

By Representative Dennis

1 A bill to be entitled
2 An act relating to wage discrimination;
3 creating the "Fair Pay Act of 1999"; amending
4 s. 760.02, F.S.; providing definitions;
5 amending s. 760.06, F.S.; providing an
6 additional duty of the Florida Commission on
7 Human Relations; providing for the adoption of
8 specified rules; amending s. 760.10, F.S.;
9 clarifying language with respect to
10 discrimination against individuals in
11 compensation, terms, conditions, or privileges
12 of employment which constitutes an unlawful
13 employment practice; providing administrative
14 and civil remedies; creating s. 760.105, F.S.;
15 providing for specified wage disclosure,
16 recordkeeping, and reporting requirements;
17 providing for relief and damages for violation
18 of requirements; amending s. 760.11, F.S.,
19 relating to administrative and civil remedies
20 under the Florida Civil Rights Act of 1992;
21 including s. 760.105, F.S., within the scope of
22 the act; providing an effective date.

23
24 WHEREAS, despite federal and state laws banning
25 discrimination in employment and pay in both the public and
26 private sectors, wage differentials persist between women and
27 men and between minorities and nonminorities in the same jobs
28 and in jobs that are dissimilar but that require equivalent
29 composites of skill, effort, responsibility, and working
30 conditions, and
31

1 WHEREAS, the existence of such wage differentials
2 depresses wages and living standards for employees, which
3 necessarily contribute to their health and efficiency, reduces
4 family incomes and contributes to higher poverty rates among
5 households headed by females and minority households, prevents
6 the maximum utilization of available labor resources, and
7 tends to cause labor disputes, thereby burdening, affecting,
8 and obstructing commerce, and

9 WHEREAS, sections 760.01-760.11, Florida Statutes, the
10 "Florida Civil Rights Act of 1992," states that it is an
11 unlawful employment practice for an employer "to discriminate
12 against any individual with respect to compensation, terms,
13 conditions, or privileges of employment because of such
14 individual's race, color, religion, sex, national origin, age,
15 handicap, or marital status," and

16 WHEREAS, discrimination in wage setting practices has
17 played a role in depressing wages for women and minorities
18 generally, and

19 WHEREAS, many individuals work in occupations that are
20 dominated by individuals of their same sex, race, or national
21 origin, and discrimination in hiring, job assignments, and
22 promotion has played a role in establishing and maintaining
23 segregated work forces, and

24 WHEREAS, eliminating discrimination in compensation
25 based on sex, race, and national origin would have positive
26 effects, including providing a solution to problems in the
27 economy created by discriminatory wage differentials, reducing
28 the number of working women and people of color earning low
29 wages, thereby lowering their incidence of poverty during
30 normal working years and in retirement, and promoting stable
31 families by raising family incomes, and

1 WHEREAS, it is the purpose of this act to correct and
2 as rapidly as practicable eliminate discriminatory wage
3 practices based on sex, race, color, religion, national
4 origin, age, handicap, or marital status, NOW, THEREFORE,

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. This act may be cited as the "Fair Pay Act
9 of 1999."

10 Section 2. Section 760.02, Florida Statutes, is
11 amended to read:

12 760.02 Definitions.--For the purposes of ss.
13 760.01-760.11 and 509.092, the term:

14 (1)~~(10)~~ "Aggrieved person" means any person who files
15 a complaint with the Human Relations Commission.

16 (2) "Commission" means the Florida Commission on Human
17 Relations created by s. 760.03.

18 (3) "Commissioner" or "member" means a member of the
19 commission.

20 (4) "Discriminatory practice" means any practice made
21 unlawful by the Florida Civil Rights Act of 1992.

22 (5) "Employ" means to suffer or permit to work.

23 (6) "Employee" means any person employed by an
24 employer and includes all of an employer's permanent
25 employees, whether working full-time or part-time, and any
26 temporary employee employed by an employer for a period of at
27 least 3 months. "Employee" shall not include any individual
28 employed by his or her parents, spouse, or child.

29 (7) "Employer" means any person employing 15 or more
30 employees for each working day in each of 20 or more calendar
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1 weeks in the current or preceding calendar year, and any agent
2 of such a person.

