

**TITLE XLIV**

**CIVIL RIGHTS**

**CHAPTER 760**

**DISCRIMINATION IN THE TREATMENT OF PERSONS; MINORITY REPRESENTATION**

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**PART I**

**FLORIDA CIVIL RIGHTS ACT**

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**760.01 Purposes; construction; title.--**

(1) Sections 760.01-760.11 and 509.092 shall be cited as the "Florida Civil Rights Act of 1992."

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

(3) The Florida Civil Rights Act of 1992 shall be construed according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this section and the special purposes of the particular provision involved.

**History.--**s. 1, ch. 69-287; s. 1, ch. 72-48; s. 1, ch. 77-341; s. 1, ch. 92-177; s. 4, ch. 92-282.

**Note.--**Former ss. 13.201, 23.161.

**760.02 Definitions.--**For the purposes of ss. 760.01-760.11 and 509.092, the term:

(1) "Florida Civil Rights Act of 1992" means ss. 760.01-760.11 and 509.092.

(2) "Commission" means the Florida Commission on Human Relations created by s. 760.03.

(3) "Commissioner" or "member" means a member of the commission.

(4) "Discriminatory practice" means any practice made unlawful by the Florida Civil Rights Act of 1992.

(5) "National origin" includes ancestry.

(6) "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or unincorporated organization; any other legal or commercial entity; the state; or any governmental entity or agency.

(7) "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(8) "Employment agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

(9) "Labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

(10) "Aggrieved person" means any person who files a complaint with the Human Relations Commission.

(11) "Public accommodations" means places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section:

- (a) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.
- (b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.
- (c) Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.
- (d) Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

**History.**--s. 2, ch. 69-287; s. 2, ch. 72-48; s. 2, ch. 77-341; s. 3, ch. 79-400; s. 2, ch. 92-177; s. 4, ch. 92-282; s. 4, ch. 2003-396.

**Note.**--Former ss. 13.211, 23.162.

#### **760.021 Enforcement.**--

- (1) The Attorney General may commence a civil action for damages, injunctive relief, civil penalties not to exceed \$10,000 per violation, and such other relief as may be appropriate under the laws of this state if the Attorney General has reasonable cause to believe that any person or group:
  - (a) Has engaged in a pattern or practice of discrimination as defined by the laws of this state; or
  - (b) Has been discriminated against as defined by the laws of this state and such discrimination raises an issue of great public interest.
- (2) The Attorney General may file an action under this section in the circuit court of the county where the cause of action arises or in the circuit court of the Second Judicial Circuit, in and for Leon County.
- (3) In any proceeding under this section, the respondent may request, before any responsive pleading is due, that a hearing be held no earlier than 5 days but no more than 30 days after the filing of the complaint, at which hearing the court shall determine whether the complaint on its face makes a prima facie showing that a pattern or practice of discrimination exists or that, as a result of discrimination, an issue of great public interest exists.
- (4) The prevailing party in an action brought under this section is entitled to an award of reasonable attorney's fees and costs.

(5) Any damages recovered under this section shall accrue to the injured party.

**History.**--s. 2, ch. 2003-396.

**760.03 Commission on Human Relations; staff.--**

- (1) There is hereby created the Florida Commission on Human Relations, comprised of 12 members appointed by the Governor, subject to confirmation by the Senate. The commission shall select one of its members to serve as chairperson for terms of 2 years.
- (2) The members of the commission must be broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups within the state; and at least one member of the commission must be 60 years of age or older.
- (3) Commissioners shall be appointed for terms of 4 years. A member chosen to fill a vacancy otherwise than by expiration of term shall be appointed for the unexpired term of the member whom such appointee is to succeed. A member of the commission shall be eligible for reappointment. A vacancy in the commission shall not impair the right of the remaining members to exercise the powers of the commission.
- (4) The Governor may suspend a member of the commission only for cause, subject to removal or reinstatement by the Senate.
- (5) 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.
- (6) Each commissioner shall be compensated at the rate of \$50 per day for each day of actual attendance to commission duties and shall be entitled to receive per diem and travel expenses as provided by s. 112.061.
- (7) The commission shall appoint, and may remove, an executive director who, with the consent of the commission, may employ a deputy, attorneys, investigators, clerks, and such other personnel as may be necessary adequately to perform the functions of the commission, within budgetary limitations.

**History.**--s. 3, ch. 69-287; s. 1, ch. 70-438; s. 3, ch. 77-341; s. 1, ch. 80-148; s. 27, ch. 87-172; s. 3, ch. 92-177; s. 4, ch. 92-282.

**Note.**--Former ss. 13.221, 23.163.

**760.04 Commission on Human Relations, assigned to Department of Management Services.--**The commission created by s. 760.03 is assigned to the Department of Management Services. The commission, in the performance of its duties pursuant to the Florida Civil Rights Act of 1992, shall not be subject to control, supervision, or direction by the Department of Management Services.

**History.**--s. 7, ch. 69-287; ss. 45, 56, ch. 79-190; s. 4, ch. 92-177; s. 134, ch. 92-279; ss. 1, 4, ch. 92-282; s. 55, ch. 92-326; s. 35, ch. 96-399.

