

# HB5443



## 100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

**HB5443**

by Rep. Lindsay Parkhurst

### SYNOPSIS AS INTRODUCED:

775 ILCS 5/7A-102

from Ch. 68, par. 7A-102

Amends the Illinois Human Rights Act. Deletes language providing that the Department of Human Rights shall stay any administrative proceedings after the filing of a civil action by or on behalf of the aggrieved party under any federal or State law seeking relief with respect to the alleged civil rights violation.

LRB100 17298 HEP 32459 b

A BILL FOR

1 AN ACT concerning human rights.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Human Rights Act is amended by  
5 changing Section 7A-102 as follows:

6 (775 ILCS 5/7A-102) (from Ch. 68, par. 7A-102)  
7 Sec. 7A-102. Procedures.

8 (A) Charge.

9 (1) Within 180 days after the date that a civil rights  
10 violation allegedly has been committed, a charge in writing  
11 under oath or affirmation may be filed with the Department  
12 by an aggrieved party or issued by the Department itself  
13 under the signature of the Director.

14 (2) The charge shall be in such detail as to  
15 substantially apprise any party properly concerned as to  
16 the time, place, and facts surrounding the alleged civil  
17 rights violation.

18 (3) Charges deemed filed with the Department pursuant  
19 to subsection (A-1) of this Section shall be deemed to be  
20 in compliance with this subsection.

21 (A-1) Equal Employment Opportunity Commission Charges.

22 (1) If a charge is filed with the Equal Employment  
23 Opportunity Commission (EEOC) within 180 days after the

1 date of the alleged civil rights violation, the charge  
2 shall be deemed filed with the Department on the date filed  
3 with the EEOC. If the EEOC is the governmental agency  
4 designated to investigate the charge first, the Department  
5 shall take no action until the EEOC makes a determination  
6 on the charge and after the complainant notifies the  
7 Department of the EEOC's determination. In such cases,  
8 after receiving notice from the EEOC that a charge was  
9 filed, the Department shall notify the parties that (i) a  
10 charge has been received by the EEOC and has been sent to  
11 the Department for dual filing purposes; (ii) the EEOC is  
12 the governmental agency responsible for investigating the  
13 charge and that the investigation shall be conducted  
14 pursuant to the rules and procedures adopted by the EEOC;  
15 (iii) it will take no action on the charge until the EEOC  
16 issues its determination; (iv) the complainant must submit  
17 a copy of the EEOC's determination within 30 days after  
18 service of the determination by the EEOC on complainant;  
19 and (v) that the time period to investigate the charge  
20 contained in subsection (G) of this Section is tolled from  
21 the date on which the charge is filed with the EEOC until  
22 the EEOC issues its determination.

23 (2) If the EEOC finds reasonable cause to believe that  
24 there has been a violation of federal law and if the  
25 Department is timely notified of the EEOC's findings by  
26 complainant, the Department shall notify complainant that

1 the Department has adopted the EEOC's determination of  
2 reasonable cause and that complainant has the right, within  
3 90 days after receipt of the Department's notice, to either  
4 file his or her own complaint with the Illinois Human  
5 Rights Commission or commence a civil action in the  
6 appropriate circuit court or other appropriate court of  
7 competent jurisdiction. The Department's notice to  
8 complainant that the Department has adopted the EEOC's  
9 determination of reasonable cause shall constitute the  
10 Department's Report for purposes of subparagraph (D) of  
11 this Section.

12 (3) For those charges alleging violations within the  
13 jurisdiction of both the EEOC and the Department and for  
14 which the EEOC either (i) does not issue a determination,  
15 but does issue the complainant a notice of a right to sue,  
16 including when the right to sue is issued at the request of  
17 the complainant, or (ii) determines that it is unable to  
18 establish that illegal discrimination has occurred and  
19 issues the complainant a right to sue notice, and if the  
20 Department is timely notified of the EEOC's determination  
21 by complainant, the Department shall notify the parties  
22 that the Department will adopt the EEOC's determination as  
23 a dismissal for lack of substantial evidence unless the  
24 complainant requests in writing within 35 days after  
25 receipt of the Department's notice that the Department  
26 review the EEOC's determination.

