

By Senator Bennett

21-600-07

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 defining the term "complaint" for purposes of

5 the Civil Rights Act of 1992; amending s.

6 760.11, F.S.; authorizing the commission to

7 require by rule additional information be

8 included in a complaint; providing for a

9 conciliation agreement if unlawful

10 discriminatory practices are discovered;

11 providing a remedy in the form of a civil

12 action if the unlawful discriminatory practices

13 continue; authorizing the commission to seek

14 compensation for attorney's fees and litigation

15 costs if a civil remedy is pursued; authorizing

16 the commission to initiate a civil action in

17 the name of the state on behalf of an aggrieved

18 person; limiting the period for filing a

19 lawsuit alleging a violation of the Civil

20 Rights Act of 1992; providing an effective

21 date.

22

23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Subsection (12) is added to section 760.02,

26 Florida Statutes, to read:

27 760.02 Definitions.--For the purposes of ss.

28 760.01-760.11 and 509.092, the term:

29 (12) "Complaint" means any written document that has

30 been signed and verified by an aggrieved party and contains a

31 clear and concise statement of the facts, including pertinent

1 dates, constituting the unlawful employment practice; the
2 name, address, and telephone number of the person filing the
3 complaint; the name, address, and telephone number of the
4 respondent; the approximate number of the respondent's
5 employees, if known; and if known or applicable, a statement
6 disclosing whether proceedings involving the alleged unlawful
7 employment practice have been commenced before a federal,
8 state, or local agency charged with enforcing
9 fair-employment-practice laws, the date of such commencement,
10 and the name of the agency.

11 Section 2. Section 760.11, Florida Statutes, is
12 amended to read:

13 760.11 Administrative and civil remedies;
14 construction.--

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

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

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

1 agency does not divest the commission's jurisdiction over the
2 complaint.

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

14 (4) ~~If in the event that~~ the commission determines
15 that there is reasonable cause to believe that a
16 discriminatory practice has occurred in violation of the
17 Florida Civil Rights Act of 1992, the commission shall
18 endeavor to eliminate the alleged unlawful practice by
19 conference, conciliation, or persuasion. The terms of a
20 conciliation agreement reached with a respondent may require
21 him or her to refrain from engaging in unlawful discriminatory
22 practices in the future and make any further provisions as may
23 be agreed upon between the commission staff and the
24 respondent.

25 (5) If the commission is unsuccessful in eliminating
26 the alleged unlawful practice by conference, conciliation, or
27 persuasion after finding that there is reasonable cause to
28 believe that a discriminatory practice has occurred in
29 violation of the Florida Civil Rights Act of 1992, the
30 aggrieved person may ~~either~~:

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1 (a) Bring a civil action against the person named in
2 the complaint in any court of competent jurisdiction; ~~or~~

3 (b) Petition the commission to initiate, at its sole
4 discretion, a civil action against the respondent in the name
5 of the State of Florida on behalf of the aggrieved person; or

6 ~~(c)(b)~~ Request an administrative hearing under ss.
7 120.569 and 120.57.

8
9 If the commission files a civil complaint under this section,
10 the commission may seek reimbursement of attorney's fees and
11 litigation costs through means of a conference, conciliation,
12 or persuasion. If the commission is unsuccessful in obtaining
13 such fees and costs in an amount deemed acceptable to the
14 commission, it may seek a court order awarding such attorney's
15 fees and litigation costs. Such fees and costs shall be
16 deposited in the commission's trust fund and used solely for
17 the purpose of funding litigation pursuant to this section.

18 The election by the aggrieved person of filing a civil action,
19 petitioning the commission to file a civil action, or
20 requesting an administrative hearing under this subsection
21 constitute is the exclusive procedures procedure available to
22 the aggrieved person pursuant to this act. The commission may
23 not initiate a civil complaint against the state and its
24 agencies and subdivisions under this section.

25 ~~(6)(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 ~~may shall~~ not exceed \$100,000. In any
4 action 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 initiate a civil action against the respondent in the name of
22 the State of Florida on behalf of the aggrieved person or may
23 intervene in the civil action as a matter of right.
24 Notwithstanding the above, the state and its agencies and
25 subdivisions ~~are shall~~ not be liable for punitive damages.
26 The total amount of recovery against the state and its
27 agencies and subdivisions ~~may shall~~ not exceed the limitation
28 as set forth in s. 768.28(5).
29 ~~(7)(6)~~ Any administrative hearing brought pursuant to
30 paragraph ~~(5)(c)(4)(b)~~ shall be conducted under ss. 120.569
31 and 120.57. The commission may hear the case provided that the

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

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

1 determination or accept the affirmative relief offered by the
2 commission, but not both.

3 ~~(9)(8)~~ If ~~In the event that~~ the commission fails to
4 conciliate or determine whether there is reasonable cause on
5 any complaint under this section within 180 days after ~~of~~ the
6 filing of the complaint, an aggrieved person may proceed under
7 subsection (4), as if the commission determined that there was
8 reasonable cause. However, any lawsuit filed under this
9 subsection must be commenced no later than 4 years following
10 the date of the alleged violation giving rise to the
11 complaint.

12 ~~(10)(9)~~ No liability for back pay shall accrue from a
13 date more than 2 years prior to the filing of a complaint with
14 the commission.

15 ~~(11)(10)~~ A judgment for the amount of damages and
16 costs assessed pursuant to a final order by the commission may
17 be entered in any court having jurisdiction thereof and may be
18 enforced as any other judgment.

19 ~~(12)(11)~~ If a complaint is within the jurisdiction of
20 the commission, the commission shall simultaneously with its
21 other statutory obligations attempt to eliminate or correct
22 the 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.

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1 ~~(13)~~~~(12)~~ All complaints filed with the commission and
2 all records and documents in the custody of the commission,
3 which relate to and identify a particular person, including,
4 but not limited to, a complainant, employer, employment
5 agency, labor organization, or joint labor-management
6 committee are ~~shall be~~ confidential and may ~~shall~~ not be
7 disclosed by the commission, except to the parties or in the
8 course of a hearing or proceeding under this section. The
9 restriction of this subsection does ~~shall~~ not apply to any
10 record or document that ~~which~~ is part of the record of any
11 hearing or court proceeding.

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

1 (15)~~(14)~~ The commission may adopt, promulgate, amend,
2 and rescind rules to effectuate the purposes and policies of
3 this section and to govern the proceedings of the commission
4 under this section.

5 (16)~~(15)~~ In any civil action or administrative
6 proceeding brought pursuant to this section, a finding that a
7 person employed by the state or any governmental entity or
8 agency has violated s. 760.10 shall as a matter of law
9 constitute just or substantial cause for such person's
10 discharge.

11 Section 3. This act shall take effect July 1, 2007.

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14 SENATE SUMMARY

15 Authorizes the Florida Commission on Human Relations to
16 require additional information in a complaint. Provides
17 for a conciliation agreement if unlawful employment
18 practices or discrimination is discovered. Provides a
19 remedy in the form of civil action if the unlawful
20 employment practices or discrimination continues. Allows
21 the commission to seek attorney's fees and litigation
22 costs if a civil remedy is pursued. Allows the commission
23 to initiate a civil action in the name of the State of
24 Florida on behalf of an aggrieved person.
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