

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 410

INTRODUCER: Senator Braynon

SUBJECT: Fair Housing Act

DATE: March 12, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 410 allows a person who alleges housing discrimination to file a civil action in a Florida court of law whether or not a complaint has been filed with the Florida Commission on Human Relations or a local housing discrimination agency, unless a conciliation agreement has been obtained.

**II. Present Situation:**

**Florida Commission on Human Relations**

Chapter 760, F.S., ensures that all individuals in Florida are protected against discrimination in areas of employment, housing and other opportunities based on race, color, religion, sex, national origin, age, handicap, or marital or familial status. Section 760.03, F.S., creates the Florida Commission on Human Relations (Commission) and authorizes the Commission to carry out the purposes of ch. 760, F.S. Section 760.04, F.S., assigns the Commission to the Department of Management Services; however, the Commission is not subject to any control, or supervision by, or direction from the Department.

The Commission is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate.<sup>1</sup> The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida.<sup>2</sup> At least one member of the Commission, as required by law, must be 60 years of age or older.<sup>3</sup> The Commission is empowered, pursuant to s. 760.06(5), F.S., to receive, initiate, investigate, conciliate and hold hearings on and act upon complaints alleging any discriminatory practice.

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<sup>1</sup> Section 760.03(1), F.S.

<sup>2</sup> Section 760.03(2), F.S.

<sup>3</sup> *Id.*

## **Florida Fair Housing Act**

Part II of Chapter 760, F.S., constitutes the Florida Fair Housing Act. It is the state's policy, as provided in s. 760.21, F.S., to provide for fair housing throughout the state. Part II defines what constitutes unlawful housing discrimination. For example, it is unlawful to refuse to sell or rent, or otherwise make unavailable, or deny, a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.<sup>4</sup> In addition, protection is afforded an individual who is pregnant or in the process of securing legal custody of a child 18 years of age or younger, or an individual who is handicapped or is associated with a handicapped person.<sup>5</sup>

### **Enforcement of the Florida Fair Housing Act**

Section 760.34(1), F.S., provides that any person who claims to have been injured by a discriminatory housing practice, or who believes that he or she will be injured by a discriminatory housing practice that is about to occur, may file a complaint with the Commission. The complainant must file the complaint within one year after the alleged discriminatory practice has occurred.<sup>6</sup> The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.<sup>7</sup> The Commission can also decide to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.<sup>8</sup> If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the complainant may commence a civil action or petition for an administrative determination.<sup>9</sup>

Section 760.34(8), F.S., provides that any local agency certified as substantially equivalent<sup>10</sup> may institute a civil action in any appropriate court if it is unable to obtain voluntary compliance with the local fair housing law. The local agency need not petition for an administrative hearing or exhaust its administrative remedies prior to bringing a civil action.<sup>11</sup>

### **Civil Actions and Relief**

Section 760.35, F.S., provides for civil actions and administrative relief. A civil action must be commenced no later than two years after the alleged discriminatory act occurred.<sup>12</sup> The court can continue a civil case if conciliation efforts by the Commission or by the local housing agency are likely to result in a satisfactory settlement.<sup>13</sup> If the court finds that a discriminatory housing practice has occurred, it is to issue an order prohibiting the practice and providing affirmative

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<sup>4</sup> Section 760.23(1), F.S.

<sup>5</sup> Sections 760.23(6)-(9), F.S.

<sup>6</sup> Section 760.34(2), F.S.

<sup>7</sup> Section 760.34(1), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 760.34(4), F.S.

<sup>10</sup> *See* Section 760.22(9), F.S. (For substantial equivalence certification, a state or local agency applies for certification and the U.S. Dep't of Housing and Urban Development determines if the agency enforces a law that provides substantive rights, procedures, remedies and judicial review provisions substantially equivalent to the federal Fair Housing Act).

<sup>11</sup> Section 760.34(8), F.S.

<sup>12</sup> Section 760.35(1), F.S.

<sup>13</sup> *Id.*

relief.<sup>14</sup> If the Commission is unable to obtain voluntary compliance or has reasonable cause to believe that a discriminatory act has occurred, the Commission may institute an administrative proceeding or the aggrieved person may request administrative relief within 30 days after receiving notice that the Commission has concluded its investigation.<sup>15</sup>

**Federal Discrimination Housing Law**

In addition to adhering to the state discrimination laws, the Commission abides by federal discrimination laws. Through annual work-share agreements with the U.S. Department of Housing and Urban Development (HUD), the Commission, certified as a substantially equivalent agency,<sup>16</sup> accepts and investigates housing discrimination cases from HUD. Federal housing discrimination laws are contained in Title VIII (Fair Housing Act) of the federal Civil Rights Act of 1968.<sup>17</sup> The Commission is reimbursed by HUD for closing housing cases; such funds are deposited into the Commission’s trust fund. Trust fund monies received from HUD in FY 2012-13 totaled \$937,848, which is down from the FY 2011-12 total of \$1,757,319.<sup>18</sup>

**2010-2011 Housing Related Complaints**

According to the Commission’s 2010-2011 Annual Report, housing complaints represented 22 percent of all complaints received by the Commission in 2011.<sup>19</sup> The 269 housing cases closed in FY 2010-11 were distributed as follows:

No Cause	171 (64%)
Administrative Closure	46 (17%)
Cause	20 (7%)
Settlement	16 (6%)
Withdrawal with Benefits	16 (6%)

**State Law Regarding Avenues of Relief for Complaints Under the Florida Fair Housing Act**

Florida’s 4th District Court of Appeal held in the 2004 case, *Belletete v. Halford*, that individuals claiming discrimination under the Florida Fair Housing Act must exhaust administrative remedies before bringing a judicial claim, citing the doctrine of exhaustion of administrative

<sup>14</sup> Section 760.35(2), F.S.

