

CHAPTER 363

DEPARTMENT OF HUMAN RIGHTS

363.01	Definitions.	363.11	Construction.
363.02	Exemptions.	363.115	Referral to local commission.
363.021	Construction of law.	363.12	Declaration of policy.
363.03	Unfair discriminatory practices.	363.20	Criminal code; effect.
363.05	Duties of commissioner.		

363.01 DEFINITIONS.

[For text of subds 1 to 22, see M.S.1992]

Subd. 23. **Local commission.** "Local commission" means an agency of a city, county, or group of counties created pursuant to law, resolution of a county board, city charter, or municipal ordinance for the purpose of dealing with discrimination on the basis of race, color, creed, religion, national origin, sex, age, disability, marital status, status with regard to public assistance, sexual orientation, or familial status.

[For text of subds 24 to 26a, see M.S.1992]

Subd. 26b. **Over-the-road bus.** "Over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

[For text of subds 27 to 29, see M.S.1992]

Subd. 30a. **Private entity.** "Private entity" means an entity other than a public service.

[For text of subds 31 to 34, see M.S.1992]

Subd. 35. **Qualified disabled person.** "Qualified disabled person" means:

(1) with respect to employment, a disabled person who, with reasonable accommodation, can perform the essential functions required of all applicants for the job in question; and

(2) with respect to public services, a person with a disability who, with or without reasonable modifications to rules, policies, or practices, removal of architectural, communications, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for receipt of services and for participation in programs and activities provided by the public service.

For the purposes of this subdivision, "disability" excludes any condition resulting from alcohol or drug abuse which prevents a person from performing the essential functions of the job in question or constitutes a direct threat to property or the safety of others.

If a respondent contends that the person is not a qualified disabled person, the burden is on the respondent to prove that it was reasonable to conclude the disabled person, with reasonable accommodation, could not have met the requirements of the job or that the selected person was demonstrably better able to perform the job.

[For text of subds 35a to 41a, see M.S.1992]

Subd. 41b. **Station.** "Station" means property located next to a right-of-way on which intercity and commuter transportation is operated, which is used by the general public and is related to the provision of the transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, drinking fountains, public telephones, and, if a public service providing rail transportation owns the property, concessions areas to the extent that the public service exercises control over the selection, design, construction, or alteration of the property. Station does not include flag stops.

[For text of subds 42 to 44, see M.S.1992]

Subd. 45. **Sexual orientation.** "Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. "Sexual orientation" does not include a physical or sexual attachment to children by an adult.

History: 1993 c 22 s 1,2; 1993 c 277 s 1-4

363.02 EXEMPTIONS.

Subdivision 1. **Employment.** The provisions of section 363.03, subdivision 1, shall not apply to:

- (1) The employment of any individual:
 - (a) by the individual's parent, grandparent, spouse, child, or grandchild; or
 - (b) in the domestic service of any person;
- (2) A religious or fraternal corporation, association, or society, with respect to qualifications based on religion or sexual orientation, when religion or sexual orientation shall be a bona fide occupational qualification for employment;
- (3) A nonpublic service organization whose primary function is providing occasional services to minors, such as youth sports organizations, scouting organizations, boys' or girls' clubs, programs providing friends, counselors, or role models for minors, youth theater, dance, music or artistic organizations, agricultural organizations for minors, and other youth organizations, with respect to qualifications of employees or volunteers based on sexual orientation;
- (4) The employment of one person in place of another, standing by itself, shall not be evidence of an unfair discriminatory practice;
- (5) The operation of a bona fide seniority system which mandates differences in such things as wages, hiring priorities, layoff priorities, vacation credit, and job assignments based on seniority, so long as the operation of the system is not a subterfuge to evade the provisions of this chapter;
- (6) With respect to age discrimination, a practice by which a labor organization or employer offers or supplies varying insurance benefits or other fringe benefits to members or employees of differing ages, so long as the cost to the labor organization or employer for the benefits is reasonably equivalent for all members or employees;
- (7) A restriction imposed by state statute, home rule charter, ordinance, or civil service rule, and applied uniformly and without exception to all individuals, which establishes a maximum age for entry into employment as a peace officer or firefighter;
- (8) Nothing in this chapter concerning age discrimination shall be construed to validate or permit age requirements which have a disproportionate impact on persons of any class otherwise protected by section 363.03, subdivision 1 or 5;
- (9) It is not an unfair employment practice for an employer, employment agency, or labor organization:
 - (i) to require or request a person to undergo physical examination, which may include a medical history, for the purpose of determining the person's capability to perform available employment, provided:
 - (a) that an offer of employment has been made on condition that the person meets the physical or mental requirements of the job, except that a law enforcement agency filling a peace officer position or part-time peace officer position may require or request an applicant to undergo psychological evaluation before a job offer is made provided that the psychological evaluation is for those job-related abilities set forth by the board of peace officer standards and training for psychological evaluations and is otherwise lawful;

