

CHAPTER 2020-153

Committee Substitute for House Bill No. 255

An act relating to the Florida Commission on Human Relations; amending s. 760.03, F.S.; providing quorum requirements for the Commission on Human Relations and its panels; amending s. 760.065, F.S.; revising the number of persons the commission may recommend for the Florida Civil Rights Hall of Fame; amending s. 760.11, F.S.; requiring the commission to provide notice to an aggrieved person under specified circumstances; providing notice requirements; providing a limitation on the time a civil action may be filed after an alleged violation of the Florida Civil Rights Act; amending s. 760.29, F.S.; deleting a requirement that a facility or community that provides housing for older persons register with and submit a letter to the commission; amending s. 760.31, F.S.; conforming a provision; amending s. 760.60, F.S.; deleting the requirement for the commission or Attorney General to investigate a complaint of discrimination in evaluating an application for club membership; revising the length of time the commission or Attorney General has to resolve such a complaint; amending s. 112.31895, F.S.; revising the timeline relating to a complaint alleging a prohibited personnel action; deleting a requirement that the commission notify a complainant upon receipt of the complaint; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 760.03, Florida Statutes, is amended to read:

760.03 Commission on Human Relations; staff.—

(5) ~~Six Seven~~ members shall constitute a quorum for the conduct of business; however, the commission may establish panels of not less than three of its members to exercise its powers under the Florida Civil Rights Act of 1992, subject to such procedures and limitations as the commission may provide by rule. Notwithstanding this subsection, three appointed members serving on panels shall constitute a quorum for the conduct of official business of the panel.

Section 2. Paragraph (a) of subsection (3) of section 760.065, Florida Statutes, is amended to read:

760.065 Florida Civil Rights Hall of Fame.—

(3)(a) The commission shall annually accept nominations for persons to be recommended as members of the Florida Civil Rights Hall of Fame. The commission shall recommend up to 10 persons from which the Governor shall select up to 3 hall-of-fame members.

Section 3. Subsections (2), (4), and (8) of section 760.11, Florida Statutes, are amended to read:

760.11 Administrative and civil remedies; construction.—

(2) ~~If In the event that~~ any other agency of the state or of any other unit of government of the state has jurisdiction of the subject matter of any complaint filed with the commission and has legal authority to investigate the complaint, the commission may refer such complaint to such agency for an investigation. Referral of such a complaint by the commission does shall not constitute agency action within the meaning of s. 120.52. If the commission refers a complaint to another agency ~~In the event of any referral~~ under this subsection, the commission shall accord substantial weight to any findings and conclusions of any such agency. The referral of a complaint by the commission to a local agency does not divest the commission’s jurisdiction over the complaint.

(4) ~~If In the event that~~ the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either:

- (a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or
- (b) Request an administrative hearing under ss. 120.569 and 120.57.

The election by the aggrieved person of filing a civil action or requesting an administrative hearing under this subsection is the exclusive procedure available to the aggrieved person under pursuant to this act.

(8) ~~If In the event that~~ the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days after of the filing of the complaint;;

(a) An aggrieved person may proceed under subsection (4); as if the commission determined that there was reasonable cause.

(b) The commission shall promptly notify the aggrieved person of the failure to conciliate or determine whether there is reasonable cause. The notice shall provide the options available to the aggrieved person under subsection (4) and inform the aggrieved person that he or she must file a civil action within 1 year after the date the commission certifies that the notice was mailed.

(c) A civil action brought by an aggrieved person under this section must be commenced within 1 year after the date the commission certifies that the notice was mailed pursuant to paragraph (b).

Section 4. Subsection (4) of section 760.29, Florida Statutes, is amended to read:

760.29 Exemptions.—

(4)(a) Any provision of ss. 760.20-760.37 regarding familial status does not apply with respect to housing for older persons.

