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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO PROPERTY -- RHODE ISLAND FAIR HOUSING PRACTICES ACT

Introduced By: Representatives Vella-Wilkinson, Lancia, Lima, Williams, and Canario

Date Introduced: March 01, 2017

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 34-37-5 of the General Laws in Chapter 34-37 entitled "Rhode
2 Island Fair Housing Practices Act" is hereby amended to read as follows:

3 **34-37-5. Prevention of unlawful housing practices.**

4 (a) The commission is empowered and directed to prevent any person from violating any
5 of the provisions of this chapter, provided that before instituting a formal proceeding it shall
6 attempt by informal methods of conference, persuasion, and conciliation to induce compliance
7 with this chapter.

8 (b) Upon the commission's own initiative or whenever an aggrieved individual or an
9 organization chartered for the purpose of or engaged in combating discrimination or racism or of
10 safeguarding civil liberties, that organization acting on behalf of one or more individuals being
11 hereinafter referred to as the complainant, makes a charge, in writing, under oath, to the
12 commission that any person, agency, bureau, corporation, or association, hereinafter referred to as
13 the respondent, has violated or is violating, to the best of complainant's knowledge and belief, any
14 of the provisions of this chapter, and that the alleged discriminatory housing practice has occurred
15 or terminated within one year of the date of filing, the commission may initiate a preliminary
16 investigation and if it shall determine after the investigation that it is probable that unlawful
17 housing practices have been or are being engaged in, it shall endeavor to eliminate the unlawful
18 housing practices by informal methods of conference, conciliation, and persuasion. Nothing said
19 or done during these endeavors may be used as evidence in any subsequent proceeding. If after

1 the investigation and conference, the commission is satisfied that any unlawful housing practice
2 of the respondent will be eliminated, it may, with the consent of the complainant, treat the charge
3 as conciliated, and entry of that disposition shall be made on the records of the commission. If the
4 commission fails to effect the elimination of the unlawful housing practices and to obtain
5 voluntary compliance with this chapter, or, if the circumstances warrant, in advance of any
6 preliminary investigation or endeavors, the commission shall have the power to issue and cause to
7 be served upon any person or respondent a complaint stating the charges in that respect and
8 containing a notice of hearing before the commission, a member thereof, or a hearing examiner at
9 a place therein fixed to be held not less than ten (10) days after the service of the complaint.

10 (c) The commission, member thereof, or hearing examiner conducting the hearing shall
11 have the power reasonably and fairly to amend any written complaint at any time prior to the
12 issuance of an order based thereon. The respondents shall have like power to amend its answer to
13 the original or amended complaint at any time prior to the issuance of the order. The
14 commissioner assigned to the preliminary hearing of any charge shall take no part in the final
15 hearing except as a witness upon competent matters and will have no part in the determination or
16 decision of the case after hearing.

17 (d) The respondent shall have the right to file an answer to the complaint and shall
18 appear at the hearing in person or otherwise with or without counsel to present evidence and to
19 examine and cross-examine witnesses.

20 (e) In any proceeding the commission, its member, or its agent shall not be bound by the
21 rules of evidence prevailing in the courts.

22 (f) The commission shall in ascertaining the practices followed by the respondent take
23 into account all evidence, statistical or otherwise, which may tend to prove the existence of a
24 predetermined pattern of discrimination in housing.

25 (g) The testimony taken at the hearing shall be under oath and shall be reduced to writing
26 and filed with the commission. Thereafter, in its discretion, the commission upon notice may take
27 further testimony or hear argument.

28 (h)(1) If upon all the testimony taken the commission shall determine that the respondent
29 has engaged in or is engaging in unlawful housing practices, the commission shall state its
30 findings of fact and shall issue and cause to be served on the respondent an order requiring the
31 respondent to cease and desist from the unlawful housing practices, and to take such further
32 affirmative or other action as will effectuate the purposes of this chapter.