(b) that the examination tests only for essential job-related abilities;

(c) that the examination except for examinations authorized under chapter 176 is required of all persons conditionally offered employment for the same position regardless of disability; and

(d) that the information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations; first aid safety personnel may be informed, when appropriate, if the disability might require emergency treatment; government officials investigating compliance with this chapter must be provided relevant information on request; and information may be released for purposes mandated by local, state, or federal law; provided that the results of the examination are used only in accordance with this chapter; or

(ii) with the consent of the employee, after employment has commenced, to obtain additional medical information for the purposes of assessing continuing ability to perform the job or employee health insurance eligibility; for purposes mandated by local, state, or federal law; for purposes of assessing the need to reasonably accommodate an employee or obtaining information to determine eligibility for the second injury fund under chapter 176; or pursuant to sections 181.950 to 181.957; or other legitimate business reason not otherwise prohibited by law;

(iii) to administer preemployment tests, provided that the tests (a) measure only essential job-related abilities, (b) are required of all applicants for the same position regardless of disability except for tests authorized under chapter 176, and (c) accurately measure the applicant's aptitude, achievement level, or whatever factors they purport to measure rather than reflecting the applicant's impaired sensory, manual, or speaking skills except when those skills are the factors that the tests purport to measure; or

(iv) to limit receipt of benefits payable under a fringe benefit plan for disabilities to that period of time which a licensed physician reasonably determines a person is unable to work; or

(v) to provide special safety considerations for pregnant women involved in tasks which are potentially hazardous to the health of the unborn child, as determined by medical criteria.

Information obtained under this section, regarding the medical condition or history of any employee, is subject to the requirements of subclause (i), item (d).

Subd. 2. Housing. (1) The provisions of section 363.03, subdivision 2, shall not apply to:

(a) rooms in a temporary or permanent residence home run by a nonprofit organization, if the discrimination is by sex;

(b) the rental by a resident owner or occupier of a one-family accommodation of a room or rooms in the accommodation to another person or persons if the discrimination is by sex, marital status, status with regard to public assistance, sexual orientation, or disability. Except as provided elsewhere in this chapter or other state or federal law, no person or group of persons selling, renting, or leasing property is required to modify the property in any way, or exercise a higher degree of care for a person having a disability than for a person who does not have a disability; nor shall this chapter be construed to relieve any person or persons of any obligations generally imposed on all persons regardless of any disability in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations of the lease, agreement, or contract; or

(c) the rental by a resident owner of a unit in a dwelling containing not more than two units, if the discrimination is on the basis of sexual orientation.

(2) The provisions of section 363.03, subdivision 2, prohibiting discrimination because of familial status shall not be construed to defeat the applicability of any local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling unit and shall not apply to:

- (a) any owner occupied building containing four or fewer dwelling units; or
- (b) housing for elderly persons. "Housing for elderly persons" means housing:
 - (i) provided under any state or federal program that the commissioner determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
 - (ii) intended for, and solely occupied by, persons 62 years of age or older; or
 - (iii) intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that:
 - (A) there are significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of these facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older persons;
 - (B) at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and
 - (C) there is publication of, and adherence to, policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Housing does not fail to meet the requirements for housing for elderly persons by reason of persons residing in the housing as of August 1, 1989, who do not meet the age requirements of clauses (b)(ii) and (b)(iii) if new occupants of the housing meet the age requirements of clause (b)(ii) or (b)(iii). In addition, housing does not fail to meet the requirements by reason of unoccupied units if unoccupied units are reserved for occupancy by persons who meet the age requirements of clause (b)(ii) or (b)(iii).