1 (a) If the complainant does not file a written  
2 request with the Department to review the EEOC's  
3 determination within 35 days after receipt of the  
4 Department's notice, the Department shall notify  
5 complainant that the decision of the EEOC has been  
6 adopted by the Department as a dismissal for lack of  
7 substantial evidence and that the complainant has the  
8 right, within 90 days after receipt of the Department's  
9 notice, to commence a civil action in the appropriate  
10 circuit court or other appropriate court of competent  
11 jurisdiction. The Department's notice to complainant  
12 that the Department has adopted the EEOC's  
13 determination shall constitute the Department's report  
14 for purposes of subparagraph (D) of this Section.

15 (b) If the complainant does file a written request  
16 with the Department to review the EEOC's  
17 determination, the Department shall review the EEOC's  
18 determination and any evidence obtained by the EEOC  
19 during its investigation. If, after reviewing the  
20 EEOC's determination and any evidence obtained by the  
21 EEOC, the Department determines there is no need for  
22 further investigation of the charge, the Department  
23 shall issue a report and the Director shall determine  
24 whether there is substantial evidence that the alleged  
25 civil rights violation has been committed pursuant to  
26 subsection (D) of Section 7A-102. If, after reviewing

1 the EEOC's determination and any evidence obtained by  
2 the EEOC, the Department determines there is a need for  
3 further investigation of the charge, the Department  
4 may conduct any further investigation it deems  
5 necessary. After reviewing the EEOC's determination,  
6 the evidence obtained by the EEOC, and any additional  
7 investigation conducted by the Department, the  
8 Department shall issue a report and the Director shall  
9 determine whether there is substantial evidence that  
10 the alleged civil rights violation has been committed  
11 pursuant to subsection (D) of Section 7A-102 of this  
12 Act.

13 (4) Pursuant to this Section, if the EEOC dismisses the  
14 charge or a portion of the charge of discrimination  
15 because, under federal law, the EEOC lacks jurisdiction  
16 over the charge, and if, under this Act, the Department has  
17 jurisdiction over the charge of discrimination, the  
18 Department shall investigate the charge or portion of the  
19 charge dismissed by the EEOC for lack of jurisdiction  
20 pursuant to subsections (A), (A-1), (B), (B-1), (C), (D),  
21 (E), (F), (G), (H), (I), (J), and (K) of Section 7A-102 of  
22 this Act.

23 (5) The time limit set out in subsection (G) of this  
24 Section is tolled from the date on which the charge is  
25 filed with the EEOC to the date on which the EEOC issues  
26 its determination.

1           (B) Notice and Response to Charge. The Department shall,  
2 within 10 days of the date on which the charge was filed, serve  
3 a copy of the charge on the respondent. This period shall not  
4 be construed to be jurisdictional. The charging party and the  
5 respondent may each file a position statement and other  
6 materials with the Department regarding the charge of alleged  
7 discrimination within 60 days of receipt of the notice of the  
8 charge. The position statements and other materials filed shall  
9 remain confidential unless otherwise agreed to by the party  
10 providing the information and shall not be served on or made  
11 available to the other party during pendency of a charge with  
12 the Department. The Department may require the respondent to  
13 file a response to the allegations contained in the charge.  
14 Upon the Department's request, the respondent shall file a  
15 response to the charge within 60 days and shall serve a copy of  
16 its response on the complainant or his or her representative.  
17 Notwithstanding any request from the Department, the  
18 respondent may elect to file a response to the charge within 60  
19 days of receipt of notice of the charge, provided the  
20 respondent serves a copy of its response on the complainant or  
21 his or her representative. All allegations contained in the  
22 charge not denied by the respondent within 60 days of the  
23 Department's request for a response may be deemed admitted,  
24 unless the respondent states that it is without sufficient  
25 information to form a belief with respect to such allegation.  
26 The Department may issue a notice of default directed to any