3 (8) "Employment agency" means any person regularly
4 undertaking, with or without compensation, to procure
5 employees for an employer or to procure for employees
6 opportunities to work for an employer, and includes an agent
7 of such a person.

8 (9) "Equivalent jobs" means jobs or occupations that
9 are equal within the meaning of the Equal Pay Act of 1963, 39
10 U.S.C. 206(d), or jobs or occupations that are dissimilar but
11 whose requirements are equivalent, when viewed as a composite
12 of skills, effort, responsibility, and working conditions.

13 (10)~~(1)~~ "Florida Civil Rights Act of 1992" means ss.
14 760.01-760.11 and 509.092.

15 (11)~~(9)~~ "Labor organization" means any organization
16 which exists for the purpose, in whole or in part, of
17 collective bargaining or of dealing with employers concerning
18 grievances, terms or conditions of employment, or other mutual
19 aid or protection in connection with employment.

20 (12)~~(5)~~ "National origin" includes ancestry.

21 (13)~~(6)~~ "Person" includes an individual, association,
22 corporation, joint apprenticeship committee, joint-stock
23 company, labor union, legal representative, mutual company,
24 partnership, receiver, trust, trustee in bankruptcy, or
25 unincorporated organization; any other legal or commercial
26 entity; the state; or any governmental entity or agency.

27 (14) "Wages" and "wage rates" means all compensation
28 in any form that an employer provides to employees in payment
29 for work performed or services rendered, including, but not
30 limited to, base pay, bonuses, commissions, awards, tips, or
31 various forms of nonmonetary compensation if provided in lieu

1 of or in addition to monetary compensation and that have
2 economic value to an employee.

3 Section 3. Section 760.06, Florida Statutes, is
4 amended to read:

5 760.06 Powers of the commission.--Within the
6 limitations provided by law, the commission shall have the
7 following powers:

8 (1) To maintain offices in the State of Florida.

9 (2) To meet and exercise its powers at any place
10 within the state.

11 (3) To promote the creation of, and to provide
12 continuing technical assistance to, local commissions on human
13 relations and to cooperate with individuals and state, local,
14 and other agencies, both public and private, including
15 agencies of the Federal Government and of other states.

16 (4) To accept gifts, bequests, grants, or other
17 payments, public or private, to help finance its activities.

18 (5) To receive, initiate, investigate, seek to
19 conciliate, hold hearings on, and act upon complaints alleging
20 any discriminatory practice, as defined by the Florida Civil
21 Rights Act of 1992.

22 (6) To issue subpoenas for, administer oaths or
23 affirmations to and compel the attendance and testimony of
24 witnesses or to issue subpoenas for and compel the production
25 of books, papers, records, documents, and other evidence
26 pertaining to any investigation or hearing convened pursuant
27 to the powers of the commission. In conducting an
28 investigation, the commission and its investigators shall have
29 access at all reasonable times to premises, records,
30 documents, and other evidence or possible sources of evidence
31 and may examine, record, and copy such materials and take and

1 record the testimony or statements of such persons as are
2 reasonably necessary for the furtherance of the investigation.
3 The authority to issue subpoenas and administer oaths may be
4 delegated by the commission, for investigations or hearings,
5 to a commissioner or the executive director. In the case of a
6 refusal to obey a subpoena issued to any person, the
7 commission may make application to any circuit court of this
8 state, which shall have jurisdiction to order the witness to
9 appear before the commission to give testimony and to produce
10 evidence concerning the matter in question. Failure to obey
11 the court's order may be punished by the court as contempt. If
12 the court enters an order holding a person in contempt or
13 compelling the person to comply with the commission's order or
14 subpoena, the court shall order the person to pay the
15 commission reasonable expenses, including reasonable
16 attorneys' fees, accrued by the commission in obtaining the
17 order from the court.

18 (7) To recommend methods for elimination of
19 discrimination and intergroup tensions and to use its best
20 efforts to secure compliance with its recommendations.

21 (8) To furnish technical assistance requested by
22 persons to facilitate progress in human relations.

23 (9) To make or arrange for studies appropriate to
24 effectuate the purposes and policies of the Florida Civil
25 Rights Act of 1992 and to make the results thereof available
26 to the public.

