



Rep. Jack D. Franks

Filed: 5/26/2011

09700SB1122ham001

LRB097 04838 AJ0 56299 a

1 AMENDMENT TO SENATE BILL 1122

2 AMENDMENT NO. _____. Amend Senate Bill 1122 on page 1,
3 line 5, by replacing "Section 2-102" with "Sections 2-102 and
4 7A-102"; and

5 on page 4, by replacing lines 22 through 26 with the following:

6 "(I) Pregnancy. For an employer to refuse to hire, to
7 segregate, or to act with respect to recruitment, hiring,
8 promotion, renewal of employment, selection for training or
9 apprenticeship, discharge, discipline, tenure or terms,
10 privileges or conditions of employment on the basis of
11 pregnancy, childbirth, or related medical conditions. Women
12 affected by pregnancy, childbirth, or related medical
13 conditions shall be treated the same for all employment-related
14 purposes, including receipt of benefits under fringe benefit
15 programs, as other persons not so affected but similar in their
16 ability or inability to work."; and

1 on page 5, by deleting line 1; and

2 on page 5, immediately below line 3, by inserting the
3 following:

4 "(775 ILCS 5/7A-102) (from Ch. 68, par. 7A-102)

5 Sec. 7A-102. Procedures.

6 (A) Charge.

7 (1) Within 180 days after the date that a civil rights
8 violation allegedly has been committed, a charge in writing
9 under oath or affirmation may be filed with the Department
10 by an aggrieved party or issued by the Department itself
11 under the signature of the Director.

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

16 (3) Charges deemed filed with the Department pursuant
17 to subsection (A-1) of this Section shall be deemed to be
18 in compliance with this subsection.

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

20 (1) If a ~~A~~ charge is filed with the Equal Employment
21 Opportunity Commission (EEOC) within 180 days after the
22 date of the alleged civil rights violation, the charge
23 shall be deemed filed with the Department on the date filed
24 with the EEOC. ~~Equal Employment Opportunity Commission.~~

1 ~~Upon receipt of a charge filed with the Equal Employment~~
2 ~~Opportunity Commission, the Department shall notify the~~
3 ~~complainant that he or she may proceed with the Department.~~
4 ~~The complainant must notify the Department of his or her~~
5 ~~decision in writing within 35 days of receipt of the~~
6 ~~Department's notice to the complainant and the Department~~
7 ~~shall close the case if the complainant does not do so. If~~
8 ~~the complainant proceeds with the Department, If the EEOC~~
9 ~~is the governmental agency designated to investigate the~~
10 ~~charge first,~~ the Department shall take no action until the
11 ~~EEOC Equal Employment Opportunity Commission~~ makes a
12 determination on the charge and after the complainant
13 notifies the Department of the EEOC's determination. In
14 such cases, after receiving notice from the EEOC that a
15 charge was filed, the Department shall notify the parties
16 that (i) a charge has been received by the EEOC and has
17 been sent to the Department for dual filing purposes; (ii)
18 the EEOC is the governmental agency responsible for
19 investigating the charge and that the investigation shall
20 be conducted pursuant to the rules and procedures adopted
21 by the EEOC; (iii) it will take no action on the charge
22 until the EEOC issues its determination; (iv) the
23 complainant must submit a copy of the EEOC's determination
24 within 30 days after service of the determination by the
25 EEOC on complainant; and (v) that the time period to
26 investigate the charge contained in subsection (G) of this

1 Section is tolled from the date on which the charge is
2 filed with the EEOC until the EEOC issues its
3 determination. ~~Upon receipt of the Equal Employment~~
4 ~~Opportunity Commission's determination, the Department~~
5 ~~shall cause the charge to be filed under oath or~~
6 ~~affirmation and to be in such detail as provided for under~~
7 ~~subparagraph (2) of paragraph (A).~~

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

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

1 including when the right to sue is issued at the request of
2 the complainant, or (ii) determines that it is unable to
3 establish that illegal discrimination has occurred and
4 issues the complainant a right to sue notice, and if the
5 Department is timely notified of the EEOC's determination
6 by complainant, the Department shall notify the parties
7 that the Department will adopt the EEOC's determination as
8 a dismissal for lack of substantial evidence unless the
9 complainant requests in writing within 35 days after
10 receipt of the Department's notice that the Department
11 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 that the decision of the EEOC has been
17 adopted by the Department as a dismissal for lack of
18 substantial evidence and that the complainant has the
19 right, within 90 days after receipt of the Department's
20 notice, to commence a civil action in the appropriate
21 circuit court or other appropriate court of competent
22 jurisdiction. The Department's notice to complainant
23 that the Department has adopted the EEOC's
24 determination shall constitute the Department's report
25 for purposes of subparagraph (D) of this Section.

