

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1214

SPONSOR: Senators Villalobos and Miller

SUBJECT: Florida Civil Rights Act of 1992

DATE: March 5, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Fav/2 amendments</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends the Florida Civil Rights Act of 1992. The bill gives the Attorney General the independent authority to initiate upon reasonable cause a civil action for damages, injunctive relief, civil penalties up to \$10,000 per violation, and other appropriate relief against those persons or groups for: 1) patterns or practices of discrimination; or 2) for discrimination that raises “an issue of general public importance.” If the Attorney General prevails, the Attorney General is entitled to reasonable attorney’s fees and costs.

This bill creates s. 760.021 of the Florida Statutes.

II. Present Situation:

There is currently no formal mechanism or statutory authority within the Florida Commission on Human Relations (FCHR), between the FCHR and the Attorney General’s Office, or within the Office of the Attorney General to independently investigate or initiate action under the Florida Civil Rights Act for discrimination that is based on a pattern or practice of discrimination or discrimination that raises an issue of general public importance.

Attorney General’s Office of Civil Rights

The Florida Legislature established the Attorney General’s Office of Civil Rights within the Department of Legal Affairs in 1991.¹ The Attorney General has limited independent authority to take action under chapter 760, F.S., particularly for violations of civil rights under the Florida Civil Rights Act of 1992. Currently, the Attorney General has independent authority to

¹ See ch. 91-74, L.O.F.; s. 16.57, F.S. The creation of the Office of Civil Rights was based in part on a recommendation of the Racial and Ethnic Bias Study Commission of the Supreme Court for the purpose of bringing a state suit against individuals and agencies for harassment and brutality against minorities.

investigate and take civil action against violations of constitutional and statutory rights. They must be violations made through threat, intimidation, or coercion or attempts thereto.² Additionally upon request by an aggrieved person, the Attorney General can initiate action for discriminatory practices by private clubs if there was no resolution to eliminate or correct the alleged discrimination by “informal methods of conference, conciliation, and persuasion.” Only private clubs whose membership exceed 400, who provide regular meal service and who regularly collect dues or other payment are affected.³

Although the Attorney General’s Office of Civil Rights has addressed past violations involving disability rights, mortgage lending, other types of economic discrimination, discrimination in places of public accommodations, racial profiling, and elder exploitation, most of the Attorney General’s actions have had to be brought under the jurisdiction of the Florida Deceptive and Unfair Trade Practices Act (FDUPTA), rather than the Florida Civil Rights Act. The Attorney General based the actions on the underlying theory that the discrimination is unfair and deceptive. According to the Attorney General, only one of the nine cases that in recent years resulted in successful settlements was actually brought under the jurisdiction of the Civil Rights Act and even that case was supported by a concurrent claim under FDUPTA. In 1999, two causes of action were filed using the Florida Fair Housing Act, after the complainants elected to have the Attorney General represent them as provided in the statute. *See* F.S. 760.23.

Florida Commission on Human Relations

Primary administrative authority and resolution of discrimination matters lies with the Florida Commission on Human Relations (FCHR). The 12-member FCHR was created within the Department of Management Services (administratively only) one year following the creation of the Office of Civil Rights within the Attorney General’s office.⁴ Specifically, the Florida Commission on Human Relations is statutorily authorized to “receive, initiate, investigate (including subpoena power), seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice” under the Florida Civil Rights Act in the areas of education, employment, housing or public accommodations,⁵ and certain private clubs.⁶ Although the law says that the FCHR can “act upon complaints alleging any discriminatory practice” under the Florida Civil Rights Act of 1992, the FCHR has construed this authority narrowly to limit its authority to handle discrimination complaints solely administratively.

The FCHR can not initiate an investigation or take any independent action until an individual files a complaint with the FCHR. Under current law, it is the person allegedly injured by the

² See s. 760.51, F.S. These rights prohibit discrimination based upon race, color, religion, gender, national origin, disability or marital status.

³ See s. 760.60, F.S.

⁴ See s. 760.03, F.S. This commission however existed as the Commission on Human Rights dating to at least 1977. Most states have a human rights commission, or some similarly named commission, that acts as the investigatory agency for complaint intake and investigations. In some cases, these agencies have exclusive enforcement authority of state civil rights laws, however, in most instances the state attorney general is authorized to intervene, file a complaint, or enforce orders of a commission.

⁵ See s. 509.092, F.S. Public accommodations includes public lodging and eating establishments only. It does not include lodge halls or other similar facilities or private organizations which are made available for public use occasionally or periodically.

⁶ The FCHR and its federal counterpart, the Equal Employment Opportunity Commission (EEOC), sometimes coordinate to conduct intake and investigate individual complaints of employment discrimination.

discriminatory practice who must initiate steps to address the discrimination for education, employment, housing, public accommodations, and retaliatory discrimination. The person may opt to file a complaint with the FCHR, file a civil action, or notify the Attorney General's Office to take action in some circumstances.