33 (2) The commission may also order the respondent to pay the complainant damages
34 sustained thereby; costs, including reasonable attorney's fees incurred at any time in connection

1 with the commission of the unlawful act, and civil penalties, any amounts awarded to be
2 deposited in the state treasury. The civil penalty shall be (i) an amount not exceeding ten
3 thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior
4 discriminatory housing practice; (ii) in an amount not exceeding twenty-five thousand dollars
5 (\$25,000) if the respondent has been adjudged to have committed one other discriminatory
6 housing practice during the five (5) year period ending on the date of filing this charge; and (iii)
7 in an amount not exceeding fifty thousand dollars (\$50,000) if the respondent has been adjudged
8 to have committed two (2) or more discriminatory housing practices during the seven (7) year
9 period ending on the date of the filing of this charge; except that if the acts constituting the
10 discriminatory housing practice that is the object of the charge are committed by the same natural
11 person who has been previously adjudged to have committed acts constituting a discriminatory
12 housing practice, then the civil penalties set forth in (ii) and (iii) may be imposed without regard
13 to the period of time within which any subsequent discriminatory housing practice occurred.
14 When determining the amount of civil penalties, the commission shall consider as a mitigating
15 factor whether the respondent has acted in good faith and whether the respondent has actively
16 engaged in regular antidiscrimination educational programs. Provided that no order shall affect
17 any contract, sale, encumbrance, or lease consummated before the issuance of the order and
18 involving a bona fide purchaser, encumbrancer or tenant without actual notice of the charge filed
19 under this title.

20 (i) If the commission shall find that no probable cause exists for crediting the charges, or,
21 if upon all the evidence, it shall find that a respondent has not engaged in unfair housing
22 practices, the commission shall state its findings of fact and shall issue and cause to be served on
23 the complainant an order dismissing the complaint as to the respondent. A copy of the order shall
24 be delivered in all cases to the attorney general and such other public officers as the commission
25 deems proper.

26 (j) Until a transcript of the record in a case shall be filed in a court as provided in
27 subsection (m), the commission may at any time, upon reasonable notice, and in such manner as
28 it shall deem proper, modify or set aside, in whole or in part, any of its findings or orders.

29 (k) Until such time as a hearing is convened pursuant to this section, no publicity shall be
30 given to any proceedings before the commission, either by the commission or any employee
31 thereof, the complainant, or the respondent, except that in the event of a conciliation agreement
32 the agreement shall be made public unless the complainant and respondent otherwise agree and
33 the commission determines that disclosure is not required to further the purposes of this chapter.
34 After the complaint issues and before an order issues, the commission shall not initiate any public

1 notice of any charge or complaint before the commission, however, the commission may respond
2 to inquiries about the status of a complaint.

3 (l) A complainant may seek a right to sue in state court if not less than one hundred and
4 twenty (120) days and not more than two (2) years have elapsed from the date of filing of a
5 charge, if the commission has been unable to secure a settlement agreement or conciliation
6 agreement and if the commission has not commenced hearing on a complaint. The commission
7 shall grant the right to sue within thirty (30) days after receipt of the request. This shall terminate
8 all proceedings before the commission and shall give to the complainant the right to commence
9 suit in the superior court within any county as provided in section 28-5-28 within ninety (90) days
10 after the granting of the request. Any party may claim a trial by jury. The superior court may
11 make orders consistent with subsection (h) and may also award punitive damages and such other
12 damages as the court deems just and proper.

13 (m)(1) The commission is further empowered to file a complaint in the superior court in
14 any county in which the unlawful housing practice allegedly occurs, or has occurred, or in which
15 a defendant resides or maintains a business office, or in Providence County, seeking injunctive
16 relief, including a temporary restraining order, against the defendant.

17 (2) No preliminary injunction shall be effective for more than thirty (30) days; provided
18 that, if the defendant has sought judicial review of an order of the commission issued pursuant to
19 this section, or if the commission has sought a decree of the court for the enforcement of the
20 order, the preliminary injunction shall remain in full force and effect until such time as the
21 judicial review or the commission's petition for the decree of enforcement is finally heard and
22 determined.

23 (3) In any proceeding under this subsection, the commission may, if the prayer of the
24 original or amended complaint so requests, proceed at the proper time to obtain the relief
25 provided in section 34-37-6.

26 (4) The application by the commission for injunctive relief shall not prevent the
27 commission from continuing to prosecute the proceeding before it out of which the application
28 arises.

