

IOWA CIVIL RIGHTS LAW JOINT SUBCOMMITTEE  
OF THE  
STANDING COMMITTEES ON STATE GOVERNMENT

Report to Members of the  
Second Session of the Sixty-seventh General Assembly

State of Iowa  
1978

1977 REPORT

IOWA CIVIL RIGHTS LAW JOINT SUBCOMMITTEE  
OF THE  
HOUSE AND SENATE COMMITTEES ON STATE GOVERNMENT

December, 1977

Organization

The Iowa Civil Rights Joint Subcommittee of the House and Senate Standing Committees on State Government was established for the purpose of allowing the members of the General Assembly, particularly the members of the Standing Committee on State Government of both House and Senate to attain a greater understanding of the problems and concerns and suggestions of the Iowa Civil Rights Commission.

Specifically, the Subcommittee attempted to review the feasibility of combining the Civil Rights Commission, with other agencies, such as the Spanish Speaking Commission, Commission on the Status of Women, and the Employment of the Handicapped.

The Subcommittee sought to review the spacial and general working environment of the Commission offices, the role of the Commission Director regarding the need for additional authority, and the education of the employees throughout the state in civil rights law.

The Subcommittee also wanted to know what is the present relationship with the Attorney General's Office and the Commission staff, particularly in regard to providing additional Assistant Attorney Generals. Finally the Subcommittee would like to discuss any problems the Commission is having with the State Merit Employment Agency.

The Iowa Civil Rights Law Joint Subcommittee was authorized to hold two scheduled meetings. An additional third meeting was requested by the Subcommittee and was approved by the Legislative Council. The Subcommittee held meetings on September 21 and 22 and November 3, 1977, respectively.

Members

Senator Robert Carr, Chairperson  
Representative Diane Brandt, Vice Chairperson  
Senator E. Kevin Kelly  
Senator Thomas Slater  
Representative William Dielman  
Representative Nancy Shimanek

## Meetings

The Subcommittee held its first meeting on September 21, 1977 in the offices of the Civil Rights Commission, 418 Sixth Street, Des Moines, Iowa. After much discussion and consideration the Subcommittee recommended to further discuss the following:

1. Whether the Civil Rights Commission has been underfunded.
2. The method and proper authority of deciding probable cause.
3. The nature and quality of the relationships between the Civil Rights Commission and other state agencies.
4. The hiring of additional staff.
5. The effectiveness of the Affirmative Action Division and the Governor's Executive Order Number Fifteen.
6. The establishment of a standby appropriation to secure the jobs of Commission employees who are presently paid with funds from the federal government.
7. The creation of a Deputy Director.
8. The establishment of a right-to-sue procedure which would enable persons aggrieved by a violation of the Civil Rights Chapter to directly commence an action for relief in District Court.

The second meeting of the joint interim Subcommittee on Civil Rights was held on September 22, 1977 in Senate Room 22, State House, Des Moines, Iowa. The Subcommittee made the following recommendations:

1. To support House File 268 by Brandt, a bill for an Act to establish a right-to-sue procedure within Chapter 601A of the Code.
2. That the power to appoint staff employees be given to the Director rather than the Commissioners.
3. That the affirmative action function be placed under the jurisdiction of the Governor's office.
4. To change the state statute of limitations to correspond with the federal statute of 180 days.
5. To defer action on the creation of a Deputy Director within the Commission.
6. Strongly support the move to alleviate the case inventory through funding to increase more investigative staff and also to increase staff in the education division.

The Subcommittee recommended to request an additional meeting for the purpose of inviting Professor Arthur Bonfield of the University of Iowa College of Law to speak before the Subcommittee and make recommendations regarding Iowa's Civil Rights Law present status and effectiveness.

The third meeting of the joint interim Subcommittee on Civil Rights was held November 3, 1977 in Senate Room 22, State House, Des Moines, Iowa.

The Subcommittee voted to recommend to the respective House and Senate Standing Committees on State Government the following proposals for legislative consideration.