(b) As used in this subsection, the term “housing for older persons” means housing:

1. Provided under any state or federal program that the commission determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;

2. Intended for, and solely occupied by, persons 62 years of age or older; or

3. Intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:

a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph. If the housing facility or community meets the requirements of sub-subparagraphs a. and c. and the recorded governing documents provide for an adult, senior, or retirement housing facility or community and the governing documents lack an amendatory procedure, prohibit amendments, or restrict amendments until a specified future date, then that housing facility or community shall be deemed housing for older persons intended and operated for occupancy by persons 55 years of age or older. If those documents further provide a prohibition against residents 16 years of age or younger, that provision shall be construed, for purposes of the Fair Housing Act, to only apply to residents 18 years of age or younger, in order to conform with federal law requirements. Governing documents which can be amended at a future date must be amended and properly recorded within 1 year after that date to reflect the requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons.

c. The housing facility or community complies with rules made by the Secretary of the United States Department of Housing and Urban Development pursuant to 24 C.F.R. part 100 for verification of occupancy, which rules provide for verification by reliable surveys and affidavits and include examples of the types of policies and procedures relevant to a determination of compliance with the requirements of sub-subparagraph b. Such surveys and affidavits are admissible in administrative and judicial proceedings for the purposes of such verification.

(c) Housing may still ~~shall not fail to~~ be considered housing for older persons if:

1. A person who resides in such housing on or after October 1, 1989, does not meet the age requirements of this subsection, provided that any new occupant meets such age requirements; or

2. One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.

(d) A person is shall not be personally liable for monetary damages for a violation of this subsection if such person reasonably relied in good faith on the application of the exemption under this subsection relating to housing for older persons. For purposes of this paragraph, a person may show good faith reliance on the application of the exemption only by showing that:

1. The person has no actual knowledge that the facility or the community is ineligible, or will become ineligible, for such exemption; and

2. The facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

~~(e) A facility or community claiming an exemption under this subsection shall register with the commission and submit a letter to the commission stating that the facility or community complies with the requirements of subparagraph (b)1., subparagraph (b)2., or subparagraph (b)3. The letter shall be submitted on the letterhead of the facility or community and shall be signed by the president of the facility or community. This registration and documentation shall be renewed biennially from the date of original filing. The information in the registry shall be made available to the public, and the commission shall include this information on an Internet website. The commission may establish a reasonable registration fee, not to exceed \$20, that shall be deposited into the commission’s trust fund to defray the administrative costs associated with maintaining the registry. The commission may impose an administrative fine, not to exceed \$500, on a facility or community that knowingly submits false information in the documentation required by this paragraph. Such fines shall be deposited in the commission’s trust fund. The registration and documentation required by this paragraph shall not substitute for proof of compliance with the requirements of this subsection. Failure to comply with the requirements of this paragraph shall not disqualify a facility or community that otherwise qualifies for the exemption provided in this subsection.~~

A county or municipal ordinance regarding housing for older persons may not contravene the provisions of this subsection.

Section 5. Subsection (5) of section 760.31, Florida Statutes, is amended to read:

760.31 Powers and duties of commission.—The commission shall:

(5) Adopt rules necessary to implement ss. 760.20-760.37 and govern the proceedings of the commission in accordance with chapter 120. Commission

rules shall clarify terms used with regard to handicapped accessibility, exceptions from accessibility requirements based on terrain or site characteristics, and requirements related to housing for older persons. ~~Commission rules shall specify the fee and the forms and procedures to be used for the registration required by s. 760.29(4)(e).~~

Section 6. Subsections (2) and (3) of section 760.60, Florida Statutes, are amended to read:

760.60 Discriminatory practices of certain clubs prohibited; remedies.

(2) A person who has been discriminated against in violation of this act may file a complaint with the Commission on Human Relations or with the Attorney General’s Office of Civil Rights. A complaint must be in writing and must contain such information and be in such form as the commission requires. Upon receipt of a complaint, the commission or the Attorney General shall provide a copy to the person who represents the club. Within 30 days after receiving a complaint, the commission or the Attorney General shall ~~investigate the alleged discrimination and~~ give notice in writing to the person who filed the complaint if it intends to resolve the complaint. If the commission or the Attorney General decides to resolve the complaint, it shall attempt to eliminate or correct the alleged discriminatory practices of a club by informal methods of conference, conciliation, and persuasion.