29 (5) Whenever a complaint shall be filed under the provisions of this subsection, the state
30 shall be liable, in an action brought against it, for the payment of such costs and damages as may
31 have been incurred or suffered by the defendant should final judgment be entered upon the
32 complaint in favor of the defendant, or should the commission, having been denied temporary
33 relief after the entry of a restraining order, fail to prosecute the matter further, or should the
34 commission, having been granted temporary relief, fail to prosecute the matter further, unless, in

1 the latter two (2) instances, failure to prosecute is caused by the making of an agreed settlement
2 of any kind with the defendant, including a conciliation agreement.

3 (6) All proceedings taken pursuant to the provisions of this section shall take precedence
4 over all other civil matters then pending before the court.

5 ~~(n) When a complaint issues after a finding of probable cause under subsection (b), any
6 party may elect to have the claims asserted in that complaint decided in a civil action in lieu of a
7 hearing under subsections (b) — (k). The election must be made not later than twenty (20) days
8 after the receipt by the electing person of service of the complaint under subsection (b). The
9 person making the election shall give notice of doing so to the commission, the attorney general,
10 and to all other complainants and respondents to whom the charge relates.~~

11 (n)(1) The complainant or the respondent may elect, within twenty (20) days after receipt
12 of a finding of probable cause, to terminate by written notice to the commission all proceedings
13 before the commission and have the case heard in the superior court. In the event of an election to
14 terminate the proceedings, the commission shall issue a right to sue notice to the complainant
15 with a copy of the notice sent to all parties.

16 (2) The complainant shall have the right to commence suit in the superior court within
17 any county as provided in §28-5-28 within ninety (90) days of the date of the right to sue notice.
18 Either party may claim a trial by jury in the superior court.

19 (3) Notwithstanding the termination of proceedings before the commission upon the
20 granting of the right to sue notice, the parties may agree to have the commission seek to conciliate
21 or mediate.

22 (o) If an election is made under subsection (n):

23 (1) The complainant, the commission, or the attorney general may commence a civil
24 action on behalf of the aggrieved person in the superior court within any county as provided in
25 section 28-5-28 within ninety (90) days of the date of the right to sue notice ~~after receipt of notice
26 of an election~~ under subsection (n);

27 (2) Any party may claim a trial by jury. Any aggrieved person with respect to the issues
28 to be determined in a civil action under this subsection may intervene as of right in that civil
29 action;

30 (3) The superior court may make orders consistent with subsection (h) and may also
31 award punitive damages and such damages as the court deems just and proper, provided that the
32 court shall not enter a consent order, dismissal stipulation or judgment settling claims of
33 discrimination in an action or proceeding under this chapter, unless the parties and their counsel
34 attest that a waiver of all or substantially all attorney's fees was not compelled as a condition of

1 [the settlement.](#)

2 SECTION 2. Section 42-87-5 of the General Laws in Chapter 42-87 entitled "Civil
3 Rights of People With Disabilities" is hereby amended to read as follows:

4 **42-87-5. Enforcement of anti-discrimination provisions.**

5 (a) Except as specifically set forth in subsections (b) and (c), the Rhode Island
6 commission for human rights is empowered and directed to prevent any person from violating
7 any of the provisions of sections 42-87-1 -- 42-87-4, provided that before instituting a formal
8 hearing it shall attempt by informal methods of conference, persuasion, and conciliation, to
9 induce compliance with those sections. Upon the commission's own initiative or whenever an
10 aggrieved individual or an organization chartered for the purpose of combating discrimination or
11 of safeguarding civil liberties or rights of persons with disabilities, the individual or organization
12 being hereinafter referred to as the "complainant", makes a charge to the commission that any
13 person, agency, bureau, corporation or association, hereinafter referred to as the "respondent", has
14 violated or is violating any of the provisions of sections 42-87-1 -- 42-87-4, the commission may
15 proceed in the same manner and with the same powers as provided in sections 28-5-16 -- 28-5-26,
16 and the provisions of sections 28-5-13 and 28-5-16 -- 28-5-36, as to the powers, duties and rights
17 of the commission, its members, hearing examiners, the complainant, respondent, interviewer,
18 and the court shall apply in any proceedings under this section. [Provided further, that with respect
19 to charges that respondents have violated the provisions of this chapter with respect to
20 discrimination in housing, the provisions of §34-37-5 shall also apply.](#)

21 (b) (1) The governor's commission on disabilities is empowered and directed to
22 investigate and hear all complaints relating to alleged violations of this chapter relating to the
23 physical inaccessibility of buildings and structures.