1 respondent who fails to file a response to a charge within 60  
2 days of receipt of the Department's request, unless the  
3 respondent can demonstrate good cause as to why such notice  
4 should not issue. The term "good cause" shall be defined by  
5 rule promulgated by the Department. Within 30 days of receipt  
6 of the respondent's response, the complainant may file a reply  
7 to said response and shall serve a copy of said reply on the  
8 respondent or his or her representative. A party shall have the  
9 right to supplement his or her response or reply at any time  
10 that the investigation of the charge is pending. The Department  
11 shall, within 10 days of the date on which the charge was  
12 filed, and again no later than 335 days thereafter, send by  
13 certified or registered mail written notice to the complainant  
14 and to the respondent informing the complainant of the  
15 complainant's right to either file a complaint with the Human  
16 Rights Commission or commence a civil action in the appropriate  
17 circuit court under subparagraph (2) of paragraph (G),  
18 including in such notice the dates within which the complainant  
19 may exercise this right. In the notice the Department shall  
20 notify the complainant that the charge of civil rights  
21 violation will be dismissed with prejudice and with no right to  
22 further proceed if a written complaint is not timely filed with  
23 the Commission or with the appropriate circuit court by the  
24 complainant pursuant to subparagraph (2) of paragraph (G) or by  
25 the Department pursuant to subparagraph (1) of paragraph (G).

26 (B-1) Mediation. The complainant and respondent may agree



1 to voluntarily submit the charge to mediation without waiving  
2 any rights that are otherwise available to either party  
3 pursuant to this Act and without incurring any obligation to  
4 accept the result of the mediation process. Nothing occurring  
5 in mediation shall be disclosed by the Department or admissible  
6 in evidence in any subsequent proceeding unless the complainant  
7 and the respondent agree in writing that such disclosure be  
8 made.

9 (C) Investigation.

10 (1) The Department shall conduct an investigation  
11 sufficient to determine whether the allegations set forth  
12 in the charge are supported by substantial evidence.

13 (2) The Director or his or her designated  
14 representatives shall have authority to request any member  
15 of the Commission to issue subpoenas to compel the  
16 attendance of a witness or the production for examination  
17 of any books, records or documents whatsoever.

18 (3) If any witness whose testimony is required for any  
19 investigation resides outside the State, or through  
20 illness or any other good cause as determined by the  
21 Director is unable to be interviewed by the investigator or  
22 appear at a fact finding conference, his or her testimony  
23 or deposition may be taken, within or without the State, in  
24 the same manner as is provided for in the taking of  
25 depositions in civil cases in circuit courts.

26 (4) Upon reasonable notice to the complainant and the

1       respondent, the Department shall conduct a fact finding  
2       conference, unless prior to 365 days after the date on  
3       which the charge was filed the Director has determined  
4       whether there is substantial evidence that the alleged  
5       civil rights violation has been committed, the charge has  
6       been dismissed for lack of jurisdiction, or the parties  
7       voluntarily and in writing agree to waive the fact finding  
8       conference. Any party's failure to attend the conference  
9       without good cause shall result in dismissal or default.  
10      The term "good cause" shall be defined by rule promulgated  
11      by the Department. A notice of dismissal or default shall  
12      be issued by the Director. The notice of default issued by  
13      the Director shall notify the respondent that a request for  
14      review may be filed in writing with the Commission within  
15      30 days of receipt of notice of default. The notice of  
16      dismissal issued by the Director shall give the complainant  
17      notice of his or her right to seek review of the dismissal  
18      before the Human Rights Commission or commence a civil  
19      action in the appropriate circuit court. If the complainant  
20      chooses to have the Human Rights Commission review the  
21      dismissal order, he or she shall file a request for review  
22      with the Commission within 90 days after receipt of the  
23      Director's notice. If the complainant chooses to file a  
24      request for review with the Commission, he or she may not  
25      later commence a civil action in a circuit court. If the  
26      complainant chooses to commence a civil action in a circuit

1 court, he or she must do so within 90 days after receipt of  
2 the Director's notice.

