

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 Judiciary

BILL: SB 374

INTRODUCER: Senator Rouson

SUBJECT: Housing Discrimination

DATE: November 4, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 374 clarifies that under the Florida Fair Housing Act (FFHA) an alleged victim of housing discrimination may file a civil action regardless of whether the victim has exhausted his or her administrative remedies. Accordingly, the person may file a civil action regardless of whether:

- He or she has filed a complaint with the Florida Commission on Human Relations;
- The Commission has resolved a complaint (if the victim chose to file one); or
- Any particular amount of time has passed since the victim filed a complaint with the Commission.

Under the bill, a victim may also proceed directly to filing a petition with the Division of Administrative Hearings. However, if an administrative law judge has commenced a hearing on the matter, the victim may not commence a civil action. Accordingly, it appears that a victim of housing discrimination must essentially chose whether to pursue remedies in a judicial proceeding or an administrative proceeding.

II. Present Situation:

Overview

This state's District Courts of Appeal have held that the Florida Fair Housing Act (FFHA) requires an alleged victim of housing discrimination to exhaust his or her administrative remedies before filing a civil action under the FFHA. However, federal District Courts (trial courts) in Florida have repeatedly disagreed with this interpretation, as has the U.S. Department of Housing and Urban Development (HUD).

HUD has also repeatedly stated that the FFHA, as interpreted by the DCAs, is inconsistent with the federal Fair Housing Act. Accordingly, HUD has advised the Commission for several years

that the Commission may be disqualified from receiving federal funding from HUD through the Fair Housing Assistance Program if Florida law is not conformed to the federal act.

The Florida Fair Housing Act (FFHA)

Purpose of the FFHA

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.¹ In addition, the FFHA affords protection 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.²

Timeline for Filing and Processing Claims

A person alleging discrimination under the FFHA has 1 year after the discriminatory housing practice to file a complaint with the Commission.³ The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.⁴ The Commission may also decide to resolve the complaint and eliminate or correct the discriminatory housing practice through conciliation.⁵ If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the victim may initiate a civil action or file petition for an administrative determination.⁶ If the Commission finds reasonable cause to believe that housing discrimination has occurred, the claimant may request that the Attorney General bring an action against the respondent.⁷

A civil action must be commenced within 2 years after the alleged discriminatory act occurred.⁸ 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.⁹ If the court finds that a discriminatory housing practice has occurred, the court must issue an order prohibiting the practice and providing affirmative relief, which may include compensatory or punitive damages.¹⁰ 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.¹¹

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

¹ Section 760.23(1), F.S.

² Sections 760.23(6)-(9), F.S.

³ Section 760.34(1) and (2), F.S.

⁴ Section 760.34(1), F.S.

⁵ *Id.*

⁶ Section 760.34(4), F.S.

⁷ *Id.*

⁸ Section 760.35(1), F.S.

⁹ *Id.*

¹⁰ Section 760.35(2), F.S.

¹¹ Section 760.35(3), F.S.

exhausted its administrative remedies prior to bringing a civil action.¹² Remedies available under the FFHA include fines and actual and punitive damages.¹³ The court may also award reasonable attorney fees and costs to the Commission.¹⁴

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.¹⁵ The local agency does not have to petition for an administrative hearing or exhaust its administrative remedies prior to bringing civil action.¹⁶

State and Federal Courts Disagree Regarding the Need to Exhaust Administrative Remedies

In at least three cases, the District Courts of Appeal have held that a person must exhaust his or her administrative remedies before filing a civil action alleging housing discrimination under the FFHA.¹⁷ However, the United States District Courts (federal trial courts) for the Middle and Southern Districts of Florida have held the opposite.¹⁸ The different outcomes are the result of different interpretations of the FFHA, thus suggesting that the FFHA could be clearer as to whether a person must exhaust his or her administrative remedies before filing a civil action.

The Fair Housing Assistance Program

Eligibility for Participation in the FHAP

The federal Fair Housing Assistance Program (FHAP) permits the United States Department of Housing and Urban Development (HUD) to reimburse state and local agencies for services that further the purposes of the federal Fair Housing Act.¹⁹ 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.²⁰ HUD will then certify these agencies as substantially equivalent, qualifying the agencies for federal funding.²¹

¹² Section 760.34(7)(a), F.S.

