

HB2061



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2061

by Rep. Jennifer Gong-Gershowitz

SYNOPSIS AS INTRODUCED:

775 ILCS 5/7A-102

from Ch. 68, par. 7A-102

Amends the Illinois Human Rights Act. Provides that charges alleging a violation under provisions concerning employment may be filed and deemed timely if filed within 3 years after the date of the alleged violation. Effective immediately.

LRB101 05891 LNS 50912 b

A BILL FOR

1 AN ACT concerning human rights.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Human Rights Act is amended by
5 changing Section 7A-102 as follows:

6 (775 ILCS 5/7A-102) (from Ch. 68, par. 7A-102)

7 Sec. 7A-102. Procedures.

8 (A) Charge.

9 (1) Except as provided in paragraph (4), within ~~Within~~
10 300 calendar days after the date that a civil rights
11 violation allegedly has been committed, a charge in writing
12 under oath or affirmation may be filed with the Department
13 by an aggrieved party or issued by the Department itself
14 under the signature of the Director.

15 (2) The charge shall be in such detail as to
16 substantially apprise any party properly concerned as to
17 the time, place, and facts surrounding the alleged civil
18 rights violation.

19 (3) Charges deemed filed with the Department pursuant
20 to subsection (A-1) of this Section shall be deemed to be
21 in compliance with this subsection.

22 (4) Charges alleging a violation under Article 2 of this
23 Act may be filed and deemed timely if filed within 3 years

1 after the date of the alleged violation. The changes made to
2 this Section by this amendatory Act of the 101st General
3 Assembly apply to charges filed on or after the effective date
4 of this amendatory Act of the 101st General Assembly.

5 (A-1) Equal Employment Opportunity Commission Charges.

6 (1) If a charge is filed with the Equal Employment
7 Opportunity Commission (EEOC) within 300 calendar days
8 after the date of the alleged civil rights violation, the
9 charge shall be deemed filed with the Department on the
10 date filed with the EEOC. If the EEOC is the governmental
11 agency designated to investigate the charge first, the
12 Department shall take no action until the EEOC makes a
13 determination on the charge and after the complainant
14 notifies the Department of the EEOC's determination. In
15 such cases, after receiving notice from the EEOC that a
16 charge was filed, the Department shall notify the parties
17 that (i) a charge has been received by the EEOC and has
18 been sent to the Department for dual filing purposes; (ii)
19 the EEOC is the governmental agency responsible for
20 investigating the charge and that the investigation shall
21 be conducted pursuant to the rules and procedures adopted
22 by the EEOC; (iii) it will take no action on the charge
23 until the EEOC issues its determination; (iv) the
24 complainant must submit a copy of the EEOC's determination
25 within 30 days after service of the determination by the
26 EEOC on complainant; and (v) that the time period to

1 investigate the charge contained in subsection (G) of this
2 Section is tolled from the date on which the charge is
3 filed with the EEOC until the EEOC issues its
4 determination.

5 (2) If the EEOC finds reasonable cause to believe that
6 there has been a violation of federal law and if the
7 Department is timely notified of the EEOC's findings by
8 complainant, the Department shall notify complainant that
9 the Department has adopted the EEOC's determination of
10 reasonable cause and that complainant has the right, within
11 90 days after receipt of the Department's notice, to either
12 file his or her own complaint with the Illinois Human
13 Rights Commission or commence a civil action in the
14 appropriate circuit court or other appropriate court of
15 competent jurisdiction. This notice shall be provided to
16 the complainant within 10 business days after the
17 Department's receipt of the EEOC's determination. The
18 Department's notice to complainant that the Department has
19 adopted the EEOC's determination of reasonable cause shall
20 constitute the Department's Report for purposes of
21 subparagraph (D) of this Section.

22 (3) For those charges alleging violations within the
23 jurisdiction of both the EEOC and the Department and for
24 which the EEOC either (i) does not issue a determination,
25 but does issue the complainant a notice of a right to sue,
26 including when the right to sue is issued at the request of

1 the complainant, or (ii) determines that it is unable to
2 establish that illegal discrimination has occurred and
3 issues the complainant a right to sue notice, and if the
4 Department is timely notified of the EEOC's determination
5 by complainant, the Department shall notify the parties,
6 within 10 business days after receipt of the EEOC's
7 determination, that the Department will adopt the EEOC's
8 determination as a dismissal for lack of substantial
9 evidence unless the complainant requests in writing within
10 35 days after receipt of the Department's notice that the
11 Department review the EEOC's determination.

