



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5498

Introduced 2/16/2018, by Rep. Sara Feigenholtz - Kelly M. Cassidy - Will Guzzardi - Steven A. Andersson - Juliana Stratton, et al.

SYNOPSIS AS INTRODUCED:

775 ILCS 5/7A-102

from Ch. 68, par. 7A-102

Amends the Illinois Human Rights Act. Provides that within 300 calendar days (instead of 180 days) after the date that a civil rights violation, other than a violation concerning a real estate transaction, allegedly has been committed, a charge in writing under oath or affirmation may be filed with the Department of Human Rights by an aggrieved party or issued by the Department itself under the signature of the Director of Human Rights. Provides that if a charge is filed with the Equal Employment Opportunity Commission (EEOC) within 300 calendar days (instead of 180 days) after the date of the alleged civil rights violation, the charge shall be deemed filed with the Department on the date filed with the EEOC. Effective immediately.

LRB100 20749 HEP 36230 b

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) Within 300 calendar ~~180~~ days after the date that a
10 civil rights violation allegedly has been committed, a
11 charge in writing under oath or affirmation may be filed
12 with the Department by an aggrieved party or issued by the
13 Department itself under the signature of the Director.

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

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

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

22 (1) If a charge is filed with the Equal Employment
23 Opportunity Commission (EEOC) within 300 calendar ~~180~~ days

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

24 (2) If the EEOC finds reasonable cause to believe that
25 there has been a violation of federal law and if the
26 Department is timely notified of the EEOC's findings by

1 complainant, the Department shall notify complainant that
2 the Department has adopted the EEOC's determination of
3 reasonable cause and that complainant has the right, within
4 90 days after receipt of the Department's notice, to either
5 file his or her own complaint with the Illinois Human
6 Rights Commission or commence a civil action in the
7 appropriate circuit court or other appropriate court of
8 competent jurisdiction. The Department's notice to
9 complainant that the Department has adopted the EEOC's
10 determination of reasonable cause shall constitute the
11 Department's Report for purposes of subparagraph (D) of
12 this Section.

13 (3) For those charges alleging violations within the
14 jurisdiction of both the EEOC and the Department and for
15 which the EEOC either (i) does not issue a determination,
16 but does issue the complainant a notice of a right to sue,
17 including when the right to sue is issued at the request of
18 the complainant, or (ii) determines that it is unable to
19 establish that illegal discrimination has occurred and
20 issues the complainant a right to sue notice, and if the
21 Department is timely notified of the EEOC's determination
22 by complainant, the Department shall notify the parties
23 that the Department will adopt the EEOC's determination as
24 a dismissal for lack of substantial evidence unless the
25 complainant requests in writing within 35 days after
26 receipt of the Department's notice that the Department

1 review the EEOC's determination.

2 (a) If the complainant does not file a written
3 request with the Department to review the EEOC's
4 determination within 35 days after receipt of the
5 Department's notice, the Department shall notify
6 complainant that the decision of the EEOC has been
7 adopted by the Department as a dismissal for lack of
8 substantial evidence and that the complainant has the
9 right, within 90 days after receipt of the Department's
10 notice, to commence a civil action in the appropriate
11 circuit court or other appropriate court of competent
12 jurisdiction. The Department's notice to complainant
13 that the Department has adopted the EEOC's
14 determination shall constitute the Department's report
15 for purposes of subparagraph (D) of this Section.

16 (b) If the complainant does file a written request
17 with the Department to review the EEOC's
18 determination, the Department shall review the EEOC's
19 determination and any evidence obtained by the EEOC
20 during its investigation. If, after reviewing the
21 EEOC's determination and any evidence obtained by the
22 EEOC, the Department determines there is no need for
23 further investigation of the charge, the Department
24 shall issue a report and the Director shall determine
25 whether there is substantial evidence that the alleged
26 civil rights violation has been committed pursuant to

1 subsection (D) of Section 7A-102. If, after reviewing
2 the EEOC's determination and any evidence obtained by
3 the EEOC, the Department determines there is a need for
4 further investigation of the charge, the Department
5 may conduct any further investigation it deems
6 necessary. After reviewing the EEOC's determination,
7 the evidence obtained by the EEOC, and any additional
8 investigation conducted by the Department, the
9 Department shall issue a report and the Director shall
10 determine whether there is substantial evidence that
11 the alleged civil rights violation has been committed
12 pursuant to subsection (D) of Section 7A-102 of this
13 Act.

14 (4) Pursuant to this Section, if the EEOC dismisses the
15 charge or a portion of the charge of discrimination
16 because, under federal law, the EEOC lacks jurisdiction
17 over the charge, and if, under this Act, the Department has
18 jurisdiction over the charge of discrimination, the
19 Department shall investigate the charge or portion of the
20 charge dismissed by the EEOC for lack of jurisdiction
21 pursuant to subsections (A), (A-1), (B), (B-1), (C), (D),
22 (E), (F), (G), (H), (I), (J), and (K) of Section 7A-102 of
23 this Act.

24 (5) The time limit set out in subsection (G) of this
25 Section is tolled from the date on which the charge is
26 filed with the EEOC to the date on which the EEOC issues

1 its determination.

