

1991 Assembly Bill 684

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1991 WISCONSIN ACT 295

AN ACT *to repeal* 101.22 (2g) (title), 101.22 (2g) (a), 101.22 (4m) and 101.22 (4n) (title); *to renumber* 101.22 (2g) (b); *to renumber and amend* 101.22 (2g) (c), 101.22 (2m), 101.22 (2p), 101.22 (3), 101.22 (4), 101.22 (4n), 101.22 (4p), 101.22 (5), 101.22 (6) and 101.22 (7); *to amend* 15.227 (6), 66.432, 101.04 (1), 101.22 (1), 101.22 (2) (a), 101.22 (8) (a), 101.22 (9) (a) 1, 3 and 4, 101.223 (4) (a), 101.62, 227.03 (2), 703.10 (2m), 814.04 (intro.) and 895.437 (1) (c); *to repeal and recreate* 101.22 (1m) and 101.22 (2) (d); and *to create* 66.432 (1m), 101.22 (2) (g) to (L), 101.22 (2r), 101.22 (5m) (title) and (a), 101.22 (5m) (d), 101.22 (5m) (e) and (f), 101.22 (6), 101.22 (6m), 101.22 (10) (title) and 227.03 (3m) of the statutes, **relating to:** prohibiting discrimination in housing, granting rule-making authority, providing an exemption from emergency rule procedures and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

PREFATORY NOTE: This bill was prepared for the legislative council's special committee on fair housing legislation. The bill incorporates various changes in the state fair housing law, s. 101.22, recommended by the special committee. These changes are, for the most part, based on the federal fair housing amendments act of 1988.

I. Current law

A. *Protected Classes.* The current state fair housing law prohibits unlawful discrimination in housing on the basis of any one of the following protected classes:

1. Sex.
2. Race.
3. Color.
4. Sexual orientation.
5. Handicap.
6. Religion.
7. National origin.
8. Sex or marital status of the person maintaining a household.
9. Lawful source of income.
10. Age.
11. Ancestry.

B. *Prohibited Acts.* Current law prohibits the following discriminatory acts based on a person's membership in a protected class:

1. *Access to housing:* Refusing to sell, lease, finance or contract to construct housing or refusing to discuss the terms of any of these types of transactions.

2. *Differential terms:* Refusing to permit inspection or exacting different or more stringent price, terms or conditions for the sale, lease, financing or rental of housing.

3. *Unimproved lots:* Refusing to finance or sell an unimproved residential lot or refusing to construct a home or residence on the lot.

4. *Advertising:* Publishing, circulating, issuing or displaying, or causing to be published, circulated, issued or displayed, any communication, notice, advertisement or sign in connection with the sale, financing, lease or rental of housing which states or indicates any discrimination in connection with housing.

5. *Property insurance:* Refusing to enter into, or exacting different terms, conditions or privileges with respect to, a contract of insurance against hazards to a dwelling.

6. *Tenancy:* Refusing to renew a lease, causing the eviction of a tenant from rental housing or engaging in the harassment of a tenant.

7. *Interference with rights:* Coercing, intimidating, threatening or interfering with any person, in the exercise or enjoyment of any right granted or protected by the fair housing law or aiding or encouraging another person to interfere with the exercise or enjoyment of any right guaranteed or protected by that law.

8. *Panic sales:* Making representations that are designed to induce panic sales (also referred to as "blockbusting"). Under this provision, a person may not make representations regarding the entry into the neighborhood of a person or per-

sons of a particular race, color, religion, national origin, sexual orientation or economic status.

C. Handicap Access Provisions. In addition to prohibiting housing discrimination against persons who are handicapped, current law includes 2 other types of protections relating to accessibility of housing:

1. *Public building access requirements:* Current law requires the department of industry, labor and human relations (DILHR) to promulgate rules providing minimum requirements to facilitate the use of public buildings and places of employment by physically disabled persons. The law requires any public building, as well as places of employment, constructed after May 27, 1986, to be designed and constructed so as to provide reasonable means of access for physically disabled persons. "Access" means the physical characteristics of a place which allow persons with functional limitations caused by impairments of sight, hearing, coordination or perception or persons with semiambulatory or nonambulatory disabilities to enter, circulate within and leave a place of employment or public building and to use the public toilet facilities and passenger elevators in the place of employment or public building without assistance.

The statutory definition of "public building" includes housing used by 3 or more tenants; one-family and 2-family dwellings are exempted from these access requirements under the administrative rules of DILHR.

The statute provides a private right of action, by any interested person, to seek a court order requiring the owner of a public building to reconstruct the building to provide reasonable means of access. The court may order that the person bringing the action be reimbursed for court costs and actual attorney fees.

2. *Animals assisting the handicapped:* If an individual's vision, hearing or mobility is impaired, it is considered discrimination on the basis of handicap for any person to do any of the following because the handicapped individual keeps an animal specially trained to assist him or her: a) refuse to rent or sell housing to that individual; b) cause the eviction of the individual from rental housing or a condominium; c) require extra compensation from an individual as a condition of continued residence in rental housing or a condominium; or d) engage in harassment of that individual. The law includes a number of protections for the dwelling owner.

