



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB1552

Introduced 2/15/2011, by Rep. Chris Nybo

#### SYNOPSIS AS INTRODUCED:

775 ILCS 5/7A-102

from Ch. 68, par. 7A-102

Amends provisions of the Illinois Human Rights Act relating to proceedings other than those involving real estate transactions. Provides that the Department of Human Rights shall adopt the Equal Employment Opportunities Commission's determination as its own (instead of at the Department's discretion, the Department may accept the Equal Employment Opportunities Commission's determination as its own or process the charge pursuant to the Act). Effective immediately.

LRB097 06777 AJO 46868 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 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 (A-1) Equal Employment Opportunity Commission Charges. A  
19 charge filed with the Equal Employment Opportunity Commission  
20 within 180 days after the date of the alleged civil rights  
21 violation shall be deemed filed with the Department on the date  
22 filed with the Equal Employment Opportunity Commission. Upon  
23 receipt of a charge filed with the Equal Employment Opportunity

1 Commission, the Department shall notify the complainant that he  
2 or she may proceed with the Department. The complainant must  
3 notify the Department of his or her decision in writing within  
4 35 days of receipt of the Department's notice to the  
5 complainant and the Department shall close the case if the  
6 complainant does not do so. If the complainant proceeds with  
7 the Department, the Department shall take no action until the  
8 Equal Employment Opportunity Commission makes a determination  
9 on the charge. Upon receipt of the Equal Employment Opportunity  
10 Commission's determination, the Department shall cause the  
11 charge to be filed under oath or affirmation and to be in such  
12 detail as provided for under subparagraph (2) of paragraph (A).  
13 ~~The~~ ~~At the Department's discretion, the~~ Department shall ~~either~~  
14 adopt the Equal Employment Opportunity Commission's  
15 determination which ~~or process the charge pursuant to this Act.~~  
16 ~~Adoption of the Equal Employment Opportunity Commission's~~  
17 ~~determination~~ shall be deemed a determination by the Department  
18 for all purposes under this Act.

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

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

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

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

22 (C) Investigation.

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

26 (2) The Director or his or her designated

1           representatives shall have authority to request any member  
2           of the Commission to issue subpoenas to compel the  
3           attendance of a witness or the production for examination  
4           of any books, records or documents whatsoever.

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

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

1           respondent that a request for review may be filed in  
2           writing with the Commission within 30 days of receipt of  
3           notice of default. The notice of dismissal issued by the  
4           Director shall give the complainant notice of his or her  
5           right to seek review of the dismissal before the Human  
6           Rights Commission or commence a civil action in the  
7           appropriate circuit court. If the complainant chooses to  
8           have the Human Rights Commission review the dismissal  
9           order, he or she shall file a request for review with the  
10          Commission within 90 days after receipt of the Director's  
11          notice. If the complainant chooses to file a request for  
12          review with the Commission, he or she may not later  
13          commence a civil action in a circuit court. If the  
14          complainant chooses to commence a civil action in a circuit  
15          court, he or she must do so within 90 days after receipt of  
16          the Director's notice.

17          (D) Report.

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

24               (2) Upon review of the report, the Director shall  
25               determine whether there is substantial evidence that the  
26               alleged civil rights violation has been committed. The

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

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

25 (4) If the Director determines that there is  
26 substantial evidence, he or she shall notify the



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

22 (E) Conciliation.

23 (1) When there is a finding of substantial evidence,  
24 the Department may designate a Department employee who is  
25 an attorney licensed to practice in Illinois to endeavor to  
26 eliminate the effect of the alleged civil rights violation

1 and to prevent its repetition by means of conference and  
2 conciliation.

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

9 (3) The place fixed for the conference shall be within  
10 35 miles of the place where the civil rights violation is  
11 alleged to have been committed.

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

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

18 (F) Complaint.

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

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

7           (G) Time Limit.

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

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

1 complaint on the Department on the same date that the  
2 complaint is filed with the Commission or in circuit court.  
3 If the complainant files a complaint with the Commission,  
4 he or she may not later commence a civil action in circuit  
5 court.

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

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

26 (H) This amendatory Act of 1995 applies to causes of action

1 filed on or after January 1, 1996.

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

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

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

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

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law.