27 (10) To become a deferral agency for the Federal
28 Government and to comply with the necessary federal
29 regulations to effect the Florida Civil Rights Act of 1992.

30 (11) To render, at least annually, a comprehensive
31 written report to the Governor and the Legislature. The report

1 may contain recommendations of the commission for legislation
2 or other action to effectuate the purposes and policies of the
3 Florida Civil Rights Act of 1992.

4 (12) To adopt, promulgate, amend, and rescind rules
5 pursuant to ss. 120.54 and 120.536(1) to effectuate the
6 purposes and policies of the Florida Civil Rights Act of 1992
7 and govern the proceedings of the commission, in accordance
8 with chapter 120. Such rules shall include the establishment
9 of guidelines which specify the criteria for determining
10 whether a job is dominated by employees of a particular sex,
11 race, or national origin for purposes of the wage disclosure,
12 recordkeeping, and reporting requirements of s. 760.105. Such
13 criteria shall include, but not be limited to, factors such as
14 whether a job has ever been formally classified as, or
15 traditionally considered to be, a "male" or "female" job, or a
16 "white" or "minority" job; whether there is a history of
17 discrimination against women and/or people of color with
18 regard to wages, assignment or access to jobs, or other terms
19 and conditions of employment; and the demographic composition
20 of the workforce in equivalent jobs, which may include the
21 numbers or percentages of women, men, caucasians, and people
22 of color working in equivalent jobs. The guidelines shall not
23 include a list of jobs.

24 Section 4. Section 760.10, Florida Statutes, is
25 amended to read:

26 760.10 Unlawful employment practices.--

27 (1) It is an unlawful employment practice for an
28 employer:

29 (a) To discharge or to fail or refuse to hire any
30 individual, or otherwise to discriminate against any
31 individual with respect to compensation, terms, conditions, or

1 | privileges of employment, because of such individual's race,
2 | color, religion, sex, national origin, age, handicap, or
3 | marital status. This paragraph shall be construed to include
4 | any discrimination by an employer between employees on the
5 | basis of sex, race, color, religion, national origin, age,
6 | handicap, or marital status by the payment of wages to
7 | employees at a rate less than the rate at which an employer
8 | pays wages to employees of the opposite sex, of a different
9 | race, color, religion, national origin, age, or marital
10 | status, or without handicap for equal work on jobs the
11 | performance of which requires equal skill, effort, and
12 | responsibility, and which are performed under similar working
13 | conditions.

14 | (b) To limit, segregate, or classify employees or
15 | applicants for employment in any way which would deprive or
16 | tend to deprive any individual of employment opportunities, or
17 | adversely affect any individual's status as an employee,
18 | because of such individual's race, color, religion, sex,
19 | national origin, age, handicap, or marital status.

20 | (2) It is an unlawful employment practice for an
21 | employment agency to fail or refuse to refer for employment,
22 | or otherwise to discriminate against, any individual because
23 | of race, color, religion, sex, national origin, age, handicap,
24 | or marital status or to classify or refer for employment any
25 | individual on the basis of race, color, religion, sex,
26 | national origin, age, handicap, or marital status.

27 | (3) It is an unlawful employment practice for a labor
28 | organization:

29 | (a) To exclude or to expel from its membership, or
30 | otherwise to discriminate against, any individual because of
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1 race, color, religion, sex, national origin, age, handicap, or
2 marital status.

3 (b) To limit, segregate, or classify its membership or
4 applicants for membership, or to classify or fail or refuse to
5 refer for employment any individual, in any way which would
6 deprive or tend to deprive any individual of employment
7 opportunities, or adversely affect any individual's status as
8 an employee or as an applicant for employment, because of such
9 individual's race, color, religion, sex, national origin, age,
10 handicap, or marital status.

11 (c) To cause or attempt to cause an employer to
12 discriminate against an individual in violation of this
13 section.

14 (4) It is an unlawful employment practice for any
15 employer, labor organization, or joint labor-management
16 committee controlling apprenticeship or other training or
17 retraining, including on-the-job training programs, to
18 discriminate against any individual because of race, color,
19 religion, sex, national origin, age, handicap, or marital
20 status in admission to, or employment in, any program
21 established to provide apprenticeship or other training.