24 (2) The governor's commission on disabilities shall have the power and duties to adopt,
25 promulgate, amend and rescind rules and regulations to effectuate the provisions of this section.

26 (i) Prior to instituting a formal hearing, the governor's commission on disabilities shall
27 attempt by informal methods of conference, persuasion and conciliation, to induce compliance
28 with this chapter. If the complaint or any portion of the complaint cannot be resolved by these
29 informal methods, the governor's commission on disabilities shall conduct a hearing as provided
30 by this section.

31 (ii) If the governor's commission on disabilities shall upon all the evidence find that the
32 respondent has not engaged in violations of the civil rights of individuals with disabilities caused
33 by the physical inaccessibility of buildings and structures, the commission shall state its findings
34 of fact and shall issue and cause to be served on the complainant an order dismissing the

1 complaint as to the respondent.

2 (iii) If upon all the testimony taken, the commission shall determine that the respondent
3 has engaged in violations of the civil rights of individuals with disabilities caused by the physical
4 inaccessibility of buildings and structures, then the commission shall state its findings of fact and
5 shall issue and cause to be served upon the respondent an order requiring the respondent to cease
6 and desist from such practices, and to take any further action that will effectuate the purposes of
7 this chapter.

8 (iv) Any complainant or respondent claiming to be aggrieved by a final order of the
9 commission may obtain judicial review of the final order; any party may obtain an order of court
10 for enforcement of a final order of the commission. These proceedings shall be brought in the
11 superior court within any county where the unlawful practices, which are the subject of the
12 commission's order, were committed or where any respondent, required in the order to cease and
13 desist from unlawful practices or to take other affirmative action resides or transacts business.

14 (c) The Rhode Island department of elementary and secondary education is empowered
15 and directed to hear all complaints relating to violations of this chapter in the area of elementary
16 and secondary education. Those complaints shall be heard in accordance with the process set
17 forth in chapter 39 of title 16.

18 SECTION 3. Section 40-9.1-4 of the General Laws in Chapter 40-9.1 entitled "Equal
19 Rights of Blind and Deaf Persons to Public Facilities" is hereby amended to read as follows:

20 **40-9.1-4. Enforcement of anti-discrimination provisions.**

21 The Rhode Island commission for human rights is empowered and directed, as
22 hereinafter provided, to prevent any person from violating any of the provisions of this chapter;
23 provided, that before instituting a formal hearing it shall attempt by informal methods of
24 conference, persuasion and conciliation, to induce compliance with those sections. Upon the
25 commission's own initiative or whenever an aggrieved individual or an organization chartered for
26 the purpose of combating discrimination or of safeguarding civil liberties or rights of persons
27 with disabilities, such individual or organization being hereinafter referred to as "the
28 complainant", makes a charge to the commission that any person, agency, bureau, corporation or
29 association, hereinafter referred to as "the respondent", has violated or is violating any of the
30 provisions of this chapter, the said commission may proceed in the same manner and with the
31 same powers as provided in sections 28-5-16 -- 28-5-27, and the provisions of sections 28-5-13
32 and 28-5-16 -- 28-5-36, as to the powers, duties and rights of the commission, its members,
33 hearing examiners, the complainant, respondent, interviewer and the court shall apply in any
34 proceedings under this section. [Provided further, that with respect to charges that respondents](#)

1 [have violated the provisions of this chapter with respect to discrimination in housing, the](#)
2 [provisions of §34-37-5 shall also apply.](#)

3 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY -- RHODE ISLAND FAIR HOUSING PRACTICES ACT

1 This act would make uniform the process for filing a complaint in superior court when
2 there has been an election to terminate proceedings before the commission after a finding of
3 probable cause under the fair housing practices act and other anti-discrimination laws.

4 This act would take effect upon passage.

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