

By Senator Jones

40-833A-99

1 A bill to be entitled
2 An act relating to the Florida Commission on
3 Human Relations; amending s. 760.02, F.S.;
4 changing the name of the commission to the
5 Florida Commission on Human Rights; amending s.
6 760.03, F.S.; authorizing and ratifying
7 investigatory determinations by the executive
8 director of the commission; amending s. 760.04,
9 F.S.; conforming provisions to the name change;
10 amending s. 760.07, F.S.; establishing
11 guidelines whereby certain types of
12 discrimination are unlawful; amending s.
13 760.11, F.S.; eliminating a requirement to use
14 registered mail; authorizing referral of
15 complaints to agencies of the United States or
16 to state attorneys in this state; tolling a
17 statute of limitations; amending s. 760.30,
18 F.S.; allowing the commission to delegate its
19 functions, duties, and powers by contract to
20 the various state attorneys in this state;
21 amending s. 760.22, F.S.; conforming provisions
22 to the name change; amending s. 760.34, F.S.;
23 authorizing the commission to bring actions to
24 enforce the fair housing act; amending s.
25 760.35, F.S.; revising the statute of
26 limitations for actions involving housing
27 discrimination; amending ss. 760.36, 760.60,
28 110.112, 110.205, 119.07, 553.77, F.S.;
29 conforming provisions to the name change;
30 providing for the filing of complaints;
31

1 ratifying referrals made by the commission;
2 providing effective dates.

3
4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Subsections (2) and (10) of section 760.02,
7 Florida Statutes, are amended to read:

8 760.02 Definitions.--For the purposes of ss.
9 760.01-760.11 and 509.092, the term:

10 (2) "Commission" means the Florida Commission on Human
11 Rights Relations created by s. 760.03.

12 (10) "Aggrieved person" means any person who files a
13 complaint with the Human Rights Relations Commission.

14 Section 2. Section 760.03, Florida Statutes, is
15 amended to read:

16 760.03 Commission on Human Rights Relations; staff.--

17 (1) There is ~~hereby~~ created the Florida Commission on
18 Human Rights Relations, comprised of 12 members appointed by
19 the Governor, subject to confirmation by the Senate. The
20 commission shall select one of its members to serve as
21 chairperson for terms of 2 years.

22 (2) The members of the commission must be broadly
23 representative of various racial, religious, ethnic, social,
24 economic, political, and professional groups within the state;
25 and at least one member of the commission must be 60 years of
26 age or older.

27 (3) Commissioners shall be appointed for terms of 4
28 years. A member chosen to fill a vacancy otherwise than by
29 expiration of term shall be appointed for the unexpired term
30 of the member whom such appointee is to succeed. A member of
31 the commission shall be eligible for reappointment. A vacancy

1 in the commission shall not impair the right of the remaining
2 members to exercise the powers of the commission.

3 (4) The Governor may suspend a member of the
4 commission only for cause, subject to removal or reinstatement
5 by the Senate.

6 (5) Seven members shall constitute a quorum for the
7 conduct of business; however, the commission may establish
8 panels of not less than three of its members to exercise its
9 powers under the Florida Civil Rights Act of 1992, subject to
10 such procedures and limitations as the commission may provide
11 by rule.

12 (6) Each commissioner shall be compensated at the rate
13 of \$50 per day for each day of actual attendance to commission
14 duties and shall be entitled to receive per diem and travel
15 expenses as provided by s. 112.061.

16 (7) The commission shall appoint, and may remove, an
17 executive director who, with the consent of the commission,
18 may employ a deputy, attorneys, investigators, clerks, and
19 such other personnel as may be necessary adequately to perform
20 the functions of the commission, within budgetary limitations.
21 The executive director may make and issue investigatory
22 determinations. Investigatory determinations made by the
23 executive director between September 30, 1992, and July 1,
24 1999, are ratified and declared lawful.

25 Section 3. Section 760.04, Florida Statutes, is
26 amended to read:

27 760.04 Commission on Human Rights ~~Relations~~, assigned
28 to Department of Management Services.--The Commission on Human
29 Rights, created by s. 760.03, is assigned to the Department of
30 Management Services. The commission, in the performance of
31 its duties under ~~pursuant to~~ the Florida Civil Rights Act of

1 1992, ~~is shall~~ not ~~be~~ subject to control, supervision, or
2 direction by the Department of Management Services.

