

1 **ADMINISTRATIVE APPEAL RIGHTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Fair Housing Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ permits an aggrieved person to appeal a determination, of a director of the Division
- 13 of Antidiscrimination and Labor, dismissing a complaint alleging housing
- 14 discrimination under the Fair Housing Act; and
- 15 ▶ makes technical and conforming changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **57-21-9**, as last amended by Laws of Utah 2016, Chapter 244

23 **57-21-10**, as last amended by Laws of Utah 2008, Chapter 382

25 *Be it enacted by the Legislature of the state of Utah:*

26 Section 1. Section **57-21-9** is amended to read:

27 **57-21-9. Procedure for an aggrieved person to file a complaint -- Conciliation --**
28 **Investigation -- Determination.**

29 (1) An aggrieved person may file a written verified complaint with the division within

30 180 days after the day on which an alleged discriminatory housing practice occurs.

31 (2) (a) The commission shall adopt rules consistent with ~~[the provisions of]~~ 24 C.F.R.
32 Sec. 115.3 (1990), relating to procedures under related federal law, to govern:

33 (i) the form of the complaint;

34 (ii) the form of any answer to the complaint;

35 (iii) procedures for filing or amending a complaint or answer; and

36 (iv) the form of notice to ~~[parties]~~ a party accused of the ~~[acts]~~ act or ~~[omissions]~~
37 omission giving rise to the complaint.

38 (b) The commission may, by rule, prescribe any other procedure pertaining to the
39 division's processing of the complaint.

40 (3) During the period beginning with the filing of the complaint and ending with the
41 director's determination, the division shall, to the extent feasible, engage in conciliation with
42 respect to the complaint.

43 (4) (a) The division shall commence proceedings to investigate and conciliate a
44 complaint alleging a discriminatory housing practice within 30 days after the ~~[filing of the~~
45 ~~complaint]~~ day on which the complainant files the complaint.

46 (b) After the commencement of an investigation, any party may request that the
47 commission review the proceedings to ~~[insure]~~ ensure compliance with the requirements of this
48 chapter.

49 (5) (a) The division shall complete the investigation within 100 days after the ~~[filing of~~
50 ~~the complaint]~~ day on which the complainant files the complaint, unless it is impracticable to
51 do so.

52 (b) If the division is unable to complete the investigation within 100 days after the
53 ~~[filing of the complaint]~~ day on which the complainant files the complaint, the division shall
54 notify the complainant and respondent in writing of the reasons for the delay.

55 (6) ~~[(a)]~~ If, as a result of the division's investigation, the director determines that there
56 is no reasonable cause to support ~~[the allegations]~~ an allegation in the complaint, the director
57 shall issue a written determination dismissing the complaint.

58 ~~[(b) If the director dismisses the complaint pursuant to Subsection (6)(a), the~~
59 ~~complainant may request that the director reconsider the dismissal pursuant to Section~~
60 ~~63G-4-302.]~~

61 ~~[(c) Notwithstanding the provisions of Title 63G, Chapter 4, Administrative~~
62 ~~Procedures Act, the director's determination to dismiss a complaint or, in the case of a request~~
63 ~~for reconsideration, the director's order denying reconsideration is not subject to further agency~~
64 ~~action or direct judicial review. However, the complainant may commence a private action~~
65 ~~pursuant to Section 57-21-12.]~~

66 (7) If, as a result of the division's investigation of a complaint, the director determines
67 that there is reasonable cause to support ~~[the allegations]~~ an allegation in the complaint~~[, all of~~
68 ~~the following apply]:~~

69 (a) ~~[The]~~ (i) the division shall informally endeavor to eliminate or correct the
70 discriminatory housing practice through a conciliation conference between the parties, presided
71 over by the division~~[- Nothing]; and~~

72 (ii) nothing said or done in the course of ~~[the]~~ a conciliation conference described in
73 Subsection (7)(a)(i) may be made public or admitted as evidence in a subsequent proceeding
74 under this chapter without the written consent of the parties concerned~~[-]; and~~

75 (b) ~~[If]~~ (i) if the conciliation conference described in Subsection (7)(a) results in
76 voluntary compliance with this chapter~~[-];~~

77 (A) the parties shall execute a conciliation agreement, approved by the division, setting
78 forth the resolution of the issues ~~[shall be executed by the parties. The]; and~~

79 (B) the parties or the division may enforce the conciliation agreement in an action filed
80 in a court of competent jurisdiction[-]; or

81 ~~[(c) If]~~ (ii) if the division is unable to obtain a conciliation agreement, the director
82 shall issue a written determination stating the director's findings and ordering ~~[any]~~ appropriate
83 relief under Section 57-21-11.

