

# EXHIBIT D

Charge of Discrimination  
Dated 12/28/2020

### CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA  
 EEOC

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

**Sherry Bren**

Home Phone (Incl. Area Code)

**(605) 222-1721**

Date of Birth

**12/05-1950**

Street Address

**910 N. Madison Avenue**

City, State and ZIP Code

**Pierre, SD 57501**

Named Is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

**State of South Dakota Department of Labor and Regulation**

No. Employees, Members

**500+**

Phone No. (Include Area Code)

Street Address

**123 W. Missouri Avenue**

City, State and ZIP Code

**Pierre, SD 57501**

Name

**Appraiser Certification Program**

No. Employees, Members

Phone No. (Include Area Code)

**(605) 773-4608**

Street Address

**308 S. Pierre Street**

City, State and ZIP Code

**Pierre, SD 57501**

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE     COLOR     SEX     RELIGION     NATIONAL ORIGIN  
 RETALIATION     AGE     DISABILITY     GENETIC INFORMATION  
 OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest  
**12/01/2020**

Latest  
**12/01/2020**

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

- I. **Individual Harm: I have been forced to submit my resignation and will be required to train my replacement.**
- II. **Rational Basis: I believe I am being discriminated against on the basis of my age in violation of the Age Discrimination in Employment Act of 1967, as amended:**
  1. **I have been employed with the State of South Dakota since 1970.**
  2. **My performance has met or exceeded my employer's expectations and I have never been subject to disciplinary action or a performance improvement plan.**
  3. **On December 1, 2020, the Secretary of the Department of Labor called me to talk about my retirement plan and said that due to my "inability to change gears," I would "need to be done in six months."**
  4. **The Secretary told me I would not be given a chance to make changes to my performance and that I had not displeased her in responding to her questions in my department. She**

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

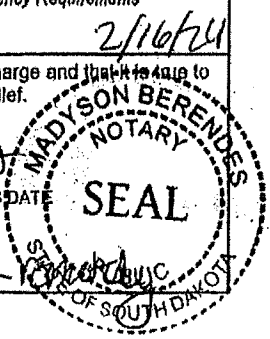
I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

*Madison Berendes*

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

*12/28/2020 mdb done*



*12/28/2020 Sherry Bren*  
 Date *done remotely* Offending Party Signature *Sherry Bren*

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told me that my direct supervisor and my program's lawyer did not know about our conversation.

5. On December 11, 2020, the Secretary reaffirmed that she was requesting my retirement within six months.
6. On December 15, 2020, the Secretary advised me that she still needed a date for my retirement, but that it had to be within six months. She added that she needed the date as soon as possible so my position could be posted.
7. On December 17, 2020, the Secretary sent out an email entitled "retirement date," announcing my retirement and my assignment to train my replacement.
8. Younger workers are not forced to retire, because of better terms and conditions of employment and are not forced to train their replacements.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

12/28/2020 *Shorey Breen*  
 Date Charging Party Signature  
*done remotely*

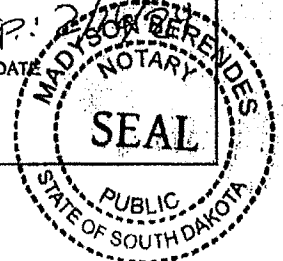
NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

2/16/24  
*Madison Berendes Exp: 2/16/24*  
 12/28/2020



**Intake Statement of Sherry Bren re: ADEA Charge of Discrimination**

I was born in 1950 and am in the protected age group for ADEA coverage. I have been an employee of the State of South Dakota since October 1970. I am currently a mid-level manager in the state of South Dakota's Department of Labor and Regulation. Specifically, my job title is Executive Director for the South Dakota Appraiser Certification Program. My direct supervisor is Amber Mulder, who is a Director of the State's Labor & Management division. The Department is ultimately overseen by Marcia Hultman, who has been the Secretary of the Department of Labor and Regulation since 2014. (A copy of the chain of command for the Department is attached.)

I have performed my job duties in a manner that meets expectations. My last performance evaluation occurred in December 2018. My performance was rated as "successful performance" or "exceptional performance" in all categories. I have never been subject to disciplinary action or a performance improvement plan. I have no reason to believe that the quality of my performance has changed since my last performance evaluation. To my knowledge, I am the oldest person in my division. My planned retirement date is 2022, however I have not discussed retirement plans with my supervisors.