1. To go on record as supporting in principle House File 268 by Brandt, a bill for an Act to establish a right-to-sue procedure within chapter 601A of the Code. Representative Shimanek did not support the adoption of this recommendation.

2. That a bill draft on civil rights include a provision to provide the director with the discretion to bypass the conciliation, conference and persuasion procedure as set forth in section 601A.14, subsection 3, and go directly to the hearing process, if the director deems the conciliation process to be unworkable, unnecessary, or wasteful of time and resources.

3. The determination of probable cause be decided by an independent hearing officer.

4. To repeal most of the secrecy provisions that now exist in section 601A.14, subsection 4 of the Code.

5. The adoption of an amended version of the language recommended by Professor Bonfield on page 3, item 5, paragraphs a and b. The amended language is as follows:

"(9) Payment to an injured party of profits obtained by the respondent wholly as a result of a violation of this Act."

The Subcommittee also recommended that language outlining remedies pursuant to item 5, paragraphs a and b are NOT to be construed as being mutually exclusive with the other remedies provided in paragraphs c through f of item 5 of Professor Bonfield's prepared remarks, and that the election of one remedy should not bar an aggrieved party or anyone else with standing or the Commission from electing to seek other provided remedies and sanctions.

6. The Subcommittee adopted recommendations 6 and 7 of page 5 pertaining to the repeal of section 601A.14, subsections 8 through 11 of the Code, and also the recommendation to provide for a technical clean-up bill, such as House File 484.

7. To amend Chapter 601A of the Code to state that age discrimination shall mean over 18 years of age.

8. To recommend to the budget committee that there be established a standby appropriation for employees of the Civil Rights Commission in case the federal government does not contract with the Commission.

9. To adopt the recommendations submitted by Professor Bonfield, specifically page 6, items 1 and 2, of Professor Bonfield's November 3 remarks, which clarify section 601A.7 of the Code, to expressly state that all state and local governmental programs, dispensing money, services, etc. to the public are to be subject to section 601A.7 of the Code. Senator Slater noted that item 1, page 6, of Professor Bonfield's remarks makes it a violation of the housing section to discriminate against persons because of the race, ethnic background, etc. of their visitors or friends, guests, relatives or any other persons similarly situated.

10. The term "public accommodation" pursuant to section 601A.2, subsection 10 should be clarified to include the language pursuant to section 601A.7 within its general scope and meaning. Presently there is some argument that section 601A.7 does not clearly cover all state and local government agencies dispensing goods, services, funds, or facilities to the public.

11. To adopt the basic language recommended by Professor Bonfield on page 2, item 4, of Professor Bonfield's prepared remarks. However, the second paragraph should be amended to provide that "at any time in its discretion, the Commission may investigate whether terms of the agreement were being complied with by the respondent".

12. The Subcommittee bill draft shall provide for the election of remedies between private actions, actions taken on the behalf of the Commission, and local commissions, and further recommended that only local commissions which are recognized by the state commission on a referral basis should be provided with the authority to provide for the election of remedies between private actions, and actions taken on behalf of the local commissions or the state.

13. To recommend to the Budget Committee on Appropriations the number of additional staff persons for the Civil Rights Commission.

A copy of Professor Arthur Bonfield's remarks which were presented at the November 3, 1977 Subcommittee meeting is made a part of and attached to the report.

Outline of Remarks by Professor Arthur Bonfield  
University of Iowa Law School

November 3, 1977

As you know, I was the principal draftsman of the Iowa Civil Rights Act of 1965 and the Iowa Fair Housing Act of 1967.

As initially introduced into the legislature the 1965 and 1967 Iowa Civil Rights Acts contained certain compromises. After those initially compromised acts of 1965 and 1967 got to the floor of the legislature they were further compromised by amendments on the floor. In addition, the Act has been amended many times since 1967 -- often in an ad hoc manner, and in a way that was technically not well executed. Our current civil rights law is therefore far from ideal. I therefore suggest the following amendments to the Iowa Civil Rights Act for the purpose of curing some of the deficiencies in the present Iowa laws, and taking advantage of some of the more recent advances in the legislation of other states and the United States on this subject.