3 (D) Report.

4 (1) Each charge shall be the subject of a report to the  
5 Director. The report shall be a confidential document  
6 subject to review by the Director, authorized Department  
7 employees, the parties, and, where indicated by this Act,  
8 members of the Commission or their designated hearing  
9 officers.

10 (2) Upon review of the report, the Director shall  
11 determine whether there is substantial evidence that the  
12 alleged civil rights violation has been committed. The  
13 determination of substantial evidence is limited to  
14 determining the need for further consideration of the  
15 charge pursuant to this Act and includes, but is not  
16 limited to, findings of fact and conclusions, as well as  
17 the reasons for the determinations on all material issues.  
18 Substantial evidence is evidence which a reasonable mind  
19 accepts as sufficient to support a particular conclusion  
20 and which consists of more than a mere scintilla but may be  
21 somewhat less than a preponderance.

22 (3) If the Director determines that there is no  
23 substantial evidence, the charge shall be dismissed by  
24 order of the Director and the Director shall give the  
25 complainant notice of his or her right to seek review of  
26 the dismissal order before the Commission or commence a

1 civil action in the appropriate circuit court. If the  
2 complainant chooses to have the Human Rights Commission  
3 review the dismissal order, he or she shall file a request  
4 for review with the Commission within 90 days after receipt  
5 of the Director's notice. If the complainant chooses to  
6 file a request for review with the Commission, he or she  
7 may not later commence a civil action in a circuit court.  
8 If the complainant chooses to commence a civil action in a  
9 circuit court, he or she must do so within 90 days after  
10 receipt of the Director's notice.

11 (4) If the Director determines that there is  
12 substantial evidence, he or she shall notify the  
13 complainant and respondent of that determination. The  
14 Director shall also notify the parties that the complainant  
15 has the right to either commence a civil action in the  
16 appropriate circuit court or request that the Department of  
17 Human Rights file a complaint with the Human Rights  
18 Commission on his or her behalf. Any such complaint shall  
19 be filed within 90 days after receipt of the Director's  
20 notice. If the complainant chooses to have the Department  
21 file a complaint with the Human Rights Commission on his or  
22 her behalf, the complainant must, within 30 days after  
23 receipt of the Director's notice, request in writing that  
24 the Department file the complaint. If the complainant  
25 timely requests that the Department file the complaint, the  
26 Department shall file the complaint on his or her behalf.

1 If the complainant fails to timely request that the  
2 Department file the complaint, the complainant may file his  
3 or her complaint with the Commission or commence a civil  
4 action in the appropriate circuit court. If the complainant  
5 files a complaint with the Human Rights Commission, the  
6 complainant shall give notice to the Department of the  
7 filing of the complaint with the Human Rights Commission.

8 (E) Conciliation.

9 (1) When there is a finding of substantial evidence,  
10 the Department may designate a Department employee who is  
11 an attorney licensed to practice in Illinois to endeavor to  
12 eliminate the effect of the alleged civil rights violation  
13 and to prevent its repetition by means of conference and  
14 conciliation.

15 (2) When the Department determines that a formal  
16 conciliation conference is necessary, the complainant and  
17 respondent shall be notified of the time and place of the  
18 conference by registered or certified mail at least 10 days  
19 prior thereto and either or both parties shall appear at  
20 the conference in person or by attorney.

21 (3) The place fixed for the conference shall be within  
22 35 miles of the place where the civil rights violation is  
23 alleged to have been committed.

