

ADMINISTRATIVE APPEAL RIGHTS

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill amends provisions of the Fair Housing Act.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

57-21-9. Procedure for an aggrieved person to file a complaint -- Conciliation --

Investigation -- Determination.

(1) An aggrieved person may file a written verified complaint with the division within 180 days after the day on which an alleged discriminatory housing practice occurs.

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

- (i) the form of the complaint;
(ii) the form of any answer to the complaint;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

83 **57-21-10. Judicial election or formal adjudicative hearing.**

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

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

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

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

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

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

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

110 (i) in accordance with Subsection 57-21-9(7)(b)(ii), the director issued a written  
111 determination finding reasonable cause to believe that a discriminatory housing practice had  
112 occurred, or was about to occur; and

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

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

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

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

123 (a) [~~The~~] the presiding officer shall commence the formal adjudicative hearing within  
124 150 days after the [~~respondent files~~] day on which a request for review of the director's  
125 determination is filed, unless it is impracticable to do so[~~;~~];

- 126 (b) ~~[The]~~ the investigator who investigated the matter may not participate;
- 127 (i) in the formal adjudicative hearing, except as a witness~~[-]; nor may the investigator~~
- 128 ~~participate];~~ or
- 129 (ii) in the deliberations of the presiding officer~~[-];~~
- 130 (c) ~~[Any]~~ any party to the complaint may file a written request to the Division of
- 131 Adjudication for review of the presiding officer's order in accordance with Section 63G-4-301
- 132 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings~~[-];~~ and
- 133 (d) ~~[A]~~ a final order of the commission under this section is subject to judicial review
- 134 as provided in Section 63G-4-403 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.
- 135 (6) If a civil action is elected, the commission is barred from continuing or
- 136 commencing any adjudicative proceeding in connection with the same claims under this
- 137 chapter.
- 138 (7) (a) The commission shall make final administrative disposition of the complaint
- 139 alleging a discriminatory housing practice within one year after the ~~[filing of]~~ complainant filed
- 140 the complaint, unless it is impracticable to do so.
- 141 (b) If the commission is unable to make final administrative disposition within ~~[one~~
- 142 ~~year]~~ the time period described in Subsection (7)(a), the commission shall notify the
- 143 complainant, respondent, and any other interested party in writing of the reasons for the delay.