[For text of subds 2a to 3, see M.S.1992]

Subd. 4. Public accommodations. The provisions of section 363.03, subdivision 3, relating to sex, shall not apply to such facilities as restrooms, locker rooms, and other similar places. The provisions of section 363.03, subdivision 3, do not apply to employees or volunteers of a nonpublic service organization whose primary function is providing occasional services to minors, such as youth sports organizations, scouting organizations, boys' or girls' clubs, programs providing friends, counselors, or role models for minors, youth theater, dance, music or artistic organizations, agricultural organizations for minors, and other youth organizations, with respect to qualifications based on sexual orientation.

[For text of subds 5 to 7, see M.S.1992]

Subd. 8. Religious association. Nothing in this chapter prohibits any religious association, religious corporation, or religious society that is not organized for private profit, or any institution organized for educational purposes that is operated, supervised, or controlled by a religious association, religious corporation, or religious society that is not organized for private profit, from:

- (1) limiting admission to or giving preference to persons of the same religion or denomination; or
- (2) in matters relating to sexual orientation, taking any action with respect to education, employment, housing and real property, or use of facilities. This clause shall not apply to secular business activities engaged in by the religious association, religious corporation, or religious society, the conduct of which is unrelated to the religious and educational purposes for which it is organized.

History: 1993 c 22 s 3-6

363.021 CONSTRUCTION OF LAW.

Nothing in this chapter shall be construed to:

- (1) mean the state of Minnesota condones homosexuality or bisexuality or any equivalent lifestyle;

(2) authorize or permit the promotion of homosexuality or bisexuality in education institutions or require the teaching in education institutions of homosexuality or bisexuality as an acceptable lifestyle;

(3) authorize or permit the use of numerical goals or quotas, or other types of affirmative action programs, with respect to homosexuality or bisexuality in the administration or enforcement of the provisions of this chapter; or

(4) authorize the recognition of or the right of marriage between persons of the same sex.

History: 1993 c 22 s 7

363.03 UNFAIR DISCRIMINATORY PRACTICES.

Subdivision 1. **Employment.** Except when based on a bona fide occupational qualification, it is an unfair employment practice:

(1) For a labor organization, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age,

(a) to deny full and equal membership rights to a person seeking membership or to a member;

(b) to expel a member from membership;

(c) to discriminate against a person seeking membership or a member with respect to hiring, apprenticeship, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment; or

(d) to fail to classify properly, or refer for employment or otherwise to discriminate against a person or member.

(2) For an employer, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age,

(a) to refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment; or

(b) to discharge an employee; or

(c) to discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.

(3) For an employment agency, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age,

(a) to refuse or fail to accept, register, classify properly, or refer for employment or otherwise to discriminate against a person; or

(b) to comply with a request from an employer for referral of applicants for employment if the request indicates directly or indirectly that the employer fails to comply with the provisions of this chapter.

(4) For an employer, employment agency, or labor organization, before a person is employed by an employer or admitted to membership in a labor organization, to

(a) require or request the person to furnish information that pertains to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age; or, subject to section 363.02, subdivision 1, to require or request a person to undergo physical examination; unless for the sole and exclusive purpose of national security, information pertaining to national origin is required by the United States, this state or a political subdivision or agency of the United States or this state, or for the sole and exclusive purpose of compliance with the public contracts act or any rule, regulation, or laws of the United States or of this state requiring the information or examination. A law enforcement agency may, after notifying an applicant for a peace officer or part-time peace officer position that the law enforcement agency is commencing the background investigation on the applicant, request the applicant's date of birth, gender, and race on a separate form for the sole

and exclusive purpose of conducting a criminal history check, a driver's license check, and fingerprint criminal history inquiry. The form shall include a statement indicating why the data is being collected and what its limited use will be. No document which has date of birth, gender, or race information will be included in the information given to or available to any person who is involved in selecting the person or persons employed other than the background investigator. No person may act both as background investigator and be involved in the selection of an employee except that the background investigator's report about background may be used in that selection as long as no direct or indirect references are made to the applicant's race, age, or gender; or

(b) seek and obtain for purposes of making a job decision, information from any source that pertains to the person's race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age, unless for the sole and exclusive purpose of compliance with the public contracts act or any rule, regulation, or laws of the United States or of this state requiring the information; or

(c) cause to be printed or published a notice or advertisement that relates to employment or membership and discloses a preference, limitation, specification, or discrimination based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age.