24 (4) Nothing occurring at the conference shall be  
25 disclosed by the Department unless the complainant and  
26 respondent agree in writing that such disclosure be made.

1           (5) The Department's efforts to conciliate the matter  
2 shall not stay or extend the time for filing the complaint  
3 with the Commission or the circuit court.

4           (F) Complaint.

5           (1) When the complainant requests that the Department  
6 file a complaint with the Commission on his or her behalf,  
7 the Department shall prepare a written complaint, under  
8 oath or affirmation, stating the nature of the civil rights  
9 violation substantially as alleged in the charge  
10 previously filed and the relief sought on behalf of the  
11 aggrieved party. The Department shall file the complaint  
12 with the Commission.

13           (2) If the complainant chooses to commence a civil  
14 action in a circuit court, he or she must do so in the  
15 circuit court in the county wherein the civil rights  
16 violation was allegedly committed. The form of the  
17 complaint in any such civil action shall be in accordance  
18 with the Illinois Code of Civil Procedure.

19           (G) Time Limit.

20           (1) When a charge of a civil rights violation has been  
21 properly filed, the Department, within 365 days thereof or  
22 within any extension of that period agreed to in writing by  
23 all parties, shall issue its report as required by  
24 subparagraph (D). Any such report shall be duly served upon  
25 both the complainant and the respondent.

26           (2) If the Department has not issued its report within

1 365 days after the charge is filed, or any such longer  
2 period agreed to in writing by all the parties, the  
3 complainant shall have 90 days to either file his or her  
4 own complaint with the Human Rights Commission or commence  
5 a civil action in the appropriate circuit court. If the  
6 complainant files a complaint with the Commission, the form  
7 of the complaint shall be in accordance with the provisions  
8 of paragraph (F)(1). If the complainant commences a civil  
9 action in a circuit court, the form of the complaint shall  
10 be in accordance with the Illinois Code of Civil Procedure.  
11 The aggrieved party shall notify the Department that a  
12 complaint has been filed and shall serve a copy of the  
13 complaint on the Department on the same date that the  
14 complaint is filed with the Commission or in circuit court.  
15 If the complainant files a complaint with the Commission,  
16 he or she may not later commence a civil action in circuit  
17 court.

18 (3) If an aggrieved party files a complaint with the  
19 Human Rights Commission or commences a civil action in  
20 circuit court pursuant to paragraph (2) of this subsection,  
21 or if the time period for filing a complaint has expired,  
22 the Department shall immediately cease its investigation  
23 and dismiss the charge of civil rights violation. Any final  
24 order entered by the Commission under this Section is  
25 appealable in accordance with paragraph (B)(1) of Section  
26 8-111. Failure to immediately cease an investigation and

1 dismiss the charge of civil rights violation as provided in  
2 this paragraph (3) constitutes grounds for entry of an  
3 order by the circuit court permanently enjoining the  
4 investigation. The Department may also be liable for any  
5 costs and other damages incurred by the respondent as a  
6 result of the action of the Department.

7 (4) (Blank) ~~The Department shall stay any~~  
8 ~~administrative proceedings under this Section after the~~  
9 ~~filing of a civil action by or on behalf of the aggrieved~~  
10 ~~party under any federal or State law seeking relief with~~  
11 ~~respect to the alleged civil rights violation.~~

12 (H) This amendatory Act of 1995 applies to causes of action  
13 filed on or after January 1, 1996.

14 (I) This amendatory Act of 1996 applies to causes of action  
15 filed on or after January 1, 1996.

16 (J) The changes made to this Section by Public Act 95-243  
17 apply to charges filed on or after the effective date of those  
18 changes.

19 (K) The changes made to this Section by this amendatory Act  
20 of the 96th General Assembly apply to charges filed on or after  
21 the effective date of those changes.

22 (Source: P.A. 100-492, eff. 9-8-17.)