D. Exceptions and Permissible Acts. Current law provides the following exceptions to the prohibitions against discrimination:

1. Discrimination on the basis of age is permissible in relation to housing that is designed to meet the needs of elderly individuals.

2. A similar exception permits the development of housing that is designed specifically for persons with a handicap; discrimination on the basis of handicap is permissible in relation to this type of housing.

3. It is permissible to exact different or more stringent terms or conditions for financing housing based on the age of the individual applicant for financing, if the terms or conditions are reasonably related to the individual applicant.

4. It is permissible to require any potential buyer or renter to supply information concerning family, marital, financial and business status, as long as no information is required concerning race, color, physical condition, developmental disability, sexual orientation or creed.

E. Administrative Enforcement. Current law provides for DILHR to administer the fair housing law through its division of equal rights. In administering the fair housing law, the division may test and investigate for the purpose of establishing

violations of the law and may make, sign and file complaints alleging violations of the law. DILHR is also authorized to initiate investigations and studies to carry out the general purposes of the law.

1. *Complaints:* The division may receive and investigate a complaint charging a violation if the complaint is filed with DILHR no more than 300 days after the alleged discrimination or act prohibited under the statutes occurred.

All complaints which are properly filed and which properly state a claim for which relief can be granted under the fair housing law must be investigated by DILHR, which may issue subpoenas as part of its investigatory powers. DILHR may also seek a court order granting appropriate temporary injunctive relief.

2. *Determination of probable cause; conciliation:* At the conclusion of the investigation, DILHR issues a determination as to whether there is probable cause to believe that discrimination has occurred. If DILHR finds probable cause, it may attempt to eliminate the discrimination by conference, conciliation or persuasion.

3. *Hearing:* In cases where attempts at conciliation are not successful, DILHR is required to issue and serve written notice of a hearing specifying the nature and acts of discrimination that appear to have been committed. The hearing notice requires the alleged violator to answer the complaint at the hearing before an examiner. The notice must indicate the time of the hearing, not less than 10 days after service of the complaint, and the location of the hearing, within the county in which the violation is alleged to have occurred.

If, after the hearing, the examiner finds by a fair preponderance of the evidence that the respondent has violated this provision, the examiner must make a written finding and may issue an order requiring the violator to engage in any remedial action that is consistent with the purpose of the law.

4. *Penalties:* The penalty for wilful violation of the state fair housing law, or any lawful order issued under that law, is, for a first violation, a forfeiture of not less than \$100 nor more than \$1,000. If a person is found to have violated that law within 5 years of a previous violation, the person must, for every such violation committed within the 5-year period, forfeit not less than \$1,000 nor more than \$10,000.

Although not specified in the fair housing law, the labor and industry review commission has determined that DILHR hearing examiners may award monetary damages, prejudgment interest, attorney fees and costs to a prevailing party.

5. *Appeal: administrative and judicial:* The findings and order of the hearing examiner are reviewable by the labor and industry review commission. An order of the commission may then be appealed to circuit court. The case in circuit court is heard as a new trial rather than an appeal of an administrative hearing.

6. *Administrative rules:* DILHR may promulgate rules to carry out the fair housing law. However, no DILHR rule may prohibit the processing of any class action complaint or the ordering of any class-based remedy or may provide that the complaints may be consolidated for administrative convenience only. Furthermore, the law provides that no complaint may be publicized in those cases where DILHR obtains compliance with the law or DILHR finds that the complaint is without foundation.

F. Civil Actions. Any person, including the state, may bring a civil action for alleged violations of the fair housing law for appropriate injunctive relief or damages, including punitive damages, and, in the case of a prevailing plaintiff, for court costs and reasonable attorney fees. The attorney general is required to represent DILHR in any action to which DILHR is a party.

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Civil actions may be brought in the circuit court for the county where the alleged violation occurred or for the county where the person against whom the civil complaint is filed resides or has a principal place of business and must be commenced within one year after the alleged violation has occurred.

G. Local Equal Opportunity Ordinances. The state fair housing law specifically provides that the enactment of the state law does not: 1) preempt the subject matter of equal opportunities in housing from consideration by local governments; or 2) exempt cities, villages, towns and counties from their duty, nor deprive them of their right, to enact ordinances which prohibit discrimination in any type of housing solely on the basis of membership in any protected class. The statute expressly authorizes cities, villages, towns and counties to enact ordinances prohibiting discrimination in the sale or rental of housing solely on the basis of membership in any of the protected classes under state law.

A local ordinance may be more inclusive in its terms or with respect to the different types of housing subject to its provisions. However, any ordinance establishing a forfeiture as a penalty for a violation may not impose less than the statutory forfeitures.

II. The bill

The bill makes the following changes in the current state fair housing law:

A. Protected Classes.

1. *Family status:* The bill adds "family status" to the list of protected classes.

The term is broadly defined to cover households with children, the pregnancy of a member of a household, custody and visitation situations, guardianships, households shared by relatives and single individuals.

2. *Persons with disabilities:* The bill replaces the current term "handicap" with the term "disability" and broadens the definition to mean: a) a physical or mental impairment which substantially limits one or more major life activities; b) a record of having such an impairment; or c) being regarded as having such an impairment. The definition specifies that "disability" does not include the current illegal use of a controlled substance, unless the individual is participating in a supervised drug rehabilitation program.

