

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 7008

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Housing Discrimination

DATE: February 2, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Peacock</u>	<u>McVaney</u>		GO Submitted as Committee Bill
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	<u>Davis</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

I. Summary:

SB 7008 eliminates a prerequisite to filing a civil action alleging an injury caused by a discriminatory housing practice. Under an interpretation of the Florida Fair Housing Act by the Fourth District Court of Appeal, a person must first exhaust his or her administrative remedies before pursuing a civil action under the Florida Fair Housing Act.

According to the United States Department of Housing and Urban Development (HUD), the Florida Fair Housing Act, as interpreted by the Fourth DCA, is not substantially equivalent to the federal Fair Housing Act. As a result, HUD has notified the Florida Commission on Human Relations (Commission) that its participation in the Fair Housing Assistance Program will be terminated if the prerequisite to filing a civil action is not eliminated by March 12, 2016.

There is no fiscal impact to state funds. Federal funds currently provided by HUD to support the investigations, training and administrative costs of the Commission may be at risk (see section V, Fiscal Impact Statement).

The effective date of the bill is July 1, 2016.

II. Present Situation:

Florida Civil Rights Act (Part I, Chapter 760, F.S.)

The Florida Civil Rights Act (FCRA) protects persons from discrimination based on race, color, religion, sex, pregnancy,¹ national origin, age, handicap, and marital or familial status.

¹ The 2015 Florida Legislature added pregnancy as a protected status from discrimination (Chapter 2015-68, L.O.F.); Section 760.01(2), F.S.

The Florida Commission on Human Relations

The FCRA establishes the Florida Commission on Human Relations within the Department of Management Services. The Commission is granted broad powers to enforce the FCRA.² The Governor appoints, and the Senate confirms, the 12 members of the Commission.³ The Commission is empowered to receive, initiate, investigate, conciliate and hold hearings on and act upon complaints alleging discriminatory practice.⁴ Additionally, the Attorney General may initiate a civil action for damages, injunctive relief, civil penalties of up to \$10,000 a violation, and other appropriate relief.⁵

Timeline for Filing and Processing Claims

An aggrieved person, the Commission, a Commissioner, or the Attorney General has 365 days after the alleged violation to file a complaint with the Commission.⁶ Within 180 days of the filing, the Commission must make a determination of reasonable cause.⁷ If the Commission issues a finding of reasonable cause, the aggrieved person may request an administrative hearing or bring civil action.⁸ A civil action must be brought within a year of the determination of reasonable cause.⁹ The FCRA expressly requires a plaintiff to exhaust his or her administrative remedy as a prerequisite to filing a civil action alleging unlawful discrimination, including housing discrimination.¹⁰

Remedies

The remedy available through an administrative hearing is affirmative relief, including back pay, and reasonable attorney fees and other costs.¹¹ Remedies available through a civil action are injunctive and affirmative relief, which includes back pay, compensatory damages, punitive damages of up to \$100,000, and reasonable attorney fees and other costs.¹²

Bases of Discrimination under the Florida Civil Rights Act

The FCRA specifically defines and prohibits discrimination based on unlawful practices in employment and public accommodations.¹³ Remedies are also available for unlawful discrimination in the areas of education, employment, housing discrimination, and public accommodation. Other than in the section of law on remedies, the term “housing discrimination” is not addressed elsewhere in the FCRA.¹⁴ Additionally, housing discrimination is specifically prohibited in the Florida Fair Housing Act.¹⁵

² Section 760.06(6), F.S.

³ Section 760.03(1), F.S.

⁴ Section 760.06(5), F.S.

⁵ Section 760.021(1), F.S.

⁶ Section 760.11(1), F.S.

⁷ Section 760.11(3), F.S.

⁸ Section 760.11(4), F.S.

⁹ Section 760.11(5), F.S.

¹⁰ Section 760.07, F.S.

¹¹ Section 760.11(6) and (7), F.S.

¹² Section 760.11(5), F.S.

¹³ Sections 760.02(7), (8), and (11), 760.08, and 760.10, F.S.

¹⁴ Section 760.07, F.S.

¹⁵ Part II of Chapter 760, F.S. The inclusion of housing discrimination in the FCRA may have been a drafting oversight because the issue is addressed fully in the Florida Fair Housing Act.