**Note.**--Former ss. 13.231, 23.164.

**760.05 Functions of the commission.**--The commission shall promote and encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, sex, national origin, age, handicap, or marital status and mutual understanding and respect among all members of all economic, social, racial, religious, and ethnic groups; and shall endeavor to eliminate discrimination against, and antagonism between, religious, racial, and ethnic groups and their members.

**History.**--s. 4, ch. 69-287; s. 4, ch. 77-341; s. 4, ch. 79-400.

**Note.**--Former ss. 13.241, 23.165.

**760.06 Powers of the commission.**--Within the limitations provided by law, the commission shall have the following powers:

- (1) To maintain offices in the State of Florida.
- (2) To meet and exercise its powers at any place within the state.
- (3) To promote the creation of, and to provide continuing technical assistance to, local commissions on human relations and to cooperate with individuals and state, local, and other agencies, both public and private, including agencies of the Federal Government and of other states.
- (4) To accept gifts, bequests, grants, or other payments, public or private, to help finance its activities.
- (5) To receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice, as defined by the Florida Civil Rights Act of 1992.
- (6) To issue subpoenas for, administer oaths or affirmations to and compel the attendance and testimony of witnesses or to issue subpoenas for and compel the production of books, papers, records, documents, and other evidence pertaining to any investigation or hearing convened pursuant to the powers of the commission. In conducting an investigation, the commission and its investigators shall have access at all reasonable times to premises, records, documents, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The authority to issue subpoenas and administer oaths may be delegated by the commission, for investigations or hearings, to a commissioner or the executive director. In the case of a refusal to obey a subpoena issued to any person, the commission may make application to any circuit court of this state, which shall have jurisdiction to order the witness to appear before the commission to give testimony and to produce evidence concerning the matter in question. Failure to obey the court's order may be punished by the court as contempt. If the court enters an order holding a person in contempt or compelling the person to comply with the commission's order or subpoena, the court shall order the person to pay the commission reasonable expenses, including reasonable attorneys' fees, accrued by the commission in obtaining the order from the court.
- (7) To recommend methods for elimination of discrimination and intergroup tensions and to use its best efforts to secure compliance with its recommendations.
- (8) To furnish technical assistance requested by persons to facilitate progress in human relations.
- (9) To make or arrange for studies appropriate to effectuate the purposes and policies of the Florida Civil Rights Act of 1992 and to make the results thereof available to the public.

- (10) To become a deferral agency for the Federal Government and to comply with the necessary federal regulations to effect the Florida Civil Rights Act of 1992.
- (11) To render, at least annually, a comprehensive written report to the Governor and the Legislature. The report may contain recommendations of the commission for legislation or other action to effectuate the purposes and policies of the Florida Civil Rights Act of 1992.
- (12) To adopt, promulgate, amend, and rescind rules to effectuate the purposes and policies of the Florida Civil Rights Act of 1992 and govern the proceedings of the commission, in accordance with chapter 120.
- (13) To receive complaints and coordinate all activities as required by the Whistle-blower's Act pursuant to ss. 112.3187-112.31895.

**History.**--s. 5, ch. 69-287; s. 3, ch. 72-48; s. 1, ch. 75-232; s. 5, ch. 77-341; s. 5, ch. 92-177; s. 4, ch. 92-282; s. 26, ch. 99-333.

**Note.**--Former ss. 13.251, 23.166.

**760.07 Remedies for unlawful discrimination.**--Any violation of any Florida statute making unlawful discrimination because of race, color, religion, gender, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

**History.**--s. 6, ch. 92-177; s. 4, ch. 92-282; s. 1137, ch. 97-102.

**760.08 Discrimination in places of public accommodation.**--All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this chapter, without discrimination or segregation on the ground of race, color, national origin, sex, handicap, familial status, or religion.

**History.**--s. 5, ch. 2003-396.

**760.10 Unlawful employment practices.**--

(1) It is an unlawful employment practice for an employer:

- (a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.
- (b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, national origin, age, handicap, or marital status or to classify or refer for employment any individual on the basis of race, color, religion, sex, national origin, age, handicap, or marital status.

(3) It is an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

(c) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(4) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, national origin, age, handicap, or marital status in admission to, or employment in, any program established to provide apprenticeship or other training.

(5) Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential, become a member or an associate of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential, seeking to become a member or associate of such club, association, or other organization, or seeking to take or pass such examination, because of such other person's race, color, religion, sex, national origin, age, handicap, or marital status.

(6) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to print, or cause to be printed or published, any notice or advertisement relating to employment, membership, classification, referral for employment, or apprenticeship or other training, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, national origin, age, absence of handicap, or marital status.

(7) It is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

(8) Notwithstanding any other provision of this section, it is not an unlawful employment practice under ss. 760.01-760.10 for an employer, employment agency, labor organization, or joint labor-management committee to:

(a) Take or fail to take any action on the basis of religion, sex, national origin, age, handicap, or marital status in those certain instances in which religion, sex, national origin, age, absence of a particular handicap, or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.

(b) Observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by quantity or quality of production, which is not designed, intended, or used to evade the purposes of ss. 760.01-760.10. However, no such employee benefit plan or system which measures earnings shall excuse the failure to hire, and no such seniority system, employee benefit plan, or system which measures earnings shall excuse the involuntary retirement of, any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual has applied or in which such individual is engaged. This subsection shall not be construed to make unlawful the rejection or termination of employment when the individual applicant or employee has failed to meet bona fide requirements for the job or position sought or held or to require any changes in any bona fide retirement or pension programs or existing collective bargaining agreements during the life of the contract, or for 2 years after October 1, 1981, whichever occurs first, nor shall this act preclude such physical and medical examinations of applicants and employees as an employer may require of applicants and employees to determine fitness for the job or position sought or held.