Under the current definition, "handicap" means any physical disability or developmental disability, such as a disability attributable to brain injury, cerebral palsy, epilepsy, autism or mental retardation, which can be expected to continue indefinitely.

3. *Marital status:* Current law includes protections against discrimination based on "sex or marital status of a person maintaining a household". Because of the overlap between this current protected class and the new protected class "family status", created in this bill, the bill amends the current term to simply refer to "marital status".

B. Prohibited Acts. The bill adds the following to the list of discriminatory acts prohibited under the fair housing law, if the acts are directed at members of a protected class:

1. Discrimination in the privileges, services or facilities available in connection with housing.

2. Falsely representing that housing is unavailable for inspection, rental or sale.

3. Denying access to, or membership or participation in, a multiple listing service or other real estate service.

4. Making unavailable any of the following transactions or discriminating in the terms or conditions of the transactions: a) the making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing or maintaining housing; or b) the making or purchasing of loans or the provision of other financial assistance secured by residential real estate.

5. Otherwise making unavailable or denying housing.

In addition, the bill adds all of the protected classes to the current "blockbusting" provision.

C. Access for Persons with Disabilities. In addition to the public building access requirements and the protections for disabled persons assisted by animals, the bill provides new requirements protecting persons with disabilities from discrimination in housing. The bill:

1. Prohibits discrimination in the sale, rental or availability of housing to any buyer or renter because of a disability of: a) that buyer or renter; b) a person residing in or intending to reside in that housing after it is sold, rented or made available; or c) any person associated with the buyer or renter.

2. Prohibits discriminating against any person in the terms, conditions or privileges of sale or rental of housing, or in the provision of services or facilities in connection with such housing, because of a disability of any person listed under item 1 above.

3. Prohibits the refusal to permit, at the expense of the person with a disability, the reasonable modification of existing housing if the modification may be necessary to give the person full enjoyment of the housing. In the case of rental housing, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the housing to the condition that existed before the modification, other than reasonable wear and tear. The bill also authorizes a landlord to negotiate with a tenant about escrowing funds to cover the cost of the restorations.

4. Prohibits a refusal to make reasonable accommodations in rules, policies, practices or services associated with the housing under certain circumstances.

5. Requires specified types of newly constructed multifamily housing to be designed and constructed in a manner that ensures internal and external accessibility. The bill provides standards for determining accessibility and for granting variances and waivers when it is impractical to design and construct the housing to be accessible.

6. Requires specified types of existing multifamily housing that is undergoing remodeling to meet various accessibility requirements, depending on how extensively the housing is being remodeled.

D. Exceptions and Permissible Acts. The bill adds the following exemptions to the prohibitions against discrimination:

1. Housing need not be made available to an individual whose tenancy would constitute a direct threat to the safety of other tenants or persons employed on the property or whose tenancy would result in substantial physical damage to the property of others, if the risk of direct threat or damage cannot be eliminated or sufficiently reduced through reasonable accommodations. Any claim that an individual's tenancy poses a direct threat or a substantial risk of harm or damage must be evidenced by behavior on the part of the individual which caused harm or damage, which directly threatened harm or damage or which caused a reasonable fear of harm or damage.

2. It is not discrimination based on family status to comply with any reasonable federal, state or local government restrictions relating to the maximum number of occupants permitted to occupy a dwelling unit.

In addition, the bill amends the current exemption for “housing for the elderly”. Under the bill, it is permissible to discriminate based on age or family status with respect to “housing for older persons”.

E. Administrative Enforcement. Under the bill, DILHR would continue to administer the fair housing law. The bill makes the following changes in the procedures used in administrative enforcement of the law:

1. *Complaints:* A complaint alleging housing discrimination must be filed with DILHR no more than one year after the alleged discrimination occurred or terminated, rather than within 300 days after the alleged discrimination occurred. The bill also specifies the type of notice of the complaint that DILHR is to provide the respondent, and requires DILHR to advise the complainant of various time limits involved with an administrative proceeding and the right to bring a private action in circuit court in lieu of proceeding administratively.

2. *Determination of cause; conciliation:* The bill permits DILHR to attempt conciliation of the case during the investigation period, up until DILHR issues a finding of probable cause.

The bill also requires DILHR to develop and implement an investigation manual for use in conducting investigations.

If, at the conclusion of the investigation of the allegations, DILHR determines that cause exists to believe that discrimination has occurred or is about to occur, DILHR is required to immediately issue a charge on behalf of the aggrieved person.

3. *Election of forum; prosecution of charge:* Once a charge has been issued by DILHR, the complainant, respondent or an aggrieved person on whose behalf the complaint was filed may elect to have the claim decided in a civil action in circuit court. The election must be made no later than 20 days after the receipt of the charge.

4. *Penalties:* DILHR may impose any of the following penalties for violation of the fair housing law:

a. Economic and noneconomic damages suffered by the aggrieved person, regardless of whether he or she intervened in the action, but not including punitive damages.

b. Injunctive or other equitable relief.

c. Costs and attorney fees.

d. A forfeiture, for a person other than a natural person, in the amount of up to \$10,000 for a first offense, up to \$25,000 for a 2nd offense within a 5-year period and up to \$50,000 for a 3rd or subsequent offense during a 7-year period.

e. A forfeiture, for a natural person, in the amount of up to \$10,000 for a first offense, up to \$25,000 for a 2nd offense or up to \$50,000 for a 3rd or subsequent offense.