3 Section 4. Section 760.07, Florida Statutes, is
4 amended to read:

5 760.07 Remedies for unlawful discrimination.--

6 (1) Any violation of any Florida statute making
7 unlawful discrimination because of race, color, religion,
8 gender, national origin, age, handicap, or marital status in
9 the areas of education, employment, housing, or public
10 accommodations gives rise to a cause of action for all relief
11 and damages described in s. 760.11(5), unless greater damages
12 are expressly provided for. If the statute prohibiting
13 unlawful discrimination provides an administrative remedy, the
14 action for equitable relief and damages provided for in this
15 section may be initiated only after the plaintiff has
16 exhausted his or her administrative remedy. The term "public
17 accommodations" does not include lodge halls or other similar
18 facilities of private organizations which are made available
19 for public use occasionally or periodically. The right to
20 trial by jury is preserved in any case in which the plaintiff
21 is seeking actual or punitive damages.

22 (2) Discrimination on the basis of handicap includes
23 the failure to make reasonable accommodations for the known
24 physical or mental limitations of an otherwise qualified
25 individual who has a disability and is an applicant or an
26 employee, unless the accommodation would impose an undue
27 hardship on the operation of the business or covered entity.

28 (3) Discrimination on the basis of sex includes
29 discrimination because of or on the basis of pregnancy,
30 childbirth, or related conditions.

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1 Section 5. Subsections (1), (2), and (5) of section
2 760.11, Florida Statutes, are amended to read:

3 760.11 Administrative and civil remedies;
4 construction.--

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

1 (2) If in the event that any other agency of the
2 United States, of the state, or of any other unit of
3 government of the state, including, but not limited to, any
4 state attorney in this state, has jurisdiction of the subject
5 matter of any complaint filed with the commission and has
6 legal authority to investigate the complaint, the commission
7 may refer such complaint to such agency for an investigation.
8 Referral of such a complaint by the commission shall not
9 constitute agency action within the meaning of s. 120.52. In
10 the event of any referral under this subsection, the
11 commission shall accord substantial weight to any findings and
12 conclusions of any such agency. The referral of a complaint
13 by the commission to a local agency does not divest the
14 commission's jurisdiction over the complaint.

15 (5) In any civil action brought under this section,
16 the court may issue an order prohibiting the discriminatory
17 practice and providing affirmative relief from the effects of
18 the practice, including back pay. The court may also award
19 compensatory damages, including, but not limited to, damages
20 for mental anguish, loss of dignity, and any other intangible
21 injuries, and punitive damages. The provisions of ss. 768.72
22 and 768.73 do not apply to this section. The judgment for the
23 total amount of punitive damages awarded under this section to
24 an aggrieved person shall not exceed \$100,000. In any action
25 or proceeding under this subsection, the court, in its
26 discretion, may allow the prevailing party a reasonable
27 attorney's fee as part of the costs. It is the intent of the
28 Legislature that this provision for attorney's fees be
29 interpreted in a manner consistent with federal case law
30 involving a Title VII action. The right to trial by jury is
31 preserved in any such private right of action in which the

1 aggrieved person is seeking compensatory or punitive damages,
2 and any party may demand a trial by jury. The commission's
3 determination of reasonable cause is not admissible into
4 evidence in any civil proceeding, including any hearing or
5 trial, except to establish for the court the right to maintain
6 the private right of action. A civil action brought under this
7 section shall be commenced no later than 1 year after the date
8 of determination of reasonable cause by the commission.
9 Notwithstanding subsection (3), any period of time during
10 which the complaint remains pending before the commission for
11 investigation must not be included in computing the 1-year
12 period.The commencement of such action shall divest the
13 commission of jurisdiction of the complaint, except that the
14 commission may intervene in the civil action as a matter of
15 right. Notwithstanding the above, the state and its agencies
16 and subdivisions shall not be liable for punitive damages.
17 The total amount of recovery against the state and its
18 agencies and subdivisions shall not exceed the limitation as
19 set forth in s. 768.28(5).

20 Section 6. Subsection (1) of section 760.22, Florida
21 Statutes, is amended to read:

22 760.22 Definitions.--As used in ss. 760.20-760.37, the
23 term:

24 (1) "Commission" means the Florida Commission on Human
25 Rights Relations.

26 Section 7. Section 760.30, Florida Statutes, is
27 amended to read:

28 760.30 Administration of ss. 760.20-760.37.--

29 (1) The authority and responsibility for administering
30 ss. 760.20-760.37 is in the commission.

