

By the Committee on Judiciary; and Senator Wasserman Schultz

308-2214-02

1 A bill to be entitled
2 An act relating to employment practices;
3 amending ss. 110.105, 110.233, 112.042, and
4 760.10, F.S.; revising provisions relating to
5 state employment policy, career service
6 appointments, county and municipal employment,
7 and unlawful employment practices, to provide
8 that discrimination on the basis of sex
9 includes discrimination on the basis of
10 pregnancy, childbirth, or related medical
11 conditions; providing a limitation with respect
12 to employer health insurance benefits;
13 reenacting ss. 104.31 and 760.11, F.S., to
14 incorporate amendments to ss. 110.233 and
15 760.10, F.S.; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsection (2) of section 110.105, Florida
20 Statutes, is amended to read:

21 110.105 Employment policy of the state.--

22 (2)(a) All appointments, terminations, assignments and
23 maintenance of status, compensation, privileges, and other
24 terms and conditions of employment in state government shall
25 be made without regard to age, sex, race, religion, national
26 origin, political affiliation, marital status, or handicap,
27 except when a specific sex, age, or physical requirement
28 constitutes a bona fide occupational qualification necessary
29 to proper and efficient administration.

30 (b) For purposes of this subsection, "without regard
31 to sex" includes, but is not limited to, without regard to

1 pregnancy, childbirth, or related medical conditions. Women
2 affected by pregnancy, childbirth, or related medical
3 conditions shall be treated the same for all
4 employment-related purposes, including receipt of benefits
5 under fringe benefits programs, as other persons not so
6 affected but similar in their ability or inability to work,
7 and nothing in the employment policy of the state shall be
8 interpreted to permit otherwise. This paragraph shall not
9 require a state employer to pay for health insurance benefits
10 for abortion, except where the life of the mother would be
11 endangered if the fetus were carried to term, or except where
12 medical complications have arisen from an abortion. However,
13 nothing in this paragraph shall preclude a state employer from
14 providing abortion benefits or shall otherwise affect
15 bargaining agreements in regard to abortion.

16 Section 2. Subsection (1) of section 110.233, Florida
17 Statutes, is amended to read:

18 110.233 Political activities and unlawful acts
19 prohibited.--

20 (1)(a) No person shall be appointed to, demoted, or
21 dismissed from any position in the career service, or in any
22 way favored or discriminated against with respect to
23 employment in the career service, because of race, color,
24 national origin, sex, handicap, religious creed, or political
25 opinion or affiliation.

26 (b) As used in this subsection, "because of sex"
27 includes, but is not limited to, because of pregnancy,
28 childbirth, or related medical conditions. Women affected by
29 pregnancy, childbirth, or related medical conditions shall be
30 treated the same with respect to employment in the career
31 service, including receipt of benefits under fringe benefits

1 programs, as other persons not so affected but similar in
2 their ability or inability to work, and nothing in the career
3 service system of the state shall be interpreted to permit
4 otherwise.

5 Section 3. Subsection (1) of section 112.042, Florida
6 Statutes, is amended to read:

7 112.042 Discrimination in county and municipal
8 employment; relief.--

9 (1)(a) It is against the public policy of this state
10 for the governing body of any county or municipal agency,
11 board, commission, department, or office, solely because of
12 the race, color, national origin, sex, handicap, or religious
13 creed of any individual, to refuse to hire or employ, to bar,
14 or to discharge from employment such individuals or to
15 otherwise discriminate against such individuals with respect
16 to compensation, hire, tenure, terms, conditions, or
17 privileges of employment, if the individual is the most
18 competent and able to perform the services required.

