

# SB3748



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB3748

Introduced 2/10/2012, by Sen. Ron Sandack

#### SYNOPSIS AS INTRODUCED:

775 ILCS 5/8B-102

from Ch. 68, par. 8B-102

Amends provisions of the Illinois Human Rights Act concerning hearings on complaints before the Human Rights Commission involving the Real Estate Transactions Article of the Act. Provides that, if a civil action is filed by or on behalf of the aggrieved party under federal or State law, the Commission shall act no further on the complaint and shall administratively close the file on the complaint.

LRB097 15772 AJO 60916 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 8B-102 as follows:

6 (775 ILCS 5/8B-102) (from Ch. 68, par. 8B-102)

7 Sec. 8B-102. Hearing on complaint.

8 (A) Election of Judicial Determination. When a complaint is  
9 filed under Section 7B-102(F) a complainant, a respondent, or  
10 an aggrieved party on whose behalf the complaint was filed, may  
11 elect to have the claims asserted in that complaint decided in  
12 a civil action in a circuit court of Illinois, in which case  
13 the Illinois Code of Civil Procedure shall apply. The election  
14 must be made not later than 20 days after the receipt by the  
15 electing person of service of the complaint by the Commission.  
16 The person making such election shall file it with the  
17 Commission and shall give notice of doing so to the Department  
18 and to all other complainants and respondents to whom the  
19 charge relates. If an election is made, the Commission shall  
20 act no further on the complaint and shall administratively  
21 close the file on the complaint. If an election is not made,  
22 the Commission shall continue proceedings on the complaint in  
23 accordance with this Act and the hearing shall be before a

1 hearing officer.

2 (B) Services. Within 5 days after a complaint is filed by  
3 the Department, the Commission shall cause it to be served on  
4 the respondent and complainant together with a notice of  
5 hearing before a hearing officer of the Commission at a place  
6 therein fixed and with information as to how to make an  
7 election under subsection (A) and the effect of such an  
8 election.

9 (C) Time and Location of Hearing. An initial hearing date  
10 shall be scheduled for not less than 30 nor more than 90 days  
11 after service of the complaint at a place that is within 100  
12 miles of the place at which the civil rights violation is  
13 alleged to have occurred. The hearing officer may, for good  
14 cause shown, extend the date of the hearing.

15 (D) Amendment.

16 (1) A complaint may be amended under oath by leave of  
17 the presiding hearing officer, for good cause shown, upon  
18 timely written motion and reasonable notice to all  
19 interested parties at any time prior to the issuance of a  
20 recommended order pursuant to Section 8A-102(I) or  
21 8B-102(J). The amended complaint shall be served upon all  
22 parties of record by the Department within 7 days of the  
23 date of the order permitting its filing or such additional  
24 time as the hearing officer may order. Amendments to the  
25 complaint may encompass any unlawful discrimination which  
26 is like or reasonably related to the charge and growing out

1 of the allegations in such charge, including, but not  
2 limited to, allegations of retaliation.

3 (2) A motion that the complaint be amended to conform  
4 to the evidence, made prior to the close of the public  
5 hearing, may be addressed orally on the record to the  
6 hearing officer, and shall be granted for good and  
7 sufficient cause.

8 (E) Answer.

9 (1) The respondent shall file an answer under oath or  
10 affirmation to the original or amended complaint within 30  
11 days of the date of service thereof, but the hearing  
12 officer may, for good cause shown, grant further time for  
13 the filing of an answer.

14 (2) When the respondent files a motion to dismiss the  
15 complaint within 30 days and the motion is denied by the  
16 hearing officer, the time for filing the answer shall be  
17 within 15 days of the date of denial of the motion.

18 (3) Any allegation in the complaint which is not denied  
19 or admitted in the answer is deemed admitted unless the  
20 respondent states in the answer that he is without  
21 sufficient knowledge or information to form a belief with  
22 respect to such allegation.

23 (4) The failure to file an answer is deemed to  
24 constitute an admission of the allegations contained in the  
25 complaint.

26 (5) The respondent has the right to amend his answer,

1 upon leave of the hearing officer, for good cause shown.

2 (F) Proceedings In Forma Pauperis.

3 (1) If the hearing officer is satisfied that the  
4 complainant or respondent is a poor person, and unable to  
5 prosecute or defend the complaint and pay the costs and  
6 expenses thereof, the hearing officer may permit the party  
7 to commence and prosecute or defend the action as a poor  
8 person. Such party shall have all the necessary subpoenas,  
9 appearances, and proceedings without prepayment of witness  
10 fees or charges. Witnesses shall attend as in other cases  
11 under this Act and the same remedies shall be available for  
12 failure or refusal to obey the subpoena as are provided for  
13 in Section 8-104 of this Act.

