



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0061

Introduced 1/11/2017, by Sen. Dale A. Righter

SYNOPSIS AS INTRODUCED:

775 ILCS 5/7-109.1	from Ch. 68, par. 7-109.1
775 ILCS 5/7A-102	from Ch. 68, par. 7A-102
775 ILCS 5/8-103	from Ch. 68, par. 8-103

Amends the Illinois Human Rights Act. Provides that for specified types of charges pending before the Department of Human Rights, if the charging party has initiated litigation for the purpose of seeking final relief in a State or federal court or before an administrative law judge or hearing officer in an administrative proceeding before a local government administrative agency, and if a final decision on the merits in that litigation or administrative hearing would preclude the charging party from bringing another action based on the pending charge, the Department shall cease its investigation and dismiss the pending charge by order of the Director, who shall provide the charging party notice of his or her right to commence a civil action in the appropriate circuit court or other appropriate court of competent jurisdiction. Provides that the Director shall also provide the charging party notice of his or her right to seek review of the dismissal order before the Human Rights Commission. Provides that any review by the Commission of the dismissal shall be limited to the question of whether the charge was properly dismissed under the new provisions. Provides that the Department may continue to investigate an allegation in a charge that is unique to the Act or otherwise could not have been included in the litigation or administrative proceeding. Provides that for charges relating to real estate transactions, the Department may administratively close a charge pending before the Department if the issues that are the basis of the charge are being litigated in a State or federal court proceeding. Deletes language providing that the Department 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. Makes other changes.

LRB100 05682 HEP 15700 b

1 AN ACT concerning civil law.

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 Sections 7-109.1, 7A-102, and 8-103 as follows:

6 (775 ILCS 5/7-109.1) (from Ch. 68, par. 7-109.1)

7 Sec. 7-109.1. Administrative closure of charges ~~Federal or~~
8 ~~State Court Proceedings.~~

9 (a) For charges filed under Article 7A, if the charging
10 party has initiated litigation for the purpose of seeking final
11 relief in a State or federal court or before an administrative
12 law judge or hearing officer in an administrative proceeding
13 before a local government administrative agency, and if a final
14 decision on the merits in that litigation or administrative
15 hearing would preclude the charging party from bringing another
16 action based on the pending charge, the Department shall cease
17 its investigation and dismiss the pending charge by order of
18 the Director, who shall provide the charging party notice of
19 his or her right to commence a civil action in the appropriate
20 circuit court or other appropriate court of competent
21 jurisdiction. The Director shall also provide the charging
22 party notice of his or her right to seek review of the
23 dismissal order before the Commission. Any review by the

1 Commission of the dismissal shall be limited to the question of
2 whether the charge was properly dismissed pursuant to this
3 Section. Nothing in this Section shall preclude the Department
4 from continuing to investigate an allegation in a charge that
5 is unique to this Act or otherwise could not have been included
6 in the litigation or administrative proceeding.

7 (b) For charges filed under Article 7B, the ~~The~~ Department
8 may administratively close a charge pending before the
9 Department if the issues that ~~which~~ are the basis of the charge
10 are being litigated in a State or federal court proceeding.

11 (Source: P.A. 86-1343.)

12 (775 ILCS 5/7A-102) (from Ch. 68, par. 7A-102)

13 Sec. 7A-102. Procedures.

14 (A) Charge.

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

20 (2) The charge shall be in such detail as to
21 substantially apprise any party properly concerned as to
22 the time, place, and facts surrounding the alleged civil
23 rights violation.

24 (3) Charges deemed filed with the Department pursuant
25 to subsection (A-1) of this Section shall be deemed to be

1 in compliance with this subsection.

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

3 (1) If a charge is filed with the Equal Employment
4 Opportunity Commission (EEOC) within 180 days after the
5 date of the alleged civil rights violation, the charge
6 shall be deemed filed with the Department on the date filed
7 with the EEOC. If the EEOC is the governmental agency
8 designated to investigate the charge first, the Department
9 shall take no action until the EEOC makes a determination
10 on the charge and after the complainant notifies the
11 Department of the EEOC's determination. In such cases,
12 after receiving notice from the EEOC that a charge was
13 filed, the Department shall notify the parties that (i) a
14 charge has been received by the EEOC and has been sent to
15 the Department for dual filing purposes; (ii) the EEOC is
16 the governmental agency responsible for investigating the
17 charge and that the investigation shall be conducted
18 pursuant to the rules and procedures adopted by the EEOC;
19 (iii) it will take no action on the charge until the EEOC
20 issues its determination; (iv) the complainant must submit
21 a copy of the EEOC's determination within 30 days after
22 service of the determination by the EEOC on complainant;
23 and (v) that the time period to investigate the charge
24 contained in subsection (G) of this Section is tolled from
25 the date on which the charge is filed with the EEOC until
26 the EEOC issues its determination.