(c) Take or fail to take any action on the basis of age, pursuant to law or regulation governing any employment or training program designed to benefit persons of a particular age group.

(d) Take or fail to take any action on the basis of marital status if that status is prohibited under its antinepotism policy.

(9) This section shall not apply to any religious corporation, association, educational institution, or society which conditions opportunities in the area of employment or public accommodation to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenets or beliefs. This section shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities.

(10) Each employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice provided by the commission setting forth such information as the commission deems appropriate to effectuate the purposes of ss. 760.01-760.10.

**History.**--s. 6, ch. 77-341; s. 2, ch. 78-49; s. 5, ch. 79-400; s. 1, ch. 81-109; s. 7, ch. 92-177; ss. 2, 4, ch. 92-282.

**Note.**--Former ss. 13.261, 23.167.

### **760.11 Administrative and civil remedies; construction.--**

(1) Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of s. 760.10(5), the person responsible for the violation and describing the violation. Any person aggrieved by a violation of s. 509.092 may file a complaint with the commission within 365 days of the alleged violation naming the

person responsible for the violation and describing the violation. The commission, a commissioner, or the Attorney General may in like manner file such a complaint. On the same day the complaint is filed with the commission, the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission. In lieu of filing the complaint with the commission, a complaint under this section may be filed with the federal Equal Employment Opportunity Commission or with any unit of government of the state which is a fair-employment-practice agency under 29 C.F.R. ss. 1601.70-1601.80.

If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing. The date the complaint is filed with the commission for purposes of this section is the earliest date of filing with the Equal Employment Opportunity Commission, the fair-employment-practice agency, or the commission. The complaint shall contain a short and plain statement of the facts describing the violation and the relief sought. The commission may require additional information to be in the complaint. The commission, within 5 days of the complaint being filed, shall by registered mail send a copy of the complaint to the person who allegedly committed the violation. The person who allegedly committed the violation may file an answer to the complaint within 25 days of the date the complaint was filed with the commission. Any answer filed shall be mailed to the aggrieved person by the person filing the answer. Both the complaint and the answer shall be verified.

(2) 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 shall not constitute agency action within the meaning of s. 120.52. 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.

(3) Except as provided in subsection (2), the commission shall investigate the allegations in the complaint. Within 180 days of the filing of the complaint, the commission shall determine if there is reasonable cause to believe that discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992. When the commission determines whether or not there is reasonable cause, the commission by registered mail shall promptly notify the aggrieved person and the respondent of the reasonable cause determination, the date of such determination, and the options available under this section.

(4) 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 pursuant to this act.

(5) In any civil action brought under this section, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the practice, including back pay. The court may also award compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages. The provisions of ss. 768.72 and 768.73 do not apply to this section. The judgment for the total amount of punitive damages

awarded under this section to an aggrieved person shall not exceed \$100,000. In any action or proceeding under this subsection, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action. The right to trial by jury is preserved in any such private right of action in which the aggrieved person is seeking compensatory or punitive damages, and any party may demand a trial by jury. The commission's determination of reasonable cause is not admissible into evidence in any civil proceeding, including any hearing or trial, except to establish for the court the right to maintain the private right of action. A civil action brought under this section shall be commenced no later than 1 year after the date of determination of reasonable cause by the commission. The commencement of such action shall divest the commission of jurisdiction of the complaint, except that the commission may intervene in the civil action as a matter of right. Notwithstanding the above, the state and its agencies and subdivisions shall not be liable for punitive damages. The total amount of recovery against the state and its agencies and subdivisions shall not exceed the limitation as set forth in s. 768.28(5).

(6) Any administrative hearing brought pursuant to paragraph (4)(b) shall be conducted under ss. 120.569 and 120.57. The commission may hear the case provided that the final order is issued by members of the commission who did not conduct the hearing or the commission may request that it be heard by an administrative law judge pursuant to s. 120.569(2)(a). If the commission elects to hear the case, it may be heard by a commissioner. If the commissioner, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the commissioner shall issue an appropriate proposed order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. If the administrative law judge, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the administrative law judge shall issue an appropriate recommended order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended or proposed order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. An administrative hearing pursuant to paragraph (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action.

(7) If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause and any such hearing shall be heard by an administrative law judge and not by the commission or a commissioner. If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred. If the administrative law judge finds that a violation of the Florida Civil Rights Act of 1992 has occurred, he or she shall issue an appropriate recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action. In the event the final order issued by the commission determines that a violation of the Florida Civil Rights Act of 1992 has occurred, the

aggrieved person may bring, within 1 year of the date of the final order, a civil action under subsection (5) as if there has been a reasonable cause determination or accept the affirmative relief offered by the commission, but not both.

(8) 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 of the filing of the complaint, an aggrieved person may proceed under subsection (4), as if the commission determined that there was reasonable cause.

(9) No liability for back pay shall accrue from a date more than 2 years prior to the filing of a complaint with the commission.