For example, a person may opt to file a complaint for discrimination with the FCHR or alternatively the EEOC within 365 days of the alleged violation. *See* s. 760.11, F.S. Even the Attorney General can file a similar complaint with the FCHR or EEOC. If any other agency has jurisdiction, the FCHR can refer the matter to that agency. The FCHR has 180 days to investigate and determine whether there is reasonable cause. If there is reasonable cause, the aggrieved person can file a civil action within one year or request an administrative hearing. The person can recover punitive damages capped at \$100,000 in the civil action. Specific relief under the administrative process is set forth in s. 760.11(6), F.S. If the FCHR has reasonable cause to believe that discriminatory practices have occurred, the aggrieved person can request the Attorney General to bring suit which the Attorney General is required to do on behalf of the aggrieved person. A person can file independently or concurrently a civil action but it must be filed within one year after the alleged discriminatory practice. The court could opt to stay the court action until the FCHR has completed any pending efforts including the administrative processing of the complaint.

As to housing discrimination, complaints are limited to those involving the Florida Fair Housing Act. *See* ss. 760.20-760.37, F.S. Most housing is covered. In some cases, owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members are exempt. If voluntary compliance with the Fair Housing Act does not occur after 180 days after the complaint is filed, or after the matter was referred to the local housing authorities, the person can initiate civil action or petition for an administrative determination by the FCHR. If the FCHR has reasonable cause to believe that discriminatory housing practices have occurred, the Attorney General is required to bring civil action upon that the aggrieved person's behalf. Alternatively or concurrently, a person can bring a civil action no later than two years after the alleged housing discrimination practice.

III. Effect of Proposed Changes:

This bill amends the Florida Civil Rights Act of 1992. The bill gives the Attorney General's independent authority to take civil action against discrimination of civil rights arising in the areas of education, employment, housing, public accommodations, and employment retaliation based on race, color, religion, gender, national origin, age, disability or marital status. If the Attorney General has reasonable cause to believe that there is "a pattern or practice of discrimination" or an issue of discrimination that is of "general public importance," the Attorney General can take civil action against those persons or group who have engaged in discriminatory practices. The phrases "pattern or practice of discrimination" or "an issue of general public importance" are not defined.

In addition to seeking damages, injunctive relief and other appropriate relief, the Attorney General may also recover civil penalties up to \$10,000 per violation as well as attorney's fees and costs. This authority to recover is similar to authority found in s. 760.51, F.S.

This new legislation tracks language found under the Federal Fair Housing Act which gives the U.S. Attorney of the Department of Justice the independent authority to investigate and take action against discrimination in fair housing issues. *See* 42 U.S.C §3614. However, as to civil enforcement of discrimination in other areas, the U.S. Attorney General has varying degrees of authority that are more constrained. For example, as to violations for discrimination under Title II (public accommodations) of the Federal Civil Rights Acts of 1964 and 1991, the U.S. Attorney General has independent authority to take civil action if he or she has reasonable cause to believe that the persons or group of persons are engaged in a “pattern or practice of resistance” as to deny full enjoyment of a right and the practice is intended to deny the right fully. *See* 42 U.S.C. §2000a-5. If the U.S. Attorney General wants to expedite the matter, he or she may certify to the court that the matter is of “general public importance.” As to violations for discrimination in education under Title IV (public education) of the Federal Civil Rights Acts of 1964 and 1991, the U.S. Attorney General can only take action upon receipt of a signed complaint from a parent of the aggrieved child, or from the aggrieved child that discrimination has occurred. *See* 42 U.S.C. §2000a-5. If the U.S. Attorney General believes the complaint is meritorious and certifies that the aggrieved person(s) is unable to initiate action, he or she can initiate civil action after providing the school board or college authority notice and after certifying that reasonable time was given to the school board or college authority to address the matter. As to discrimination matters involving Title VII (employment) of the Federal Civil Rights Acts of 1964 and 1991, the authority to investigate and take action for pattern or practice of discrimination is bifurcated between the EEOC and the U.S. Attorney General. The U.S. Attorney General only has authority to investigate and pursue pattern or practice of discrimination in public employment claims.⁷ *See* 42 U.S.C. §2000e-6.