Any individual who is required to provide information that is prohibited by this subdivision is an aggrieved party under section 363.06.

(5) For an employer, an employment agency, or a labor organization, with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work, including a duty to make reasonable accommodations as provided by paragraph (6).

(6) For an employer with a number of part-time or full-time employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year equal to or greater than 25 effective July 1, 1992, and equal to or greater than 15 effective July 1, 1994, an employment agency, or a labor organization, not to make reasonable accommodation to the known disability of a qualified disabled person or job applicant unless the employer, agency, or organization can demonstrate that the accommodation would impose an undue hardship on the business, agency, or organization. "Reasonable accommodation" means steps which must be taken to accommodate the known physical or mental limitations of a qualified disabled person. "Reasonable accommodation" may include but is not limited to, nor does it necessarily require: (a) making facilities readily accessible to and usable by disabled persons; and (b) job restructuring, modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis.

In determining whether an accommodation would impose an undue hardship on the operation of a business or organization, factors to be considered include:

(a) the overall size of the business or organization with respect to number of employees or members and the number and type of facilities;

(b) the type of the operation, including the composition and structure of the work force, and the number of employees at the location where the employment would occur;

(c) the nature and cost of the needed accommodation;

(d) the reasonable ability to finance the accommodation at each site of business; and

(e) documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with the disabled person or with knowledgeable disabled persons or organizations.

A prospective employer need not pay for an accommodation for a job applicant if it is available from an alternative source without cost to the employer or applicant.

[For text of subd 1a, see M.S.1992]

Subd. 2. Real property. It is an unfair discriminatory practice:

(1) For an owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease any real property, or any agent of any of these:

(a) to refuse to sell, rent, or lease or otherwise deny to or withhold from any person or group of persons any real property because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status; or

(b) to discriminate against any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status in the terms, conditions or privileges of the sale, rental or lease of any real property or in the furnishing of facilities or services in connection therewith, except that nothing in this clause shall be construed to prohibit the adoption of reasonable rules intended to protect the safety of minors in their use of the real property or any facilities or services furnished in connection therewith; or

(c) in any transaction involving real property, to print, circulate or post or cause to be printed, circulated, or posted any advertisement or sign, or use any form of application for the purchase, rental or lease of real property, or make any record or inquiry in connection with the prospective purchase, rental, or lease of real property which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status, or any intent to make any such limitation, specification, or discrimination except that nothing in this clause shall be construed to prohibit the advertisement of a dwelling unit as available to adults-only if the person placing the advertisement reasonably believes that the provisions of this subdivision prohibiting discrimination because of familial status do not apply to the dwelling unit.

(2) For a real estate broker, real estate salesperson, or employee, or agent thereof:

(a) to refuse to sell, rent, or lease or to offer for sale, rental, or lease any real property to any person or group of persons or to negotiate for the sale, rental, or lease of any real property to any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status or represent that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or otherwise deny or withhold any real property or any facilities of real property to or from any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status; or

(b) to discriminate against any person because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status in the terms, conditions or privileges of the sale, rental or lease of real property or in the furnishing of facilities or services in connection therewith; or

(c) to print, circulate, or post or cause to be printed, circulated, or posted any advertisement or sign, or use any form of application for the purchase, rental, or lease of any real property or make any record or inquiry in connection with the prospective purchase, rental or lease of any real property, which expresses directly or indirectly, any limitation, specification or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status or any intent to make any such limitation, specification, or discrimination except that nothing in this clause shall be construed to prohibit the advertisement of a dwelling unit as available to adults-only if the person placing the advertisement reasonably believes that the provisions of this subdivision prohibiting discrimination because of familial status do not apply to the dwelling unit.

(3) For a person, bank, banking organization, mortgage company, insurance company, or other financial institution or lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair or maintenance of any real property or any agent or employee thereof:

(a) to discriminate against any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status of the person or group of persons or of the prospective occupants or tenants of the real property in the granting, withholding, extending, modifying or renewing, or in the rates, terms, conditions, or privileges of the financial assistance or in the extension of services in connection therewith; or

(b) to use any form of application for the financial assistance or make any record or inquiry in connection with applications for the financial assistance which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status or any intent to make any such limitation, specification, or discrimination; or

(c) to discriminate against any person or group of persons who desire to purchase, lease, acquire, construct, rehabilitate, repair, or maintain real property in a specific urban or rural area or any part thereof solely because of the social, economic, or environmental conditions of the area in the granting, withholding, extending, modifying, or renewing, or in the rates, terms, conditions, or privileges of the financial assistance or in the extension of services in connection therewith.