(10) A judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(11) If a complaint is within the jurisdiction of the commission, the commission shall simultaneously with its other statutory obligations attempt to eliminate or correct the alleged discrimination by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent civil proceeding, trial, or hearing. The commission may initiate dispute resolution procedures, including voluntary arbitration, by special magistrates or mediators. The commission may adopt rules as to the qualifications of persons who may serve as special magistrates and mediators.

(12) All complaints filed with the commission and all records and documents in the custody of the commission, which relate to and identify a particular person, including, but not limited to, a complainant, employer, employment agency, labor organization, or joint labor-management committee shall be confidential and shall not be disclosed by the commission, except to the parties or in the course of a hearing or proceeding under this section. The restriction of this subsection shall not apply to any record or document which is part of the record of any hearing or court proceeding.

(13) Final orders of the commission are subject to judicial review pursuant to s. 120.68. The commission's determination of reasonable cause is not final agency action that is subject to judicial review. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay the order of the commission, except as provided in the Rules of Appellate Procedure. In any action or proceeding under this subsection, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the cost. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action. In the event the order of the court determines that a violation of the Florida Civil Rights Act of 1992 has occurred, the court shall remand the matter to the commission for appropriate relief. The aggrieved party has the option to accept the relief offered by the commission or may bring, within 1 year of the date of the court order, a civil action under subsection (5) as if there has been a reasonable cause determination.

(14) The commission may adopt, promulgate, amend, and rescind rules to effectuate the purposes and policies of this section and to govern the proceedings of the commission under this section.

(15) In any civil action or administrative proceeding brought pursuant to this section, a finding that a person employed by the state or any governmental entity or agency has violated s. 760.10 shall as a matter of law constitute just or substantial cause for such person's discharge.

**History.**--s. 8, ch. 92-177; s. 3, ch. 92-282; s. 1, ch. 94-91; s. 417, ch. 96-406; s. 302, ch. 96-410; s. 1, ch. 2001-187; s. 97, ch. 2004-11.

## **PART II**

### **FAIR HOUSING ACT**

760.20 Fair Housing Act; short title.

760.21 State policy on fair housing.

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760.23 Discrimination in the sale or rental of housing and other prohibited practices.

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760.30 Administration of ss. 760.20-760.37.

760.31 Powers and duties of commission.

760.32 Investigations; subpoenas; oaths.

760.34 Enforcement.

760.35 Civil actions and relief; administrative procedures.

760.36 Conciliation agreements.

760.37 Interference, coercion, or intimidation; enforcement by administrative or civil action.

**760.20 Fair Housing Act; short title.**--Sections 760.20-760.37 may be cited as the "Fair Housing Act."

**History.**--s. 1, ch. 83-221.

**760.21 State policy on fair housing.**--It is the policy of this state to provide, within constitutional limitations, for fair housing throughout the state.

**History.**--s. 2, ch. 83-221.

**760.22 Definitions.**--As used in ss. 760.20-760.37, the term:

(1) "Commission" means the Florida Commission on Human Relations.

(2) "Covered multifamily dwelling" means:

(a) A building which consists of four or more units and has an elevator; or

(b) The ground floor units of a building which consists of four or more units and does not have an elevator.

(3) "Discriminatory housing practice" means an act that is unlawful under the terms of ss. 760.20-760.37.

(4) "Dwelling" means any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location on the land of any such building or structure, or portion thereof.

(5) "Familial status" is established when an individual who has not attained the age of 18 years is domiciled with:

(a) A parent or other person having legal custody of such individual; or

(b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

(6) "Family" includes a single individual.

(7) "Handicap" means:

(a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

(b) A person has a developmental disability as defined in s. 393.063.

(8) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(9) "Substantially equivalent" means an administrative subdivision of the State of Florida meeting the requirements of 24 C.F.R. part 115, s. 115.6.

(10) "To rent" includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

**History.**--s. 3, ch. 83-221; s. 1, ch. 84-117; s. 1, ch. 87-106; s. 28, ch. 89-308; s. 1, ch. 89-321; s. 1138, ch. 97-102.

### **760.23 Discrimination in the sale or rental of housing and other prohibited practices.--**

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, or religion.

(3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, handicap, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

(4) It is unlawful to represent to any person because of race, color, national origin, sex, handicap, familial status, or religion that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) It is unlawful, for profit, to induce or attempt to induce any person to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, handicap, familial status, or religion.

(6) The protections afforded under ss. 760.20-760.37 against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(7) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available;  
or

(c) Any person associated with the buyer or renter.

(8) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available;  
or

(c) Any person associated with the buyer or renter.

(9) For purposes of subsections (7) and (8), discrimination includes:

(a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; or

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(10) Covered multifamily dwellings as defined herein which are intended for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by commission rule. Such buildings shall also be designed and constructed in such a manner that:

(a) The public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons.

(b) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.

(c) All premises within such dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling.

2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

3. Reinforcements in bathroom walls to allow later installation of grab bars.

4. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as ANSI A117.1-1986, suffices to satisfy the requirements of paragraph (c).

State agencies with building construction regulation responsibility or local governments, as appropriate, shall review the plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of this subsection.

**History.**--s. 5, ch. 83-221; s. 2, ch. 84-117; s. 2, ch. 89-321.

**760.24 Discrimination in the provision of brokerage services.**--It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, on account of race, color, national origin, sex, handicap, familial status, or religion.