22 (5) Whenever, in order to engage in a profession,
23 occupation, or trade, it is required that a person receive a
24 license, certification, or other credential, become a member
25 or an associate of any club, association, or other
26 organization, or pass any examination, it is an unlawful
27 employment practice for any person to discriminate against any
28 other person seeking such license, certification, or other
29 credential, seeking to become a member or associate of such
30 club, association, or other organization, or seeking to take
31 or pass such examination, because of such other person's race,

1 color, religion, sex, national origin, age, handicap, or
2 marital status.

3 (6) It is an unlawful employment practice for an
4 employer, labor organization, employment agency, or joint
5 labor-management committee to print, or cause to be printed or
6 published, any notice or advertisement relating to employment,
7 membership, classification, referral for employment, or
8 apprenticeship or other training, indicating any preference,
9 limitation, specification, or discrimination, based on race,
10 color, religion, sex, national origin, age, absence of
11 handicap, or marital status.

12 (7) It is an unlawful employment practice for an
13 employer, an employment agency, a joint labor-management
14 committee, or a labor organization to discriminate against any
15 person because that person has opposed any practice which is
16 an unlawful employment practice under this section, or because
17 that person has made a charge, testified, assisted, or
18 participated in any manner in an investigation, proceeding, or
19 hearing under this section.

20 (8) Notwithstanding any other provision of this
21 section, it is not an unlawful employment practice under ss.
22 760.01-760.10 for an employer, employment agency, labor
23 organization, or joint labor-management committee to:

24 (a) Take or fail to take any action on the basis of
25 religion, sex, national origin, age, handicap, or marital
26 status in those certain instances in which religion, sex,
27 national origin, age, absence of a particular handicap, or
28 marital status is a bona fide occupational qualification
29 reasonably necessary for the performance of the particular
30 employment to which such action or inaction is related.

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1 (b) Observe the terms of a bona fide seniority system,
2 a bona fide employee benefit plan such as a retirement,
3 pension, or insurance plan, or a system which measures
4 earnings by quantity or quality of production, which is not
5 designed, intended, or used to evade the purposes of ss.
6 760.01-760.10. However, no such employee benefit plan or
7 system which measures earnings shall excuse the failure to
8 hire, and no such seniority system, employee benefit plan, or
9 system which measures earnings shall excuse the involuntary
10 retirement of, any individual on the basis of any factor not
11 related to the ability of such individual to perform the
12 particular employment for which such individual has applied or
13 in which such individual is engaged. This subsection shall
14 not be construed to make unlawful the rejection or termination
15 of employment when the individual applicant or employee has
16 failed to meet bona fide requirements for the job or position
17 sought or held or to require any changes in any bona fide
18 retirement or pension programs or existing collective
19 bargaining agreements during the life of the contract, or for
20 2 years after October 1, 1981, whichever occurs first, nor
21 shall this act preclude such physical and medical examinations
22 of applicants and employees as an employer may require of
23 applicants and employees to determine fitness for the job or
24 position sought or held.

25 (c) Take or fail to take any action on the basis of
26 age, pursuant to law or regulation governing any employment or
27 training program designed to benefit persons of a particular
28 age group.

29 (d) Take or fail to take any action on the basis of
30 marital status if that status is prohibited under its
31 antinepotism policy.

1 (9) This section shall not apply to any religious
2 corporation, association, educational institution, or society
3 which conditions opportunities in the area of employment or
4 public accommodation to members of that religious corporation,
5 association, educational institution, or society or to persons
6 who subscribe to its tenets or beliefs. This section shall
7 not prohibit a religious corporation, association, educational
8 institution, or society from giving preference in employment
9 to individuals of a particular religion to perform work
10 connected with the carrying on by such corporations,
11 associations, educational institutions, or societies of its
12 various activities.

13 (10) Each employer, employment agency, and labor
14 organization shall post and keep posted in conspicuous places
15 upon its premises a notice provided by the commission setting
16 forth such information as the commission deems appropriate to
17 effectuate the purposes of ss. 760.01-760.10.

