

2012 Kansas Statutes

44-1019. Same; complaints; referral to local authority, when; investigation; administrative proceedings; election to file action in court; administrative remedial orders. (a) The authority and responsibility for administering this act shall be in the commission. Any person aggrieved may file a verified complaint with the commission. Such complaints shall be in writing, shall state the facts upon which the allegations of a discriminatory housing practice are based and shall contain such other information and be in such form as the commission may require. Complaints must be filed within one year after the alleged discriminatory housing practice occurred, but may be reasonably and fairly amended at any time. The commission upon its own initiative or the attorney general may, in like manner, make, sign and file such complaint. A respondent may file a verified answer to the complaint against the respondent and with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend the answer filed by the respondent at any time.

(b) Upon receipt of any such complaint the commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this act; and the commission shall within 10 days thereof serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this act, together with a copy of the original complaint. Service of the notice shall be made in the manner prescribed by the code of civil procedure.

(c) Whenever a local fair housing ordinance provides rights and remedies for alleged discriminatory housing practices which are, in the judgment of the commission, substantially equivalent to the rights and remedies provided in this act, the commission shall refer to the appropriate local agency any complaint filed under this act which appears to constitute a violation of such local fair housing ordinance. The commission shall take no further action with respect to such complaint until 30 days have elapsed since the complaint was referred to the local agency, or the local agency has completed its investigation, or the local agency requests the commission to assume jurisdiction or to assist it, whichever occurs first. The local agency shall inform the commission in writing of the status of the referred complaint at the end of the referral period or when the local agency has completed its investigation, whichever occurs first. The commission may take further action on the complaint if in its judgment the protection of the rights of the parties or the interests of justice require such action.

(d) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under subsections (a) and (b), to such person, from the commission.

(e) (1) If a complaint is not referred to a local agency as provided in subsection (b), or after the commission assumes jurisdiction of a complaint following such referral, the commission shall promptly commence an investigation thereof, in the manner provided in K.S.A. 44-1005, and amendments thereto, for investigating complaints of violations of the Kansas act against discrimination, and complete such investigation, including conciliation, within 100 days after the filing of the complaint or, when the commission takes further action under subsection (c), within 100 days after the commission assumes jurisdiction of a complaint, unless it is impracticable to do so.

(2) If the commission is unable to complete the investigation within 100 days, or when the commission takes further action under subsection (c), within 100 days after the commission assumes jurisdiction of a complaint, the commission shall inform the parties in writing of the reasons for not doing so.

(3) The commission shall make final administrative disposition within one year after the filing of the complaint or, when the commission takes further action under subsection (c), within one year after the commission assumes jurisdiction of a complaint, unless it is impracticable to do so.

(4) If the commission is unable to make final administrative disposition of the complaint within one year of the date of filing, or when the commission takes further action under subsection (c), within one year after the commission assumes jurisdiction of a complaint, the commission shall inform the parties in writing of the reasons for not doing so.

(f) (1) If it is determined that probable cause exists for crediting the allegations of the complaint, the commission shall serve written notice of such determination on the person aggrieved. The commission shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion which shall be held, insofar as possible, in the cities or other localities where the alleged discriminatory housing practices have occurred or are about to occur. The commission is hereby authorized to enter into formal conciliation agreement which shall include the person aggrieved and the respondent as signatories. Such agreements may include in the provisions thereof any term or condition which may be included in a final order of the commission. Each conciliation agreement shall be made public unless the person aggrieved and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this act.

(2) Any of the parties to a conciliation agreement may apply to the district court of the county where the alleged discriminatory housing practice occurred, or was about to occur, for specific performance of any such agreement.

(g) If the commission is unable to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion, a hearing may be held before the commission in the manner provided in K.S.A. 44-1005, and amendments thereto, for holding hearings under the Kansas act against discrimination. In any such hearing, the burden of proof shall be on the complainant.

(h) In lieu of a hearing under subsection (g), a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in the complaint decided in a civil action as provided in subsection (d) of K.S.A. 44-1021, and amendments thereto. The election must be made not later than 20 days after the receipt by the electing person of service in the manner provided in K.S.A. 44-1005, and amendments thereto, or, in the case of an election by the commission, not later than 20 days after such service. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the complaint relates. If a timely election is made under this subsection, the commission shall file, not later than 30 days after the election is made, a civil action as provided in subsection (d) of K.S.A. 44-1021, and amendments thereto.

(i) If an election is not made under subsection (h) and the commission finds that a respondent has engaged in or is engaging in any discriminatory housing practice, the commission shall render an order requiring the respondent to cease and desist from such discriminatory housing practice, and such order may direct a respondent

to take such affirmative action as the commission deems necessary to effectuate the intent and purposes of this act, including, but not limited to, the selling or renting of specified real property and the lending of money for the acquisition, construction, rehabilitation, repair or maintenance of real property. Such order may also include an award of actual damages, including damages caused by pain, suffering and humiliation. Such order may also, to vindicate the public interest, assess a civil penalty against the respondent:

(1) In an amount not exceeding \$10,000, if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(2) subject to the provisions of subsection (i)(4), in an amount not exceeding \$25,000, if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the complaint;

(3) subject to the provisions of subsection (i)(4), in an amount not exceeding \$50,000, if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the complaint; and

(4) if the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice in the amounts provided by subsections (i)(2) and (i)(3) without regard to the period of time within which any subsequent discriminatory housing practice occurred.

Any such civil penalty shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(j) Within 15 days after an order is served by the commission requiring or prohibiting action by a respondent, the respondent shall notify the commission in writing of the manner in which the respondent has complied with the order.

(k) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a state agency, the commission shall, not later than 30 days after the respondent has complied with the order, or, if such order is judicially reviewed under K.S.A. 44-1021, and amendments thereto, 30 days after such order is in substance affirmed upon such review:

(1) Send copies of the findings of fact, conclusions of law, and the order, to that state agency; and

(2) recommend to the state agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.

History: L. 1970, ch. 193, § 5; L. 1972, ch. 194, § 10; L. 1984, ch. 186, § 2; L. 1988, ch. 356, § 151; L. 1991, ch. 147, § 11; L. 1992, ch. 142, § 3; L. 2001, ch. 5, § 146; July 1.

* Reference apparently intended to be to this subsection (h).