2 (B) Notice and Response to Charge. The Department shall,
3 within 10 days of the date on which the charge was filed, serve
4 a copy of the charge on the respondent. This period shall not
5 be construed to be jurisdictional. The charging party and the
6 respondent may each file a position statement and other
7 materials with the Department regarding the charge of alleged
8 discrimination within 60 days of receipt of the notice of the
9 charge. The position statements and other materials filed shall
10 remain confidential unless otherwise agreed to by the party
11 providing the information and shall not be served on or made
12 available to the other party during pendency of a charge with
13 the Department. The Department may require the respondent to
14 file a response to the allegations contained in the charge.
15 Upon the Department's request, the respondent shall file a
16 response to the charge within 60 days and shall serve a copy of
17 its response on the complainant or his or her representative.
18 Notwithstanding any request from the Department, the
19 respondent may elect to file a response to the charge within 60
20 days of receipt of notice of the charge, provided the
21 respondent serves a copy of its response on the complainant or
22 his or her representative. All allegations contained in the
23 charge not denied by the respondent within 60 days of the
24 Department's request for a response may be deemed admitted,
25 unless the respondent states that it is without sufficient
26 information to form a belief with respect to such allegation.

1 The Department may issue a notice of default directed to any
2 respondent who fails to file a response to a charge within 60
3 days of receipt of the Department's request, unless the
4 respondent can demonstrate good cause as to why such notice
5 should not issue. The term "good cause" shall be defined by
6 rule promulgated by the Department. Within 30 days of receipt
7 of the respondent's response, the complainant may file a reply
8 to said response and shall serve a copy of said reply on the
9 respondent or his or her representative. A party shall have the
10 right to supplement his or her response or reply at any time
11 that the investigation of the charge is pending. The Department
12 shall, within 10 days of the date on which the charge was
13 filed, and again no later than 335 days thereafter, send by
14 certified or registered mail written notice to the complainant
15 and to the respondent informing the complainant of the
16 complainant's right to either file a complaint with the Human
17 Rights Commission or commence a civil action in the appropriate
18 circuit court under subparagraph (2) of paragraph (G),
19 including in such notice the dates within which the complainant
20 may exercise this right. In the notice the Department shall
21 notify the complainant that the charge of civil rights
22 violation will be dismissed with prejudice and with no right to
23 further proceed if a written complaint is not timely filed with
24 the Commission or with the appropriate circuit court by the
25 complainant pursuant to subparagraph (2) of paragraph (G) or by
26 the Department pursuant to subparagraph (1) of paragraph (G).

1 (B-1) Mediation. The complainant and respondent may agree
2 to voluntarily submit the charge to mediation without waiving
3 any rights that are otherwise available to either party
4 pursuant to this Act and without incurring any obligation to
5 accept the result of the mediation process. Nothing occurring
6 in mediation shall be disclosed by the Department or admissible
7 in evidence in any subsequent proceeding unless the complainant
8 and the respondent agree in writing that such disclosure be
9 made.

10 (C) Investigation.

11 (1) The Department shall conduct an investigation
12 sufficient to determine whether the allegations set forth
13 in the charge are supported by substantial evidence.

14 (2) The Director or his or her designated
15 representatives shall have authority to request any member
16 of the Commission to issue subpoenas to compel the
17 attendance of a witness or the production for examination
18 of any books, records or documents whatsoever.

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

1 (4) Upon reasonable notice to the complainant and the
2 respondent, the Department shall conduct a fact finding
3 conference, unless prior to 365 days after the date on
4 which the charge was filed the Director has determined
5 whether there is substantial evidence that the alleged
6 civil rights violation has been committed, the charge has
7 been dismissed for lack of jurisdiction, or the parties
8 voluntarily and in writing agree to waive the fact finding
9 conference. Any party's failure to attend the conference
10 without good cause shall result in dismissal or default.
11 The term "good cause" shall be defined by rule promulgated
12 by the Department. A notice of dismissal or default shall
13 be issued by the Director. The notice of default issued by
14 the Director shall notify the respondent that a request for
15 review may be filed in writing with the Commission within
16 30 days of receipt of notice of default. The notice of
17 dismissal issued by the Director shall give the complainant
18 notice of his or her right to seek review of the dismissal
19 before the Human Rights Commission or commence a civil
20 action in the appropriate circuit court. If the complainant
21 chooses to have the Human Rights Commission review the
22 dismissal order, he or she shall file a request for review
23 with the Commission within 90 days after receipt of the
24 Director's notice. If the complainant chooses to file a
25 request for review with the Commission, he or she may not
26 later commence a civil action in a circuit court. If the

1 complainant chooses to commence a civil action in a circuit
2 court, he or she must do so within 90 days after receipt of
3 the Director's notice.

4 (D) Report.

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

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

23 (3) If the Director determines that there is no
24 substantial evidence, the charge shall be dismissed by
25 order of the Director and the Director shall give the
26 complainant notice of his or her right to seek review of

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

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

1 Department shall file the complaint on his or her behalf.
2 If the complainant fails to timely request that the
3 Department file the complaint, the complainant may file his
4 or her complaint with the Commission or commence a civil
5 action in the appropriate circuit court. If the complainant
6 files a complaint with the Human Rights Commission, the
7 complainant shall give notice to the Department of the
8 filing of the complaint with the Human Rights Commission.

9 (E) Conciliation.

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

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

22 (3) The place fixed for the conference shall be within
23 35 miles of the place where the civil rights violation is
24 alleged to have been committed.

25 (4) Nothing occurring at the conference shall be
26 disclosed by the Department unless the complainant and

1 respondent agree in writing that such disclosure be made.

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

5 (F) Complaint.

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

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

20 (G) Time Limit.

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

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

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

1 8-111. Failure to immediately cease an investigation and
2 dismiss the charge of civil rights violation as provided in
3 this paragraph (3) constitutes grounds for entry of an
4 order by the circuit court permanently enjoining the
5 investigation. The Department may also be liable for any
6 costs and other damages incurred by the respondent as a
7 result of the action of the Department.

8 (4) The Department shall stay any administrative
9 proceedings under this Section after the filing of a civil
10 action by or on behalf of the aggrieved party under any
11 federal or State law seeking relief with respect to the
12 alleged civil rights violation.

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

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

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

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

23 (Source: P.A. 100-492, eff. 9-8-17.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.