12 (a) If the complainant does not file a written
13 request with the Department to review the EEOC's
14 determination within 35 days after receipt of the
15 Department's notice, the Department shall notify
16 complainant, within 10 business days after the
17 expiration of the 35-day period, that the decision of
18 the EEOC has been adopted by the Department as a
19 dismissal for lack of substantial evidence and that the
20 complainant has the right, within 90 days after receipt
21 of the Department's notice, to commence a civil action
22 in the appropriate circuit court or other appropriate
23 court of competent jurisdiction. The Department's
24 notice to complainant that the Department has adopted
25 the EEOC's determination shall constitute the
26 Department's report for purposes of subparagraph (D)

1 of this Section.

2 (b) If the complainant does file a written request
3 with the Department to review the EEOC's
4 determination, the Department shall review the EEOC's
5 determination and any evidence obtained by the EEOC
6 during its investigation. If, after reviewing the
7 EEOC's determination and any evidence obtained by the
8 EEOC, the Department determines there is no need for
9 further investigation of the charge, the Department
10 shall issue a report and the Director shall determine
11 whether there is substantial evidence that the alleged
12 civil rights violation has been committed pursuant to
13 subsection (D) of Section 7A-102. If, after reviewing
14 the EEOC's determination and any evidence obtained by
15 the EEOC, the Department determines there is a need for
16 further investigation of the charge, the Department
17 may conduct any further investigation it deems
18 necessary. After reviewing the EEOC's determination,
19 the evidence obtained by the EEOC, and any additional
20 investigation conducted by the Department, the
21 Department shall issue a report and the Director shall
22 determine whether there is substantial evidence that
23 the alleged civil rights violation has been committed
24 pursuant to subsection (D) of Section 7A-102 of this
25 Act.

26 (4) Pursuant to this Section, if the EEOC dismisses the

1 charge or a portion of the charge of discrimination
2 because, under federal law, the EEOC lacks jurisdiction
3 over the charge, and if, under this Act, the Department has
4 jurisdiction over the charge of discrimination, the
5 Department shall investigate the charge or portion of the
6 charge dismissed by the EEOC for lack of jurisdiction
7 pursuant to subsections (A), (A-1), (B), (B-1), (C), (D),
8 (E), (F), (G), (H), (I), (J), and (K) of Section 7A-102 of
9 this Act.

10 (5) The time limit set out in subsection (G) of this
11 Section is tolled from the date on which the charge is
12 filed with the EEOC to the date on which the EEOC issues
13 its determination.

14 (6) The failure of the Department to meet the
15 10-business-day notification deadlines set out in
16 paragraph (2) of this subsection shall not impair the
17 rights of any party.

18 (B) Notice and Response to Charge. The Department shall,
19 within 10 days of the date on which the charge was filed, serve
20 a copy of the charge on the respondent and provide all parties
21 with a notice of the complainant's right to opt out of the
22 investigation within 60 days as set forth in subsection (C-1).
23 This period shall not be construed to be jurisdictional. The
24 charging party and the respondent may each file a position
25 statement and other materials with the Department regarding the
26 charge of alleged discrimination within 60 days of receipt of

1 the notice of the charge. The position statements and other
2 materials filed shall remain confidential unless otherwise
3 agreed to by the party providing the information and shall not
4 be served on or made available to the other party during
5 pendency of a charge with the Department. The Department may
6 require the respondent to file a response to the allegations
7 contained in the charge. Upon the Department's request, the
8 respondent shall file a response to the charge within 60 days
9 and shall serve a copy of its response on the complainant or
10 his or her representative. Notwithstanding any request from the
11 Department, the respondent may elect to file a response to the
12 charge within 60 days of receipt of notice of the charge,
13 provided the respondent serves a copy of its response on the
14 complainant or his or her representative. All allegations
15 contained in the charge not denied by the respondent within 60
16 days of the Department's request for a response may be deemed
17 admitted, unless the respondent states that it is without
18 sufficient information to form a belief with respect to such
19 allegation. The Department may issue a notice of default
20 directed to any respondent who fails to file a response to a
21 charge within 60 days of receipt of the Department's request,
22 unless the respondent can demonstrate good cause as to why such
23 notice should not issue. The term "good cause" shall be defined
24 by rule promulgated by the Department. Within 30 days of
25 receipt of the respondent's response, the complainant may file
26 a reply to said response and shall serve a copy of said reply