18 Section 5. Section 760.105, Florida Statutes, is
19 created to read:

20 760.105 Wage disclosure; recordkeeping and reporting
21 requirements.--

22 (1) Upon commencement of an individual's employment
23 and at least annually thereafter, every employer subject to
24 this act shall provide to each employee a written statement
25 sufficient to inform the employee of his or her job title,
26 wage rate, and the manner or method in which the wage is
27 calculated. This notice shall be supplemented whenever an
28 employee is promoted or reassigned to a different position
29 with the employer; however, the employer is not required to
30 issue supplemental notifications for temporary reassignments
31 that are no greater than 3 months in duration.

1 (2) Every employer subject to this act shall make and
2 preserve records that document the wages paid to employees and
3 that document and support the method, system, calculations,
4 and other bases used to establish, adjust, and determine the
5 wage rates paid to the employer's employees. Every employer
6 subject to this act shall preserve such records for such
7 periods of time and shall make such reports from the records
8 as shall be prescribed by rule of the commission as provided
9 in s. 760.06(12).

10 (3) Rules promulgated under s. 760.06(12), relating to
11 the form of reports required by subsection (2) shall provide
12 for protection of the confidentiality of employees, and shall
13 expressly require that reports shall not include the names or
14 other identifying information from which readers could discern
15 the identities of employees. The rules may also identify
16 circumstances that warrant a prohibition on disclosure of
17 reports or information identifying the employer.

18 (4) The commission may use the information and data it
19 collects pursuant to subsection (2) for statistical and
20 research purposes, and may compile and publish such studies,
21 analyses, reports, and surveys based on the information and
22 data, as it may consider appropriate.

23 (5) A violation of the wage disclosure, recordkeeping,
24 or reporting requirements under this section by any employer
25 subject to the provisions of this section gives rise to a
26 cause of action for all relief and damages described in s.
27 760.11(5), unless greater damages are expressly provided for.

28 Section 6. Section 760.11, Florida Statutes, is
29 amended to read:

30 760.11 Administrative and civil remedies;
31 construction.--

1 (1) Any person aggrieved by a violation of ss.
2 760.01-760.105 ~~760.01-760.10~~ may file a complaint with the
3 commission within 365 days of the alleged violation, naming
4 the employer, employment agency, labor organization, or joint
5 labor-management committee, or, in the case of an alleged
6 violation of s. 760.10(5), the person responsible for the
7 violation and describing the violation. Any person aggrieved
8 by a violation of s. 509.092 may file a complaint with the
9 commission within 365 days of the alleged violation naming the
10 person responsible for the violation and describing the
11 violation. The commission, a commissioner, or the Attorney
12 General may in like manner file such a complaint. On the same
13 day the complaint is filed with the commission, the commission
14 shall clearly stamp on the face of the complaint the date the
15 complaint was filed with the commission. The complaint shall
16 contain a short and plain statement of the facts describing
17 the violation and the relief sought. The commission may
18 require additional information to be in the complaint. The
19 commission, within 5 days of the complaint being filed, shall
20 by registered mail send a copy of the complaint to the person
21 who allegedly committed the violation. The person who
22 allegedly committed the violation may file an answer to the
23 complaint within 25 days of the date the complaint was filed
24 with the commission. Any answer filed shall be mailed to the
25 aggrieved person by the person filing the answer. Both the
26 complaint and the answer shall be verified.

27 (2) In the event that any other agency of the state or
28 of any other unit of government of the state has jurisdiction
29 of the subject matter of any complaint filed with the
30 commission and has legal authority to investigate the
31 complaint, the commission may refer such complaint to such

1 agency for an investigation. Referral of such a complaint by
2 the commission shall not constitute agency action within the
3 meaning of s. 120.52. In the event of any referral under this
4 subsection, the commission shall accord substantial weight to
5 any findings and conclusions of any such agency. The referral
6 of a complaint by the commission to a local agency does not
7 divest the commission's jurisdiction over the complaint.

8 (3) Except as provided in subsection (2), the
9 commission shall investigate the allegations in the complaint.
10 Within 180 days of the filing of the complaint, the commission
11 shall determine if there is reasonable cause to believe that
12 discriminatory practice has occurred in violation of the
13 Florida Civil Rights Act of 1992. When the commission
14 determines whether or not there is reasonable cause, the
15 commission by registered mail shall promptly notify the
16 aggrieved person and the respondent of the reasonable cause
17 determination, the date of such determination, and the options
18 available under this section.