PROCEDURAL SUGGESTIONS

1. Right to file private action. Will keep agency on its toes and will assure private person's rights not lost by agency non-feasance. Brandt bill H.F. 268 good. Query: Why not permit election of remedies right at start so aggrieved person need not go to agency in first place, and if person elects judicial remedy, cannot go to agency later. On other hand, if person goes to agency first, make that a final election of administrative remedy only if agency has found probable cause within 90 days. In alternative, adopt Brandt bill but make agency give release after 90 days rather than 240 days.
2. Let Commission go right to hearing and omit conciliation and mediation stage and process where it deems that not fruitful --- i.e., willful or repeated offenders, or situations where conciliation seems to Commission to be total waste of time and delaying tactic. For instance add at end of § 601A.14(3) language such as:

Provided, however, that an endeavor by the investigating official to eliminate a discriminatory or unfair practice by conference, conciliation, and persuasion shall not be required in any case where, in the opinion of the investigating official, such an effort would be futile.

Also make other appropriate language adjustments and repeals in § 601A.14(5)-(6).

3. Repeal § 601A.14(4) secrecy prior to public hearing provision. Why treat complaints filed with respect to these laws differently than complaints filed with respect to other laws? Also it will strengthen hand of agency in securing compliance without having to go to a hearing if it is free to release fact of complaint at its discretion just like any other agency. Also public's right to know outweighs privacy interests here. Reasons for original privacy requirement at complaint stage probably no longer justified since more emphasis then on efficacy of conciliation as ultimate remedy. In light of intervening ten years and development of law in this area, emphasis should now be much more heavily on straight law enforcement. And no reason to treat complaints filed under this law any differently than complaints filed under other laws.
  
4. Means should be provided to assure easier enforcement of Commission conciliation agreements. Parties may conciliate and then fail to live up to their conciliation agreements. Conciliation may then be used as a delay tactic by guilty parties. Since the Commission gives up stronger action against a respondent if he agrees to a conciliation agreement, the Commission should have a relatively summary, quick and easy means of assuring compliance with that agreement. Add language like:

The terms of a conciliation agreement reached with the respondent may require him or her to refrain in the future from committing discriminatory practices of the type stated in the agreement, to take such affirmative action as in the judgment of the Commission will carry out the purposes of this Act, and to consent to the entry in an appropriate district court of a consent decree embodying the terms of the conciliation agreement. Violation of such a consent decree shall be punished as contempt by the court in which it is filed, upon a showing by the Commission of the violation at any time within six months of its occurrence. In all cases where a conciliation agreement is entered into, the Commission shall issue an order stating its terms and furnish a copy of the order to the complainant, the respondent, and such other persons as the Commission deems proper. At any time in its discretion, but not later than one year from the date of a conciliation agreement, the Commission shall investigate whether the terms of the agreement are being complied with by the respondent. Upon a finding that the terms of the conciliation agreement are not being complied with by the respondent, the Commission shall take appropriate action to assure compliance.

5. Enhance the remedial powers of the agency under the Act. Be more specific as to agency remedial powers. Also give the agency specific authority to award actual damages other than back pay, and punitive damages of up to \$500. Also confer specific authority to bind licensing or contracting agencies with civil rights agency's finding that the licensee or contractor has violated the Civil Rights Act so those other agencies will take appropriate action with respect to licensee's license or contractor's contract. /

Possible language for this purpose to be inserted in lieu of § 601A.14(12) might be:

(a) If the Commission determines that the respondent has engaged in a discriminatory practice, the Commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory practice and to take such affirmative action as in the judgment of the Commission will carry out the purposes of this Act. A copy of the order shall be delivered to the respondent, the complainant, the Attorney General, and to such other public officers and persons as the Commission deems proper.