26 (b) If the complainant does file a written request

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

23 (4) Pursuant to this Section, if the EEOC dismisses the
24 charge or a portion of the charge of discrimination
25 because, under federal law, the EEOC lacks jurisdiction
26 over the charge, and if, under the this Act, the Department

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

7 (5) The time limit set out in subsection (G) of this
8 Section is tolled from the date on which the charge is
9 filed with the EEOC to the date on which the EEOC issues
10 its determination. ~~At the Department's discretion, the~~
11 ~~Department shall either adopt the Equal Employment~~
12 ~~Opportunity Commission's determination or process the~~
13 ~~charge pursuant to this Act. Adoption of the Equal~~
14 ~~Employment Opportunity Commission's determination shall be~~
15 ~~deemed a determination by the Department for all purposes~~
16 ~~under this Act.~~

17 (B) Notice and Response to Charge. The Department shall,
18 within 10 days of the date on which the charge was filed, serve
19 a copy of the charge on the respondent. This period shall not
20 be construed to be jurisdictional. The charging party and the
21 respondent may each file a position statement and other
22 materials with the Department regarding the charge of alleged
23 discrimination within 60 days of receipt of the notice of the
24 charge. The position statements and other materials filed shall
25 remain confidential unless otherwise agreed to by the party
26 providing the information and shall not be served on or made

1 available to the other party during pendency of a charge with
2 the Department. The Department shall require the respondent to
3 file a verified response to the allegations contained in the
4 charge within 60 days of receipt of the notice of the charge.
5 The respondent shall serve a copy of its response on the
6 complainant or his representative. All allegations contained
7 in the charge not timely denied by the respondent shall be
8 deemed admitted, unless the respondent states that it is
9 without sufficient information to form a belief with respect to
10 such allegation. The Department may issue a notice of default
11 directed to any respondent who fails to file a verified
12 response to a charge within 60 days of receipt of the notice of
13 the charge, unless the respondent can demonstrate good cause as
14 to why such notice should not issue. The term "good cause"
15 shall be defined by rule promulgated by the Department. Within
16 30 days of receipt of the respondent's response, the
17 complainant may file a reply to said response and shall serve a
18 copy of said reply on the respondent or his representative. A
19 party shall have the right to supplement his response or reply
20 at any time that the investigation of the charge is pending.
21 The Department shall, within 10 days of the date on which the
22 charge was filed, and again no later than 335 days thereafter,
23 send by certified or registered mail written notice to the
24 complainant and to the respondent informing the complainant of
25 the complainant's right to either file a complaint with the
26 Human Rights Commission or commence a civil action in the

1 appropriate circuit court under subparagraph (2) of paragraph
2 (G), including in such notice the dates within which the
3 complainant may exercise this right. In the notice the
4 Department shall notify the complainant that the charge of
5 civil rights violation will be dismissed with prejudice and
6 with no right to further proceed if a written complaint is not
7 timely filed with the Commission or with the appropriate
8 circuit court by the complainant pursuant to subparagraph (2)
9 of paragraph (G) or by the Department pursuant to subparagraph
10 (1) of paragraph (G).

11 (B-1) Mediation. The complainant and respondent may agree
12 to voluntarily submit the charge to mediation without waiving
13 any rights that are otherwise available to either party
14 pursuant to this Act and without incurring any obligation to
15 accept the result of the mediation process. Nothing occurring
16 in mediation shall be disclosed by the Department or admissible
17 in evidence in any subsequent proceeding unless the complainant
18 and the respondent agree in writing that such disclosure be
19 made.