In circuit court, the remedies are the same except that a court is authorized under the bill to grant punitive damages.

5. *Time limitations:* The bill imposes new time limitations on DILHR for processing complaints relating to housing violations. DILHR is required to commence proceedings within 30 days after receiving a complaint and complete the investigation within 100 days after receiving the complaint. DILHR must make final administrative disposition of the complaint within one year after receiving the complaint. If DILHR is unable to comply with the time limitations relating to investigation and administrative disposition of the complaint, it must notify the complainant and respondent, in writing, of the reasons for not doing so.

6. *Appeal:* An order of a DILHR hearing examiner would be appealable directly to circuit court, rather than first taking an appeal to the labor and industry review commission.

The appeal in circuit court would be an administrative review, rather than a new trial.

F. Civil Actions. The bill retains current law authorizing persons to bring a private action in circuit court alleging violations of the state fair housing law. In addition to the costs, damages and injunctive relief authorized under current law, the bill authorizes a court to impose forfeitures in the same amounts as described in the “Penalties” provision, E. 4., above.

G. Local Equal Opportunity Ordinances. The bill retains current provisions authorizing local governments to enact fair housing ordinances conforming with state law. The draft adds all protected classes under state law to the list of classes which may be offered protection under local ordinances. The bill also authorizes local ordinances to permit any party to elect either an administrative hearing or an action in civil court once a finding has been made by the administrative body that there is reasonable cause to believe that a violation of the ordinance has occurred.

SECTION 1. 15.227 (6) of the statutes is amended to read:

15.227 (6) DWELLING CODE COUNCIL. There is created in the department of industry, labor and human relations, a dwelling code council, consisting of 17 members appointed for staggered 3-year terms. Four members shall be representatives of building trade labor organizations; 4 members shall be certified building inspectors employed by local units of government; 2 members shall be representatives of building contractors actively engaged in on-site construction of one- and 2-family housing; 2 members shall be representatives of manufacturers or installers of manufactured one- and 2-family housing; one member shall be an architect, engineer or designer actively engaged in the design or evaluation of one- and 2-family housing; 2 members shall represent the construction material supply industry; and 2 members shall represent the public, one of whom shall represent persons with disabilities, as defined in s. 101.22 (1m) (g). An employe of the department designated by the secretary of industry, labor and human relations shall serve as nonvoting secretary of the council. The council shall meet at least twice a year. Eleven members of the council shall constitute a quorum. For the purpose of conducting business a majority vote of the council is required.

SECTION 2. 66.432 of the statutes is amended to read:

66.432 Local equal opportunities. (1) DECLARATION OF POLICY. The right of all persons to have equal opportunities for housing regardless of their sex, race, color, physical condition, ~~developmental~~ disability as defined in s. 51.01(5) 101.22 (1m) (g), sexual orientation as defined in s. 111.32 (13m), religion, national origin, marital status, family status as defined in s. 101.22 (1m) (k), lawful source of income, age or ancestry is a matter both of statewide concern under s. 101.22 and also of local interest under this section and s. 66.433. The enactment of s. 101.22 by the legislature shall not preempt the subject matter of equal opportunities in housing from consideration by ~~local governments~~ political subdivisions, and shall not exempt ~~cities, villages, towns and~~

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counties political subdivisions from their duty, nor deprive them of their right, to enact ordinances which prohibit discrimination in any type of housing solely on the basis of ~~sex, race, color, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation, religion, national origin or ancestry~~ an individual being a member of a protected class.

(2) ANTIDISCRIMINATION HOUSING ORDINANCES. ~~Cities, villages, towns and counties~~ Political subdivisions may enact ordinances prohibiting discrimination in the sale or rental of any type of housing within their respective boundaries solely on the basis of ~~sex, race, color, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation, religion, national origin or ancestry~~ an individual being a member of a protected class. Such an ordinance may be similar to s. 101.22 (1) to (8) or may be more inclusive in its terms or in respect to the different types of housing subject to its provisions, but any such ordinance establishing a forfeiture as a penalty for violation shall not be for an amount that is less than the statutory forfeitures under s. 101.22. Such an ordinance may permit a complainant, aggrieved person or respondent to elect to remove the action to circuit court after a finding has been made that there is reasonable cause to believe that a violation of the ordinance has occurred. Such an ordinance may also authorize the political subdivision, at any time after a complaint has been filed alleging an ordinance violation, to file a complaint in circuit court seeking a temporary injunction or restraining order pending final disposition of the complaint.

(3) CONTINGENCY RESTRICTION. No ~~city, village, town or county~~ political subdivision shall enact an ordinance under sub. (2), which contains a provision making its effective date or the operation of any of its provisions contingent on the enactment of an ordinance on the same or similar subject matter by one or more other ~~cities, villages, towns or counties~~ political subdivisions.

NOTE: Amends s. 66.432, relating to the authority of political subdivisions to enact fair housing ordinances, to:

1. Add the new protected class being added to the state fair housing law (family status) and clarify that local ordinances may be enacted to protect all classes currently covered by state law.