19 (4) In the event that the commission determines that
20 there is reasonable cause to believe that a discriminatory
21 practice has occurred in violation of the Florida Civil Rights
22 Act of 1992, the aggrieved person may either:

23 (a) Bring a civil action against the person named in
24 the complaint in any court of competent jurisdiction; or

25 (b) Request an administrative hearing under ss.
26 120.569 and 120.57.

27
28 The election by the aggrieved person of filing a civil action
29 or requesting an administrative hearing under this subsection
30 is the exclusive procedure available to the aggrieved person
31 pursuant to this act.

1 (5) In any civil action brought under this section,
2 the court may issue an order prohibiting the discriminatory
3 practice and providing affirmative relief from the effects of
4 the practice, including back pay. The court may also award
5 compensatory damages, including, but not limited to, damages
6 for mental anguish, loss of dignity, and any other intangible
7 injuries, and punitive damages. The provisions of ss. 768.72
8 and 768.73 do not apply to this section. The judgment for the
9 total amount of punitive damages awarded under this section to
10 an aggrieved person shall not exceed \$100,000. In any action
11 or proceeding under this subsection, the court, in its
12 discretion, may allow the prevailing party a reasonable
13 attorney's fee as part of the costs. It is the intent of the
14 Legislature that this provision for attorney's fees be
15 interpreted in a manner consistent with federal case law
16 involving a Title VII action. The right to trial by jury is
17 preserved in any such private right of action in which the
18 aggrieved person is seeking compensatory or punitive damages,
19 and any party may demand a trial by jury. The commission's
20 determination of reasonable cause is not admissible into
21 evidence in any civil proceeding, including any hearing or
22 trial, except to establish for the court the right to maintain
23 the private right of action. A civil action brought under this
24 section shall be commenced no later than 1 year after the date
25 of determination of reasonable cause by the commission. The
26 commencement of such action shall divest the commission of
27 jurisdiction of the complaint, except that the commission may
28 intervene in the civil action as a matter of right.
29 Notwithstanding the above, the state and its agencies and
30 subdivisions shall not be liable for punitive damages. The
31 total amount of recovery against the state and its agencies

1 and subdivisions shall not exceed the limitation as set forth
2 in s. 768.28(5).

3 (6) Any administrative hearing brought pursuant to
4 paragraph (4)(b) shall be conducted under ss. 120.569 and
5 120.57. The commission may hear the case provided that the
6 final order is issued by members of the commission who did not
7 conduct the hearing or the commission may request that it be
8 heard by an administrative law judge pursuant to s.
9 120.569(2)(a). If the commission elects to hear the case, it
10 may be heard by a commissioner. If the commissioner, after
11 the hearing, finds that a violation of the Florida Civil
12 Rights Act of 1992 has occurred, the commissioner shall issue
13 an appropriate proposed order in accordance with chapter 120
14 prohibiting the practice and providing affirmative relief from
15 the effects of the practice, including back pay. If the
16 administrative law judge, after the hearing, finds that a
17 violation of the Florida Civil Rights Act of 1992 has
18 occurred, the administrative law judge shall issue an
19 appropriate recommended order in accordance with chapter 120
20 prohibiting the practice and providing affirmative relief from
21 the effects of the practice, including back pay. Within 90
22 days of the date the recommended or proposed order is
23 rendered, the commission shall issue a final order by
24 adopting, rejecting, or modifying the recommended order as
25 provided under ss. 120.569 and 120.57. The 90-day period may
26 be extended with the consent of all the parties. An
27 administrative hearing pursuant to paragraph (4)(b) must be
28 requested no later than 35 days after the date of
29 determination of reasonable cause by the commission. In any
30 action or proceeding under this subsection, the commission, in
31 its discretion, may allow the prevailing party a reasonable

1 attorney's fee as part of the costs. It is the intent of the
2 Legislature that this provision for attorney's fees be
3 interpreted in a manner consistent with federal case law
4 involving a Title VII action.