19 (b) As used in this subsection, "because of sex"
20 includes, but is not limited to, because of pregnancy,
21 childbirth, or related medical conditions. Women affected by
22 pregnancy, childbirth, or related medical conditions shall be
23 treated the same for all employment-related purposes,
24 including receipt of benefits under fringe benefits programs,
25 as other persons not so affected but similar in their ability
26 or inability to work, and nothing in this subsection shall be
27 interpreted to permit otherwise. This subsection shall not
28 require an employer to pay for health insurance benefits for
29 abortion, except where the life of the mother would be
30 endangered if the fetus were carried to term, or except where
31 medical complications have arisen from an abortion. However,

1 nothing in this subsection shall preclude an employer from
2 providing abortion benefits or shall otherwise affect
3 bargaining agreements in regard to abortion.

4 Section 4. Subsection (10) of section 760.10, Florida
5 Statutes, is renumbered as subsection (11) and a new
6 subsection (10) is added to said section to read:

7 760.10 Unlawful employment practices.--

8 (10) As used in this section, the terms "because of
9 sex" and "on the basis of sex" include, but are not limited
10 to, because or on the basis of pregnancy, childbirth, or
11 related medical conditions. Women affected by pregnancy,
12 childbirth, or related medical conditions shall be treated the
13 same for all employment-related purposes, including receipt of
14 benefits under fringe benefits programs, as other persons not
15 so affected but similar in their ability or inability to work,
16 and nothing in this section shall be interpreted to permit
17 otherwise. This subsection shall not require an employer to
18 pay for health insurance benefits for abortion, except where
19 the life of the mother would be endangered if the fetus were
20 carried to term, or except where medical complications have
21 arisen from an abortion. However, nothing in this subsection
22 shall preclude an employer from providing abortion benefits or
23 shall otherwise affect bargaining agreements in regard to
24 abortion.

25 Section 5. For purposes of incorporating the
26 amendments to s. 110.233, Florida Statutes, in reference
27 thereto, subsection (3) of section 104.31, Florida Statutes,
28 is reenacted to read:

29 104.31 Political activities of state, county, and
30 municipal officers and employees.--

31

1 (3) Nothing contained in this section or in any county
2 or municipal charter shall be deemed to prohibit any public
3 employee from expressing his or her opinions on any candidate
4 or issue or from participating in any political campaign
5 during the employee's off-duty hours, so long as such
6 activities are not in conflict with the provisions of
7 subsection (1) or s. 110.233.

8 Section 6. For purposes of incorporating the
9 amendments to s. 760.10, Florida Statutes, section 760.11,
10 Florida Statutes, is reenacted to read:

11 760.11 Administrative and civil remedies;
12 construction.--

13 (1) Any person aggrieved by a violation of ss.
14 760.01-760.10 may file a complaint with the commission within
15 365 days of the alleged violation, naming the employer,
16 employment agency, labor organization, or joint
17 labor-management committee, or, in the case of an alleged
18 violation of s. 760.10(5), the person responsible for the
19 violation and describing the violation. Any person aggrieved
20 by a violation of s. 509.092 may file a complaint with the
21 commission within 365 days of the alleged violation naming the
22 person responsible for the violation and describing the
23 violation. The commission, a commissioner, or the Attorney
24 General may in like manner file such a complaint. On the same
25 day the complaint is filed with the commission, the commission
26 shall clearly stamp on the face of the complaint the date the
27 complaint was filed with the commission. In lieu of filing the
28 complaint with the commission, a complaint under this section
29 may be filed with the federal Equal Employment Opportunity
30 Commission or with any unit of government of the state which
31 is a fair-employment-practice agency under 29 C.F.R. ss.

1 1601.70-1601.80. If the date the complaint is filed is clearly
2 stamped on the face of the complaint, that date is the date of
3 filing. The date the complaint is filed with the commission
4 for purposes of this section is the earliest date of filing
5 with the Equal Employment Opportunity Commission, the
6 fair-employment-practice agency, or the commission. The
7 complaint shall contain a short and plain statement of the
8 facts describing the violation and the relief sought. The
9 commission may require additional information to be in the
10 complaint. The commission, within 5 days of the complaint
11 being filed, shall by registered mail send a copy of the
12 complaint to the person who allegedly committed the violation.
13 The person who allegedly committed the violation may file an
14 answer to the complaint within 25 days of the date the
15 complaint was filed with the commission. Any answer filed
16 shall be mailed to the aggrieved person by the person filing
17 the answer. Both the complaint and the answer shall be
18 verified.

