



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/09/04, by Mary E. Flowers

SYNOPSIS AS INTRODUCED:

775 ILCS 5/7A-102

from Ch. 68, par. 7A-102

Amends provisions of the Illinois Human Rights Act concerning the investigation of charges by the Department of Human Rights. Eliminates language providing that questions of credibility shall be considered in determining whether there is substantial evidence that an alleged civil rights violation has been committed. Effective immediately.

LRB093 20450 WGH 46236 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 (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 shall
6 issue a notice of default directed to any respondent who fails
7 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 Within 30 days of receipt of the respondent's response, the
11 complainant may file a reply to said response and shall serve a
12 copy of said reply on the respondent or his representative. A
13 party shall have the right to supplement his response or reply
14 at any time that the investigation of the charge is pending.
15 The Department shall, within 10 days of the date on which the
16 charge was filed, and again no later than 335 days thereafter,
17 send by certified or registered mail written notice to the
18 complainant and to the respondent informing the complainant of
19 the right to file a complaint with the Human Rights Commission
20 under subparagraph (2) of paragraph (G), including in such
21 notice the dates within which the complainant may exercise this
22 right. In the notice the Department shall notify the
23 complainant that the charge of civil rights violation will be
24 dismissed with prejudice and with no right to further proceed
25 if a written complaint is not timely filed with the Commission
26 by the complainant pursuant to subparagraph (2) of paragraph
27 (G) or by the Department pursuant to subparagraph (1) of
28 paragraph (G).

29 (B-1) Mediation. The complainant and respondent may agree
30 to voluntarily submit the charge to mediation without waiving
31 any rights that are otherwise available to either party
32 pursuant to this Act and without incurring any obligation to
33 accept the result of the mediation process. Nothing occurring
34 in mediation shall be disclosed by the Department or admissible
35 in evidence in any subsequent proceeding unless the complainant
36 and the respondent agree in writing that such disclosure be

1 made.

2 (C) Investigation.

3 (1) After the respondent has been notified, the
4 Department shall conduct a full investigation of the
5 allegations set forth in the charge.

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

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

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

36 (D) Report.

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

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

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

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

35 (E) Conciliation.

36 (1) When the Department determines that a formal

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

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

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

12 (F) Complaint.

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

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

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 either issue and file a complaint in the
25 manner and form set forth in this Section or shall order
26 that no complaint be issued and dismiss the charge with
27 prejudice without any further right to proceed except in
28 cases in which the order was procured by fraud or duress.
29 Any such order shall be duly served upon both the
30 complainant and the respondent.

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

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

6 (3) If an aggrieved party files a complaint with the
7 Human Rights Commission pursuant to paragraph (2) of this
8 subsection, or if the time period for filing a complaint
9 has expired, the Department shall immediately cease its
10 investigation and dismiss the charge of civil rights
11 violation. Any final order entered by the Chief Legal
12 Counsel under this Section is appealable in accordance with
13 paragraph (A)(1) of Section 8-111. Failure to immediately
14 cease an investigation and dismiss the charge of civil
15 rights violation as provided in this paragraph (3)
16 constitutes grounds for entry of an order by the circuit
17 court permanently enjoining the investigation. The
18 Department may also be liable for any costs and other
19 damages incurred by the respondent as a result of the
20 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
27 filed on or after January 1, 1996.

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

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

31 Section 99. Effective date. This Act takes effect upon
32 becoming law.