¹³ 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.

¹⁴ Section 760.34(7)(c), F.S.

¹⁵ Sections 760.22(9) and 760.34(8), F.S.

¹⁶ Section 760.34(8), F.S.

¹⁷ See *Housing Opportunities Project v. SPV Realty, LC* 212 So. 3d 419 (Fla. 3d DCA 2016); *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); *Sun Harbor Homeowners' Ass'n, Inc. v. Bonura*, 95 So. 3d 262, 267 (Fla. 4th DCA 2012).

¹⁸ See *Milsap v. Cornerstone Residential Mgmt., Inc.*, 2010 WL 427436 (S.D. Fla. 2010); *Serota v. Carriage Hills Condominium Ass'n, Inc.* 2014 WL 3894264 (S.D. Fla. 2014); *Floyd v. City of Sanibel*, 2017 WL 78638 (S.D. Fla. 2017).

¹⁹ 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 Oct. 31, 2019).

²⁰ *Id.*

²¹ *Id.*

The Florida Commission on Human Relations, and its Prospects for Continued Eligibility

In this state, the Florida Commission on Human Relations is the main agency certified as substantially equivalent.²² Monies the Commission receives from HUD under the FHAP are placed into the Commission's Operating Trust Fund. However, as recently as 2016, HUD warned the Commission by letter that it was at risk of suspension and withdrawal from the FHAP because the FFHA, which the Commission administers, is not substantially equivalent to the federal Fair Housing Act.²³ Particularly, HUD stated that the laws are not substantially equivalent because the federal Fair Housing Act permits a person alleging housing discrimination to file a civil action regardless of whether he or she has exhausted administrative remedies, while the FFHA, as interpreted by the DCAs, requires the exhaustion of administrative remedies before filing a civil action.²⁴

In 2019, the FHCR was suspended by HUD on different grounds.²⁵ In correspondence pertaining primarily to those other issues, HUD nonetheless pointed out the "continuing substantial equivalency issues" created by the FFHA as interpreted by the DCAs.²⁶

HUD's Reimbursement of the Commission under the FHAP, by the Numbers

As part of the Fair Housing Assistance Program, HUD reimburses the Commission for resolving housing cases. The reimbursement monies are placed into the Human Relation's Operating Trust Fund. In Fiscal Year 2018-2019, these payments totaled \$507,061 for the 2018 grant period. This amount was 45.99% of the Commission's Operating Trust fund for that year.²⁷ In Fiscal Year 2017-18, these payments totaled \$611,721, which was 49.89% of the Commission's Operating Trust Fund.²⁸

III. Effect of Proposed Changes:

The bill clarifies that under the Florida Fair Housing Act (FFHA) an alleged victim of housing discrimination may file a civil action regardless of whether the victim has exhausted his or her administrative remedies. Accordingly, the person may file a civil action regardless of whether:

- He or she has filed a complaint with the Florida Commission on Human Relations;

²² Six local agencies also qualify: 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. *See* 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. 31, 2019).

²³ *See* Letter from Lynn Grosso, Acting Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (Mar. 16, 2016); Letter from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 2, 2015) (on file with the Senate Committee on Judiciary).

²⁴ *Id.*

²⁵ United States Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Region IV, *Post-Suspension Performance Assessment Report* (Aug. 8, 2019).

²⁶ *Id.*

²⁷ Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (Oct. 31, 2019) (on file with the Senate Committee on Judiciary).

²⁸ Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (April 5, 2019) (on file with the Senate Committee on Judiciary).

- The Commission has resolved a complaint (if the victim chose to file one); or
- Any particular amount of time has passed since the victim filed a complaint with the Commission.

Under the bill, a victim may also proceed directly to filing a petition with the Division of Administrative Hearings. However, if an administrative law judge has commenced a hearing on the matter, the victim may not commence a civil action. Accordingly, it appears that a victim of housing discrimination must essentially whether to pursue remedies in court or through an administrative proceeding.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The passage of the bill might be necessary to allow the Florida Commission on Human Relations to continue to receive federal reimbursement for the Commission's resolution

of housing discrimination cases. Without the bill, the Commission may be disqualified from receiving this funding.

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.

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.