Florida Fair Housing Act

Purpose of the Florida Fair Housing Act

The Florida Fair Housing Act (FFHA) is modelled after the Federal Fair Housing Act.¹⁶ The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.¹⁷ In addition, protection is afforded to persons who are pregnant or in the process of becoming legal custodians of children of 18 years of age or younger, or persons who are themselves handicapped or associated with a handicapped person.¹⁸

Timeline for Filing and Processing Claims

A person alleging discrimination under the FFHA has one year after the discriminatory housing practice to file a complaint with the Commission.¹⁹ The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.²⁰ The Commission can also decide to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.²¹ If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the complainant may initiate civil action or petition for an administrative determination.²² If the Commission finds reasonable cause, the claimant may request that the Attorney General bring an action against the respondent.²³

A civil action must be commenced within two years after the alleged discriminatory act occurred.²⁴ The court may continue a civil case if conciliation efforts by the Commission or by the local housing agency are likely to result in a satisfactory settlement.²⁵ If the court finds that a discriminatory housing practice has occurred, the court must issue an order prohibiting the practice and providing affirmative relief.²⁶ If the Commission is unable to obtain voluntary compliance or has reasonable cause to believe that a discriminatory act has occurred, the Commission may institute an administrative proceeding. Alternatively, the aggrieved person may request administrative relief under ch. 120, F.S., within 30 days after receiving notice that the Commission has concluded its investigation.²⁷

The Commission may institute a civil action if it is unable to achieve voluntary compliance with the FFHA and is not required to have petitioned for an administrative hearing or exhausted its

¹⁶ Part II of Chapter 760, F.S., is the Florida Fair Housing Act. See Florida Fair Housing Commission, *Fair Housing Laws* http://fchr.state.fl.us/resources/the_laws/florida_fair_housing_laws (last visited Oct. 27, 2015).

¹⁷ Section 760.23(1), F.S.

¹⁸ Sections 760.23(6)-(9), F.S.

¹⁹ Section 760.34(1) and (2), F.S.

²⁰ Section 760.34(1), F.S.

²¹ *Id.*

²² Section 760.34(4), F.S.

²³ *Id.*

²⁴ Section 760.35(1), F.S.

²⁵ *Id.*

²⁶ Section 760.35(2), F.S.

²⁷ Section 760.35(3), F.S.

administrative remedies prior to bringing a civil action.²⁸ Remedies available under the FFHA include fines and actual and punitive damages.²⁹ The court may also award reasonable attorney's fees and costs to the Commission.³⁰

The Commission, or any local agency certified as substantially equivalent, may institute a civil action in an appropriate court if it is unable to obtain voluntary compliance with the local fair housing law.³¹ The local agency does not have to petition for an administrative hearing or exhaust its administrative remedies prior to bringing civil action.³²

Financial Reimbursement from HUD

The federal Fair Housing Assistance Program (FHAP) permits HUD to reimburse state and local agencies for services that further the purposes of the federal Fair Housing Act. To be eligible for participation in the FHAP, a state or local agency must enforce a fair housing law that is substantially equivalent to the federal Fair Housing Act. The HUD will then certify these agencies as substantially equivalent, qualifying the agencies for federal funding.³³ In Florida, in addition to the Florida Commission on Human Relations serving as the main agency certified as substantially equivalent, six other localities also qualify.³⁴

Through annual work-share agreements with HUD, the Commission, in its capacity as a substantially equivalent agency, accepts and investigates housing discrimination cases from HUD. The Commission is reimbursed by HUD for closing housing cases, through deposit from HUD into the Human Relations Commission Operating Trust Fund within the Commission. Trust fund monies received from HUD in Fiscal Year 2014-15 totaled \$604,978, an increase from the Fiscal Year 2013-14 total of \$516,536.³⁵

According to the Commission's Fiscal Year 2010-11 through Fiscal Year 2014-15 Annual Reports, housing complaints represented on average 15 percent of all complaints received by the Commission. From Fiscal Year 2010-11 through Fiscal Year 2014-15, 1,009 cases were closed, distributed as follows:

²⁸ Section 760.34(7)(a), F.S.

²⁹ Fines are capped in a tiered system based on the number of prior violations of the Fair Housing Act: up to \$10,000 if the respondent has no prior findings of guilt under the Fair Housing Act; up to \$25,000 if the respondent has had one prior violation of the Fair Housing Act; and up to \$50,000, if the respondent has had two or more violations of the Fair Housing Act. Section 760.34(7)(b), F.S.

³⁰ Section 760.34(7)(c), F.S.

³¹ Sections 760.22(9) and 760.34(8), F.S.

³² Section 760.34(8), F.S.

³³ United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP)*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP (last visited Nov. 2, 2015).

³⁴ HUD additionally certified as substantially equivalent the Broward County Office of Equal Opportunity, Jacksonville Human Rights Commission, Office of Community Affairs – Human Relations Department (Orlando), Palm Beach County Office of Equal Opportunity, Pinellas County Office of Human Rights, and City of Tampa Office of Community Relations. United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#FL (last visited Oct. 29, 2015).