1 on the respondent or his or her representative. A party shall
2 have the right to supplement his or her response or reply at
3 any time that the investigation of the charge is pending. The
4 Department shall, within 10 days of the date on which the
5 charge was filed, and again no later than 335 days thereafter,
6 send by certified or registered mail written notice to the
7 complainant and to the respondent informing the complainant of
8 the complainant's rights to either file a complaint with the
9 Human Rights Commission or commence a civil action in the
10 appropriate circuit court under subparagraph (2) of paragraph
11 (G) and under subsection (C-1), including in such notice the
12 dates within which the complainant may exercise these rights.
13 In the notice the Department shall notify the complainant that
14 the charge of civil rights violation will be dismissed with
15 prejudice and with no right to further proceed if a written
16 complaint is not timely filed with the Commission or with the
17 appropriate circuit court by the complainant pursuant to
18 subparagraph (2) of paragraph (G) or subsection (C-1) or by the
19 Department pursuant to subparagraph (1) of paragraph (G).

20 (B-1) Mediation. The complainant and respondent may agree
21 to voluntarily submit the charge to mediation without waiving
22 any rights that are otherwise available to either party
23 pursuant to this Act and without incurring any obligation to
24 accept the result of the mediation process. Nothing occurring
25 in mediation shall be disclosed by the Department or admissible
26 in evidence in any subsequent proceeding unless the complainant

1 and the respondent agree in writing that such disclosure be
2 made.

3 (C) Investigation.

4 (1) If the complainant does not elect to opt out of an
5 investigation pursuant to subsection (C-1), the Department
6 shall conduct an investigation sufficient to determine
7 whether the allegations set forth in the charge are
8 supported by substantial evidence.

9 (2) The Director or his or her designated
10 representatives shall have authority to request any member
11 of the Commission to issue subpoenas to compel the
12 attendance of a witness or the production for examination
13 of any books, records or documents whatsoever.

14 (3) If any witness whose testimony is required for any
15 investigation resides outside the State, or through
16 illness or any other good cause as determined by the
17 Director is unable to be interviewed by the investigator or
18 appear at a fact finding conference, his or her testimony
19 or deposition may be taken, within or without the State, in
20 the same manner as is provided for in the taking of
21 depositions in civil cases in circuit courts.

22 (4) Upon reasonable notice to the complainant and the
23 respondent, the Department shall conduct a fact finding
24 conference, unless prior to 365 days after the date on
25 which the charge was filed the Director has determined
26 whether there is substantial evidence that the alleged

1 civil rights violation has been committed, the charge has
2 been dismissed for lack of jurisdiction, or the parties
3 voluntarily and in writing agree to waive the fact finding
4 conference. Any party's failure to attend the conference
5 without good cause shall result in dismissal or default.
6 The term "good cause" shall be defined by rule promulgated
7 by the Department. A notice of dismissal or default shall
8 be issued by the Director. The notice of default issued by
9 the Director shall notify the respondent that a request for
10 review may be filed in writing with the Commission within
11 30 days of receipt of notice of default. The notice of
12 dismissal issued by the Director shall give the complainant
13 notice of his or her right to seek review of the dismissal
14 before the Human Rights Commission or commence a civil
15 action in the appropriate circuit court. If the complainant
16 chooses to have the Human Rights Commission review the
17 dismissal order, he or she shall file a request for review
18 with the Commission within 90 days after receipt of the
19 Director's notice. If the complainant chooses to file a
20 request for review with the Commission, he or she may not
21 later commence a civil action in a circuit court. If the
22 complainant chooses to commence a civil action in a circuit
23 court, he or she must do so within 90 days after receipt of
24 the Director's notice.