84 Section 2. Section 57-21-10 is amended to read:

85 **57-21-10. Judicial election or formal adjudicative hearing.**

86 (1) (a) If, pursuant to Subsection ~~57-21-9(6) or (7)(c)~~(b)(ii), the director issues a
87 written determination [~~finding reasonable cause to believe that a discriminatory housing~~
88 ~~practice has occurred, or is about to occur, a respondent~~], a party to the complaint may obtain
89 de novo review of the determination by submitting a written request for a formal adjudicative
90 hearing to be conducted by the commission's Division of Adjudication in accordance with Title
91 34A, Chapter 1, Part 3, Adjudicative Proceedings, to the director within 30 days [~~from the date~~
92 ~~of issuance of~~] after the day on which the director issues the determination.

93 (b) If the director does not receive a timely request for review, the director's
94 determination becomes the final order of the commission and is not subject to further agency
95 action or direct judicial review.

96 (2) If a [~~respondent~~] party files a timely request for review pursuant to Subsection (1):

97 (a) any [~~respondent, complainant, or aggrieved party~~] party to the complaint may elect
98 to have the de novo review take place in a civil action in the district court rather than in a
99 formal adjudicative hearing with the Division of Adjudication by filing an election with the
100 commission in accordance with rules established by the commission pursuant to Title 63G,
101 Chapter 3, Utah Administrative Rulemaking Act, regarding the form and time period for the
102 election;

103 (b) the complainant shall file a complaint for review in the forum selected pursuant to
104 Subsection (2)(a) within 30 days after the completion of the forum selection process; and

105 (c) the commission shall determine whether the director's determination is supported
106 by substantial evidence.

107 (3) (a) [~~If, pursuant to Subsection (2)(c), the commission determines that the director's~~
108 ~~determination is supported by substantial evidence, the] The commission shall provide legal
109 representation on behalf of the aggrieved person, including the filing of a complaint for review
110 as required by Subsection (2)(b), to support and enforce the director's determination in the de
111 novo review proceeding, if:~~

112 (i) in accordance with Subsection ~~57-21-9(7)(b)(ii)~~, the director issued a written
113 determination finding reasonable cause to believe that a discriminatory housing practice had

114 occurred, or was about to occur; and

115 (ii) under Subsection (2)(c), the commission determines that the director's
116 determination under 57-21-9(7)(b)(ii) is supported by substantial evidence.

117 (b) Notwithstanding [any provisions of] Title 63G, Chapter 4, Administrative
118 Procedures Act, the commission's determination, under Subsection (2)(c), regarding the
119 existence or nonexistence of substantial evidence to support the director's determination is not
120 subject to further agency action or direct judicial review.

121 (4) Upon timely application, an aggrieved person may intervene with respect to the
122 issues to be determined in a formal adjudicative hearing or in a civil action brought under this
123 section.

124 (5) If a formal adjudicative hearing is elected [~~all of the following apply~~]:

125 (a) [~~The~~] the presiding officer shall commence the formal adjudicative hearing within
126 150 days after the [~~respondent files~~] day on which a request for review of the director's
127 determination is filed, unless it is impracticable to do so[-];

128 (b) [~~The~~] the investigator who investigated the matter may not participate;

129 (i) in the formal adjudicative hearing, except as a witness [~~nor may the investigator~~
130 participate]; or

131 (ii) in the deliberations of the presiding officer[-];

132 (c) [~~Any~~] any party to the complaint may file a written request to the Division of
133 Adjudication for review of the presiding officer's order in accordance with Section 63G-4-301
134 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings[-]; and

135 (d) [~~A~~] a final order of the commission under this section is subject to judicial review
136 as provided in Section 63G-4-403 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.

137 (6) If a civil action is elected, the commission is barred from continuing or
138 commencing any adjudicative proceeding in connection with the same claims under this
139 chapter.

140 (7) (a) The commission shall make final administrative disposition of the complaint
141 alleging a discriminatory housing practice within one year after the [~~filing of~~] complainant filed

142 the complaint, unless it is impracticable to do so.

143 **(b)** If the commission is unable to make final administrative disposition within [~~one~~

144 ~~year~~] the time period described in Subsection (7)(a), the commission shall notify the

145 complainant, respondent, and any other interested party in writing of the reasons for the delay.