

Bill No. SB 558

Barcode 972880

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Lawson) recommended  
the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 760.09, Florida Statutes, is  
created to read:

760.09 Discrimination with respect to lending or  
credit transactions.--It is unlawful for any person that is  
engaged in the business of making personal or commercial  
loans, or extending personal or commercial credit, to  
discriminate against any applicant with respect to any aspect  
of the loan or credit transaction on the basis of race, color,  
religion, gender, national origin, marital status, handicap,  
or age, as long as the applicant has the capacity to enter  
into a contract.

Section 2. Section 760.07, Florida Statutes, is  
amended to read:

760.07 Remedies for unlawful discrimination.--Any

Bill No. SB 558

Barcode 972880

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

18 Section 3. Section 760.021, Florida Statutes, reads:

19 760.021 Enforcement.--

20 (1) The Attorney General may commence a civil action  
21 for damages, injunctive relief, civil penalties not to exceed  
22 \$10,000 per violation, and such other relief as may be  
23 appropriate under the laws of this state if the Attorney  
24 General has reasonable cause to believe that any person or  
25 group:

26 (a) Has engaged in a pattern or practice of  
27 discrimination as defined by the laws of this state; or

28 (b) Has been discriminated against as defined by the  
29 laws of this state and such discrimination raises an issue of  
30 great public interest.

31 (2) The Attorney General may file an action under this

Bill No. SB 558

Barcode 972880

1 section in the circuit court of the county where the cause of  
2 action arises or in the circuit court of the Second Judicial  
3 Circuit, in and for Leon County.

4 (3) In any proceeding under this section, the  
5 respondent may request, before any responsive pleading is due,  
6 that a hearing be held no earlier than 5 days but no more than  
7 30 days after the filing of the complaint, at which hearing  
8 the court shall determine whether the complaint on its face  
9 makes a prima facie showing that a pattern or practice of  
10 discrimination exists or that, as a result of discrimination,  
11 an issue of great public interest exists.

12 (4) The prevailing party in an action brought under  
13 this section is entitled to an award of reasonable attorney's  
14 fees and costs.

15 (5) Any damages recovered under this section shall  
16 accrue to the injured party.

17 Section 4. Section 760.11, Florida Statutes, reads:

18 760.11 Administrative and civil remedies;  
19 construction.--

20 (1) Any person aggrieved by a violation of ss.  
21 760.01-760.10 may file a complaint with the commission within  
22 365 days of the alleged violation, naming the employer,  
23 employment agency, labor organization, or joint  
24 labor-management committee, or, in the case of an alleged  
25 violation of s. 760.10(5), the person responsible for the  
26 violation and describing the violation. Any person aggrieved  
27 by a violation of s. 509.092 may file a complaint with the  
28 commission within 365 days of the alleged violation naming the  
29 person responsible for the violation and describing the  
30 violation. The commission, a commissioner, or the Attorney  
31 General may in like manner file such a complaint. On the same

Bill No. SB 558

Barcode 972880

1 day the complaint is filed with the commission, the commission  
2 shall clearly stamp on the face of the complaint the date the  
3 complaint was filed with the commission. In lieu of filing the  
4 complaint with the commission, a complaint under this section  
5 may be filed with the federal Equal Employment Opportunity  
6 Commission or with any unit of government of the state which  
7 is a fair-employment-practice agency under 29 C.F.R. ss.  
8 1601.70-1601.80. If the date the complaint is filed is clearly  
9 stamped on the face of the complaint, that date is the date of  
10 filing. The date the complaint is filed with the commission  
11 for purposes of this section is the earliest date of filing  
12 with the Equal Employment Opportunity Commission, the  
13 fair-employment-practice agency, or the commission. The  
14 complaint shall contain a short and plain statement of the  
15 facts describing the violation and the relief sought. The  
16 commission may require additional information to be in the  
17 complaint. The commission, within 5 days of the complaint  
18 being filed, shall by registered mail send a copy of the  
19 complaint to the person who allegedly committed the violation.  
20 The person who allegedly committed the violation may file an  
21 answer to the complaint within 25 days of the date the  
22 complaint was filed with the commission. Any answer filed  
23 shall be mailed to the aggrieved person by the person filing  
24 the answer. Both the complaint and the answer shall be  
25 verified.

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

Bill No. SB 558

Barcode 972880

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

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

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

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

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

26  
 27 The election by the aggrieved person of filing a civil action  
 28 or requesting an administrative hearing under this subsection  
 29 is the exclusive procedure available to the aggrieved person  
 30 pursuant to this act.

31 (5) In any civil action brought under this section,

Bill No. SB 558

Barcode 972880

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

Bill No. SB 558

Barcode 972880

1 in s. 768.28(5).

2 (6) Any administrative hearing brought pursuant to  
3 paragraph (4)(b) shall be conducted under ss. 120.569 and  
4 120.57. The commission may hear the case provided that the  
5 final order is issued by members of the commission who did not  
6 conduct the hearing or the commission may request that it be  
7 heard by an administrative law judge pursuant to s.

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

Bill No. SB 558

Barcode 972880

1 Legislature that this provision for attorney's fees be  
2 interpreted in a manner consistent with federal case law  
3 involving a Title VII action.

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



Bill No. SB 558

Barcode 972880

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

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

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

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

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

31 (12) All complaints filed with the commission and all

Bill No. SB 558

Barcode 972880

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

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

30           (14) The commission may adopt, promulgate, amend, and  
 31 rescind rules to effectuate the purposes and policies of this

Bill No. SB 558

Barcode 972880

1 section and to govern the proceedings of the commission under  
2 this section.

3 (15) In any civil action or administrative proceeding  
4 brought pursuant to this section, a finding that a person  
5 employed by the state or any governmental entity or agency has  
6 violated s. 760.10 shall as a matter of law constitute just or  
7 substantial cause for such person's discharge.

8 Section 5. This act shall take effect October 1, 2006.  
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11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 Delete everything before the enacting clause  
14

15 and insert:

16 A bill to be entitled  
17 An act relating to discriminatory lending  
18 practices; creating s. 760.09, F.S.; making it  
19 unlawful for any person engaged in the business  
20 of making personal or commercial loans, or  
21 extending personal or commercial credit, to  
22 discriminate against an applicant with respect  
23 to any aspect of the loan or credit transaction  
24 on the basis of certain factors; amending s.  
25 760.07, F.S.; creating a cause of action and  
26 providing specified remedies for a violation of  
27 any state statute that makes discrimination  
28 because of certain factors in the area of  
29 lending or extension of credit unlawful;  
30 republishing s. 760.021, F.S., relating to  
31 enforcement of laws relating to discrimination,

Bill No. SB 558

Barcode 972880

1           and s. 760.11, F.S., relating to administrative  
2           and civil remedies and to construction;  
3           providing an effective date.

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