Florida would join the ranks of eight other states that have some variation of this proposed language already in their civil rights act or limited to their fair housing acts (California, Missouri, and Wisconsin. Arkansas, Delaware, Georgia, Nebraska, and Ohio).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁷ In 1978, the Department of Justice underwent a federal reorganization which amended Title VII of the federal Civil Rights Act. The reorganization plan transferred limited power from the EEOC back to the Attorney General in cases involving discrimination suits against public employers. The approval of this agency plan occurred without formal action by Congress as provided by federal law. *See* DOJ Reorg. Plan No. 1 of 1978, Sec. 5, 43 F.R. 19807, 92 Stat. 3781. An executive order was subsequently issued to clarify that the transfer was valid and intended. *See* Executive Order No. 12068. At least two federal suits unsuccessfully challenged the validity of the transfer to the Attorney General. *See U.S. v. Fresno United School Dist.*, 592 F.2d 1088 (9th Cir. 1979); *U.S. v. City of Yonkers*, 592 F. Supp. 570 (S.D. New York 1984)

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons aggrieved by discriminatory practices or policies that may become the basis of a civil action for damages and other relief may benefit from injunctive relief and damages awarded, provided the aggrieved persons are either specifically named in the suit or part of the class affected by a class action filed by the Attorney General. Persons subject to potential or actual discriminatory conduct may benefit from the potential expediency towards resolution brought by the Attorney General's involvement and additional resources to remedy, stop or prevent patterns or practices of discrimination or discrimination that is general public importance.

C. Government Sector Impact:

The Office of the Attorney General does not anticipate a significant fiscal impact as the Attorney General's authority to take action under this bill is discretionary. It is reported in the past two years, the Office of Civil Rights has negotiated over \$25,015,000.00 in restitution, fees and costs, including the \$1 million settlement in *State of Florida v. Adam's Mark Hotel*,⁸ the \$23.8 million in consumer restitution and the \$250,000.00 for attorney's fees and costs in the case against *Household Finance, Inc.*

The Florida Commission on Human Relations reports no fiscal impact from this bill. It has also been reported that the FCHR finds that the authority granted to the Attorney General under this bill would not conflict with its jurisdictional authority at this time. Under current practice, the FCHR and the Attorney General's office work cooperatively on matters of discrimination. The FCHR's authority to conduct intake and investigate individual complaints of discrimination remains unaffected by the bill.

⁸ In 1999, the Attorney General joined a class action lawsuit filed by the United States Justice Department in federal court against Adam's Mark Hotel for discriminatory practices against registered guests attending a black college reunion. Although agreements settling the state, federal and private complaints were reached in March 2000, the court rejected the private class-action and state agreements and ruled that the matter needed to be heard in state court. The state Attorney General charged the Adam's Mark hotel with violating the state's Deceptive and Unfair Trade Practices based on the hotel's disparate treatment of registered guests attending an annual black college reunion. Among other things, the Attorney General charged that black guests were denied the opportunity to rent higher quality rooms, were denied the same access to parking facilities and services as white guests, were charged additional, undisclosed deposits for telephones and movies that were not charged at white events and had to wear color-coded wristbands on the resort premises. Under the agreement, the Adam's Mark Daytona Beach Resort agreed to pay a total of \$1 million to former guests and Florida's historically black colleges. The money is administered by the attorney general's office through a designated claims administrator, which can compensate each eligible individual up to \$1,000 per claim.

VI. Technical Deficiencies:

The bill does not specify a fund for receipt of civil penalties collected pursuant to this new section as is currently provided in s. 760.51, F.S. [Amendment prepared]

VII. Related Issues:

The bill does not address the Attorney General's authority to investigate discrimination under this new section which may be necessary in order to form any basis for "reasonable cause to believe" that there is a pattern or practice of discrimination or discriminatory practice that is of general public importance. Notably, current law provides the Florida Commission on Human Relations with investigatory powers as to matters within its jurisdiction under s.760.06, F.S., and the Attorney General with presuit investigative powers for violation of constitutional and statutory rights arising under s. 760.51, and discrimination in private clubs arising s. 760.60. [Amendment prepared]

Unlike existing provisions in section 760.51, F.S., relating to the Attorney General's authority to enforce civil rights violations, this bill does not state whether the action may also be brought in the name(s) of injured person(s) particularly if the Attorney General seeks to recover damages.

The bill does not address the jurisdictional overlap and interplay between the authority of the Florida Commission on Human Relations and the authority of the Attorney General's Office as provided under this bill and as may affect an individual's potential or pending FCHR claim or civil action and recovery or other relief. Further, the bill and current law do not address the extent to which documents and other evidence is or would be shared between the FCHR and the Attorney General and their continued protection as confidential or publicly exempt records arising from matters for which the FCHR and the Attorney General may be sharing concurrent investigatory jurisdiction. Presumably, the FCHR and the Attorney General would continue to work cooperatively with the FCHR focused on its duties to conduct intake and investigation of individual complaints and with the Attorney General focused on civil actions against specific matters of discrimination as prescribed by this bill.

VIII. Amendments:

#1 by Judiciary:

Designates the General Revenue Fund as the recipient of civil penalties collected by the Attorney General in civil actions against discrimination (WITH TITLE AMENDMENT)

#2 by Judiciary:

Clarifies that the Attorney General's Office of Civil Rights as the office responsible for handling civil actions against discrimination under chapter 760, F.S.

Authorizes the Attorney General's Office to conduct presuit investigations in order to determine a basis for initiating civil actions involving discrimination cases under the Florida Civil Rights Act. (WITH TITLE AMENDMENT)