section 363A.33, an attorney representing a person who  
3.3 alleges that an entity required to comply with section 363A.11, subdivision 3, has violated  
3.4 accessibility requirements under state law must provide a demand letter consistent with  
3.5 subdivision 4. A demand letter sent pursuant to this section is not invalidated if a good  
3.6 faith attempt to comply with the requirements of subdivision 4 are made. The demand  
3.7 letter must provide a reasonable time to respond which must be no less than 30 days.

3.8 (b) A person who is not represented by an attorney, may, but is not required to, send  
3.9 a demand letter. A person who elects to send the demand letter under this section must  
3.10 comply with the requirements of this section.

3.11 (c) A person who sends a demand letter is entitled to a civil penalty of \$250 to be  
3.12 paid by the entity required to comply with section 363A.11, subdivision 3, if the alleged  
3.13 architectural barrier or barriers are found to be a violation of accessibility requirements  
3.14 in a barrier removal audit, administrative proceeding under section 363A.28, or a court  
3.15 of law. Payment of the civil penalty does not relieve the entity required to comply with  
3.16 section 363A.11, subdivision 3, from the obligation to remove the architectural barrier.

3.17 (d) When a demand letter has been sent pursuant to paragraph (a), a civil action may  
3.18 not be filed or pursued by a plaintiff if, within the response time provided in the demand  
3.19 letter, the entity required to comply with section 363A.11, subdivision 3:

3.20 (1) removes the architectural barrier in a manner that complies with accessibility  
3.21 requirements under law and provides reasonable proof of the removal to the attorney  
3.22 representing the person alleging the violation;

3.23 (2) demonstrates that the business has scheduled a barrier removal audit to be  
3.24 conducted at the earliest time that a certified accessibility specialist or other certified  
3.25 professional is available and agrees to produce the audit report as soon as practicable after  
3.26 it is completed and, if the report contains a remedial plan, comply with the plan; or

3.27 (3) produces a barrier removal audit report prepared by a certified professional:

3.28 (i) finding that the alleged architectural barrier does not violate accessibility  
3.29 requirements under law or that compliance with accessibility requirements under law is  
3.30 not readily achievable or cannot be accomplished by alternative means; or

3.31 (ii) containing a remedial plan, with a reasonable timetable for completion, for  
3.32 removal of the architectural barrier and compliance with accessibility requirements  
3.33 under law.

3.34 (e) Nothing in this subdivision bars a person from bringing an action:

3.35 (1) if a plaintiff believes a potential defendant has failed to comply with a timetable  
3.36 for completion of a plan to remove an architectural barrier;

- 4.1 (2) if a person is challenging a finding or remedial plan under paragraph (b), clause  
4.2 (3);  
4.3 (3) if a person has a claim for damages resulting from an injury; or  
4.4 (4) if a person is filing charges pursuant to section 363A.28.  
4.5 (f) The requirements of this subdivision do not apply to attorneys representing the  
4.6 state or a political subdivision of the state.

4.7 **Subd. 4. Statutory short form; demand letter for removal of an architectural**  
4.8 **barrier.** The demand letter required under subdivision 3 must be in the following, or  
4.9 substantially similar form:

4.10 "This demand letter is to advise you of your rights under Minnesota law in  
4.11 connection with a claim that you or your business has engaged in an unfair discriminatory  
4.12 practice. The undersigned attorney represents [Individual/Organization], who alleges that  
4.13 there are architectural barriers that limit the accessibility of persons with disabilities at  
4.14 [Place of Public Accommodation/Business], located at [Address, City, State, Zip].

4.15 [Individual/Organization] alleges that [Place of Public Accommodation] is in  
4.16 violation of [Specific Laws] because [Detailed Description of Architectural Barrier] is  
4.17 limiting access to persons with disabilities. Before filing a lawsuit against you under  
4.18 Minnesota Statutes, section 363A.33, [Individual/Organization] are required under  
4.19 Minnesota Statutes, section 363A.331, subdivision 3, to submit this demand letter seeking  
4.20 removal of the alleged architectural barriers. [Individual/Organization] demands that  
4.21 [Place of Public Accommodation] remove the described architectural barriers on or before  
4.22 [Deadline of at Least 30 Days], or [Individual/Organization] may file a lawsuit against you  
4.23 under Minnesota Statutes, section 363A.33.

4.24 A lawsuit may not be filed against you for failure to remove the above-described  
4.25 architectural barriers if, within the response period provided above, [Place of Public  
4.26 Accommodation] does one of the following, as required by Minnesota Statutes, section  
4.27 363A.331, subdivision 3:

4.28 (1) removes the architectural barrier in a manner that complies with accessibility  
4.29 requirements under law and provides proof of the removal to the undersigned attorney; or

4.30 (2) produces a barrier removal audit report prepared or developed by a certified  
4.31 accessibility specialist or other certified professional with demonstrated knowledge of  
4.32 accessibility requirements that:

4.33 (i) contains a remedial plan, with a reasonable timetable for completion for removal  
4.34 of the architectural barrier and compliance with accessibility requirements under law;

5.1 (ii) finds that the alleged architectural barrier does not violate accessibility  
5.2 requirements under law or that compliance with accessibility requirements is not readily  
5.3 achievable or cannot be accomplished by alternative means; or

5.4 (iii) demonstrates that [Place of Public Accommodation] has scheduled a barrier  
5.5 removal audit to be conducted at the earliest time that a certified professional is available  
5.6 and agrees to produce the audit report as soon as practicable after it is completed and, if  
5.7 the report contains a remedial plan, comply with the plan.

5.8 Under Minnesota law, if the alleged architectural barrier is a violation of  
5.9 accessibility requirements under law, you will be required to pay a civil penalty of \$250  
5.10 to [Individual/Organization], in addition to removing the architectural barrier. Failure to  
5.11 comply with Minnesota law may result in a lawsuit being filed against you."