2. Refer to "disability", rather than "developmental disability", as a protected class and provide a reference to the new definition of disability created elsewhere in the bill.

3. Specify that a local ordinance may permit a complainant, an aggrieved person or a respondent to elect to remove the action to circuit court, rather than proceed with an administrative hearing. This election option is available only if there has been a finding, at the administrative level, that there is reasonable cause to believe that housing discrimination has occurred.

4. Specify that a local ordinance may authorize the political subdivision, at any time after a complaint has been filed alleging an ordinance violation, to file a complaint in circuit

court seeking temporary relief pending final disposition of the complaint.

SECTION 3. 66.432 (1m) of the statutes is created to read:

66.432 (1m) DEFINITIONS. In this section:

(a) "Aggrieved person" has the meaning given in s. 101.22 (1m) (b).

(b) "Complainant" has the meaning given in s. 101.22 (1m) (c).

(c) "Discriminate" has the meaning given in s. 101.22 (1m) (h).

(d) "Member of a protected class" has the meaning given in s. 101.22 (1m) (nm).

(e) "Political subdivision" means a city, village, town or county.

NOTE: Creates cross-references to definitions in the state fair housing law, created elsewhere in the bill, that apply to local fair housing ordinances. Also creates a definition of "political subdivision".

SECTION 4. 101.04 (1) of the statutes is amended to read:

101.04 (1) The commission shall issue its decision in any case where a petition for review is filed under ch. 102 or 108 or s. 66.191, 1981 stats., or s. 40.65 (2), 101.22 (10), 101.223 (4), 111.39, 303.07 (7) or 303.21.

NOTE: Amends a general reference to the state fair housing law to more specifically refer to the administrative provisions that are applicable to the public accommodations law.

Under the bill, appeals of administrative decisions in fair housing cases are taken to circuit court, rather than to the labor and industry review commission.

SECTION 5. 101.22 (1) of the statutes is amended to read:

101.22 (1) INTENT. It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of this state that all persons shall have an equal opportunity for housing regardless of sex, race, color, sexual orientation ~~as defined in s. 111.32 (13m), handicap, disability~~, religion, national origin, ~~sex or marital status of the person maintaining a household, family status~~, lawful source of income, age or ancestry and it is the duty of the ~~local units of government~~ political subdivisions to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under ~~s. ss. 66.432 and~~ 66.433. The legislature hereby extends the state law governing equal housing opportunities to cover single-family residences which are owner-occupied. The legislature finds that the sale and rental of single-family residences constitute a significant portion of the housing business in this state and should be regulated. This section shall be deemed an exercise of the police powers of the state for the protection of the welfare, health, peace, dignity and human rights of the people of this state.

NOTE: Amends the general statement of intent of the current fair housing law to include the protected class of "family status" and to substitute the term "disability" for "handicap".

Substitutes the term “marital status” for the current term “sex or marital status of the person maintaining a household”.

SECTION 6. 101.22 (1m) of the statutes is repealed and recreated to read:

101.22 (1m) DEFINITIONS. In this section:

(ad) “Advertise” means to publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign in connection with the sale, financing or rental of housing.

(am) “Age”, in reference to a member of a protected class, means at least 18 years of age.

(b) “Aggrieved person” means a person who claims to have been injured by discrimination in housing or believes that he or she will be injured by discrimination in housing that is about to occur.

(c) “Complainant” means a person who files a complaint alleging discrimination in housing or public place of accommodation or amusement.

(d) “Conciliation” means the attempted resolution of issues raised by a complaint or by the investigation of the complaint, through informal negotiations involving the aggrieved person, the complainant, the respondent and the department.

(e) “Condominium” has the meaning given in s. 703.02 (4).

(f) “Condominium association” means an association, as defined in s. 703.02 (1m).

(g) “Disability” means a physical or mental impairment that substantially limits one or more major life activities, a record of having such an impairment or being regarded as having such an impairment. “Disability” does not include the current illegal use of a controlled substance, as defined in s. 161.01 (4), unless the individual is participating in a supervised drug rehabilitation program.

(h) “Discriminate” means to segregate, separate, exclude or treat a person or class of persons unequally in a manner described in sub. (2), (2m) or (2r) because of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry.

(i) “Dwelling unit” means a structure or that part of a structure that is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons who are maintaining a common household, to the exclusion of all others.

(j) “Family” includes one natural person.

(k) “Family status” means any of the following conditions that apply to a person seeking to rent or purchase housing or to a member or prospective member of the person’s household regardless of the person’s marital status:

1. A person is pregnant.

2. A person is in the process of securing sole or joint legal custody, periods of physical placement or visitation rights of a minor child.

3. A person’s household includes one or more minor or adult relatives.

4. A person’s household includes one or more adults or minor children in his or her legal custody or physical placement or with whom he or she has visitation rights.

5. A person’s household includes one or more adults or minor children placed in his or her care under a court order, under a guardianship or with the written permission of a parent or other person having legal custody of the adult or minor child.

(km) “Hardship condition” means a situation under which a tenant in housing for older persons has legal custody or physical placement of a minor child or a minor child is placed in the tenant’s care under a court order, under a guardianship or with the written permission of a parent or other person having legal custody of the minor child.

