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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO PROPERTY - RHODE ISLAND FAIR HOUSING PRACTICES ACT

Introduced By: Representatives Ajello, Walsh, Blazejewski, Cimini, and Handy

Date Introduced: January 30, 2014

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

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

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

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

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

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

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

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

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

32 (2) The commission may also order the respondent to pay the complainant damages
33 sustained thereby; costs, including reasonable attorney's fees incurred at any time in connection
34 with the commission of the unlawful act, and civil penalties, any amounts awarded to be

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

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

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

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

1 to inquiries about the status of a complaint.

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

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

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

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

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

28 (5) Whenever a complaint shall be filed under the provisions of this subsection, the state
29 shall be liable, in an action brought against it, for the payment of such costs and damages as may
30 have been incurred or suffered by the defendant should final judgment be entered upon the
31 complaint in favor of the defendant, or should the commission, having been denied temporary
32 relief after the entry of a restraining order, fail to prosecute the matter further, or should the
33 commission, having been granted temporary relief, fail to prosecute the matter further, unless, in
34 the latter two (2) instances, failure to prosecute is caused by the making of an agreed settlement

1 of any kind with the defendant, including a conciliation agreement.

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

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

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

11 (1) The complainant, the commission, or the attorney general may commence a civil
12 action on behalf of the aggrieved person in the superior court within any county as provided in
13 section 28-5-28 within ninety (90) days after receipt of notice of an election under subsection (n);

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

17 (3) The superior court may make orders consistent with subsection (h) and may also
18 award punitive damages and such damages as the court deems just and proper.

19 SECTION 2. 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 eliminate a provision on publicity in the Fair Housing Practices Act that
- 2 has been found unconstitutional under the Fair Employment Practices Act.
- 3 This act would take effect upon passage.

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