<sup>15</sup> Section 760.35(3), F.S.

<sup>16</sup> See U.S. Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies*, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHAP/agencies](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies) (last visited Mar. 3, 2014). Providing a list of agencies certified as a “fair housing assistance program” with HUD.

<sup>17</sup> 42 U.S.C. ch. 45.

<sup>18</sup> E-mail from Hunter Barnett, Policy Analyst, Florida Commission on Human Relations (Mar. 4, 2014). The Commission’s trust fund dollars cited here are composed of federal fund receipts from HUD and Equal Employment Opportunity Commission for closed cases, but do not include payment received for public records copy requests and 55+ housing registrations and renewals.

<sup>19</sup> Florida Commission on Human Relations, *Annual Report 2010-2011*, 5 (2011) (the remaining breakdown as follows: employment complaints, 73 percent; whistle blower complaints, 3 percent; and public accommodations, 2 percent).

remedies.<sup>20</sup> In 2012, the 4<sup>th</sup> DCA reiterated that the Florida Fair Housing Act, as interpreted by that court, requires exhaustion of administrative remedies as a condition precedent to a civil suit. The court did not rule on that particular issue because it was moot.<sup>21</sup> The Florida Supreme Court has not addressed this issue yet, leaving the 4<sup>th</sup> DCA decision the only one on point in the state court system.

However, in a case brought before the U.S. District Court for the Southern District of Florida and decided in 2010, the Florida Attorney General, in a motion to intervene, stated that “as co-enforcer with the Florida Commission on Human Relations of the FFHA (Florida Fair Housing Act), it has always interpreted the right of the private individual to file a judicial action under the FFHA without first pursuing an administrative remedy.”<sup>22</sup> The court agreed that the 4<sup>th</sup> DCA decided *Belletete* incorrectly and that aggrieved parties did not have to exhaust administrative remedies before petitioning the courts for relief in a cause of action grounded in the Florida Fair Housing Act.<sup>23</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 760.34, F.S., to list and clarify the actions that may be taken to enforce the rights granted or protected by the Florida Fair Housing Act. Either the Commission, or an aggrieved person, may initiate proceedings for administrative relief under chapter 120.

A “cause” determination by the Commission would be a prerequisite before a complainant is allowed to have legal representation from the Attorney General.

The bill amends subsection (7) of s. 760.34, F.S., to clarify what is actually required to file a housing discrimination case in civil court. An aggrieved person would not be required to file a complaint with the Commission prior to commencing civil action.

**Section 2** amends s. 760.35, F.S., to prevent commencement of a civil action in a Florida court of law, if a conciliation agreement consented to by the aggrieved person has already been obtained for the same discriminatory housing practice that forms the basis of the complaint.

**Section 3** provides an effective date of July 1, 2014.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>20</sup> *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); *See also Fla. Welding & Erection Serv., Inc. v. Am. Mut. Ins. Co. of Boston*, 285 So. 2d 386, 389-90 (Fla. 1973) (the Doctrine of Exhaustion of Administrative Remedies stands generally for the proposition that judicial intervention in executive branch decision making is precluded where administrative procedures can afford the relief a litigant seeks).

<sup>21</sup> *Sun Harbor Homeowners' Ass'n, Inc. v. Bonura*, 95 So. 3d 262 (Fla. 4<sup>th</sup> DCA 2012).

<sup>22</sup> *Milsap v. Cornerstone Residential Mgmt., Inc.*, 2010 WL 427436, at 1 (S.D. Fla. 2010).

<sup>23</sup> *Id.* at 2 (holding that the Florida Fair Housing Act should be interpreted similarly to the Federal Fair Housing Act, which has been interpreted by federal courts as allowing for actions in court whether or not all administrative remedies have been exhausted).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Entities engaged in the housing industry may experience indeterminate effects as a result of the bill.

C. Government Sector Impact:

According to the Commission, they would incur no fiscal or workload impact related to the bill.<sup>24</sup> While the Commission maintains that a Floridian aggrieved by a discriminatory housing practice already may commence a civil action without first filing a complaint for an administrative remedy, this bill confirms for individuals in the 4<sup>th</sup> DCA that they can bypass the investigation and conciliation process in order to better access Florida's court system.

**VI. Technical Deficiencies:**

Commission staff note that lines 77-86, which contain a reference to a 180 day waiting period, should instead reflect that a complainant may go to court any time during the course of the investigation. The "reference to having to wait 180 days before commencing a civil action is not necessary."<sup>25</sup>

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends Sections 760.34, and 760.35 of the Florida Statutes.

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<sup>24</sup> Florida Commission on Human Relations, *SB 410 Analysis* (Jan. 3, 2014).

<sup>25</sup> *Id.*, at 4.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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