(L) “Housing” means any improved property, or any portion thereof, including a mobile home as defined in s. 66.058 (1) (d) or condominium, that is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence. “Housing” includes any vacant land that is offered for sale or rent for the construction or location thereon of any building, structure or portion thereof that is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence.

(m) “Housing for older persons” means any of the following:

1. Housing provided under any state or federal program that the secretary determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program.

2. Housing solely intended for, and solely occupied by, persons 62 years of age or older.

3. Housing primarily intended and primarily operated for occupancy by at least one person 55 years of age or older per dwelling unit.

(mm) “Interested person” means an adult relative or friend of a member of a protected class, or an official or representative of a private agency, corporation or association concerned with the welfare of a member of a protected class.

(n) “Lodging establishment” means any of the following:

1. A bed and breakfast establishment, as defined in s. 50.50 (1).

2. A hotel, as defined in s. 50.50 (3).

3. A tourist rooming house, as defined in s. 50.50 (6).

4. A campground.

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(nm) "Member of a protected class" means a group of natural persons, or a natural person, who may be categorized based on one or more of the following characteristics: sex, race, color, disability, sexual orientation as defined in s. 111.32 (13m), religion, national origin, marital status, family status, lawful source of income, age or ancestry.

(om) "Political subdivision" means a city, village, town or county.

(p) 1. "Public place of accommodation or amusement" shall be interpreted broadly to include, but not be limited to, places of business or recreation; lodging establishments; restaurants; taverns; barber or cosmetologist, aesthetician, electrologist or manicuring establishments; nursing homes; clinics; hospitals; cemeteries; and any place where accommodations, amusement, goods or services are available either free or for a consideration, subject to subd. 2.

2. "Public place of accommodation or amusement" does not include a place where a bona fide private, non-profit organization or institution provides accommodations, amusement, goods or services during an event in which the organization or institution provides the accommodations, amusement, goods or services to the following individuals only:

a. Members of the organization or institution.

b. Guests named by members of the organization or institution.

c. Guests named by the organization or institution.

(q) "Relative" means a parent, grandparent, great-grandparent, stepparent, step grandparent, brother, sister, child, stepchild, grandchild, step grandchild, great-grandchild, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepbrother, stepsister, half brother or half sister or any other person related by marriage, consanguinity or affinity.

(r) "Rent" means to lease, to sublease, to let or to otherwise grant for a consideration the right of a tenant to occupy housing not owned by the tenant.

(s) "Respondent" means the person accused in a complaint or amended complaint of discrimination in housing and any other person identified in the course of an investigation as allegedly having discriminated in housing or in providing a public place of accommodation or amusement.

(t) "Sexual orientation" has the meaning given in s. 111.32 (13m).

(u) "Significant facilities and services specifically designed to meet the physical or social needs of older persons" includes social and recreational programs; continuing education; information and counseling; recreational, homemaker, outside maintenance and referral services; an accessible physical environment; emergency and preventive health care programs; congregate dining facilities; transportation to facilitate access to social ser-

vices; and services designed to encourage and assist residents to use the services and facilities available to them.

NOTE: Creates new definitions applicable to the fair housing law:

1. "Advertise", which incorporates the terms used in current s. 101.22 (2) (d).

2. "Age", which is based on the department's current administrative rule governing the enforcement of the fair housing law.

3. "Aggrieved person", "complainant", "conciliation", "person" and "respondent", all of which relate to the enforcement process and are based on the definitions in the federal fair housing amendments act of 1988.

The language defining "aggrieved person" to include a person who believes that he or she will be injured by a discriminatory housing practice that is "about to occur" directly parallels federal law. The preamble to the federal regulations promulgated by the federal department of housing and urban development explains that this language applies to situations in which it is clear to a person that, if he or she takes an action, he or she will be subjected to discrimination. According to the preamble, the federal act does not require a person in this situation to expose himself or herself to the injury involved with the actual act of discrimination before filing a complaint.

4. "Disability", which replaces the term "handicap" used under current law and which incorporates the federal definition. The definition specifies that "disability" does not include the current illegal use of a controlled substance by a person unless he or she is participating in a supervised drug rehabilitation program. The exemption for users of illegal drugs is based on the federal fair housing amendments act; the language relating to the person's participation in a supervised drug rehabilitation program is derived from similar language in the federal Americans with disabilities act of 1990.

5. "Dwelling unit", defined as a structure or that part of a structure that is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

6. "Family" and "family status", which incorporate the federal definition of "familial status" and, in addition, include other types of households, such as persons with temporary custody of or periods of physical placement with a child, single parents, and a more extensive list of persons who are related, including adult relatives. The bill also separately defines the term "relative".

7. "Housing for older persons", as provided under federal law.

8. "Interested person", defined as a friend, relative, private agency, corporation or association that is concerned with the welfare of a member of a protected class.

9. "Member of a protected class", defined as a person or group of people against whom it is illegal to discriminate based on factors such as the person's race, sex, sexual orientation, disability or religion.

10. "Rent", which is derived from a definition in the federal fair housing law.

SECTION 7. 101.22 (2) (a) of the statutes is amended to read:

101.22 (2) (a) By refusing to sell, ~~lease~~ rent, finance or contract to construct housing or by refusing to negotiate or discuss the terms thereof.