(3) If the commission or the Attorney General fails, within 30 days after receiving a complaint filed under pursuant to subsection (2), to give notice of its intent to resolve the complaint ~~to eliminate or correct the alleged discriminatory practices of a club~~, or if the commission or the Attorney General fails to resolve the complaint within ~~45~~ 30 days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action in a court against the club, its officers, or its members to enforce this section. If the court finds that a discriminatory practice occurs at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.

Section 7. Subsections (1) and (2), paragraphs (d) and (e) of subsection (3), and paragraph (a) of subsection (4) of section 112.31895, Florida Statutes, are amended to read:

112.31895 Investigative procedures in response to prohibited personnel actions.—

(1)(a) If a disclosure under s. 112.3187 includes or results in alleged retaliation by an employer, the employee or former employee of, or applicant for employment with, a state agency, as defined in s. 216.011, that is so affected may file a complaint alleging a prohibited personnel action, which complaint must be made by filing a written complaint with the Office of the Chief Inspector General in the Executive Office of the Governor or the

Florida Commission on Human Relations, no later than 60 days after the prohibited personnel action.

(b) Within ~~5~~ three working days after receiving a complaint under this section, the office or officer receiving the complaint shall acknowledge receipt of the complaint and provide copies of the complaint and any other preliminary information available concerning the disclosure of information under s. 112.3187 to each of the other parties named in paragraph (a), which parties shall each acknowledge receipt of such copies to the complainant.

(2) FACT FINDING.—The Florida Commission on Human Relations shall:

(a) Receive any allegation of a personnel action prohibited by s. 112.3187, including a proposed or potential action, and conduct informal fact finding regarding any allegation under this section, to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel action under s. 112.3187 has occurred, is occurring, or is to be taken.

~~(b) Notify the complainant, within 15 days after receiving a complaint, that the complaint has been received by the department.~~

~~(b)(e)~~ Within 180 ~~90~~ days after receiving the complaint, provide the agency head and the complainant with a fact-finding report that may include recommendations to the parties or proposed resolution of the complaint. The fact-finding report shall be presumed admissible in any subsequent or related administrative or judicial review.

(3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

(d) If the Florida Commission on Human Relations is unable to conciliate a complaint within ~~35~~ 60 days after providing the agency head and complainant with receipt of the fact-finding report, the Florida Commission on Human Relations shall terminate the investigation. Upon termination of any investigation, the Florida Commission on Human Relations shall notify the complainant and the agency head of the termination of the investigation, providing a summary of relevant facts found during the investigation and the reasons for terminating the investigation. A written statement under this paragraph is presumed admissible as evidence in any judicial or administrative proceeding but is not admissible without the consent of the complainant.

(e)1. The Florida Commission on Human Relations may request an agency or circuit court to order a stay, on such terms as the court requires, of any personnel action for 45 days if the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a prohibited personnel action has occurred, is occurring, or is to be taken.

The Florida Commission on Human Relations may request that such stay be extended for appropriate periods of time.

2. If, in connection with any investigation, the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a prohibited action has occurred, is occurring, or is to be taken which requires corrective action, the Florida Commission on Human Relations shall report the determination together with any findings or recommendations to the agency head and may report that determination and those findings and recommendations to the Governor and the Chief Financial Officer. The Florida Commission on Human Relations may include in the report recommendations for corrective action to be taken.

3. If, after ~~35~~ 20 days, the agency does not implement the recommended action, the Florida Commission on Human Relations shall terminate the investigation and notify the complainant of the right to appeal under subsection (4), or may petition the agency for corrective action under this subsection.

4. If the Florida Commission on Human Relations finds, in consultation with the individual subject to the prohibited action, that the agency has implemented the corrective action, the commission shall file such finding with the agency head, together with any written comments that the individual provides, and terminate the investigation.

(4) RIGHT TO APPEAL.—

(a) Not more than 21 ~~60~~ days after receipt of a notice of termination of the investigation from the Florida Commission on Human Relations, the complainant may file, with the Public Employees Relations Commission, a complaint against the employer-agency regarding the alleged prohibited personnel action. The Public Employees Relations Commission shall have jurisdiction over such complaints under ss. 112.3187 and 447.503(4) and (5).

Section 8. This act shall take effect July 1, 2020.

Approved by the Governor June 30, 2020.

Filed in Office Secretary of State June 30, 2020.