

SB3574



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3574

Introduced 2/14/2020, by Sen. Melinda Bush

SYNOPSIS AS INTRODUCED:

775 ILCS 5/7A-102

from Ch. 68, par. 7A-102

Amends the Article of the Illinois Human Rights Act regarding procedures for the Department of Human Rights under Articles related to employment, financial credit, public accommodations, education, and additional civil rights violations. Deletes language providing that the Department shall conduct a fact finding conference, unless prior to 365 days after the date on which the charge was filed the Director of Human Rights has determined whether there is substantial evidence that the alleged civil rights violation has been committed, the charge has been dismissed for lack of jurisdiction, or the parties voluntarily and in writing agree to waive the fact finding conference. Provides instead that the Department may conduct a fact finding conference.

LRB101 16917 LNS 66316 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 300 calendar days after the date that a
10 civil rights violation allegedly has been committed, a
11 charge in writing under oath or affirmation may be filed
12 with the Department by an aggrieved party or issued by the
13 Department itself 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 300 calendar days

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

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

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

15 (3) For those charges alleging violations within the
16 jurisdiction of both the EEOC and the Department and for
17 which the EEOC either (i) does not issue a determination,
18 but does issue the complainant a notice of a right to sue,
19 including when the right to sue is issued at the request of
20 the complainant, or (ii) determines that it is unable to
21 establish that illegal discrimination has occurred and
22 issues the complainant a right to sue notice, and if the
23 Department is timely notified of the EEOC's determination
24 by the complainant, the Department shall notify the
25 parties, within 10 business days after receipt of the
26 EEOC's determination, that the Department will adopt the

1 EEOC's determination as a dismissal for lack of substantial
2 evidence unless the complainant requests in writing within
3 35 days after receipt of the Department's notice that the
4 Department 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 the
9 complainant, within 10 business days after the
10 expiration of the 35-day period, that the decision of
11 the EEOC has been adopted by the Department as a
12 dismissal for lack of substantial evidence and that the
13 complainant has the right, within 90 days after receipt
14 of the Department's notice, to commence a civil action
15 in the appropriate circuit court or other appropriate
16 court of competent jurisdiction. The Department's
17 notice to the complainant that the Department has
18 adopted the EEOC's determination shall constitute the
19 Department's report for purposes of subparagraph (D)
20 of this Section.

21 (b) If the complainant does file a written request
22 with the Department to review the EEOC's
23 determination, the Department shall review the EEOC's
24 determination and any evidence obtained by the EEOC
25 during its investigation. If, after reviewing the
26 EEOC's determination and any evidence obtained by the

1 EEOC, the Department determines there is no need for
2 further investigation of the charge, the Department
3 shall issue a report and the Director shall determine
4 whether there is substantial evidence that the alleged
5 civil rights violation has been committed pursuant to
6 subsection (D) of this Section ~~7A-102~~. If, after
7 reviewing the EEOC's determination and any evidence
8 obtained by the EEOC, the Department determines there
9 is a need for further investigation of the charge, the
10 Department may conduct any further investigation it
11 deems necessary. After reviewing the EEOC's
12 determination, the evidence obtained by the EEOC, and
13 any additional investigation conducted by the
14 Department, the Department shall issue a report and the
15 Director shall determine whether there is substantial
16 evidence that the alleged civil rights violation has
17 been committed pursuant to subsection (D) of this
18 Section ~~7A-102 of this Act~~.

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

1 (E), (F), (G), (H), (I), (J), and (K) of this Section
2 ~~7A-102 of this Act.~~

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

7 (6) The failure of the Department to meet the
8 10-business-day notification deadlines set out in
9 paragraph (2) of this subsection shall not impair the
10 rights of any party.

