



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3747

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

SYNOPSIS AS INTRODUCED:

775 ILCS 5/7-109.1

from Ch. 68, par. 7-109.1

775 ILCS 5/7B-102

from Ch. 68, par. 7B-102

Amends the Illinois Human Rights Act. Provides that the Department of Human Rights shall (instead of may) administratively close a charge pending before the Department if the issues which are the basis of the charge are being litigated in a State or federal court proceeding. Amends provisions concerning charges filed under the Real Estate Transactions Article. Adds language providing that: the Department shall issue its report within 365 days after the filing of a charge or any agreed extension; if the Department does not do so, the aggrieved party has 90 days to file a complaint with the Human Rights Commission or commence a civil action; if the aggrieved party files a complaint or commences a civil action or the time for doing so has expired, the Department shall cease its investigation and dismiss the charge. Provides that the failure of the Department to do so constitutes grounds for a circuit court order permanently enjoining the investigation, and the Department may be liable for costs, attorney's fees, and damages incurred by the respondent as a result of the action of the Department; the Department shall stay administrative proceedings after the filing of a civil action; and, if a civil action is filed, the Department shall act no further on the charge and shall close the file. Deletes language providing that: the Department shall, within 100 days after the filing of a charge, unless it is impracticable to do so, issue and file a complaint or issue an order that no complaint be issued; the Department's failure to issue and file a complaint or issue an order that no complaint be issued within 100 days after the filing of a charge does not deprive the Department of jurisdiction; and the Director of Human Rights shall make available to the aggrieved party and the respondent, upon request following completion of the Department's investigation, information derived from an investigation and any final investigative report.

LRB097 15771 AJ0 61527 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 7-109.1 and 7B-102 as follows:

6 (775 ILCS 5/7-109.1) (from Ch. 68, par. 7-109.1)

7 Sec. 7-109.1. Federal or State Court Proceedings. The
8 Department shall ~~may~~ administratively close a charge pending
9 before the Department if the issues which are the basis of the
10 charge are being litigated in a State or federal court
11 proceeding.

12 (Source: P.A. 86-1343.)

13 (775 ILCS 5/7B-102) (from Ch. 68, par. 7B-102)

14 Sec. 7B-102. Procedures.

15 (A) Charge.

16 (1) Within one year after the date that a civil rights
17 violation allegedly has been committed or terminated, a
18 charge in writing under oath or affirmation may be filed
19 with the Department by an aggrieved party or issued by the
20 Department itself under the signature of the Director.

21 (2) The charge shall be in such detail as to
22 substantially apprise any party properly concerned as to

1 the time, place, and facts surrounding the alleged civil
2 rights violation.

3 (B) Notice and Response to Charge.

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

1 "good cause" shall be defined by rule promulgated by the
2 Department. Within 10 days of the date he receives the
3 respondent's response, the complainant may file his reply
4 to said response. If he chooses to file a reply, the
5 complainant shall serve a copy of said reply on the
6 respondent or his representative. A party shall have the
7 right to supplement his response or reply at any time that
8 the investigation of the charge is pending.

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

18 (C) Investigation.

19 (1) The Department shall conduct a full investigation
20 of the allegations set forth in the charge and complete
21 such investigation within 100 days after the filing of the
22 charge, unless it is impracticable to do so. The
23 Department's failure to complete the investigation within
24 100 days after the proper filing of the charge does not
25 deprive the Department of jurisdiction over the charge.

26 (2) If the Department is unable to complete the

1 investigation within 100 days after the charge is filed,
2 the Department shall notify the complainant and respondent
3 in writing of the reasons for not doing so.

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

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

17 (5) Upon reasonable notice to the complainant and the
18 respondent, the Department shall conduct a fact finding
19 conference, unless prior to 100 days from the date on which
20 the charge was filed, the Director has determined whether
21 there is substantial evidence that the alleged civil rights
22 violation has been committed or the parties voluntarily and
23 in writing agree to waive the fact finding conference. A
24 party's failure to attend the conference without good cause
25 may result in dismissal or default. A notice of dismissal
26 or default shall be issued by the Director and shall notify

1 the relevant party that a request for review may be filed
2 in writing with the Commission within 30 days of receipt of
3 notice of dismissal or default.

4 (D) Report.

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

11 The report shall contain:

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

13 (b) a summary and the date of correspondence and
14 other contacts with the aggrieved party and the
15 respondent;

16 (c) a summary description of other pertinent
17 records;

18 (d) a summary of witness statements; and

19 (e) answers to questionnaires.