31

1 (2) The commission may delegate any of its functions,
2 duties, and powers to its employees or to any state attorney
3 in this state by contract between the commission and the state
4 attorney, including functions, duties, and powers with respect
5 to investigating, conciliating, hearing, determining,
6 ordering, certifying, reporting, or otherwise acting as to any
7 work, business, or matter under ss. 760.20-760.37.

8 Section 8. Subsection (4) of section 760.34, Florida
9 Statutes, is amended to read:

10 760.34 Enforcement.--

11 (4) If, within 180 days after a complaint is filed
12 with the commission or within 180 days after expiration of any
13 period of reference under subsection (3), the commission has
14 been unable to obtain voluntary compliance with ss.

15 760.20-760.37, the person aggrieved may commence a civil
16 action in any appropriate court against the respondent named
17 in the complaint or petition for an administrative
18 determination pursuant to s. 760.35 to enforce the rights
19 granted or protected by ss. 760.20-760.37. If, as a result of
20 its investigation under subsection (1), the commission finds
21 there is reasonable cause to believe that a discriminatory
22 housing practice has occurred, at the request of the person
23 aggrieved, the Attorney General or the commission shall bring
24 an action in the name of the state on behalf of the aggrieved
25 person to enforce the provisions of ss. 760.20-760.37.

26 Section 9. Subsection (1) of section 760.35, Florida
27 Statutes, is amended to read:

28 760.35 Civil actions and relief; administrative
29 procedures.--

30 (1) A civil action shall be commenced no later than 2
31 years after an alleged discriminatory housing practice has

1 occurred. The computation of the 2-year period may not include
2 any time during which the complaint for administrative relief
3 is pending before the commission. However, the court shall
4 continue a civil case brought pursuant to this section or s.
5 760.34 from time to time before bringing it to trial if the
6 court believes that the conciliation efforts of the commission
7 or local agency are likely to result in satisfactory
8 settlement of the discriminatory housing practice complained
9 of in the complaint made to the commission or to the local
10 agency and which practice forms the basis for the action in
11 court. Any sale, encumbrance, or rental consummated prior to
12 the issuance of any court order issued under the authority of
13 ss. 760.20-760.37 and involving a bona fide purchaser,
14 encumbrancer, or tenant without actual notice of the existence
15 of the filing of a complaint or civil action under the
16 provisions of ss. 760.20-760.37 shall not be affected.

17 Section 10. Section 760.36, Florida Statutes, is
18 amended to read:

19 760.36 Conciliation agreements.--Any conciliation
20 agreement arising out of conciliation efforts by the Florida
21 Commission on Human Rights ~~Relations~~ pursuant to the Fair
22 Housing Act must be agreed to by the respondent and the
23 complainant and is subject to the approval of the commission.
24 Notwithstanding the provisions of s. 760.11(11) and (12), each
25 conciliation agreement arising out of a complaint filed under
26 the Fair Housing Act shall be made public unless the
27 complainant and the respondent otherwise agree and the
28 commission determines that disclosure is not required to
29 further the purposes of the Florida Fair Housing Act.

30 Section 11. Subsection (2) of section 760.60, Florida
31 Statutes, is amended to read:

1 760.60 Discriminatory practices of certain clubs
2 prohibited; remedies.--

3 (2) A person who has been discriminated against in
4 violation of this act may file a complaint with the Commission
5 on Human Rights ~~Relations~~ or with the Attorney General's
6 Office of Civil Rights. A complaint must be in writing and
7 must contain such information and be in such form as the
8 commission requires. Upon receipt of a complaint, the
9 commission or the Attorney General shall provide a copy to the
10 person who represents the club. Within 30 days after
11 receiving a complaint, the commission or the Attorney General
12 shall investigate the alleged discrimination and give notice
13 in writing to the person who filed the complaint if it intends
14 to resolve the complaint. If the commission or the Attorney
15 General decides to resolve the complaint, it shall attempt to
16 eliminate or correct the alleged discriminatory practices of a
17 club by informal methods of conference, conciliation, and
18 persuasion.

19 Section 12. Subsection (5) of section 110.112, Florida
20 Statutes, is amended to read:

21 110.112 Affirmative action; equal employment
22 opportunity.--

23 (5) Any individual claiming to be aggrieved by an
24 unlawful employment practice may file a complaint with the
25 Florida Commission on Human Rights ~~Relations as provided by s.~~
26 ~~760.10(10)~~.