11 (B) Notice and Response to Charge. The Department shall,
12 within 10 days of the date on which the charge was filed, serve
13 a copy of the charge on the respondent and provide all parties
14 with a notice of the complainant's right to opt out of the
15 investigation within 60 days as set forth in subsection (C-1).
16 This period shall not be construed to be jurisdictional. The
17 charging party and the respondent may each file a position
18 statement and other materials with the Department regarding the
19 charge of alleged discrimination within 60 days of receipt of
20 the notice of the charge. The position statements and other
21 materials filed shall remain confidential unless otherwise
22 agreed to by the party providing the information and shall not
23 be served on or made available to the other party during the
24 pendency of a charge with the Department. The Department may
25 require the respondent to file a response to the allegations
26 contained in the charge. Upon the Department's request, the

1 respondent shall file a response to the charge within 60 days
2 and shall serve a copy of its response on the complainant or
3 his or her representative. Notwithstanding any request from the
4 Department, the respondent may elect to file a response to the
5 charge within 60 days of receipt of notice of the charge,
6 provided the respondent serves a copy of its response on the
7 complainant or his or her representative. All allegations
8 contained in the charge not denied by the respondent within 60
9 days of the Department's request for a response may be deemed
10 admitted, unless the respondent states that it is without
11 sufficient information to form a belief with respect to such
12 allegation. The Department may issue a notice of default
13 directed to any respondent who fails to file a response to a
14 charge within 60 days of receipt of the Department's request,
15 unless the respondent can demonstrate good cause as to why such
16 notice should not issue. The term "good cause" shall be defined
17 by rule promulgated by the Department. Within 30 days of
18 receipt of the respondent's response, the complainant may file
19 a reply to said response and shall serve a copy of said reply
20 on the respondent or his or her representative. A party shall
21 have the right to supplement his or her response or reply at
22 any time that the investigation of the charge is pending. The
23 Department shall, within 10 days of the date on which the
24 charge was filed, and again no later than 335 days thereafter,
25 send by certified or registered mail, or electronic mail if
26 elected by the party, written notice to the complainant and to

1 the respondent informing the complainant of the complainant's
2 rights to either file a complaint with the Human Rights
3 Commission or commence a civil action in the appropriate
4 circuit court under subparagraph (2) of paragraph (G),
5 including in such notice the dates within which the complainant
6 may exercise these rights. In the notice the Department shall
7 notify the complainant that the charge of civil rights
8 violation will be dismissed with prejudice and with no right to
9 further proceed if a written complaint is not timely filed with
10 the Commission or with the appropriate circuit court by the
11 complainant pursuant to subparagraph (2) of paragraph (G) or by
12 the Department pursuant to subparagraph (1) of paragraph (G).

13 (B-1) Mediation. The complainant and respondent may agree
14 to voluntarily submit the charge to mediation without waiving
15 any rights that are otherwise available to either party
16 pursuant to this Act and without incurring any obligation to
17 accept the result of the mediation process. Nothing occurring
18 in mediation shall be disclosed by the Department or admissible
19 in evidence in any subsequent proceeding unless the complainant
20 and the respondent agree in writing that such disclosure be
21 made.

22 (C) Investigation.

23 (1) The Department shall conduct an investigation
24 sufficient to determine whether the allegations set forth
25 in the charge are supported by substantial evidence unless
26 the complainant elects to opt out of an investigation

1 pursuant to subsection (C-1).

2 (2) The Director or his or her designated
3 representatives shall have authority to request any member
4 of the Commission to issue subpoenas to compel the
5 attendance of a witness or the production for examination
6 of any books, records or documents whatsoever.

7 (3) If any witness whose testimony is required for any
8 investigation resides outside the State, or through
9 illness or any other good cause as determined by the
10 Director is unable to be interviewed by the investigator or
11 appear at a fact finding conference, his or her testimony
12 or deposition may be taken, within or without the State, in
13 the same manner as is provided for in the taking of
14 depositions in civil cases in circuit courts.

15 (4) Upon reasonable notice to the complainant and the
16 respondent, the Department may ~~shall~~ conduct a fact finding
17 conference, ~~unless prior to 365 days after the date on~~
18 ~~which the charge was filed the Director has determined~~
19 ~~whether there is substantial evidence that the alleged~~
20 ~~civil rights violation has been committed, the charge has~~
21 ~~been dismissed for lack of jurisdiction, or the parties~~
22 ~~voluntarily and in writing agree to waive the fact finding~~
23 ~~conference.~~ When requested by the Department, a ~~Any~~ party's
24 failure to attend the conference without good cause shall
25 result in dismissal or default. The term "good cause" shall
26 be defined by rule promulgated by the Department. A notice

