

SB3677



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3677

Introduced 2/10/2012, by Sen. William Delgado

SYNOPSIS AS INTRODUCED:

775 ILCS 5/10-104

Amends provisions of the Illinois Human Rights Act concerning preliminary investigations by the Attorney General before the initiation of civil actions in circuit court. Provides that, if a person fails to comply with a subpoena or if satisfactory copying or reproduction of any material requested in an investigation cannot be done and the person refuses to surrender the material, the Attorney General may file a petition for a court order for the enforcement of the subpoena or other request. Contains provisions regarding: venue; petitions to modify or set aside a subpoena; hearings; orders; and enforcement. Deletes language providing that if a person fails or refuses to file a statement or report or obey a subpoena, the Attorney General is deemed to have met the requirement of conducting a preliminary investigation and may commence a civil action to enforce the provisions of the Act.

LRB097 15867 AJO 61533 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 10-104 as follows:

6 (775 ILCS 5/10-104)

7 Sec. 10-104. Circuit Court Actions by the Illinois Attorney
8 General.

9 (A) Standing, venue, limitations on actions, preliminary
10 investigations, notice, and Assurance of Voluntary Compliance.

11 (1) Whenever the Illinois Attorney General has
12 reasonable cause to believe that any person or group of
13 persons is engaged in a pattern and practice of
14 discrimination prohibited by this Act, the Illinois
15 Attorney General may commence a civil action in the name of
16 the People of the State, as parens patriae on behalf of
17 persons within the State to enforce the provisions of this
18 Act in any appropriate circuit court. Venue for this civil
19 action shall be determined under paragraph (6) of
20 subsection (C) of Section 8-111~~(B)(6)~~. Such actions shall
21 be commenced no later than 2 years after the occurrence or
22 the termination of an alleged civil rights violation or the
23 breach of a conciliation agreement or Assurance of

1 Voluntary Compliance entered into under this Act,
2 whichever occurs last, to obtain relief with respect to the
3 alleged civil rights violation or breach.

4 (2) Prior to initiating a civil action, the Attorney
5 General shall conduct a preliminary investigation to
6 determine whether there is reasonable cause to believe that
7 any person or group of persons is engaged in a pattern and
8 practice of discrimination declared unlawful by this Act
9 and whether the dispute can be resolved without litigation.
10 In conducting this investigation, the Attorney General
11 may:

12 (a) require the individual or entity to file a
13 statement or report in writing under oath or otherwise,
14 as to all information the Attorney General may consider
15 necessary;

16 (b) examine under oath any person alleged to have
17 participated in or with knowledge of the alleged
18 pattern and practice violation; or

19 (c) issue subpoenas or conduct hearings in aid of
20 any investigation.

21 (3) Service by the Attorney General of any notice
22 requiring a person to file a statement or report, or of a
23 subpoena upon any person, shall be made:

24 (a) personally by delivery of a duly executed copy
25 thereof to the person to be served or, if a person is
26 not a natural person, in the manner provided in the

1 Code of Civil Procedure when a complaint is filed; or

2 (b) by mailing by certified mail a duly executed
3 copy thereof to the person to be served at his or her
4 last known abode or principal place of business within
5 this State.

6 (4) In lieu of a civil action, the individual or entity
7 alleged to have engaged in a pattern or practice of
8 discrimination deemed violative of this Act may enter into
9 an Assurance of Voluntary Compliance with respect to the
10 alleged pattern or practice violation.

11 (5) The Illinois Attorney General may commence a civil
12 action under this subsection (A) whether or not a charge
13 has been filed under Sections 7A-102 or 7B-102 and without
14 regard to the status of any charge, however, if the
15 Department or local agency has obtained a conciliation or
16 settlement agreement or if the parties have entered into an
17 Assurance of Voluntary Compliance no action may be filed
18 under this subsection (A) with respect to the alleged civil
19 rights violation practice that forms the basis for the
20 complaint except for the purpose of enforcing the terms of
21 the conciliation or settlement agreement or the terms of
22 the Assurance of Voluntary Compliance.

23 (6) Subpoenas.

24 (a) Petition for enforcement. Whenever any person
25 fails to comply with any subpoena issued under
26 paragraph (2) of this subsection (A), or whenever

1 satisfactory copying or reproduction of any material
2 requested in an investigation cannot be done and the
3 person refuses to surrender the material, the Attorney
4 General may file in any appropriate circuit court, and
5 serve upon the person, a petition for a court order for
6 the enforcement of the subpoena or other request. Venue
7 for this enforcement action shall be determined under
8 paragraph (C) (6) of Section 8-111.