(4) For any real estate broker or real estate salesperson, for the purpose of inducing a real property transaction from which the person, the person's firm, or any of its members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin, sex, marital status, status with regard to public assistance, sexual orientation, or disability of the owners or occupants in the block, neighborhood, or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood, or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other public facilities.

(5) For a person to deny full and equal access to real property provided for in this section to a person who is totally or partially blind, deaf, or has a physical or sensory disability and who uses a service animal, if the service animal can be properly identified as being from a recognized program which trains service animals to aid persons who are totally or partially blind or deaf or have physical or sensory disabilities. The person may not be required to pay extra compensation for the service animal but is liable for damage done to the premises by the service animal.

(6) For a person to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged a third person in the exercise or enjoyment of, any right granted or protected by this subdivision.

Notwithstanding the provisions of any law, ordinance, or home rule charter to the contrary, no person shall be deemed to have committed an unfair discriminatory practice based upon age if the unfair discriminatory practice alleged is attempted or accomplished for the purpose of obtaining or maintaining one of the exemptions provided for a dwelling unit provided for in section 363.02, subdivision 2.

[For text of subd 2a, see M.S.1992]

Subd. 3. Public accommodations. (a) It is an unfair discriminatory practice:

(1) to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin, sexual orientation, or

sex, or for a taxicab company to discriminate in the access to, full utilization of, or benefit from service because of a person's disability; or

(2) for a place of public accommodation not to make reasonable accommodation to the known physical, sensory, or mental disability of a disabled person. In determining whether an accommodation is reasonable, the factors to be considered may include:

(i) the frequency and predictability with which members of the public will be served by the accommodation at that location;

(ii) the size of the business or organization at that location with respect to physical size, annual gross revenues, and the number of employees;

(iii) the extent to which disabled persons will be further served from the accommodation;

(iv) the type of operation;

(v) the nature and amount of both direct costs and legitimate indirect costs of making the accommodation and the reasonableness for that location to finance the accommodation; and

(vi) the extent to which any persons may be adversely affected by the accommodation.

State or local building codes control where applicable. Violations of state or local building codes are not violations of this chapter and must be enforced under normal building code procedures.

(b) This paragraph lists general prohibitions against discrimination on the basis of disability. For purposes of this paragraph "individual" or "class of individuals" refers to the clients or customers of the covered public accommodation that enter into the contractual, licensing, or other arrangement.

(1) It is discriminatory to:

(i) subject an individual or class of individuals on the basis of a disability of that individual or class, directly or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity;

(ii) afford an individual or class of individuals on the basis of the disability of that individual or class, directly or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations that are not equal to those afforded to other individuals; and

(iii) provide an individual or class of individuals, on the basis of a disability of that individual or class, directly or through contractual, licensing, or other arrangements, with goods, services, facilities, privileges, advantages, or accommodations that are different or separate from those provided to other individuals, unless the action is necessary to provide the individual or class of individuals with goods, services, facilities, privileges, advantages, or accommodations, or other opportunities that are as effective as those provided to others.

(2) Goods, services, facilities, privileges, advantages, and accommodations must be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(3) Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, the individual with a disability may not be denied the opportunity to participate in the programs or activities that are not separate or different.

(4) An individual or entity may not, directly or through contractual or other arrangements, use standards or criteria and methods of administration:

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(c) This paragraph lists specific prohibitions against discrimination on the basis of disability. For purposes of this paragraph, discrimination includes:

(1) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless the criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations;

(2) failure to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to afford the goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations;

(3) failure to take all necessary steps to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking the steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered and would result in an undue burden;

(4) failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals, not including barriers that can only be removed through the retrofitting of vehicles by the installation of hydraulic or other lifts, if the removal is readily achievable; and

(5) if an entity can demonstrate that the removal of a barrier under clause (4) is not readily achievable or cannot be considered a reasonable accommodation, a failure to make the goods, services, facilities, privileges, advantages, or accommodations available through alternative means if the means are readily achievable.