**History.**--s. 7, ch. 83-221; s. 3, ch. 84-117; s. 3, ch. 89-321; s. 1139, ch. 97-102.

**760.25 Discrimination in the financing of housing or in residential real estate transactions.**--

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, handicap, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, handicap, familial status, or religion of the

present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2)(a) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, handicap, familial status, or religion.

(b) As used in this subsection, the term "residential real estate transaction" means any of the following:

1. The making or purchasing of loans or providing other financial assistance:
  - a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
  - b. Secured by residential real estate.
2. The selling, brokering, or appraising of residential real property.

**History.**--s. 6, ch. 83-221; s. 4, ch. 84-117; s. 4, ch. 89-321; s. 17, ch. 90-275; s. 1140, ch. 97-102.

**760.26 Prohibited discrimination in land use decisions and in permitting of development.**--It is unlawful to discriminate in land use decisions or in the permitting of development based on race, color, national origin, sex, disability, familial status, religion, or, except as otherwise provided by law, the source of financing of a development or proposed development.

**History.**--s. 16, ch. 2000-353.

#### **760.29 Exemptions.--**

(1)(a) Nothing in ss. 760.23 and 760.25 applies to:

1. Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three single-family houses at any one time. In the case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this paragraph applies only with respect to one sale within any 24-month period. In addition, the bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three single-family houses at any one time. The sale or rental of any single-family house shall be excepted from the application of ss. 760.20-760.37 only if the house is sold or rented:
  - a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate licensee or such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such licensee or person; and
  - b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of s. 760.23(3).

Nothing in this provision prohibits the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title.

2. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(b) For the purposes of paragraph (a), a person is deemed to be in the business of selling or renting dwellings if the person:

1. Has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or interest therein;
2. Has, within the preceding 12 months, participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or interest therein; or
3. Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(2) Nothing in ss. 760.20-760.37 prohibits a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of any dwelling which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nothing in ss. 760.20-760.37 prohibits a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(3) Nothing in ss. 760.20-760.37 requires any person renting or selling a dwelling constructed for first occupancy before March 13, 1991, to modify, alter, or adjust the dwelling in order to provide physical accessibility except as otherwise required by law.

(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 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 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.

(5) Nothing in ss. 760.20-760.37:

- (a) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, national origin, sex, handicap, familial status, or religion.
- (b) Limits the applicability of any reasonable local restriction regarding the maximum number of occupants permitted to occupy a dwelling.
- (c) Requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
- (d) Prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined under chapter 893.

**History.**--ss. 4, 8, ch. 83-221; s. 5, ch. 84-117; s. 5, ch. 89-321; s. 18, ch. 90-275; s. 1, ch. 96-191; s. 1792, ch. 97-102; s. 1, ch. 99-348; s. 4, ch. 2001-143; s. 59, ch. 2003-164.

#### **760.30 Administration of ss. 760.20-760.37.--**

- (1) The authority and responsibility for administering ss. 760.20-760.37 is in the commission.
- (2) The commission may delegate any of its functions, duties, and powers to its employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under ss. 760.20-760.37.

**History.**--s. 9, ch. 83-221.

#### **760.31 Powers and duties of commission.--**The commission shall:

- (1) Make studies with respect to the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the state.
- (2) Publish and disseminate reports, recommendations, and information derived from such studies.
- (3) Cooperate with and render technical assistance to public or private agencies, organizations, and institutions within the state which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices.
- (4) Administer the programs and activities relating to housing in a manner affirmatively to further the policies of ss. 760.20-760.37.
- (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).

**History.**--s. 9, ch. 83-221; s. 6, ch. 89-321; s. 5, ch. 2001-143.

### **760.32 Investigations; subpoenas; oaths.--**

(1) In conducting an investigation, the commission shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation, provided the commission first complies with the provisions of the State Constitution relating to unreasonable searches and seizures. The commission may issue subpoenas to compel its access to or the production of such materials or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in court. The commission may administer oaths.

(2) Upon written application to the commission, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the commission to the same extent and subject to the same limitations as subpoenas issued by the commission itself. A subpoena issued at the request of a respondent shall show on its face the name and address of such respondent and shall state that it was issued at her or his request.

(3) Within 5 days after service of a subpoena upon any person, such person may petition the commission to revoke or modify the subpoena. The commission shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, or that compliance would be unduly onerous or for other good reason.

(4) In case of refusal to obey a subpoena, the commission or the person at whose request the subpoena was issued may petition for its enforcement in the circuit court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(5) Witnesses summoned by subpoena of the commission shall be entitled to the same witness and mileage fees as are witnesses in proceedings in court. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by the respondent.

**History.**--s. 9, ch. 83-221; s. 1141, ch. 97-102.

### **760.34 Enforcement.--**

(1) 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. Complaints shall be in writing and shall contain such information and be in such form as the commission requires. Upon receipt of such a complaint, the commission shall furnish a copy to the person or persons who allegedly committed the discriminatory housing practice or are about to commit the alleged discriminatory housing practice. Within 100 days after receiving a complaint, or within 100 days after the expiration of any period of reference under subsection (3), the commission shall investigate the complaint and give notice in writing to the person aggrieved whether it intends to resolve

it. If the commission decides to resolve the complaint, it shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion.

Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under ss. 760.20-760.37 without the written consent of the persons concerned. Any employee of the commission who makes public any information in violation of this provision is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A complaint under subsection (1) must be filed within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her answer at any time. Both complaint and answer shall be verified.

(3) Wherever a local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in ss. 760.20-760.37, the commission shall notify the appropriate local agency of any complaint filed under ss. 760.20-760.37 which appears to constitute a violation of the local fair housing law, and the commission shall take no further action with respect to such complaint if the local law enforcement official has, within 30 days from the date the alleged offense was brought to his or her attention, commenced proceedings in the matter. In no event shall the commission take further action unless it certifies that in its judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(4) If, within 180 days after a complaint is filed with the commission or within 180 days after expiration of any period of reference under subsection (3), the commission has been unable to obtain voluntary compliance with ss. 760.20-760.37, the person aggrieved may commence a civil action in any appropriate court against the respondent named in the complaint or petition for an administrative determination pursuant to s. 760.35 to enforce the rights granted or protected by ss. 760.20-760.37. If, as a result of its investigation under subsection (1), the commission finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the person aggrieved, the Attorney General shall bring an action in the name of the state on behalf of the aggrieved person to enforce the provisions of ss. 760.20-760.37.

(5) In any proceeding brought pursuant to this section or s. 760.35, the burden of proof is on the complainant.

(6) Whenever an action filed in court pursuant to this section or s. 760.35 comes to trial, the commission shall immediately terminate all efforts to obtain voluntary compliance.

(7)(a) The commission may institute a civil action in any appropriate court if it is unable to obtain voluntary compliance with ss. 760.20-760.37. The commission need not have petitioned for an administrative hearing or exhausted its administrative remedies prior to bringing a civil action.

(b) The court may impose the following fines for each violation of ss. 760.20-760.37:

1. Up to \$10,000, if the respondent has not previously been found guilty of a violation of ss. 760.20-760.37.

2. Up to \$25,000, if the respondent has been found guilty of one prior violation of ss. 760.20-760.37 within the preceding 5 years.
3. Up to \$50,000, if the respondent has been found guilty of two or more violations of ss. 760.20-760.37 within the preceding 7 years.

In imposing a fine under this paragraph, the court shall consider the nature and circumstances of the violation, the degree of culpability, the history of prior violations of ss. 760.20-760.37, the financial circumstances of the respondent, and the goal of deterring future violations of ss. 760.20-760.37.

- (c) The court shall award reasonable attorney's fees and costs to the commission in any action in which the commission prevails.
- (8) Any local agency certified as substantially equivalent may institute a civil action in any appropriate court, including circuit court, if it is unable to obtain voluntary compliance with the local fair housing law. The agency need not have petitioned for an administrative hearing or exhausted its administrative remedies prior to bringing a civil action. The court may impose fines as provided in the local fair housing law.

**History.**--ss. 9, 10, ch. 83-221; s. 7, ch. 89-321; s. 2, ch. 94-91; s. 418, ch. 96-406; s. 1793, ch. 97-102.

### **760.35 Civil actions and relief; administrative procedures.--**

(1) A civil action shall be commenced no later than 2 years after an alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought pursuant to this section or s. 760.34 from time to time before bringing it to trial if the court believes that the conciliation efforts of the commission or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court. Any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of ss. 760.20-760.37 and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of ss. 760.20-760.37 shall not be affected.

(2) If the court finds that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including injunctive and other equitable relief, actual and punitive damages, and reasonable attorney's fees and costs.

(3)(a) If the commission is unable to obtain voluntary compliance with ss. 760.20-760.37 or has reasonable cause to believe that a discriminatory practice has occurred:

1. The commission may institute an administrative proceeding under chapter 120; or
2. The person aggrieved may request administrative relief under chapter 120 within 30 days after receiving notice that the commission has concluded its investigation under s. 760.34.

(b) Administrative hearings shall be conducted pursuant to ss. 120.569 and 120.57(1). The respondent must be served written notice by certified mail. If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice,

including quantifiable damages and reasonable attorney's fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1). Judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(c) The district courts of appeal may, upon the filing of appropriate notices of appeal, review final orders of the commission pursuant to s. 120.68. Costs or fees may not be assessed against the commission in any appeal from a final order issued by the commission under this subsection. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay an order of the commission.

(d) This subsection does not prevent any other legal or administrative action provided by law.

**History.**--s. 11, ch. 83-221; s. 8, ch. 89-321; s. 303, ch. 96-410; s. 1794, ch. 97-102.

**760.36 Conciliation agreements.**--Any conciliation agreement arising out of conciliation efforts by the Florida Commission on Human Relations pursuant to the Fair Housing Act must be agreed to by the respondent and the complainant and is subject to the approval of the commission. Notwithstanding the provisions of s. 760.11(11) and (12), each conciliation agreement arising out of a complaint filed under the Fair Housing Act shall be made public unless the complainant and the respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of the Florida Fair Housing Act.

**History.**--s. 19, ch. 90-275; s. 9, ch. 92-177; s. 4, ch. 92-282; s. 3, ch. 94-91; s. 419, ch. 96-406.

**760.37 Interference, coercion, or intimidation; enforcement by administrative or civil action.**--It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of her or his having exercised, or on account of her or his having aided or encouraged any other person in the exercise of any right granted under ss. 760.20-760.37. This section may be enforced by appropriate administrative or civil action.