9 (b) Petition to modify or set aside a subpoena.

10 (i) Any person who has received a subpoena
11 issued under paragraph (2) of this subsection (A)
12 may file in the appropriate circuit court, and
13 serve upon the Attorney General, a petition for a
14 court order to modify or set aside the subpoena or
15 other request. The petition must be filed either
16 (I) within 20 days after the date of service of the
17 subpoena or at any time before the return date
18 specified in the subpoena, whichever date is
19 earlier, or (II) within such longer period as may
20 be prescribed in writing by the Attorney General.

21 (ii) The petition shall specify each ground
22 upon which the petitioner relies in seeking relief
23 under subdivision (i) and may be based upon any
24 failure of the subpoena to comply with the
25 provisions of this Section or upon any
26 constitutional or other legal right or privilege

1 of the petitioner. During the pendency of the
2 petition in the court, the court may stay, as it
3 deems proper, the running of the time allowed for
4 compliance with the subpoena or other request, in
5 whole or in part, except that the petitioner shall
6 comply with any portion of the subpoena or other
7 request not sought to be modified or set aside.

8 (c) Jurisdiction. Whenever any petition is filed
9 in any circuit court under this paragraph (6), the
10 court shall have jurisdiction to hear and determine the
11 matter so presented and to enter such orders as may be
12 required to carry out the provisions of this Section.
13 Any final order so entered shall be subject to appeal
14 in the same manner as appeals of other final orders in
15 civil matters. Any disobedience of any final order
16 entered under this paragraph (6) by any court shall be
17 punished as a contempt of the court. ~~If any person~~
18 ~~fails or refuses to file any statement or report, or~~
19 ~~obey any subpoena, issued pursuant to subdivision~~
20 ~~(A) (2) of this Section, the Attorney General will be~~
21 ~~deemed to have met the requirement of conducting a~~
22 ~~preliminary investigation and may proceed to initiate~~
23 ~~a civil action pursuant to subdivision (A) (1) of this~~
24 ~~Section.~~

25 (B) Relief which may be granted.

26 (1) In any civil action brought pursuant to subsection

1 (A) of this Section, the Attorney General may obtain as a
2 remedy, equitable relief (including any permanent or
3 preliminary injunction, temporary restraining order, or
4 other order, including an order enjoining the defendant
5 from engaging in such civil rights violation or ordering
6 any action as may be appropriate). In addition, the
7 Attorney General may request and the Court may impose a
8 civil penalty to vindicate the public interest:

9 (a) for violations of Article 3 and Article 4 in an
10 amount not exceeding \$25,000 per violation, and in the
11 case of violations of all other Articles in an amount
12 not exceeding \$10,000 if the defendant has not been
13 adjudged to have committed any prior civil rights
14 violations under the provision of the Act that is the
15 basis of the complaint;

16 (b) for violations of Article 3 and Article 4 in an
17 amount not exceeding \$50,000 per violation, and in the
18 case of violations of all other Articles in an amount
19 not exceeding \$25,000 if the defendant has been
20 adjudged to have committed one other civil rights
21 violation under the provision of the Act within 5 years
22 of the occurrence of the civil rights violation that is
23 the basis of the complaint; and

24 (c) for violations of Article 3 and Article 4 in an
25 amount not exceeding \$75,000 per violation, and in the
26 case of violations of all other Articles in an amount

1 not exceeding \$50,000 if the defendant has been
2 adjudged to have committed 2 or more civil rights
3 violations under the provision of the Act within 5
4 years of the occurrence of the civil rights violation
5 that is the basis of the complaint.

6 (2) A civil penalty imposed under subdivision (B) (1) of
7 this Section shall be deposited into the Attorney General
8 Court Ordered and Voluntary Compliance Payment Projects
9 Fund, which is a special fund in the State Treasury. Moneys
10 in the Fund shall be used, subject to appropriation, for
11 the performance of any function pertaining to the exercise
12 of the duties of the Attorney General including but not
13 limited to enforcement of any law of this State and
14 conducting public education programs; however, any moneys
15 in the Fund that are required by the court or by an
16 agreement to be used for a particular purpose shall be used
17 for that purpose.

18 (3) Aggrieved parties seeking actual damages must
19 follow the procedure set out in Sections 7A-102 or 7B-102
20 for filing a charge.

21 (Source: P.A. 95-961, eff. 9-23-08.)