(d) Nothing in this chapter requires an entity to permit an individual to participate in and benefit from the goods, services, facilities, privileges, advantages, and accommodations of the entity if the individual poses a direct threat to the health or safety of others. "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

(e) No individual may be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce. For purposes of this paragraph, it is an unfair discriminatory practice for a private entity providing public transportation to engage in one or more of the following practices:

(1) imposition or application of eligibility criteria that screen out, or tend to screen out, an individual with a disability or a class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless the criteria can be shown to be necessary for the provision of the services being offered;

(2) failure to make reasonable modifications, provide auxiliary aids and services, and remove barriers, consistent with section 363.03, subdivision 3, paragraph (c);

(3) the purchase or lease of a new vehicle, other than an automobile or van with a seating capacity of fewer than eight passengers, including the driver, or an over-the-road bus, that is to be used to provide specified public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, except that a new vehicle need not be readily accessible to and usable by individuals with disabilities if the vehicle is to be used solely in a demand responsive system and if the private entity can demonstrate that the system, when viewed in its entirety, provides a level of services to individuals with disabilities equivalent to the level of service provided to the general public;

(4) purchase or lease a new railroad passenger car that is to be used to provide

specified public transportation if the car is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, or to manufacture railroad passenger cars or purchase used cars that have been remanufactured so as to extend their usable life by ten years or more, unless the remanufactured car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, except that compliance with this clause is not required to the extent that compliance would significantly alter the historic or antiquated character of historic or antiquated railroad passenger cars or rail stations served exclusively by those cars;

(5) purchase or lease a new, used, or remanufactured vehicle with a seating capacity in excess of 16 passengers, including the driver, for use on a fixed route public transportation system, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If a private entity that operates a fixed route public transportation system purchases or leases a new, used, or remanufactured vehicle with a seating capacity of 16 passengers or fewer, including the driver, for use on the system which is not readily accessible to and usable by individuals with disabilities, it is an unfair discriminatory practice for the entity to fail to operate the system so that, when viewed in its entirety, the system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; or

(6) to fail to operate a demand responsive system so that, when viewed in its entirety, the system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities. It is an unfair discriminatory practice for the entity to purchase or lease for use on a demand responsive system a new, used, or remanufactured vehicle with a seating capacity in excess of 16 passengers, including the driver, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that the system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(f) It is an unfair discriminatory practice to construct a new facility or station to be used in the provision of public transportation services, unless the facilities or stations are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. It is an unfair discriminatory practice for a facility or station currently used for the provision of public transportation services defined in this subdivision to fail to make alterations necessary in order, to the maximum extent feasible, to make the altered portions of facilities or stations readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If the private entity is undertaking an alteration that affects or could affect the usability of or access to an area of the facility containing a primary function, the entity shall make the alterations so that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, drinking fountains, and telephones serving the altered area, are readily accessible to and usable by individuals with disabilities if the alterations to the path of travel or to the functions mentioned are not disproportionate to the overall alterations in terms of cost and scope. The entity raising this defense has the burden of proof, and the department shall review these cases on a case-by-case basis.

Subd. 4. Public services. It is an unfair discriminatory practice:

(1) To discriminate against any person in the access to, admission to, full utilization of or benefit from any public service because of race, color, creed, religion, national origin, disability, sex, sexual orientation, or status with regard to public assistance or to fail to ensure physical and program access for disabled persons unless the public service can demonstrate that providing the access would impose an undue hardship on its operation. In determining whether providing physical and program access would impose an undue hardship, factors to be considered include:

- (a) the type and purpose of the public service's operation;
- (b) the nature and cost of the needed accommodation;

(c) documented good faith efforts to explore less restrictive or less expensive alternatives; and

(d) the extent of consultation with knowledgeable disabled persons and organizations.

Physical and program access must be accomplished within six months of June 7, 1983, except for needed architectural modifications, which must be made within two years of June 7, 1983.

(2) For public transit services to discriminate in the access to, full utilization of, or benefit from service because of a person's disability. Public transit services may use any of a variety of methods to provide transportation for disabled people, provided that persons who are disabled are offered transportation that, in relation to the transportation offered nondisabled persons, is:

(a) in a similar geographic area of operation. To the extent that the transportation provided disabled people is not provided in the same geographic area of operation as that provided nondisabled people, priority must be given to those areas which contain the largest percent of disabled riders. A public transit service may not fail to provide transportation to disabled persons in a geographic area for which it provides service to nondisabled persons if doing so will exclude a sizable portion of the disabled ridership;

(b) during similar hours of operation;

(c) for comparable fares;

(d) with similar or no restrictions as to trip purpose; and

(e) with reasonable response time.