25 (C-1) Opt out of Department's investigation. At any time
26 within 60 days after receipt of notice of the right to opt out,

1 a complainant may submit a written request seeking notice from
2 the Director indicating that the complainant has opted out of
3 the investigation and may commence a civil action in the
4 appropriate circuit court. The Department shall respond to a
5 complainant's opt-out request within 10 business days by
6 issuing the complainant a notice of the right to commence an
7 action in circuit court. The Department shall also notify the
8 respondent that the complainant has elected to opt out of the
9 administrative process within 10 business days of receipt of
10 the complainant's request. If the complainant chooses to
11 commence an action in a circuit court under this subsection, he
12 or she must do so within 90 days after receipt of the
13 Director's notice of the right to commence an action in circuit
14 court. The complainant shall notify the Department and the
15 respondent that a complaint has been filed with the appropriate
16 circuit court and shall mail a copy of the complaint to the
17 Department and the respondent on the same date that the
18 complaint is filed with the appropriate circuit court. Upon
19 receipt of notice that the complainant has filed an action with
20 the appropriate circuit court, the Department shall
21 immediately cease its investigation and dismiss the charge of
22 civil rights violation. Once a complainant has commenced an
23 action in circuit court under this subsection, he or she may
24 not file or refile a substantially similar charge with the
25 Department arising from the same incident of unlawful
26 discrimination or harassment.

1 (D) Report.

2 (1) Each charge investigated under subsection (C)
3 shall be the subject of a report to the Director. The
4 report shall be a confidential document subject to review
5 by the Director, authorized Department employees, the
6 parties, and, where indicated by this Act, members of the
7 Commission or their designated hearing officers.

8 (2) Upon review of the report, the Director shall
9 determine whether there is substantial evidence that the
10 alleged civil rights violation has been committed. The
11 determination of substantial evidence is limited to
12 determining the need for further consideration of the
13 charge pursuant to this Act and includes, but is not
14 limited to, findings of fact and conclusions, as well as
15 the reasons for the determinations on all material issues.
16 Substantial evidence is evidence which a reasonable mind
17 accepts as sufficient to support a particular conclusion
18 and which consists of more than a mere scintilla but may be
19 somewhat less than a preponderance.

20 (3) If the Director determines that there is no
21 substantial evidence, the charge shall be dismissed by
22 order of the Director and the Director shall give the
23 complainant notice of his or her right to seek review of
24 the dismissal order before the Commission or commence a
25 civil action in the appropriate circuit court. If the
26 complainant chooses to have the Human Rights Commission

1 review the dismissal order, he or she shall file a request
2 for review with the Commission within 90 days after receipt
3 of the Director's notice. If the complainant chooses to
4 file a request for review with the Commission, he or she
5 may not later commence a civil action in a circuit court.
6 If the complainant chooses to commence a civil action in a
7 circuit court, he or she must do so within 90 days after
8 receipt of the Director's notice.

9 (4) If the Director determines that there is
10 substantial evidence, he or she shall notify the
11 complainant and respondent of that determination. The
12 Director shall also notify the parties that the complainant
13 has the right to either commence a civil action in the
14 appropriate circuit court or request that the Department of
15 Human Rights file a complaint with the Human Rights
16 Commission on his or her behalf. Any such complaint shall
17 be filed within 90 days after receipt of the Director's
18 notice. If the complainant chooses to have the Department
19 file a complaint with the Human Rights Commission on his or
20 her behalf, the complainant must, within 30 days after
21 receipt of the Director's notice, request in writing that
22 the Department file the complaint. If the complainant
23 timely requests that the Department file the complaint, the
24 Department shall file the complaint on his or her behalf.
25 If the complainant fails to timely request that the
26 Department file the complaint, the complainant may file his

1 or her complaint with the Commission or commence a civil
2 action in the appropriate circuit court. If the complainant
3 files a complaint with the Human Rights Commission, the
4 complainant shall give notice to the Department of the
5 filing of the complaint with the Human Rights Commission.

6 (E) Conciliation.

7 (1) When there is a finding of substantial evidence,
8 the Department may designate a Department employee who is
9 an attorney licensed to practice in Illinois to endeavor to
10 eliminate the effect of the alleged civil rights violation
11 and to prevent its repetition by means of conference and
12 conciliation.