1 of dismissal or default shall be issued by the Director.
2 The notice of default issued by the Director shall notify
3 the respondent that a request for review may be filed in
4 writing with the Commission within 30 days of receipt of
5 notice of default. The notice of dismissal issued by the
6 Director shall give the complainant notice of his or her
7 right to seek review of the dismissal before the Human
8 Rights Commission or commence a civil action in the
9 appropriate circuit court. If the complainant chooses to
10 have the Human Rights Commission review the dismissal
11 order, he or she shall file a request for review with the
12 Commission within 90 days after receipt of the Director's
13 notice. If the complainant chooses to file a request for
14 review with the Commission, he or she may not later
15 commence a civil action in a circuit court. If the
16 complainant chooses to commence a civil action in a circuit
17 court, he or she must do so within 90 days after receipt of
18 the Director's notice.

19 (C-1) Opt out of Department's investigation. At any time
20 within 60 days after receipt of notice of the right to opt out,
21 a complainant may submit a written request seeking notice from
22 the Director indicating that the complainant has opted out of
23 the investigation and may commence a civil action in the
24 appropriate circuit court or other appropriate court of
25 competent jurisdiction. Within 10 business days of receipt of
26 the complainant's request to opt out of the investigation, the

1 Director shall issue a notice to the parties stating that: (i)
2 the complainant has exercised the right to opt out of the
3 investigation; (ii) the complainant has 90 days after receipt
4 of the Director's notice to commence an action in the
5 appropriate circuit court or other appropriate court of
6 competent jurisdiction; and (iii) the Department has ceased its
7 investigation and is administratively closing the charge. The
8 complainant shall notify the Department and the respondent that
9 a complaint has been filed with the appropriate circuit court
10 or other appropriate court of competent jurisdiction and shall
11 mail a copy of the complaint to the Department and the
12 respondent on the same date that the complaint is filed with
13 the appropriate court. Once a complainant has opted out of the
14 investigation under this subsection, he or she may not file or
15 refile a substantially similar charge with the Department
16 arising from the same incident of unlawful discrimination or
17 harassment.

18 (D) Report.

19 (1) Each charge investigated under subsection (C)
20 shall be the subject of a report to the Director. The
21 report shall be a confidential document subject to review
22 by the Director, authorized Department employees, the
23 parties, and, where indicated by this Act, members of the
24 Commission or their designated hearing officers.

25 (2) Upon review of the report, the Director shall
26 determine whether there is substantial evidence that the

1 alleged civil rights violation has been committed. The
2 determination of substantial evidence is limited to
3 determining the need for further consideration of the
4 charge pursuant to this Act and includes, but is not
5 limited to, findings of fact and conclusions, as well as
6 the reasons for the determinations on all material issues.
7 Substantial evidence is evidence which a reasonable mind
8 accepts as sufficient to support a particular conclusion
9 and which consists of more than a mere scintilla but may be
10 somewhat less than a preponderance.

11 (3) If the Director determines that there is no
12 substantial evidence, the charge shall be dismissed by
13 order of the Director and the Director shall give the
14 complainant notice of his or her right to seek review of
15 the dismissal order before the Commission or commence a
16 civil action in the appropriate circuit court. If the
17 complainant chooses to have the Human Rights Commission
18 review the dismissal order, he or she shall file a request
19 for review with the Commission within 90 days after receipt
20 of the Director's notice. If the complainant chooses to
21 file a request for review with the Commission, he or she
22 may not later commence a civil action in a circuit court.
23 If the complainant chooses to commence a civil action in a
24 circuit court, he or she must do so within 90 days after
25 receipt of the Director's notice.

26 (4) If the Director determines that there is

1 substantial evidence, he or she shall notify the
2 complainant and respondent of that determination. The
3 Director shall also notify the parties that the complainant
4 has the right to either commence a civil action in the
5 appropriate circuit court or request that the Department of
6 Human Rights file a complaint with the Human Rights
7 Commission on his or her behalf. Any such complaint shall
8 be filed within 90 days after receipt of the Director's
9 notice. If the complainant chooses to have the Department
10 file a complaint with the Human Rights Commission on his or
11 her behalf, the complainant must, within 30 days after
12 receipt of the Director's notice, request in writing that
13 the Department file the complaint. If the complainant
14 timely requests that the Department file the complaint, the
15 Department shall file the complaint on his or her behalf.
16 If the complainant fails to timely request that the
17 Department file the complaint, the complainant may file his
18 or her complaint with the Commission or commence a civil
19 action in the appropriate circuit court. If the complainant
20 files a complaint with the Human Rights Commission, the
21 complainant shall give notice to the Department of the
22 filing of the complaint with the Human Rights Commission.