20 (C) Investigation.

21 (1) After the respondent has been notified, the
22 Department shall conduct a full investigation of the
23 allegations set forth in the charge.

24 (2) The Director or his or her designated
25 representatives shall have authority to request any member
26 of the Commission to issue subpoenas to compel the

1 attendance of a witness or the production for examination
2 of any books, records or documents whatsoever.

3 (3) If any witness whose testimony is required for any
4 investigation resides outside the State, or through
5 illness or any other good cause as determined by the
6 Director is unable to be interviewed by the investigator or
7 appear at a fact finding conference, his or her testimony
8 or deposition may be taken, within or without the State, in
9 the same manner as is provided for in the taking of
10 depositions in civil cases in circuit courts.

11 (4) Upon reasonable notice to the complainant and the
12 respondent, the Department shall conduct a fact finding
13 conference prior to 365 days after the date on which the
14 charge was filed, unless the Director has determined
15 whether there is substantial evidence that the alleged
16 civil rights violation has been committed or the charge has
17 been dismissed for lack of jurisdiction. If the parties
18 agree in writing, the fact finding conference may be held
19 at a time after the 365 day limit. Any party's failure to
20 attend the conference without good cause shall result in
21 dismissal or default. The term "good cause" shall be
22 defined by rule promulgated by the Department. A notice of
23 dismissal or default shall be issued by the Director. The
24 notice of default issued by the Director shall notify the
25 respondent that a request for review may be filed in
26 writing with the Commission within 30 days of receipt of

1 notice of default. The notice of dismissal issued by the
2 Director shall give the complainant notice of his or her
3 right to seek review of the dismissal before the Human
4 Rights Commission or commence a civil action in the
5 appropriate circuit court. If the complainant chooses to
6 have the Human Rights Commission review the dismissal
7 order, he or she shall file a request for review with the
8 Commission within 90 days after receipt of the Director's
9 notice. If the complainant chooses to file a request for
10 review with the Commission, he or she may not later
11 commence a civil action in a circuit court. If the
12 complainant chooses to commence a civil action in a circuit
13 court, he or she must do so within 90 days after receipt of
14 the Director's notice.

15 (D) Report.

16 (1) Each charge shall be the subject of a report to the
17 Director. The report shall be a confidential document
18 subject to review by the Director, authorized Department
19 employees, the parties, and, where indicated by this Act,
20 members of the Commission or their designated hearing
21 officers.

22 (2) Upon review of the report, the Director shall
23 determine whether there is substantial evidence that the
24 alleged civil rights violation has been committed. The
25 determination of substantial evidence is limited to
26 determining the need for further consideration of the

1 charge pursuant to this Act and includes, but is not
2 limited to, findings of fact and conclusions, as well as
3 the reasons for the determinations on all material issues.
4 Substantial evidence is evidence which a reasonable mind
5 accepts as sufficient to support a particular conclusion
6 and which consists of more than a mere scintilla but may be
7 somewhat less than a preponderance.

8 (3) If the Director determines that there is no
9 substantial evidence, the charge shall be dismissed by
10 order of the Director and the Director shall give the
11 complainant notice of his or her right to seek review of
12 the dismissal order before the Commission or commence a
13 civil action in the appropriate circuit court. If the
14 complainant chooses to have the Human Rights Commission
15 review the dismissal order, he or she shall file a request
16 for review with the Commission within 90 days after receipt
17 of the Director's notice. If the complainant chooses to
18 file a request for review with the Commission, he or she
19 may not later commence a civil action in a circuit court.
20 If the complainant chooses to commence a civil action in a
21 circuit court, he or she must do so within 90 days after
22 receipt of the Director's notice.