(b) Affirmative action ordered under this section may include but is not limited to

(1) hiring, reinstatement or upgrading of employees with or without pay;

(2) admission or restoration of individuals to union membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, with the utilization of objective criteria in the admission of individuals to such programs;

(3) admission of individuals to a public accommodation or an education institution;

(4) sale, exchange, lease, rental, assignment or sublease of real property to an individual;

(5) extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent;

- (6) reporting as to the manner of compliance;
- (7) posting notices in conspicuous places in the respondent's place of business in form prescribed by the Commission and inclusion of such notices in advertising material;
- (8) cancellation, rescission or revocation of a contract, deed, lease or other instrument transferring real property, which is the subject of a complaint of a discriminatory practice, to a person who had actual knowledge or record notice, prior to the transfer or the execution of the legally binding obligation to make the transfer, that a determination of reasonable cause had been made with respect to the discriminatory practice;
- (9) payment to an injured party of profits obtained by the respondent through a violation of this Act, subject to the principles of equity;
- (10) payment to the complainant of damages for an injury caused by the discriminatory practice and costs, including a reasonable attorney's fee. Unless greater damages are proven, damages may be assessed at \$500 for each violation.

(c) In the case of a respondent operating by virtue of a license issued by the State or a political subdivision or agency thereof, if the Commission, upon notice to the respondent with an opportunity to be heard, determines that the respondent has engaged in a discriminatory practice and that the discriminatory practice was authorized, requested, commanded, performed or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of his employment, the Commission shall so certify to the licensing agency. Unless the Commission finding of a discriminatory practice is reversed in the course of judicial review, the finding of discrimination is binding on the licensing agency.

(d) In the case of a respondent who is found by the Commission to have engaged in a discriminatory practice in the course of performing under a contract or subcontract with the State or political subdivision or agency thereof, if the discriminatory practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of his employment, the Commission shall so certify to the contracting agency. Unless the Commission's finding of a discriminatory practice is reversed in the course of judicial review, the finding of discrimination is binding on the contracting agency.

(e) If a certification is made pursuant to this section, the licensing agency may take appropriate action to revoke or suspend the license of the respondent.

(f) Upon receiving a certification made under this section, a contracting agency may take appropriate action to

- (1) terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with the provisions of this Act, and

- (2) assist the State and all political subdivisions and agencies thereof to refrain from entering into further contracts, or extensions or other modifications of existing contracts, with the respondent until the Commission is satisfied that the respondent will carry out policies in compliance with the provisions of this Act.

6. Clean up procedural parts of Act. IAPA, Ch. 17A enacted since this statute. Can repeal most of § 601A.14(8)-(11) and rely on IAPA § 17A.11-.17 instead, thereby treating this administrative process like all others in state government, and eliminating any ambiguities of a separate statement of procedural rights here.
  
7. Clean up technical deficiencies in act due to many recent amendments. H.F. 484 is a partial step in the right direction for this purpose.

## SUBSTANTIVE IMPROVEMENTS

1. Make a specific violation of the housing section to discriminate against persons because of the race, ethnic background, etc. of their visitors or friends. Current law is unclear on this and there has been a problem on this score. Some language that might be added to § 601A.8(1) might be:

4. To discriminate against the lessee or purchaser of any real property or housing accommodation or part, portion or interest therein, or against any prospective lessee or purchaser of such property or accommodation, because of the race, color, creed, religion, sex, disability, age, or national origin of persons who may from time to time be present in or on the lessee's or owner's premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives, or in any similar capacity.

2. Clearly cover all state and local government agencies dispensing goods, services, funds, or facilities to the public as within § 601A.7. I think they are probably already covered by that section because of the all embracing special definition of "public accommodation" in § 601A.2(10), but I know many people might dispute that point. So, I think it should be clarified. All such state and local governmental programs dispensing money, services, programs, etc. to the public should be expressly included as within § 601A.7.

3. The statute should be amended to clearly indicate, as an agency rule now does, that only age discrimination for those over 18 is covered by the act's prohibitions.