Public transit services must meet these five criteria for the provision of transit services within three years of June 7, 1983.

(3) For a public service that operates a fixed route system to:

(a) purchase or lease a new bus or vehicle for use on the system if the bus or vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs;

(b) purchase or lease a used bus or vehicle for use on its system unless the public service makes a demonstrated good faith effort to purchase or lease a used bus or vehicle for use on the system that is accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; or

(c) purchase or lease remanufactured buses or vehicles, or to remanufacture buses or vehicles for use on its system, if the bus or vehicle has been remanufactured to extend its usable life by five years or more, unless after the remanufacture, the bus or vehicle is, to the maximum extent feasible, readily accessible to and usable by persons with disabilities, including individuals who use wheelchairs. If a public service operates a fixed route system, any segment of which is included on the national or state register of historic places, and if making a vehicle of historic character to be used solely on that segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of the vehicle, the public service shall make whatever modifications are possible while retaining the historic character of the vehicle.

(4) For a public service operating a demand responsive system to purchase or lease new, used, or remanufactured vehicles that are not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to individuals without disabilities who use the fixed route system or demand responsive system, or for a light or rapid rail public transportation system offering intercity or commuter rail services to purchase or lease new, used, or remanufactured railroad cars, including single- and bi-level dining cars, sleeping cars, coach cars, lounge cars, restroom cars, and food service cars, unless all the cars, to the maximum extent feasible, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

With respect to the remanufacture of a vehicle or railroad car which is to be used on a segment of a light or rapid rail system which is included on the state or national register of historic places, if making the vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of the vehicle, the public service that operates the system only has to make, or purchase or lease a remanufactured vehicle with, those modifications that do not significantly alter the historic character of the vehicle.

(5) To construct a new facility or station to be used in the provision of public transportation services, including intercity and commuter light and rapid rail transportation, unless the facility or station is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, or for a facility or station currently used for the provision of public transportation services covered by this clause, to fail to make alterations necessary in order, to the maximum extent feasible, to make the altered portions of the facilities or stations, including restrooms, passenger platforms and waiting or ticketing areas, publicly owned concessions areas, and drinking fountains and public telephones, accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

If a public service can demonstrate that the provision of paratransit and other transportation services otherwise required under this subdivision would impose an undue financial burden on the public service, the public service is only required to provide services to the extent that providing those services would not impose such a burden.

Nothing in this subdivision may be construed to prevent a public service from providing paratransit services or other special transportation services at a level greater than that required by this subdivision, providing additional paratransit services to those required under this subdivision or extending those services to additional individuals not covered under this subdivision.

Subd. 5. Educational institution. It is an unfair discriminatory practice:

(1) To discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability, or to fail to ensure physical and program access for disabled persons. For purposes of this paragraph, program access includes but is not limited to providing taped texts, interpreters or other methods of making orally delivered materials available, readers in libraries, adapted classroom equipment, and similar auxiliary aids or services. Program access does not include providing attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

(2) To exclude, expel, or otherwise discriminate against a person seeking admission as a student, or a person enrolled as a student because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability.

(3) To make or use a written or oral inquiry, or form of application for admission that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, or disability of a person seeking admission, except as permitted by rules of the department.

[For text of subd 6, see M.S.1992]

Subd. 7. Reprisals. It is an unfair discriminatory practice for any employer, labor organization, employment agency, public accommodation, public service, educational institution, or owner, lessor, lessee, sublessee, assignee or managing agent of any real property, or any real estate broker, real estate salesperson, or employee or agent thereof to intentionally engage in any reprisal against any person because that person:

(1) Opposed a practice forbidden under this chapter or has filed a charge, testified,

assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter; or

(2) Associated with a person or group of persons who are disabled or who are of different race, color, creed, religion, sexual orientation, or national origin.

A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment. It is a reprisal for an employer to do any of the following with respect to an individual because that individual has engaged in the activities listed in clause (1) or (2): refuse to hire the individual; depart from any customary employment practice; transfer or assign the individual to a lesser position in terms of wages, hours, job classification, job security, or other employment status; or inform another employer that the individual has engaged in the activities listed in clause (1) or (2).