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

22 (2) Upon review of the report and within 100 days of
23 the filing of the charge, unless it is impracticable to do
24 so, the Director shall determine whether there is
25 substantial evidence that the alleged civil rights
26 violation has been committed or is about to be committed.

1 If the Director is unable to make the determination within
2 100 days after the filing of the charge, the Director shall
3 notify the complainant and respondent in writing of the
4 reasons for not doing so. The Director's failure to make
5 the determination within 100 days after the proper filing
6 of the charge does not deprive the Department of
7 jurisdiction over the charge.

8 (a) If the Director determines that there is no
9 substantial evidence, the charge shall be dismissed
10 and the aggrieved party notified that he or she may
11 seek review of the dismissal order before the
12 Commission. The aggrieved party shall have 90 days from
13 receipt of notice to file a request for review by the
14 Commission. The Director shall make public disclosure
15 of each such dismissal.

16 (b) If the Director determines that there is
17 substantial evidence, he or she shall immediately
18 issue a complaint on behalf of the aggrieved party
19 pursuant to subsection (F).

20 (E) Conciliation.

21 (1) During the period beginning with the filing of
22 charge and ending with the filing of a complaint or a
23 dismissal by the Department, the Department shall, to the
24 extent feasible, engage in conciliation with respect to
25 such charge.

26 When the Department determines that a formal

1 conciliation conference is feasible, the aggrieved party
2 and respondent shall be notified of the time and place of
3 the conference by registered or certified mail at least 7
4 days prior thereto and either or both parties shall appear
5 at 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 made
10 public or used as evidence in a subsequent proceeding for
11 the purpose of proving a violation under this Act unless
12 the complainant and respondent agree in writing that such
13 disclosure be made.

14 (4) A conciliation agreement arising out of such
15 conciliation shall be an agreement between the respondent
16 and the complainant, and shall be subject to approval by
17 the Department and Commission.

18 (5) A conciliation agreement may provide for binding
19 arbitration of the dispute arising from the charge. Any
20 such arbitration that results from a conciliation
21 agreement may award appropriate relief, including monetary
22 relief.

23 (6) Each conciliation agreement shall be made public
24 unless the complainant and respondent otherwise agree and
25 the Department determines that disclosure is not required
26 to further the purpose of this Act.

1 (F) Complaint.

2 (1) When there is a failure to settle or adjust any
3 charge through a conciliation conference and the charge is
4 not dismissed, the Department shall prepare a written
5 complaint, under oath or affirmation, stating the nature of
6 the civil rights violation and the relief sought on behalf
7 of the aggrieved party. Such complaint shall be based on
8 the final investigation report and need not be limited to
9 the facts or grounds alleged in the charge filed under
10 subsection (A).

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

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

17 (G) Time Limit.

18 (1) When a charge of a civil rights violation has been
19 properly filed, the Department, within 365 days thereof or
20 within any extension of that period agreed to in writing by
21 all parties, shall issue its report as required by
22 subsection (D). Any such report shall be duly served upon
23 both the complainant and the respondent. ~~When a charge of a~~
24 ~~civil rights violation has been properly filed, the~~
25 ~~Department, within 100 days thereof, unless it is~~
26 ~~impracticable to do so, shall either issue and file a~~

1 ~~complaint in the manner and form set forth in this Section~~
2 ~~or shall order that no complaint be issued. Any such order~~
3 ~~shall be duly served upon both the aggrieved party and the~~
4 ~~respondent. The Department's failure to either issue and~~
5 ~~file a complaint or order that no complaint be issued~~
6 ~~within 100 days after the proper filing of the charge does~~
7 ~~not deprive the Department of jurisdiction over the charge.~~

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

26 (3) If an aggrieved party files a complaint with the

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

17 (4) The Department shall stay any administrative
18 proceedings under this Section after the filing of a civil
19 action by or on behalf of the aggrieved party under any
20 federal or State law seeking relief with respect to the
21 alleged civil rights violation. If such a civil action is
22 filed the Department shall act no further on the charge and
23 administratively close the file on the charge. ~~The Director~~
24 ~~shall make available to the aggrieved party and the~~
25 ~~respondent, at any time, upon request following completion~~
26 ~~of the Department's investigation, information derived~~

1 ~~from an investigation and any final investigative report~~
2 ~~relating to that investigation.~~

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

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

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

11 (K) The changes made to this Section by this amendatory Act
12 of the 97th General Assembly apply to charges filed on or after
13 the effective date of those changes.

14 (Source: P.A. 96-876, eff. 2-2-10; 97-22, eff. 1-1-12.)