1 (2) If the EEOC finds reasonable cause to believe that
2 there has been a violation of federal law and if the
3 Department is timely notified of the EEOC's findings by
4 complainant, the Department shall notify complainant that
5 the Department has adopted the EEOC's determination of
6 reasonable cause and that complainant has the right, within
7 90 days after receipt of the Department's notice, to either
8 file his or her own complaint with the Illinois Human
9 Rights Commission or commence a civil action in the
10 appropriate circuit court or other appropriate court of
11 competent jurisdiction. The Department's notice to
12 complainant that the Department has adopted the EEOC's
13 determination of reasonable cause shall constitute the
14 Department's Report for purposes of subparagraph (D) of
15 this Section.

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

1 a dismissal for lack of substantial evidence unless the
2 complainant requests in writing within 35 days after
3 receipt of the Department's notice that the Department
4 review the EEOC's determination.

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

19 (b) If the complainant does file a written request
20 with the Department to review the EEOC's
21 determination, the Department shall review the EEOC's
22 determination and any evidence obtained by the EEOC
23 during its investigation. If, after reviewing the
24 EEOC's determination and any evidence obtained by the
25 EEOC, the Department determines there is no need for
26 further investigation of the charge, the Department

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

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

1 (5) The time limit set out in subsection (G) of this
2 Section is tolled from the date on which the charge is
3 filed with the EEOC to the date on which the EEOC issues
4 its determination.

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

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

25 (B-1) Mediation. The complainant and respondent may agree
26 to voluntarily submit the charge to mediation without waiving

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

8 (C) Investigation.

9 (1) After the respondent has been notified, the
10 Department shall conduct a full investigation of the
11 allegations set forth in the charge.

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

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

25 (4) Upon reasonable notice to the complainant and the
26 respondent, the Department shall conduct a fact finding

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

1 the Director's notice.

2 (D) Report.

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

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

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

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

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

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

7 (E) Conciliation.

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

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

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

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

26 (5) The Department's efforts to conciliate the matter

1 shall not stay or extend the time for filing the complaint
2 with the Commission or the circuit court.

3 (F) Complaint.

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

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

18 (G) Time Limit.

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

25 (2) If the Department has not issued its report within
26 365 days after the charge is filed, or any such longer

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

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

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

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

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

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

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

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

21 (Source: P.A. 96-876, eff. 2-2-10; 97-22, eff. 1-1-12; 97-596,
22 eff. 8-26-11; 97-813, eff. 7-13-12.)

23 (775 ILCS 5/8-103) (from Ch. 68, par. 8-103)

24 Sec. 8-103. Request for Review.

25 (A) Jurisdiction. The Commission, through a panel of three

1 members, shall have jurisdiction to hear and determine requests
2 for review of (1) decisions of the Department to dismiss a
3 charge; and (2) notices of default issued by the Department.

4 In each instance, the Department shall be the respondent.

5 (B) Review. When a request for review is properly filed,
6 the Commission may consider the Department's report, any
7 argument and supplemental evidence timely submitted, and the
8 results of any additional investigation conducted by the
9 Department in response to the request. However, if the
10 Commission is reviewing a dismissal order entered pursuant to
11 subsection (a) of Section 7-109.1 of this Act, the Commission's
12 review shall be limited to the question of whether the charge
13 was properly dismissed pursuant to that Section. In its
14 discretion, the Commission may designate a hearing officer to
15 conduct a hearing into the factual basis of the matter at
16 issue.

17 (C) Default Order. When a respondent fails to file a timely
18 request for review of a notice of default, or the default is
19 sustained on review, the Commission shall enter a default order
20 and notify the parties that the complainant has the right to
21 either commence a civil action in the appropriate circuit court
22 to determine the complainant's damages or request that the
23 Commission set a hearing on damages before one of its hearing
24 officers. The complainant shall have 90 days after receipt of
25 the Commission's default order to either commence a civil
26 action in the appropriate circuit court or request that the

1 Commission set a hearing on damages.

2 (D) Time Period Toll. Proceedings on requests for review
3 shall toll the time limitation established in paragraph (G) of
4 Section 7A-102 from the date on which the Department's notice
5 of dismissal or default is issued to the date on which the
6 Commission's order is entered.

7 (E) The changes made to this Section by Public Act 95-243
8 apply to charges or complaints filed with the Department or
9 Commission on or after the effective date of those changes.

10 (F) The changes made to this Section by this amendatory Act
11 of the 96th General Assembly apply to charges or complaints
12 filed with the Department or Commission on or after the
13 effective date of those changes.

14 (Source: P.A. 95-243, eff. 1-1-08; 96-876, eff. 2-2-10.)