



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB0823

Introduced 2/2/2005, by Rep. Eddie Washington

SYNOPSIS AS INTRODUCED:

775 ILCS 5/7A-102
775 ILCS 5/7B-102

from Ch. 68, par. 7A-102
from Ch. 68, par. 7B-102

Amends the Illinois Human Rights Act. Provides that the Department of Human Rights may (rather than shall) issue a notice of default directed to a respondent who fails to file a verified response to a charge within 60 days of receipt of the notice of the charge, unless the respondent demonstrates good cause as to why the notice should not issue. Provides that the Department shall define "good cause" by rule. Effective immediately.

LRB094 07350 WGH 37508 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 Sections 7A-102 and 7B-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 180 days after the date that a civil rights
10 violation allegedly has been committed, a charge in writing
11 under oath or affirmation may be filed with the Department
12 by an aggrieved party or issued by the Department itself
13 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 (B) Notice, and Response, and Review of Charge. The
19 Department shall, within 10 days of the date on which the
20 charge was filed, serve a copy of the charge on the respondent.
21 This period shall not be construed to be jurisdictional. The
22 charging party and the respondent may each file a position
23 statement and other materials with the Department regarding the
24 charge of alleged discrimination within 60 days of receipt of
25 the notice of the charge. The position statements and other
26 materials filed shall remain confidential unless otherwise
27 agreed to by the party providing the information and shall not
28 be served on or made available to the other party during
29 pendency of a charge with the Department. The Department shall
30 require the respondent to file a verified response to the
31 allegations contained in the charge within 60 days of receipt
32 of the notice of the charge. The respondent shall serve a copy

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

30 (B-1) Mediation. The complainant and respondent may agree
31 to voluntarily submit the charge to mediation without waiving
32 any rights that are otherwise available to either party
33 pursuant to this Act and without incurring any obligation to
34 accept the result of the mediation process. Nothing occurring
35 in mediation shall be disclosed by the Department or admissible
36 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) After the respondent has been notified, the
5 Department shall conduct a full investigation of the
6 allegations set forth in the charge.

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

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

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

1 (D) Report.

2 (1) Each charge shall be the subject of a report to the
3 Director. The report shall be a confidential document
4 subject to review by the Director, authorized Department
5 employees, the parties, and, where indicated by this Act,
6 members of the Commission or their designated hearing
7 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 and questions of credibility. Substantial evidence is
17 evidence which a reasonable mind accepts as sufficient to
18 support a particular conclusion and which consists of more
19 than a mere scintilla but may be somewhat less than a
20 preponderance.

21 (a) If the Director determines that there is no
22 substantial evidence, the charge shall be dismissed by
23 order of the Director and the complainant notified that
24 he or she may seek review of the dismissal order before
25 the Chief Legal Counsel of the Department. The
26 complainant shall have 30 days from receipt of notice
27 to file a request for review by the Chief Legal Counsel
28 of the Department.

29 (b) If the Director determines that there is
30 substantial evidence, he or she shall designate a
31 Department employee who is an attorney licensed to
32 practice in Illinois to endeavor to eliminate the
33 effect of the alleged civil rights violation and to
34 prevent its repetition by means of conference and
35 conciliation.

36 (E) Conciliation.

1 (1) 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 (2) 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 (3) 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 (F) Complaint.

14 (1) When there is a failure to settle or adjust any
15 charge through conciliation, the Department shall prepare
16 a written complaint, under oath or affirmation, stating the
17 nature of the civil rights violation substantially as
18 alleged in the charge previously filed and the relief
19 sought on behalf of the aggrieved party.

20 (2) The complaint shall be filed with the Commission.

21 (G) Time Limit.

22 (1) When a charge of a civil rights violation has been
23 properly filed, the Department, within 365 days thereof or
24 within any extension of that period agreed to in writing by
25 all parties, shall either issue and file a complaint in the
26 manner and form set forth in this Section or shall order
27 that no complaint be issued and dismiss the charge with
28 prejudice without any further right to proceed except in
29 cases in which the order was procured by fraud or duress.
30 Any such order shall be duly served upon both the
31 complainant and the respondent.