27 Section 13. Paragraph (m) of subsection (2) of section
28 110.205, Florida Statutes, is amended to read:

29 110.205 Career service; exemptions.--

30 (2) EXEMPT POSITIONS.--The exempt positions which are
31 not covered by this part include the following, provided that

1 no position, except for positions established for a limited
2 period of time pursuant to paragraph (h), shall be exempted if
3 the position reports to a position in the career service:

4 (m)1. In addition to those positions exempted by other
5 paragraphs of this subsection, each department head may
6 designate a maximum of 20 policymaking or managerial
7 positions, as defined by the department and approved by the
8 Administration Commission, as being exempt from the Career
9 Service System. Career service employees who occupy a
10 position designated as a position in the Selected Exempt
11 Service under this paragraph shall have the right to remain in
12 the Career Service System by opting to serve in a position not
13 exempted by the employing agency. Unless otherwise fixed by
14 law, the department shall set the salary and benefits of these
15 positions in accordance with the rules of the Selected Exempt
16 Service; provided, however, that if the agency head determines
17 that the general counsel, chief Cabinet aide, public
18 information administrator or comparable position for a Cabinet
19 officer, inspector general, or legislative affairs director
20 has both policymaking and managerial responsibilities and if
21 the department determines that any such position has both
22 policymaking and managerial responsibilities, the salary and
23 benefits for each such position shall be established by the
24 department in accordance with the rules of the Senior
25 Management Service.

26 2. If otherwise exempt, employees of the Public
27 Employees Relations Commission, the Commission on Human Rights
28 ~~Relations~~, and the Unemployment Appeals Commission, upon the
29 certification of their respective commission heads, may be
30 provided for under this paragraph as members of the Senior
31 Management Service, if otherwise qualified. However, the

1 deputy general counsels of the Public Employees Relations
2 Commission shall be compensated as members of the Selected
3 Exempt Service.

4 Section 14. Paragraphs (p) and (q) of subsection (3)
5 of section 119.07, Florida Statutes, 1998 Supplement, are
6 amended to read:

7 119.07 Inspection, examination, and duplication of
8 records; exemptions.--

9 (3)

10 (p) All complaints and other records in the custody of
11 any unit of local government which relate to a complaint of
12 discrimination relating to race, color, religion, sex,
13 national origin, age, handicap, marital status, sale or rental
14 of housing, the provision of brokerage services, or the
15 financing of housing are exempt from the provisions of
16 subsection (1) and s. 24(a), Art. I of the State Constitution
17 until a finding is made relating to probable cause, the
18 investigation of the complaint becomes inactive, or the
19 complaint or other record is made part of the official record
20 of any hearing or court proceeding. This provision shall not
21 affect any function or activity of the Florida Commission on
22 Human Rights Relations. Any state or federal agency which is
23 authorized to have access to such complaints or records by any
24 provision of law shall be granted such access in the
25 furtherance of such agency's statutory duties, notwithstanding
26 the provisions of this section. This paragraph shall not be
27 construed to modify or repeal any special or local act.

28 (q) All complaints and other records in the custody of
29 any agency in the executive branch of state government which
30 relate to a complaint of discrimination relating to race,
31 color, religion, sex, national origin, age, handicap, or

1 marital status in connection with hiring practices, position
2 classifications, salary, benefits, discipline, discharge,
3 employee performance, evaluation, or other related activities
4 are exempt from the provisions of subsection (1) and s. 24(a),
5 Art. I of the State Constitution until a finding is made
6 relating to probable cause, the investigation of the complaint
7 becomes inactive, or the complaint or other record is made
8 part of the official record of any hearing or court
9 proceeding. This provision shall not affect any function or
10 activity of the Florida Commission on Human Rights ~~Relations~~.
11 Any state or federal agency which is authorized to have access
12 to such complaints or records by any provision of law shall be
13 granted such access in the furtherance of such agency's
14 statutory duties, notwithstanding the provisions of this
15 section.

16 Section 15. Paragraph (e) of subsection (1) of section
17 553.77, Florida Statutes, 1998 Supplement, is amended to read:

18 553.77 Specific powers of the commission.--

19 (1) The commission shall:

20 (e) Make recommendations to, and provide assistance
21 upon the request of, the Florida Commission on Human Rights
22 ~~Relations~~ regarding rules relating to handicapped
23 accessibility.

24 Section 16. Effective January 1, 2001, paragraph (f)
25 of subsection (1) of section 553.77, Florida Statutes, 1998
26 Supplement, as amended by section 46 of chapter 98-287, Laws
27 of Florida, is amended to read:

28 553.77 Specific powers of the commission.--

29 (1) The commission shall:

30 (f) Make recommendations to, and provide assistance
31 upon the request of, the Florida Commission on Human Rights