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NOTE: Amends s. 101.22 (2) (a) to substitute the defined term “rent” for the term “lease” and add the word “negotiate”, which is covered under federal law.

SECTION 8. 101.22 (2) (d) of the statutes is repealed and recreated to read:

101.22 (2) (d) By advertising in a manner that indicates discrimination by a preference or limitation.

NOTE: Rewords the current provision relating to discriminatory advertising to: 1) use the term “advertising”, defined in s. 101.22 (1m) (ad) in the bill; and 2) refer to discriminatory preferences, based on the corresponding federal provision. Nothing in this provision prohibits affirmative marketing practices designed to make available information that broadens housing choices for persons who are members of protected classes under the fair housing law.

SECTION 9. 101.22 (2) (g) to (L) of the statutes are created to read:

101.22 (2) (g) In providing the privileges, services or facilities that are available in connection with housing.

(h) By falsely representing that housing is unavailable for inspection, rental or sale.

(i) By denying access to, or membership or participation in, a multiple listing service or other real estate service.

(j) By coercing, intimidating, threatening or interfering with a person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, a right granted or protected under this section, or with a person who has aided or encouraged another person in the exercise or enjoyment of a right granted or protected under this section.

(k) In making available any of the following transactions, or in the terms or conditions of such transactions for a person whose business includes engaging in residential real estate–related transactions:

1. The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing or maintaining housing or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate.

2. Selling, brokering or appraising residential real property.

(L) By otherwise making unavailable or denying housing.

NOTE: Paragraphs (g) to (L) create provisions based on federal law, that do all of the following:

1. Specify that it is unlawful to discriminate in providing privileges, services or facilities that are available in connection with housing.

2. Prohibit discrimination by falsely representing that housing is unavailable for inspection, rental or sale.

3. Prohibit discrimination by denying access to or membership or participation in a multiple listing service or other real estate service.

4. Prohibit the coercion or intimidation of persons exercising rights under the fair housing law, incorporating current s. 101.22 (4m), repealed elsewhere in this bill, and corresponding federal law.

5. Prohibit discrimination in real estate–related transactions.

6. Prohibit discrimination by making housing unavailable or denying housing to a person based on his or her status in a protected class.

SECTION 10. 101.22 (2g) (title) of the statutes is repealed.

SECTION 11. 101.22 (2g) (a) of the statutes is repealed.

NOTE: Repeals a provision relating to housing designed to meet the needs of elderly individuals. A modified provision is created in s. 101.22 (5m) (a) in this bill.

SECTION 12. 101.22 (2g) (b) of the statutes is renumbered 101.22 (5m) (b).

NOTE: Incorporates a current provision, permitting the exacting of reasonable terms for financing, based on the age of an applicant, into the general exemption provisions set forth in newly created sub. (5m).

SECTION 13. 101.22 (2g) (c) of the statutes is renumbered 101.22 (5m) (c) and amended to read:

101.22 (5m) (c) Nothing in this section shall prohibit the development of housing designed specifically for persons with ~~a handicap and discrimination on the basis of handicap disabilities and preference in favor of persons with disabilities~~ disabilities in relation to such housing.

NOTE: Renumbers and amends current s. 101.22 (2g) (c) to substitute the term “disabilities” for the term “handicap” and to consolidate the provision with the exemptions under newly created sub. (5m). Also clarifies that the exemption applies to preferences in favor of persons with disabilities, rather than discrimination on the basis of handicap, which could be interpreted to allow discrimination against persons with certain handicaps.

SECTION 14. 101.22 (2m) of the statutes is renumbered 101.22 (2m) (intro.) and amended to read:

101.22 (2m) REPRESENTATIONS DESIGNED TO INDUCE PANIC SALES. (intro.) No person may induce or attempt to induce ~~any a~~ person to sell, or rent or lease any dwelling housing by representations regarding the present or prospective entry into the neighborhood of a person ~~or persons of a particular race, color, religion, national origin, sexual orientation or economic status or a member of a protected class~~, or by representations to the effect that such present or prospective entry will or may result in: ~~a) the any of the following:~~

(a) The lowering of real estate values in the area concerned; ~~b) a.~~

(b) A deterioration in the character of the area concerned; ~~c) an.~~

(c) An increase in criminal or antisocial behavior in the area concerned; ~~or d) a.~~

(d) A decline in the quality of the schools or other public facilities serving the area.

NOTE: 1. Incorporates into the current “blockbusting” provision all protected classes now covered under the definition of “discriminate”.

2. Deletes the term “lease” since “lease” is included in the definition of “rent” under sub. (1m) (r).

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SECTION 15. 101.22 (2p) of the statutes is renumbered 101.22 (2r) (bm), and 101.22 (2r) (bm) (title), 1. (intro.) and 2, as renumbered, are amended to read:

101.22 (2r) (bm) (title) *Animals assisting persons with disabilities.* 1. (intro.) If an individual's vision, hearing or mobility is impaired, it is discrimination ~~on the basis of handicap for any for a~~ person to refuse to rent or sell housing to the individual, cause the eviction of the individual from rental housing ~~or a condominium~~, require extra compensation from an individual as a condition of continued residence in rental housing ~~or a condominium~~ or engage in the harassment of the individual because he or she keeps an animal that is specially trained to lead or assist individuals the individual with impaired vision, hearing or mobility if all of the following apply:

2. ~~Paragraph (a) Subdivision 1~~ does not apply in the case of the rental of an owner-occupied dwelling housing if the owner or a member of his or her immediate family occupying the dwelling housing possesses and, upon request, presents to the individual a certificate signed by a physician which states that the owner or family member is allergic to the type of animal the individual possesses.