³⁵ E-mail from Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 8, 2015) (on file with the Senate Committee on Judiciary).

Closure Type	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
No Cause	171 (64%)	126 (69%)	92 (50%)	138 (73%)	123 (67%)
Administrative Closure	46 (17%)	15 (8%)	50 (27%)	29 (15%)	52 (28%)
Cause	20 (7%)	14 (8%)	4 (2%)	11 (6%)	0 (0%)
Settlement	16 (6%)	16 (9%)	18 (10%)	0 (0%)	0 (0%)
Withdrawal with Benefits	16 (6%)	11 (6%)	19 (11%)	12 (6%)	10 (5%)
Total Closures	269	182	183	190	185

Case Law on the Exhaustion of Administrative Remedies

In *Belletete v. Halford*, the Florida Fourth District Court of Appeal (DCA) held that individuals claiming discrimination under the FFHA must first exhaust administrative remedies before bringing a judicial claim, citing the doctrine of exhaustion of administrative remedies.³⁶ In a 2012 opinion, *Sun Harbor Homeowners' Association v. Bonura*, the Fourth DCA reiterated that the FFHA requires exhaustion of administrative remedies as a condition precedent to bringing a civil suit.³⁷ The court, however, did not rule on that particular issue because it was moot.³⁸ To date, the Florida Supreme Court has not addressed this issue, making the Fourth DCA decision the only one on point in the state court system.

However, in a case brought before the U.S. District Court for the Southern District of Florida and decided in 2010, the Florida Attorney General, in a motion to intervene, stated that “as co-enforcer with the Florida Commission on Human Relations of the FFHA, it has always interpreted the right of the private individual to file a judicial action under the FFHA without first pursuing an administrative remedy.”³⁹ The U.S. District court agreed that the Fourth DCA decided *Belletete* incorrectly and that aggrieved parties did not have to exhaust administrative remedies before filing a civil lawsuit in a cause of action grounded in the FFHA.⁴⁰

Based upon the Fourth DCA holdings, the HUD notified the Commission that the HUD will suspend the Commission’s participation in the FHAP if the FFHA is not amended to overcome the judicially-created requirement that a state court plaintiff must exhaust their administrative remedies as a precondition to filing a housing discrimination claim in state court.⁴¹ HUD has

³⁶ *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); See also *Fla. Welding & Erection Serv., Inc. v. Am. Mut. Ins. Co. of Boston*, 285 So. 2d 386, 389-90 (Fla. 1973). The doctrine of the exhaustion of administrative remedies is the principle that if an administrative remedy is provided by statute, a claimant must first seek relief from the administrative body before judicial relief is available. BLACK’S LAW DICTIONARY (2014).

³⁷ *Sun Harbor Homeowners' Ass'n, Inc. v. Bonura*, 95 So. 3d 262, 267 (Fla. 4th DCA 2012).

³⁸ *Id.*

³⁹ *Milsap v. Cornerstone Residential Mgmt., Inc.*, 2010 WL 427436, *1 (S.D. Fla. 2010).

⁴⁰ *Id.* at 2. The court held that the FFHA should be interpreted similarly to the federal Fair Housing Act, which has been interpreted by federal courts as allowing for actions in court whether or not all administrative remedies have been exhausted. “The Court is now of the opinion that were this issue before the Florida Supreme Court, that Court would not follow the *Belletete* decision on this narrow issue, and that this Court’s ruling dismissing the FFHA claims for failure to exhaust administrative remedies based on *Belletete* was incorrect.” *Id.* at 2.

⁴¹ Letter from HUD to Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 8, 2015) (on file with the Senate Committee on Judiciary).

agreed to extend the deadline for the Commission to have the FFHA amended until March 12, 2016.⁴²

III. Effect of Proposed Changes:

Removal of Housing Discrimination from the Florida Civil Rights Act

The bill removes housing discrimination as one of the forms of prohibited discrimination under the Florida Civil Rights Act (FCRA). The FCRA expressly requires the exhaustion of administrative remedies as a prerequisite to a civil action. The Florida Fair Housing Act, which has similar prohibitions against housing discrimination, does not include any express prerequisites. As such, the bill clarifies that a person must pursue housing discrimination claims exclusively through the FFHA.