**History.**--s. 12, ch. 83-221; s. 9, ch. 89-321; s. 1142, ch. 97-102.

### **PART III**

#### **MISCELLANEOUS PROVISIONS**

760.40 Genetic testing; informed consent; confidentiality; penalties; notice of use of results.

760.50 Discrimination on the basis of AIDS, AIDS-related complex, and HIV prohibited.

760.51 Violations of constitutional rights, civil action by the Attorney General; civil penalty.

760.60 Discriminatory practices of certain clubs prohibited; remedies.

**760.40 Genetic testing; informed consent; confidentiality; penalties; notice of use of results.**--

(1) As used in this section, the term "DNA analysis" means the medical and biological examination and analysis of a person to identify the presence and composition of genes in that person's body. The term includes DNA typing and genetic testing.

(2)(a) Except for purposes of criminal prosecution, except for purposes of determining paternity as provided in s. 409.256 or s. 742.12(1), and except for purposes of acquiring specimens from persons convicted of certain offenses or as otherwise provided in s. 943.325, DNA analysis may be performed only with the informed consent of the person to be tested, and the results of such DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without the consent of the person tested. Such information held by a public entity is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) A person who violates paragraph (a) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who performs DNA analysis or receives records, results, or findings of DNA analysis must provide the person tested with notice that the analysis was performed or that the information was received. The notice must state that, upon the request of the person tested, the information will be made available to his or her physician. The notice must also state whether the information was used in any decision to grant or deny any insurance, employment, mortgage, loan, credit, or educational opportunity. If the information was used in any decision that resulted in a denial, the analysis must be repeated to verify the accuracy of the first analysis, and if the first analysis is found to be inaccurate, the denial must be reviewed.

**History.**--s. 1, ch. 92-101; s. 10, ch. 93-204; s. 1, ch. 94-90; s. 420, ch. 96-406; s. 1795, ch. 97-102; s. 15, ch. 98-251; s. 7, ch. 2001-127; s. 40, ch. 2005-39.

#### **760.50 Discrimination on the basis of AIDS, AIDS-related complex, and HIV prohibited.--**

(1) The Legislature finds and declares that persons infected or believed to be infected with human immunodeficiency virus have suffered and will continue to suffer irrational and scientifically unfounded discrimination. The Legislature further finds and declares that society itself is harmed by this discrimination, as otherwise able-bodied persons are deprived of the means of supporting themselves, providing for their own health care, housing themselves, and participating in the opportunities otherwise available to them in society. The Legislature further finds and declares that remedies are needed to correct these problems.

(2) Any person with or perceived as having acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, or human immunodeficiency virus shall have every protection made available to handicapped persons.

(3)(a) No person may require an individual to take a human immunodeficiency virus-related test as a condition of hiring, promotion, or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question.

(b) No person may fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of knowledge or belief that the individual has taken a human immunodeficiency virus test or the results or perceived results of such test unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification of the job in question.

(c) A person who asserts that a bona fide occupational qualification exists for human immunodeficiency virus-related testing shall have the burden of proving that:

1. The human immunodeficiency virus-related test is necessary to ascertain whether an employee is currently able to perform in a reasonable manner the duties of the particular job or whether an employee will present a significant risk of transmitting human immunodeficiency virus infection to other persons in the course of normal work activities; and
2. There exists no means of reasonable accommodation short of requiring that the individual be free of human immunodeficiency virus infection.

(4)(a) A person may not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(b) A person or other entity receiving or benefiting from state financial assistance may not discriminate against an otherwise qualified individual on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(c) A person who asserts that an individual who is infected with human immunodeficiency virus is not otherwise qualified shall have the burden of proving that no reasonable accommodation can be made to prevent the likelihood that the individual will, under the circumstances involved, expose other individuals to a significant possibility of being infected with human immunodeficiency virus.

(d) A person may not fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the fact that the individual is a licensed health care professional or health care worker who treats or provides patient care to persons infected with human immunodeficiency virus.

(5) Every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall maintain the confidentiality of information relating to the medical condition or status of any person covered by such insurance benefits. Such information in the possession of a public employer is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. An employer shall be liable in damages to any person damaged by its failure to implement such a procedure.

(6)(a) Any person aggrieved by a violation of this section shall have a right of action in the circuit court and may recover for each violation:

1. Against any person who violates a provision of this section, liquidated damages of \$1,000 or actual damages, whichever is greater.
2. Against any person who intentionally or recklessly violates a provision of this section, liquidated damages of \$5,000 or actual damages, whichever is greater.
3. Reasonable attorney's fees.
4. Such other relief, including an injunction, as the court may deem appropriate.

(b) Nothing in this section limits the right of the person aggrieved by a violation of this section to recover damages or other relief under any other applicable law.