32 (2) Between 365 and 395 days after the charge is filed,
33 or such longer period agreed to in writing by all parties,
34 the aggrieved party may file a complaint with the
35 Commission, if the Director has not sooner issued a report
36 and determination pursuant to paragraphs (D) (1) and (D) (2)

1 of this Section. The form of the complaint shall be in
2 accordance with the provisions of paragraph (F). The
3 aggrieved party shall notify the Department that a
4 complaint has been filed and shall serve a copy of the
5 complaint on the Department on the same date that the
6 complaint is filed with the Commission.

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

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

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

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

31 (Source: P.A. 89-370, eff. 8-18-95; 89-520, eff. 7-18-96.)

32 (775 ILCS 5/7B-102) (from Ch. 68, par. 7B-102)

33 Sec. 7B-102. Procedures.

34 (A) Charge.

35 (1) Within one year after the date that a civil rights

1 violation allegedly has been committed or terminated, a
2 charge in writing under oath or affirmation may be filed
3 with the Department by an aggrieved party or issued by the
4 Department itself under the signature of the Director.

5 (2) The charge shall be in such detail as to
6 substantially apprise any party properly concerned as to
7 the time, place, and facts surrounding the alleged civil
8 rights violation.

9 (B) Notice and Response to Charge.

10 (1) The Department shall serve notice upon the
11 aggrieved party acknowledging such charge and advising the
12 aggrieved party of the time limits and choice of forums
13 provided under this Act. The Department shall, within 10
14 days of the date on which the charge was filed or the
15 identification of an additional respondent under paragraph
16 (2) of this subsection, serve on the respondent a copy of
17 the charge along with a notice identifying the alleged
18 civil rights violation and advising the respondent of the
19 procedural rights and obligations of respondents under
20 this Act and shall require the respondent to file a
21 verified response to the allegations contained in the
22 charge within 30 days. The respondent shall serve a copy of
23 its response on the complainant or his representative. All
24 allegations contained in the charge not timely denied by
25 the respondent shall be deemed admitted, unless the
26 respondent states that it is without sufficient
27 information to form a belief with respect to such
28 allegation. The Department may ~~shall~~ issue a notice of
29 default directed to any respondent who fails to file a
30 verified response to a charge within 30 days of the date on
31 which the charge was filed, unless the respondent can
32 demonstrate good cause as to why such notice should not
33 issue. The term "good cause" shall be defined by rule
34 promulgated by the Department. Within 10 days of the date
35 he receives the respondent's response, the complainant may
36 file his reply to said response. If he chooses to file a

1 reply, the complainant shall serve a copy of said reply on
2 the respondent or his representative. A party shall have
3 the right to supplement his response or reply at any time
4 that the investigation of the charge is pending.

5 (2) A person who is not named as a respondent in a
6 charge, but who is identified as a respondent in the course
7 of investigation, may be joined as an additional or
8 substitute respondent upon written notice, under
9 subsection (B), to such person, from the Department. Such
10 notice, in addition to meeting the requirements of
11 subsections (A) and (B), shall explain the basis for the
12 Department's belief that a person to whom the notice is
13 addressed is properly joined as a respondent.

14 (C) Investigation.

15 (1) The Department shall conduct a full investigation
16 of the allegations set forth in the charge and complete
17 such investigation within 100 days after the filing of the
18 charge, unless it is impracticable to do so.

19 (2) If the Department is unable to complete the
20 investigation within 100 days after the charge is filed,
21 the Department shall notify the complainant and respondent
22 in writing of the reasons for not doing so.

23 (3) The Director or his or her designated
24 representative shall have authority to request any member
25 of the Commission to issue subpoenas to compel the
26 attendance of a witness or the production for examination
27 of any books, records or documents whatsoever.

28 (4) If any witness whose testimony is required for any
29 investigation resides outside the State, or through
30 illness or any other good cause as determined by the
31 Director is unable to be interviewed by the investigator or
32 appear at a fact finding conference, his or her testimony
33 or deposition may be taken, within or without the State, in
34 the same manner as provided for in the taking of
35 depositions in civil cases in circuit courts.

36 (5) Upon reasonable notice to the complainant and the

1 respondent, the Department shall conduct a fact finding
2 conference, unless prior to 100 days from the date on which
3 the charge was filed, the Director has determined whether
4 there is substantial evidence that the alleged civil rights
5 violation has been committed. A party's failure to attend
6 the conference without good cause may result in dismissal
7 or default. A notice of dismissal or default shall be
8 issued by the Director and shall notify the relevant party
9 that a request for review may be filed in writing with the
10 Chief Legal Counsel of the Department within 30 days of
11 receipt of notice of dismissal or default.