19 (2) In the event that any other agency of the state or
20 of any other unit of government of the state has jurisdiction
21 of the subject matter of any complaint filed with the
22 commission and has legal authority to investigate the
23 complaint, the commission may refer such complaint to such
24 agency for an investigation. Referral of such a complaint by
25 the commission shall not constitute agency action within the
26 meaning of s. 120.52. In the event of any referral under this
27 subsection, the commission shall accord substantial weight to
28 any findings and conclusions of any such agency. The referral
29 of a complaint by the commission to a local agency does not
30 divest the commission's jurisdiction over the complaint.

31

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

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

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

18 (b) Request an administrative hearing under ss.
19 120.569 and 120.57.

20
21 The election by the aggrieved person of filing a civil action
22 or requesting an administrative hearing under this subsection
23 is the exclusive procedure available to the aggrieved person
24 pursuant to this act.

25 (5) In any civil action brought under this section,
26 the court may issue an order prohibiting the discriminatory
27 practice and providing affirmative relief from the effects of
28 the practice, including back pay. The court may also award
29 compensatory damages, including, but not limited to, damages
30 for mental anguish, loss of dignity, and any other intangible
31 injuries, and punitive damages. The provisions of ss. 768.72

1 and 768.73 do not apply to this section. The judgment for the
2 total amount of punitive damages awarded under this section to
3 an aggrieved person shall not exceed \$100,000. In any action
4 or proceeding under this subsection, the court, in its
5 discretion, may allow the prevailing party a reasonable
6 attorney's fee as part of the costs. It is the intent of the
7 Legislature that this provision for attorney's fees be
8 interpreted in a manner consistent with federal case law
9 involving a Title VII action. The right to trial by jury is
10 preserved in any such private right of action in which the
11 aggrieved person is seeking compensatory or punitive damages,
12 and any party may demand a trial by jury. The commission's
13 determination of reasonable cause is not admissible into
14 evidence in any civil proceeding, including any hearing or
15 trial, except to establish for the court the right to maintain
16 the private right of action. A civil action brought under this
17 section shall be commenced no later than 1 year after the date
18 of determination of reasonable cause by the commission. The
19 commencement of such action shall divest the commission of
20 jurisdiction of the complaint, except that the commission may
21 intervene in the civil action as a matter of right.

22 Notwithstanding the above, the state and its agencies and
23 subdivisions shall not be liable for punitive damages. The
24 total amount of recovery against the state and its agencies
25 and subdivisions shall not exceed the limitation as set forth
26 in s. 768.28(5).

27 (6) Any administrative hearing brought pursuant to
28 paragraph (4)(b) shall be conducted under ss. 120.569 and
29 120.57. The commission may hear the case provided that the
30 final order is issued by members of the commission who did not
31 conduct the hearing or the commission may request that it be

1 heard by an administrative law judge pursuant to s.
2 120.569(2)(a). If the commission elects to hear the case, it
3 may be heard by a commissioner. If the commissioner, after
4 the hearing, finds that a violation of the Florida Civil
5 Rights Act of 1992 has occurred, the commissioner shall issue
6 an appropriate proposed order in accordance with chapter 120
7 prohibiting the practice and providing affirmative relief from
8 the effects of the practice, including back pay. If the
9 administrative law judge, after the hearing, finds that a
10 violation of the Florida Civil Rights Act of 1992 has
11 occurred, the administrative law judge shall issue an
12 appropriate recommended order in accordance with chapter 120
13 prohibiting the practice and providing affirmative relief from
14 the effects of the practice, including back pay. Within 90
15 days of the date the recommended or proposed order is
16 rendered, the commission shall issue a final order by
17 adopting, rejecting, or modifying the recommended order as
18 provided under ss. 120.569 and 120.57. The 90-day period may
19 be extended with the consent of all the parties. An
20 administrative hearing pursuant to paragraph (4)(b) must be
21 requested no later than 35 days after the date of
22 determination of reasonable cause by the commission. In any
23 action or proceeding under this subsection, the commission, in
24 its discretion, may allow the prevailing party a reasonable
25 attorney's fee as part of the costs. It is the intent of the
26 Legislature that this provision for attorney's fees be
27 interpreted in a manner consistent with federal case law
28 involving a Title VII action.