On November 24, 2020, Secretary Hultman called me to discuss some of her concerns about the Appraiser Certification program. This was my first awareness that the Secretary had any concerns about the operation of my program. Prior to this, I had met with the Secretary in 2014 regarding a specific matter, and one other time with two legislators to discuss statutory appraiser standards. After the November 24 call, Secretary Hultman and I exchanged three (3) emails in which I responded to her questions.

On December 1, 2020, Secretary Hultman called me and stated that she had been "hoping to avoid this" but due to my "inability to change gears" I would "need to be done in six months." She stated that she knew that I planned to retire in a couple of years but that I needed to be done in six months. I asked if she had been displeased about my responses to her questions; she said no. I asked if I would be given a chance to make changes; she said no. She then said that no one else knew about this conversation, meaning neither my direct supervisor (Amber Mulder) or the Department's ACP program attorney (Graham Oey). The Secretary stated that this secrecy would make it look like it was "[my] choice."

On December 11, 2021, the Secretary emailed me to say that I needed to give her my retirement date. I responded by email as follows: "Marcia: I know that you are anxious for my decision about retirement and want my response today. For my own closure, I have to ask if there is anything that I can do that will allow me to stay in my job longer than the six months. My planned retirement date was in two years. I am going to accept your determination about this, but if there is anything that I can do to keep this position for at least a year to get closer to my retirement date, I would do it. I'm asking because I really love my job. Please let me know if extending the time limit would even be a possibility, and if so how long. Thank you for your consideration of my request."

The Secretary responded: "The 6 months is the most I can allow."

On December 15, 2020, I received another email from Secretary Hultman that stated: "Good morning Sherry. In order to post a position, I need a retirement date. I know there is much knowledge and information to transfer, and would therefore like to begin the process as soon as possible for cross training purposes. Thank you. Marcia". I responded with an email that state: "Thank you for letting met know about the posting so I am not surprised when I see or hear about it. What date are you using for my retirement date?" She then wrote to me: "You need to provide the date to me. That is your decision to make."

Later that day, the Secretary contacted me again by email and stated: "... In rereading my email sent earlier today, I want to reinforce that I am asking you for your retirement date. I had originally anticipated a date from you last Friday. You had not yet provided your selected date, so this morning's email was a reminder that I am still waiting. Your position will not be posted until you notify me of the date you chose to retire." Even though I did not agree that I was able to make the decision about when I would retire, because she is the Secretary, I responded by providing a date that met her 6-month retirement demand. Specifically, I responded: "Marcia: Six months from December 11, 2020 would be June 11, 2021."

On December 16, the Secretary emailed me again to state the following: "Also, would you like to share this date with Graham and Amber prior to me sharing with BHR? I'm assuming we won't get the position posted until after Christmas as Graham and Amber will need time to draft the requisition. If you want you can email Graham and Amber and cc me, and I will let BHR know. I don't want to get ahead of you sharing the news with Graham and Amber. If you prefer, I can also let Graham and Amber know." I responded that I preferred for her to do it. I did not want to participate in the Secretary's efforts to create the false appearance that my retirement at this time was my idea.

On December 17, the Secretary sent out an email titled "Retirement date" to Amber Mulder, Graham Oey and Deb Olson (the Human Resources manager who is likely to be involved in replacing my position), with a copy to me. It states as follows: "Good morning. Sherry has shared with me that her retirement date will be June 11, 2021. We will work with her to have someone hired to cross train with Sherry prior to her retirement." I then received emails from my supervisor and the program's attorney in response -- to thank me for my hard work, to thank me for giving them time to find someone to replace me and to comment that I will be hard to replace.

I am being forced to retire in 6 months because of my age at the directive of a cabinet Secretary. The Secretary has required me to go through the pretext of selecting a retirement date even though she has demanded my retirement within six months. I am going to be required to train my replacement, a fact which supports my claim that I am performing as expected. My direct supervisor has not been involved in my termination, which is further evidence that my forced termination is unrelated to my performance and is instead about my age.