Subd. 8. Credit; discrimination. It is an unfair discriminatory practice:

(1) to discriminate in the extension of personal or commercial credit to a person, or in the requirements for obtaining credit, because of race, color, creed, religion, disability, national origin, sex, sexual orientation, or marital status; or

(2) for a credit card issuer to refuse to issue a credit card to a woman under her current or former surname unless there is an intent to defraud or mislead, except that a credit card issuer may require that a woman requesting a card under a former surname open a separate account in that name. A credit card issuer may also require disclosure of any other names under which the credit card applicant may have a credit history.

Subd. 8a. Business discrimination. It is an unfair discriminatory practice for a person engaged in a trade or business or in the provision of a service:

(a) to refuse to do business with or provide a service to a woman based on her use of her current or former surname; or

(b) to impose, as a condition of doing business with or providing a service to a woman, that a woman use her current surname rather than a former surname; or

(c) intentionally to refuse to do business with, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract because of a person's race, color, sex, sexual orientation, or disability, unless the alleged refusal or discrimination is because of a legitimate business purpose.

Nothing in this subdivision shall prohibit positive action plans.

[For text of subds 8b and 9, see M.S.1992]

Subd. 10. Discrimination against blind, deaf, or other persons with physical or sensory disabilities prohibited. (a) It is an unfair discriminatory practice for an owner, operator, or manager of a hotel, restaurant, public conveyance, or other public place to prohibit a blind or deaf person or a person with a physical or sensory disability from taking a service animal into the public place or conveyance if the service animal can be properly identified as being from a recognized program which trains service animals to aid blind or deaf persons or persons with physical or sensory disabilities, and if the animal is properly harnessed or leashed so that the blind or deaf person or a person with a physical or sensory disability may maintain control of the animal.

(b) No person shall require a blind, physically handicapped, or deaf person to make an extra payment or pay an additional charge when taking a service animal into any of the public places referred to in paragraph (a).

[For text of subd 11, see M.S.1992]

History: 1993 c 22 s 8-15; 1993 c 277 s 5-7

363.05 DUTIES OF COMMISSIONER.

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

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

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

(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;

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

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

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

(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;

(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;

(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;

(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;

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

(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;

(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, sexual orientation, 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;

(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;

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

(18) make grants in aid to the extent that appropriations are made available for that purpose in aid of carrying out duties and responsibilities; and

(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.

[For text of subd 2, see M.S.1992]

History: 1993 c 22 s 16

363.11 CONSTRUCTION.

The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of the civil rights law or of any other law of this state relating to discrimination because of race, creed, color, religion, sex, age, disability, marital status, status with regard to public assistance, national origin, sexual orientation, or familial status; but, as to acts declared unfair by section 363.03, the procedure herein provided shall, while pending, be exclusive.

History: 1993 c 22 s 17

363.115 REFERRAL TO LOCAL COMMISSION.

The commissioner, whether or not a charge has been filed under this chapter, may refer a matter involving discrimination because of race, color, religion, sex, creed, disability, marital status, status with regard to public assistance, national origin, age, sexual orientation, or familial status to a local commission for study and report.

Upon referral by the commissioner, the local commission shall make a report and make recommendations to the commissioner and take other appropriate action within the scope of its powers.

History: 1993 c 22 s 18

363.12 DECLARATION OF POLICY.

Subdivision 1. It is the public policy of this state to secure for persons in this state, freedom from discrimination;

(1) In employment because of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, and age;

(2) In housing and real property because of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, and familial status;

(3) In public accommodations because of race, color, creed, religion, national origin, sex, sexual orientation, and disability;

(4) In public services because of race, color, creed, religion, national origin, sex, marital status, disability, sexual orientation, and status with regard to public assistance; and

(5) In education because of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, and age. Such discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy. It is also the public policy of this state to protect all persons from wholly unfounded charges of discrimination. Nothing in this chapter shall be interpreted as restricting the implementation of positive action programs to combat discrimination.

[For text of subds 2 to 4, see M.S.1992]

History: 1993 c 22 s 19

363.20 CRIMINAL CODE; EFFECT.

Nothing in this chapter alters the provisions of chapter 609 or other law relating to criminal penalties.

History: 1993 c 22 s 20