23 (4) If the Director determines that there is
24 substantial evidence, he or she shall notify the
25 complainant and respondent of that determination. The
26 Director shall also notify the parties that the complainant

1 has the right to either commence a civil action in the
2 appropriate circuit court or request that the Department of
3 Human Rights file a complaint with the Human Rights
4 Commission on his or her behalf. Any such complaint shall
5 be filed within 90 days after receipt of the Director's
6 notice. If the complainant chooses to have the Department
7 file a complaint with the Human Rights Commission on his or
8 her behalf, the complainant must, within 30 days after
9 receipt of the Director's notice, request in writing that
10 the Department file the complaint. If the complainant
11 timely requests that the Department file the complaint, the
12 Department shall file the complaint on his or her behalf.
13 If the complainant fails to timely request that the
14 Department file the complaint, the complainant may file his
15 or her complaint with the Commission or commence a civil
16 action in the appropriate circuit court. If the complainant
17 files a complaint with the Human Rights Commission, the
18 complainant shall give notice to the Department of the
19 filing of the complaint with the Human Rights Commission.

20 (E) Conciliation.

21 (1) When there is a finding of substantial evidence,
22 the Department may designate a Department employee who is
23 an attorney licensed to practice in Illinois to endeavor to
24 eliminate the effect of the alleged civil rights violation
25 and to prevent its repetition by means of conference and
26 conciliation.

1 (2) When the Department determines that a formal
2 conciliation conference is necessary, the complainant and
3 respondent shall be notified of the time and place of the
4 conference by registered or certified mail at least 10 days
5 prior thereto and either or both parties shall appear at
6 the conference in person or by attorney.

7 (3) The place fixed for the conference shall be within
8 35 miles of the place where the civil rights violation is
9 alleged to have been committed.

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

13 (5) The Department's efforts to conciliate the matter
14 shall not stay or extend the time for filing the complaint
15 with the Commission or the circuit court.

16 (F) Complaint.

17 (1) When the complainant requests that the Department
18 file a complaint with the Commission on his or her behalf,
19 the Department shall prepare a written complaint, under
20 oath or affirmation, stating the nature of the civil rights
21 violation substantially as alleged in the charge
22 previously filed and the relief sought on behalf of the
23 aggrieved party. The Department shall file the complaint
24 with the Commission.

25 (2) If the complainant chooses to commence a civil
26 action in a circuit court, he or she must do so in the

1 circuit court in the county wherein the civil rights
2 violation was allegedly committed. The form of the
3 complaint in any such civil action shall be in accordance
4 with the Illinois Code of Civil Procedure.

5 (G) Time Limit.

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

12 (2) If the Department has not issued its report within
13 365 days after the charge is filed, or any such longer
14 period agreed to in writing by all the parties, the
15 complainant shall have 90 days to either file his or her
16 own complaint with the Human Rights Commission or commence
17 a civil action in the appropriate circuit court. If the
18 complainant files a complaint with the Commission, the form
19 of the complaint shall be in accordance with the provisions
20 of paragraph (F)(1). If the complainant commences a civil
21 action in a circuit court, the form of the complaint shall
22 be in accordance with the Illinois Code of Civil Procedure.
23 The aggrieved party shall notify the Department that a
24 complaint has been filed and shall serve a copy of the
25 complaint on the Department on the same date that the
26 complaint is filed with the Commission or in circuit court.

1 If the complainant files a complaint with the Commission,
2 he or she may not later commence a civil action in circuit
3 court.

4 (3) If an aggrieved party files a complaint with the
5 Human Rights Commission or commences a civil action in
6 circuit court pursuant to paragraph (2) of this subsection,
7 or if the time period for filing a complaint has expired,
8 the Department shall immediately cease its investigation
9 and dismiss the charge of civil rights violation. Any final
10 order entered by the Commission under this Section is
11 appealable in accordance with paragraph (B)(1) of Section
12 8-111. Failure to immediately cease an investigation and
13 dismiss the charge of civil rights violation as provided in
14 this paragraph (3) constitutes grounds for entry of an
15 order by the circuit court permanently enjoining the
16 investigation. The Department may also be liable for any
17 costs and other damages incurred by the respondent as a
18 result of the action of the Department.

19 (4) The Department shall stay any administrative
20 proceedings under this Section after the filing of a civil
21 action by or on behalf of the aggrieved party under any
22 federal or State law seeking relief with respect to the
23 alleged civil rights violation.

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

26 (I) This amendatory Act of 1996 applies to causes of action

1 filed on or after January 1, 1996.

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

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

8 (Source: P.A. 95-243, eff. 1-1-08; 96-876, eff. 2-2-10.)".