5 (7) If the commission determines that there is not
6 reasonable cause to believe that a violation of the Florida
7 Civil Rights Act of 1992 has occurred, the commission shall
8 dismiss the complaint. The aggrieved person may request an
9 administrative hearing under ss. 120.569 and 120.57, but any
10 such request must be made within 35 days of the date of
11 determination of reasonable cause and any such hearing shall
12 be heard by an administrative law judge and not by the
13 commission or a commissioner. If the aggrieved person does
14 not request an administrative hearing within the 35 days, the
15 claim will be barred. If the administrative law judge finds
16 that a violation of the Florida Civil Rights Act of 1992 has
17 occurred, he or she shall issue an appropriate recommended
18 order to the commission prohibiting the practice and
19 recommending affirmative relief from the effects of the
20 practice, including back pay. Within 90 days of the date the
21 recommended order is rendered, the commission shall issue a
22 final order by adopting, rejecting, or modifying the
23 recommended order as provided under ss. 120.569 and 120.57.
24 The 90-day period may be extended with the consent of all the
25 parties. In any action or proceeding under this subsection,
26 the commission, in its discretion, may allow the prevailing
27 party a reasonable attorney's fee as part of the costs. It is
28 the intent of the Legislature that this provision for
29 attorney's fees be interpreted in a manner consistent with
30 federal case law involving a Title VII action. In the event
31 the final order issued by the commission determines that a

1 violation of the Florida Civil Rights Act of 1992 has
2 occurred, the aggrieved person may bring, within 1 year of the
3 date of the final order, a civil action under subsection (5)
4 as if there has been a reasonable cause determination or
5 accept the affirmative relief offered by the commission, but
6 not both.

7 (8) In the event that the commission fails to
8 conciliate or determine whether there is reasonable cause on
9 any complaint under this section within 180 days of the filing
10 of the complaint, an aggrieved person may proceed under
11 subsection (4), as if the commission determined that there was
12 reasonable cause.

13 (9) No liability for back pay shall accrue from a date
14 more than 2 years prior to the filing of a complaint with the
15 commission.

16 (10) A judgment for the amount of damages and costs
17 assessed pursuant to a final order by the commission may be
18 entered in any court having jurisdiction thereof and may be
19 enforced as any other judgment.

20 (11) If a complaint is within the jurisdiction of the
21 commission, the commission shall simultaneously with its other
22 statutory obligations attempt to eliminate or correct the
23 alleged discrimination by informal methods of conference,
24 conciliation, and persuasion. Nothing said or done in the
25 course of such informal endeavors may be made public or used
26 as evidence in a subsequent civil proceeding, trial, or
27 hearing. The commission may initiate dispute resolution
28 procedures, including voluntary arbitration, by special
29 masters or mediators. The commission may adopt rules as to
30 the qualifications of persons who may serve as special masters
31 and mediators.

1 (12) All complaints filed with the commission and all
2 records and documents in the custody of the commission, which
3 relate to and identify a particular person, including, but not
4 limited to, a complainant, employer, employment agency, labor
5 organization, or joint labor-management committee shall be
6 confidential and shall not be disclosed by the commission,
7 except to the parties or in the course of a hearing or
8 proceeding under this section. The restriction of this
9 subsection shall not apply to any record or document which is
10 part of the record of any hearing or court proceeding.

11 (13) Final orders of the commission are subject to
12 judicial review pursuant to s. 120.68. The commission's
13 determination of reasonable cause is not final agency action
14 that is subject to judicial review. Unless specifically
15 ordered by the court, the commencement of an appeal does not
16 suspend or stay the order of the commission, except as
17 provided in the Rules of Appellate Procedure. In any action
18 or proceeding under this subsection, the court, in its
19 discretion, may allow the prevailing party a reasonable
20 attorney's fee as part of the cost. It is the intent of the
21 Legislature that this provision for attorney's fees be
22 interpreted in a manner consistent with federal case law
23 involving a Title VII action. In the event the order of the
24 court determines that a violation of the Florida Civil Rights
25 Act of 1992 has occurred, the court shall remand the matter to
26 the commission for appropriate relief. The aggrieved party
27 has the option to accept the relief offered by the commission
28 or may bring, within 1 year of the date of the court order, a
29 civil action under subsection (5) as if there has been a
30 reasonable cause determination.

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