29 (7) If the commission determines that there is not
30 reasonable cause to believe that a violation of the Florida
31 Civil Rights Act of 1992 has occurred, the commission shall

1 dismiss the complaint. The aggrieved person may request an
2 administrative hearing under ss. 120.569 and 120.57, but any
3 such request must be made within 35 days of the date of
4 determination of reasonable cause and any such hearing shall
5 be heard by an administrative law judge and not by the
6 commission or a commissioner. If the aggrieved person does
7 not request an administrative hearing within the 35 days, the
8 claim will be barred. If the administrative law judge finds
9 that a violation of the Florida Civil Rights Act of 1992 has
10 occurred, he or she shall issue an appropriate recommended
11 order to the commission prohibiting the practice and
12 recommending affirmative relief from the effects of the
13 practice, including back pay. Within 90 days of the date the
14 recommended order is rendered, the commission shall issue a
15 final order by adopting, rejecting, or modifying the
16 recommended order as provided under ss. 120.569 and 120.57.
17 The 90-day period may be extended with the consent of all the
18 parties. In any action or proceeding under this subsection,
19 the commission, in its discretion, may allow the prevailing
20 party a reasonable attorney's fee as part of the costs. It is
21 the intent of the Legislature that this provision for
22 attorney's fees be interpreted in a manner consistent with
23 federal case law involving a Title VII action. In the event
24 the final order issued by the commission determines that a
25 violation of the Florida Civil Rights Act of 1992 has
26 occurred, the aggrieved person may bring, within 1 year of the
27 date of the final order, a civil action under subsection (5)
28 as if there has been a reasonable cause determination or
29 accept the affirmative relief offered by the commission, but
30 not both.
31

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

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

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

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

26 (12) All complaints filed with the commission and all
27 records and documents in the custody of the commission, which
28 relate to and identify a particular person, including, but not
29 limited to, a complainant, employer, employment agency, labor
30 organization, or joint labor-management committee shall be
31 confidential and shall not be disclosed by the commission,

1 except to the parties or in the course of a hearing or
2 proceeding under this section. The restriction of this
3 subsection shall not apply to any record or document which is
4 part of the record of any hearing or court proceeding.

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

25 (14) The commission may adopt, promulgate, amend, and
26 rescind rules to effectuate the purposes and policies of this
27 section and to govern the proceedings of the commission under
28 this section.

29 (15) In any civil action or administrative proceeding
30 brought pursuant to this section, a finding that a person
31 employed by the state or any governmental entity or agency has

1 | violated s. 760.10 shall as a matter of law constitute just or
2 | substantial cause for such person's discharge.

3 | Section 7. This act shall take effect July 1, 2002.

4 |

5 | STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 | COMMITTEE SUBSTITUTE FOR
7 | Senate Bill 410

7 |

8 | Reenacts ss. 104.31, and 760.10, F.S., which cross-reference
9 | ss. 11.233 and 760.11, F.S., respectively, to incorporate the
10 | amendments made to these sections in this bill.

10 |

11 |

12 |

13 |

14 |

15 |

16 |

17 |

18 |

19 |

20 |

21 |

22 |

23 |

24 |

25 |

26 |

27 |

28 |

29 |

30 |

31 |