14 (2) A person desiring to proceed without payment of  
15 fees or charges shall file with the hearing officer an  
16 affidavit stating that he is a poor person and unable to  
17 pay costs, and that the action is meritorious.

18 (G) Discovery. The procedures for obtaining discovery of  
19 information from parties and witnesses shall be specified by  
20 the Commission in rules. If no rule has been promulgated by the  
21 Commission on a particular type of discovery, the Code of Civil  
22 Procedure may be considered persuasive authority. The types of  
23 discovery shall be the same as in civil cases in the circuit  
24 courts of this State, provided, however, that a party may take  
25 discovery depositions only upon leave of the hearing officer  
26 and for good cause shown.

1 (H) Hearing.

2 (1) The Department and the respondent shall be parties  
3 in hearings under this Article. The Department shall seek  
4 appropriate relief for the complainant and vindication of  
5 the public interest. Any complainant may intervene as a  
6 party. All parties have the right to examine and cross  
7 examine witnesses.

8 (2) The testimony taken at the hearing shall be under  
9 oath or affirmation and a transcript shall be made and  
10 filed in the office of the Commission.

11 (3) The testimony taken at the hearing is subject to  
12 the same rules of evidence that apply in courts of this  
13 State in civil cases.

14 (I) Compelling Appearance of Parties at Hearing. The  
15 appearance at the hearing of a party or a person who at the  
16 time of the hearing is an officer, director, or employee of a  
17 party may be required by serving the party with a notice  
18 designating the person who is required to appear. The notice  
19 also may require the production at the hearing of documents or  
20 tangible things. If the party or person is a nonresident of the  
21 county, the hearing officer may order any terms and conditions  
22 in connection with his appearance at the hearing that are just,  
23 including payment of his reasonable expenses. Upon a failure to  
24 comply with the notice, the hearing officer may enter any order  
25 that is just.

26 (J) Decision.

1           (1) When all the testimony has been taken, the hearing  
2 officer shall determine whether the respondent has engaged  
3 in or is engaging in the civil rights violation with  
4 respect to the aggrieved party as charged in the complaint.  
5 A determination sustaining a complaint shall be based upon  
6 a preponderance of the evidence.

7           (2) The hearing officer shall make findings of fact in  
8 writing and, if the finding is against the respondent,  
9 shall issue and cause to be served on the parties and the  
10 Department a recommended order for appropriate relief as  
11 provided by this Act.

12           (3) If, upon all the evidence, the hearing officer  
13 finds that a respondent has not engaged in the civil rights  
14 violation charged in the complaint or that a preponderance  
15 of the evidence does not sustain the complaint, he shall  
16 state his findings of fact and shall issue and cause to be  
17 served on the parties and the Department a recommended  
18 order dismissing the complaint.

19           (4) The findings and recommended order of the hearing  
20 officer shall be filed with the Commission. The findings  
21 and recommended order may be authored by a hearing officer  
22 other than the hearing officer who presides at the public  
23 hearing if:

24           (a) the hearing officer who presides at the public  
25 hearing is unable to author the findings and  
26 recommended order by reason of death, disability, or

1 separation from employment; and

2 (b) all parties to a complaint file a joint motion  
3 agreeing to have the findings and recommended order  
4 written by a hearing officer who did not preside at the  
5 public hearing.

6 (5) The hearing officer may issue a recommended order  
7 of dismissal with prejudice or a recommended order of  
8 default as a sanction for the failure of a party to  
9 prosecute his or her case, file a required pleading, appear  
10 at a hearing, or otherwise comply with this Act, the rules  
11 of the Commission, or a previous order of the hearing  
12 officer.

13 (K) Effect of Trial of Civil Action on Administrative  
14 Proceedings. A hearing officer shall not proceed with any  
15 administrative proceedings under this Section after the filing  
16 of a civil action by or on behalf of the aggrieved party under  
17 federal or State law seeking relief with respect to the alleged  
18 civil rights violation. If a civil action is filed by or on  
19 behalf of the aggrieved party under federal or State law, the  
20 Commission shall act no further on the complaint and shall  
21 administratively close the file on the complaint.

22 (Source: P.A. 92-472, eff. 1-1-02.)