**History.**--s. 45, ch. 88-380; s. 14, ch. 89-350; s. 6, ch. 94-90; s. 421, ch. 96-406; s. 1796, ch. 97-102.

**760.51 Violations of constitutional rights, civil action by the Attorney General; civil penalty.--**

(1) Whenever any person, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any other person of rights secured by the State Constitution or laws of this state, the Attorney General may bring a civil or administrative action for damages, and for injunctive or other appropriate relief for violations of the rights secured. Any damages recovered under this section shall accrue to the injured person. The civil action shall be brought in the name of the state and may be brought on behalf of the injured person. The Attorney General is entitled to an award of reasonable attorney's fees and costs if the Department of Legal Affairs prevails in an action brought under this section.

(2) Any person who interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any other person of rights secured by the State Constitution or laws of this state is liable for a civil penalty of not more than \$10,000 for each violation. This penalty may be recovered in any action brought under this section by the Attorney General. A civil penalty so collected shall accrue to the state and shall be deposited as received into the General Revenue Fund unallocated.

**History.**--s. 4, ch. 91-74.

**760.60 Discriminatory practices of certain clubs prohibited; remedies.--**

(1) It is unlawful for a person to discriminate against any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status in evaluating an application for membership in a club that has more than 400 members, that provides regular meal service, and that regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from nonmembers for business purposes. It is unlawful for a person, on behalf of such a club, to publish, circulate, issue, display, post, or mail any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status. This subsection does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.

(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 pursuant to subsection (2), to give notice of its intent 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 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.

**History.**--s. 12, ch. 92-177.

## **PART IV**

### **MINORITY REPRESENTATION IN CERTAIN BODIES**

760.80 Minority representation on boards, commissions, councils, and committees.

#### **760.80 Minority representation on boards, commissions, councils, and committees.--**

(1) It is the intent of the Legislature to recognize the importance of balance in the appointment of minority and nonminority persons to membership on statutorily created decisionmaking and regulatory boards, commissions, councils, and committees, and to promote that balance through the provisions of this section. In addition, the Legislature recognizes the importance of including persons with physical disabilities on such panels. Furthermore, the Legislature recognizes that statutorily created decisionmaking and regulatory boards, commissions, councils, and committees play a vital role in shaping public policy for Florida, and the selection of the best-qualified candidates is the paramount obligation of the appointing authority.

(2) As used in this section, "minority person" means:

(a) An African American; that is, a person having origins in any of the racial groups of the African Diaspora.

(b) A Hispanic American; that is, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race.

(c) An Asian American; that is, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778.

(d) A Native American; that is, a person who has origins in any of the Indian Tribes of North America prior to 1835.

(e) An American woman.

(3) In appointing members to any statutorily created decisionmaking or regulatory board, commission, council, or committee of the state, the appointing authority should select, from among the best-qualified persons, those persons whose appointment would ensure that the membership of the board, commission, council, or committee accurately reflects the proportion that each group of minority persons specified in subsection (2) represents in the population of the state as a whole or, in the case of a local board, commission, council, or committee, in the population of the area represented by the board, commission, council, or committee, as determined pursuant to the most recent federal decennial census, unless the law regulating such appointment requires otherwise, or persons of the underrepresented minority group cannot

be recruited. When appointing members to a statutorily created decisionmaking or regulatory board, commission, council, or committee which was created to address a specific issue relating to minority persons, the appointing authority should give weight to the minority group that the board, commission, council, or committee was created to serve. If the size of the board, commission, council, or committee precludes an accurate representation of all minority groups, appointments should be made which conform to the requirements of this section insofar as possible. If there are multiple appointing authorities for the board, commission, council, or committee, they shall consult with each other to ensure compliance with this section.

(4) Each appointing authority described in subsection (3) shall submit a report to the Secretary of State annually by December 1 which discloses the number of appointments made during the preceding year from each minority group and the number of nonminority appointments made, expressed both in numerical terms and as a percentage of the total membership of the board, commission, council, or committee. In addition, information shall be included in the report detailing the number of physically disabled persons appointed to boards, commissions, councils, and committees in the previous calendar year. A copy of the report shall be submitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate. In addition, each appointing authority shall designate a person responsible for retaining all applications for appointment, who shall ensure that information describing each applicant's race, ethnicity, gender, physical disability, if applicable, and qualifications is available for public inspection during reasonable hours. Nothing in this section requires disclosure of an applicant's identity or of any other information made confidential by law.

(5) This section applies to appointments and reappointments made after January 1, 1995. It does not prohibit a member of a decisionmaking or regulatory board, commission, council, or committee from completing a term being served as such member when this act takes effect. A person appointed to a decisionmaking or regulatory board, commission, council, or committee before January 1, 1995, may not be removed from office solely for the purpose of meeting the requirements of this section.

**History.**--s. 1, ch. 94-213.

## **PART V**

### **ENVIRONMENTAL EQUITY AND JUSTICE**

760.854 Center for Environmental Equity and Justice.

#### **760.854 Center for Environmental Equity and Justice.--**

(1) There is hereby established the Center for Environmental Equity and Justice.

(2) The purpose of the center is to conduct and facilitate research, develop policies, and engage in education, training, and community outreach with respect to environmental equity and justice issues.

(3) The Center for Environmental Equity and Justice shall be established at the Florida Agricultural and Mechanical University within the Environmental Sciences Institute.

(4) The Center for Environmental Equity and Justice shall sponsor students to serve as interns at the Department of Health, the Department of Environmental Protection, the Department of Community

Affairs, and other relevant state agencies. The center may enter into a memorandum of understanding with these agencies to address environmental equity and justice issues.