13 (2) When the Department determines that a formal
14 conciliation conference is necessary, the complainant and
15 respondent shall be notified of the time and place of the
16 conference by registered or certified mail at least 10 days
17 prior thereto and either or both parties shall appear at
18 the conference in person or by attorney.

19 (3) The place fixed for the conference shall be within
20 35 miles of the place where the civil rights violation is
21 alleged to have been committed.

22 (4) Nothing occurring at the conference shall be
23 disclosed by the Department unless the complainant and
24 respondent agree in writing that such disclosure be made.

25 (5) The Department's efforts to conciliate the matter
26 shall not stay or extend the time for filing the complaint

1 with the Commission or the circuit court.

2 (F) Complaint.

3 (1) When the complainant requests that the Department
4 file a complaint with the Commission on his or her behalf,
5 the Department shall prepare a written complaint, under
6 oath or affirmation, stating the nature of the civil rights
7 violation substantially as alleged in the charge
8 previously filed and the relief sought on behalf of the
9 aggrieved party. The Department shall file the complaint
10 with the Commission.

11 (2) If the complainant chooses to commence a civil
12 action in a circuit court, he or she must do so in the
13 circuit court in the county wherein the civil rights
14 violation was allegedly committed. The form of the
15 complaint in any such civil action shall be in accordance
16 with the Illinois Code of Civil Procedure.

17 (G) Time Limit.

18 (1) When a charge of a civil rights violation has been
19 properly filed, the Department, within 365 days thereof or
20 within any extension of that period agreed to in writing by
21 all parties, shall issue its report as required by
22 subparagraph (D). Any such report shall be duly served upon
23 both the complainant and the respondent.

24 (2) If the Department has not issued its report within
25 365 days after the charge is filed, or any such longer
26 period agreed to in writing by all the parties, the

1 complainant shall have 90 days to either file his or her
2 own complaint with the Human Rights Commission or commence
3 a civil action in the appropriate circuit court. If the
4 complainant files a complaint with the Commission, the form
5 of the complaint shall be in accordance with the provisions
6 of paragraph (F)(1). If the complainant commences a civil
7 action in a circuit court, the form of the complaint shall
8 be in accordance with the Illinois Code of Civil Procedure.
9 The aggrieved party shall notify the Department that a
10 complaint has been filed and shall serve a copy of the
11 complaint on the Department on the same date that the
12 complaint is filed with the Commission or in circuit court.
13 If the complainant files a complaint with the Commission,
14 he or she may not later commence a civil action in circuit
15 court.

16 (3) If an aggrieved party files a complaint with the
17 Human Rights Commission or commences a civil action in
18 circuit court pursuant to paragraph (2) of this subsection,
19 or if the time period for filing a complaint has expired,
20 the Department shall immediately cease its investigation
21 and dismiss the charge of civil rights violation. Any final
22 order entered by the Commission under this Section is
23 appealable in accordance with paragraph (B)(1) of Section
24 8-111. Failure to immediately cease an investigation and
25 dismiss the charge of civil rights violation as provided in
26 this paragraph (3) constitutes grounds for entry of an

1 order by the circuit court permanently enjoining the
2 investigation. The Department may also be liable for any
3 costs and other damages incurred by the respondent as a
4 result of the action of the Department.

5 (4) (Blank).

6 (H) This amendatory Act of 1995 applies to causes of action
7 filed on or after January 1, 1996.

8 (I) This amendatory Act of 1996 applies to causes of action
9 filed on or after January 1, 1996.

10 (J) The changes made to this Section by Public Act 95-243
11 apply to charges filed on or after the effective date of those
12 changes.

13 (K) The changes made to this Section by this amendatory Act
14 of the 96th General Assembly apply to charges filed on or after
15 the effective date of those changes.

16 (L) The changes made to this Section by this amendatory Act
17 of the 100th General Assembly apply to charges filed on or
18 after the effective date of this amendatory Act of the 100th
19 General Assembly.

20 (Source: P.A. 100-492, eff. 9-8-17; 100-588, eff. 6-8-18;
21 100-1066, eff. 8-24-18.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.