## RELATIONS OF STATE ACT TO LOCAL ACTS

Section 601A.17 was drafted as a compromise provision. There was disagreement when it was enacted as to whether or not local governments should be able to go further than the state act and if so, in what particulars. Section 601A.17 was, therefore, purposefully drafted in a vague way with the understanding that it would in reality shift to the courts the responsibility of determining, from time-to-time, what the precise "field" of this chapter was, and when a local law was "inconsistent with this chapter." It is time for the legislature to clarify this. The legislature should specifically determine:

1. Whether or not local governments can make illegal, conduct specifically exempted from the state act's prohibitions.
2. Whether or not local governments can use procedural means other than those found in the state act to enforce their civil rights laws, e.g., criminal prosecution or civil suits.
3. Whether or not local governments are bound by every detail of the procedure used in enforcing the state act when they devise schemes to enforce their own act. This later determination will have to be made only if the legislature decides that local governments should have to use the same enforcement means as the state act to avoid being inconsistent with it.
4. Whether or not the substantive coverage of the local act can vary from that of the state act beyond the question raised in number 1 above.

## STRUCTURAL IMPROVEMENTS

A large step in the right direction was taken by empowering the Governor to appoint the agency director. But that still splits lines of political responsibility in the agency. The Director serves at the pleasure of the Governor and is, therefore, responsible to him; but the Director must take orders from the Commission, which is not directly politically responsible to the Governor since its members, once appointed, serve for a fixed term of years. The Commission, not the Director, is authorized by law to make all agency policy, and finally determine all matters in the agency's jurisdiction.

I think the Commission should be abolished as head of the agency. The Iowa civil rights agency should be headed instead by a single official appointed by the Governor, with a Commission also appointed by the Governor, but empowered only to advise the Director of the agency. I know how controversial this suggestion will be; and I know there are many vested interests that will automatically find it unacceptable even without giving it serious consideration. Nevertheless, I suggest this, I assure you, only because I believe it would mean stronger and more efficient enforcement of the civil rights laws of this state.

A number of states like New Jersey and Minnesota have moved in this direction to assure more efficient and professional management of the state civil rights agency, and a clearer line of political responsibility for the agency's performance. The performance of their agencies is better as a consequence. The Governor in Iowa is not now in a position to directly control the Commission that sets agency policy, finally makes agency determinations and controls the Director of the agency; so he cannot fairly be held responsible for all actions of the agency. I believe that to be unsound, particularly in light of the past performance of this agency.

There is also not as much need today for a Civil Rights Commission that is, by its independent fixed term structure, very much insulated from political accountability and direct executive superintendance. There are at least five reasons for this conclusion. 1) Since sex, age, and disability were added to the act, a sufficient number of citizens of Iowa now have a vested interest in the work of this agency to assure it a substantial supportive political constituency and also to ensure continuing political pressure to effectively enforce these laws. 2) The agency needs all full-time professional law enforcement people, to do law enforcement work meeting a wholly professional standard, rather than well intentioned, but only part-time, non law enforcement professionals, who may not be as efficient, qualified or dependable for these purposes no matter how well intentioned they are. 3) Potential conflict between the Commission and the Director who is not now appointed by the Commission, would be eliminated by making the Commission advisory only. This conflict between the Director and Commission was, as we remember, a large cause of the poor performance of this agency several years ago. 4) Furthermore, and in this I hope I am not

too optimistic, a Commission insulated from the political process and direct executive superintendence is not quite as necessary today as it was in 1965, because there is a greater public acceptance of the general principles embodied in these laws than in 1965. 5) Lastly, I think the agency must be made more directly politically accountable and more directly subject to executive superintendence to assure its long term effective performance. In my opinion lack of such direct pressures are likely to make its performance less than satisfactory. That is one of the lessons I have learned from its past performance.

I want to add that I fully recognize and commend the enhanced performance of this agency recently, and in no way mean by these comments to depreciate its considerable recent progress. We all should applaud the considerable recent progress of the Commission; but that is not enough.