23 (E) Conciliation.

24 (1) When there is a finding of substantial evidence,
25 the Department may designate a Department employee who is
26 an attorney licensed to practice in Illinois to endeavor to

1 eliminate the effect of the alleged civil rights violation
2 and to prevent its repetition by means of conference and
3 conciliation.

4 (2) When the Department determines that a formal
5 conciliation conference is necessary, the complainant and
6 respondent shall be notified of the time and place of the
7 conference by registered or certified mail at least 10 days
8 prior thereto and either or both parties shall appear at
9 the conference in person or by attorney.

10 (3) The place fixed for the conference shall be within
11 35 miles of the place where the civil rights violation is
12 alleged to have been committed.

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

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

19 (F) Complaint.

20 (1) When the complainant requests that the Department
21 file a complaint with the Commission on his or her behalf,
22 the Department shall prepare a written complaint, under
23 oath or affirmation, stating the nature of the civil rights
24 violation substantially as alleged in the charge
25 previously filed and the relief sought on behalf of the
26 aggrieved party. The Department shall file the complaint

1 with the Commission.

2 (2) If the complainant chooses to commence a civil
3 action in a circuit court, he or she must do so in the
4 circuit court in the county wherein the civil rights
5 violation was allegedly committed. The form of the
6 complaint in any such civil action shall be in accordance
7 with the ~~Illinois~~ Code of Civil Procedure.

8 (G) Time Limit.

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

15 (2) If the Department has not issued its report within
16 365 days after the charge is filed, or any such longer
17 period agreed to in writing by all the parties, the
18 complainant shall have 90 days to either file his or her
19 own complaint with the Human Rights Commission or commence
20 a civil action in the appropriate circuit court. If the
21 complainant files a complaint with the Commission, the form
22 of the complaint shall be in accordance with the provisions
23 of paragraph (F)(1). If the complainant commences a civil
24 action in a circuit court, the form of the complaint shall
25 be in accordance with the ~~Illinois~~ Code of Civil Procedure.
26 The aggrieved party shall notify the Department that a

1 complaint has been filed and shall serve a copy of the
2 complaint on the Department on the same date that the
3 complaint is filed with the Commission or in circuit court.
4 If the complainant files a complaint with the Commission,
5 he or she may not later commence a civil action in circuit
6 court.

7 (3) If an aggrieved party files a complaint with the
8 Human Rights Commission or commences a civil action in
9 circuit court pursuant to paragraph (2) of this subsection,
10 or if the time period for filing a complaint has expired,
11 the Department shall immediately cease its investigation
12 and dismiss the charge of civil rights violation. Any final
13 order entered by the Commission under this Section is
14 appealable in accordance with paragraph (B) (1) of Section
15 8-111. Failure to immediately cease an investigation and
16 dismiss the charge of civil rights violation as provided in
17 this paragraph (3) constitutes grounds for entry of an
18 order by the circuit court permanently enjoining the
19 investigation. The Department may also be liable for any
20 costs and other damages incurred by the respondent as a
21 result of the action of the Department.

22 (4) (Blank).

23 (H) Public Act 89-370 ~~This amendatory Act of 1995~~ applies
24 to causes of action filed on or after January 1, 1996.

25 (I) Public Act 89-520 ~~This amendatory Act of 1996~~ applies
26 to causes of action filed on or after January 1, 1996.

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

4 (K) The changes made to this Section by Public Act 96-876
5 ~~this amendatory Act of the 96th General Assembly~~ apply to
6 charges filed on or after the effective date of those changes.

7 (L) The changes made to this Section by Public Act 100-1066
8 ~~this amendatory Act of the 100th General Assembly~~ apply to
9 charges filed on or after August 24, 2018 (the effective date
10 of Public Act 100-1066) ~~this amendatory Act of the 100th~~
11 ~~General Assembly.~~

12 (Source: P.A. 100-492, eff. 9-8-17; 100-588, eff. 6-8-18;
13 100-1066, eff. 8-24-18; 101-221, eff. 1-1-20; revised
14 9-12-19.)