According to the Commission, this change will clear up confusion by the courts that plaintiffs who wish to file a civil action for housing discrimination must first exhaust administrative remedies.⁴³

Flexibility and Limits on Filing a Claim

The bill clarifies that a person does not have to petition for an administrative hearing or exhaust administrative remedies as a condition to bringing a civil action. The bill also removes the requirement that an aggrieved person wait to file the civil action until 180 days after filing a complaint with the Florida Commission on Human Relations or a local agency. Therefore, a person who alleges that he or she has been injured by unlawful housing discrimination may file a civil action at any time.

The bill also prohibits the filing of a civil action if the claimant and the respondent have entered into a conciliation agreement which has been approved by the Commission other than to enforce the terms of the agreement. Also, an aggrieved person may not file a civil action regarding a discriminatory housing practice once an administrative hearing has begun.

Continuation of Federal Funding

In removing the term “housing discrimination” from the FCRA and specifying that a petitioner is not required to petition for an administrative hearing or exhaust administrative remedies prior to filing a lawsuit, the bill will make the FFHA substantially equivalent to its federal counterpart. These changes appear sufficient to preserve the eligibility of the Commission to receive federal funds for investigations, administrative costs, and training for use in housing discrimination cases filed with the HUD.⁴⁴

The bill takes effect July 1, 2016.

⁴² *Id.*

⁴³ Email from Michelle Wilson, Executive Director, Florida Commission on Human Relations (Nov. 5, 2015) (copy on file with the Senate Committee on Judiciary).

⁴⁴ E-mail from Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 7, 2015) (copy on file with the Senate Committee on Judiciary).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, s. 18, of the Florida Constitution, provides that a mandate potentially exists if a law:

- Requires cities or counties to spend funds or take action requiring the expenditure of funds;
- Reduces the authority of cities or counties to raise revenues in the aggregate; or
- Reduces the percentage of a state tax shared with cities and counties in the aggregate.⁴⁵

This bill does not impact the ability of a city or county to raise revenue. The bill also does not negatively impact the tax base of a city or county. Therefore, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Under SB 7008, by eliminating a requirement that a person exhaust his or her administrative remedies before filing a lawsuit, some housing discrimination claims may be resolved by the court system instead of the conciliation processes available through the Florida Commission on Human Relations.

C. Government Sector Impact:**Florida Commission on Human Relations**

The Commission does not expect a fiscal or workload impact from the bill.⁴⁶ While the Commission maintains that existing law allows a person aggrieved by a discriminatory housing practice to commence a civil action without first filing a complaint for an

⁴⁵ Article VII, x. 18(a) through (c), Fla. Const.

⁴⁶ E-mail from Cheyanne Costilla, General Counsel, Florida Commission on Human Relations (Aug. 20, 2015) (on file with the Senate Committee on Judiciary).

administrative remedy, the bill clarifies that individuals can bypass the investigation and conciliation process in order to better access Florida's court system.

According to the Commission, if the proposed bill does not pass, this agency will continue to investigate any complaints of housing discrimination directly filed with the Commission, but would no longer receive or investigate cases for HUD.⁴⁷ Additionally, federal funding from HUD for investigations, administrative costs, or training would be at risk.⁴⁸ The HUD has indicated to the Commission that cases previously referred by HUD would have to be investigated by HUD.⁴⁹

The Commission received \$604,978 from HUD in the 2014-2015 fiscal year.⁵⁰ The ending fund balance of the Human Relations Commission Operating Trust Fund for Fiscal Year 2015-2016 is estimated to be \$17,360.⁵¹ As a result of the potential loss of federal funds, a deficit of (\$1,264,105) is projected to occur in the Human Relations Commission Operating Trust Fund in Fiscal Year 2016-2017.⁵² If the bill does pass and federal funds continue to be received from HUD for investigations, the Commission projects an ending fund balance of (\$664,105) in Fiscal Year 2016-2017.⁵³

Office of the State Courts Administrator

The Office of the State Courts Administrator indicates that the fiscal impact of the bill is unknown due to the unavailability of data needed to establish both additional revenue expected to be generated from an increase in civil filings and increased expenditures due to additional workload.⁵⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 760.07, 760.34, and 760.35.

⁴⁷ E-mail from Cheyanne Costilla, General Counsel, Florida Commission on Human Relations (Aug. 19, 2015) (on file with the Senate Committee on Judiciary).

⁴⁸ Letter from Michael Keller, Chair of the Florida Commission on Human Relations, to Senator Diaz de La Portilla (Oct. 22, 2015) (on file with the Senate Committee on Judiciary).

⁴⁹ E-mail from Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 7, 2015) (on file with the Senate Committee on Judiciary).

⁵⁰ *Id.*

⁵¹ Accrual Fund Balance Analysis – Human Relations Commission Operating Trust Fund (Jan 11, 2016).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Nov. 2, 2015).

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