12 (D) Report.

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

19 The report shall contain:

20 (a) the names and dates of contacts with witnesses;

21 (b) a summary and the date of correspondence and
22 other contacts with the aggrieved party and the
23 respondent;

24 (c) a summary description of other pertinent
25 records;

26 (d) a summary of witness statements; and

27 (e) answers to questionnaires.

28 A final report under this paragraph may be amended if
29 additional evidence is later discovered.

30 (2) Upon review of the report and within 100 days of
31 the filing of the charge, unless it is impracticable to do
32 so, the Director shall determine whether there is
33 substantial evidence that the alleged civil rights
34 violation has been committed or is about to be committed.
35 If the Director is unable to make the determination within
36 100 days after the filing of the charge, the Director shall

1 notify the complainant and respondent in writing of the
2 reasons for not doing so.

3 (a) If the Director determines that there is no
4 substantial evidence, the charge shall be dismissed
5 and the aggrieved party notified that he or she may
6 seek review of the dismissal order before the
7 Commission. The aggrieved party shall have 30 days from
8 receipt of notice to file a request for review by the
9 Chief Legal Counsel of the Department. The Director
10 shall make public disclosure of each such dismissal.

11 (b) If the Director determines that there is
12 substantial evidence, he or she shall immediately
13 issue a complaint on behalf of the aggrieved party
14 pursuant to subsection (F).

15 (E) Conciliation.

16 (1) During the period beginning with the filing of
17 charge and ending with the filing of a complaint or a
18 dismissal by the Department, the Department shall, to the
19 extent feasible, engage in conciliation with respect to
20 such charge.

21 When the Department determines that a formal
22 conciliation conference is feasible, the aggrieved party
23 and respondent shall be notified of the time and place of
24 the conference by registered or certified mail at least 7
25 days prior thereto and either or both parties shall appear
26 at the conference in person or by attorney.

27 (2) The place fixed for the conference shall be within
28 35 miles of the place where the civil rights violation is
29 alleged to have been committed.

30 (3) Nothing occurring at the conference shall be made
31 public or used as evidence in a subsequent proceeding for
32 the purpose of proving a violation under this Act unless
33 the complainant and respondent agree in writing that such
34 disclosure be made.

35 (4) A conciliation agreement arising out of such
36 conciliation shall be an agreement between the respondent

1 and the complainant, and shall be subject to approval by
2 the Department and Commission.

3 (5) A conciliation agreement may provide for binding
4 arbitration of the dispute arising from the charge. Any
5 such arbitration that results from a conciliation
6 agreement may award appropriate relief, including monetary
7 relief.

8 (6) Each conciliation agreement shall be made public
9 unless the complainant and respondent otherwise agree and
10 the Department determines that disclosure is not required
11 to further the purpose of this Act.

12 (F) Complaint.

13 (1) When there is a failure to settle or adjust any
14 charge through a conciliation conference and the charge is
15 not dismissed, the Department shall prepare a written
16 complaint, under oath or affirmation, stating the nature of
17 the civil rights violation and the relief sought on behalf
18 of the aggrieved party. Such complaint shall be based on
19 the final investigation report and need not be limited to
20 the facts or grounds alleged in the charge filed under
21 subsection (A).

22 (2) The complaint shall be filed with the Commission.

23 (3) The Department may not issue a complaint under this
24 Section regarding an alleged civil rights violation after
25 the beginning of the trial of a civil action commenced by
26 the aggrieved party under any State or federal law, seeking
27 relief with respect to that alleged civil rights violation.

28 (G) Time Limit.

29 (1) When a charge of a civil rights violation has been
30 properly filed, the Department, within 100 days thereof,
31 unless it is impracticable to do so, shall either issue and
32 file a complaint in the manner and form set forth in this
33 Section or shall order that no complaint be issued. Any
34 such order shall be duly served upon both the aggrieved
35 party and the respondent.

36 (2) The Director shall make available to the aggrieved

1 party and the respondent, at any time, upon request
2 following completion of the Department's investigation,
3 information derived from an investigation and any final
4 investigative report relating to that investigation.

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

7 (Source: P.A. 89-370, eff. 8-18-95.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.