NOTE: Consolidates the prohibition against animals assisting persons with disabilities with other provisions relating to persons with disabilities in sub. (2r), created in the bill. Also deletes separate references to condominiums to clarify that condominiums are included in the term "housing".

SECTION 16. 101.22 (2r) of the statutes is created to read:

101.22 (2r) DISCRIMINATION AGAINST PERSONS WITH DISABILITIES PROHIBITED. (a) *Definitions.* In this subsection:

1. "Accessible" means able to be approached, entered and used by persons with disabilities.

2. "Accessible route" means a continuous, unobstructed path connecting accessible elements and spaces in a building, within a site or from a site to a vehicular route, that can be negotiated by all persons with a disability.

3. "ANSI A117.1" means the 1986 edition of the American national standards institute's code for buildings and facilities providing accessibility and usability for physically handicapped people.

4. "Covered multifamily housing" means any of the following:

a. Housing that is first ready for occupancy on or after the first day of the 13th month beginning after the effective date of this subdivision [revisor inserts date], consisting of 3 or more dwelling units if the housing has one or more elevators.

b. Grade-level dwelling units, in housing without elevators, that are first ready for occupancy on or after the first day of the 13th month beginning after the effective date of this subdivision [revisor inserts date], consisting of 3 or more dwelling units.

5. "Remodeling" has the meaning given in s. 101.13 (6) (a).

6. "Vehicular route" means a route intended for vehicular traffic including, but not limited to, a street, driveway or parking lot.

(b) *Types of discrimination prohibited.* In addition to discrimination prohibited under subs. (2) and (2m), no person may do any of the following:

1. Segregate, separate, exclude or treat unequally in the sale or rental of, or otherwise make unavailable or deny, housing to a buyer or renter because of a disability of that buyer or renter, a disability of a person residing in or intending to reside in that housing after it is sold, rented or made available or a disability of a person associated with that buyer or renter.

2. Segregate, separate, exclude or treat unequally a person in the terms, conditions or privileges of sale or rental of housing, or in the provision of services or facilities in connection with such housing, because of a disability of that person, a disability of a person residing in or intending to reside in that housing after it is sold, rented or made available or a disability of a person associated with that person.

3. Refuse to permit, at the expense of a person with a disability, reasonable modifications of existing housing that is occupied, or is to be occupied, by such a person if the modifications may be necessary to afford the person full enjoyment of the housing, except that in the case of rental housing the landlord may, where it is reasonable to do so, condition permission for a modification on the tenant's agreement to restore the interior of the housing to the condition that existed before the modification, other than reasonable wear and tear. The landlord may not increase any customarily required security deposit. Where it is necessary to ensure that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of a restoration agreement a requirement that the tenant pay into an interest-bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant. If escrowed funds are not used by the landlord for restorations, they shall be returned to the tenant.

4. Refuse to make reasonable accommodations in rules, policies, practices or services that are associated with the housing, when such accommodations may be necessary to afford the person equal opportunity to use and enjoy housing, unless the accommodation would impose an undue hardship on the owner of the housing.

(c) *Design and construction of covered multifamily housing.* In addition to discrimination prohibited under pars. (b) and (bm) and subs. (2) and (2m), no person may

design or construct covered multifamily housing unless it meets all of the following standards:

1. There is at least one accessible entrance for each building and that entrance is on an accessible route. All other entrances that are at grade level shall be accessible to the greatest extent feasible. The department shall promulgate rules that define “to the greatest extent feasible” to ensure maximum accessibility in a way that is not disproportionate to the entire project’s cost and scope. If the covered multifamily housing units are at grade level and are served by separate entrances, each unit shall be on an accessible route. If the units have a minimum number of required exits, as determined by rules that shall be promulgated by the department, all required grade-level exits shall be accessible.

2. Public and common use areas are accessible to persons with disabilities.

3. Interior and exterior doors, and interior passages, are sufficiently wide to allow passage by persons with disabilities who use wheelchairs.

4. Light switches, electrical outlets, circuit controls, thermostats and other environmental controls are all located in accessible locations; reinforcements in bathroom walls are installed to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, when such facilities are provided; kitchens and bathrooms allow an individual in a wheelchair to maneuver about the space; and, upon the request of a renter and without cost to a renter, lever door handles are on all doors and single lever controls, or other controls that are approved by the department by rule, are on all plumbing fixtures used by residents.

(d) *Remodeling.* 1. If more than 50% of the interior square footage of any housing with 3 or more dwelling units is to be remodeled, the entire housing shall conform to the standards in par. (c), regardless of when the housing was first intended for occupancy.

2. If 25% to 50% of the interior square footage of any housing with 3 or more dwelling units is to be remodeled, that part of the housing that is to be remodeled shall conform to the standards in par. (c), regardless of when the housing was first intended for occupancy.

3. If less than 25% of the interior square footage of any housing with 3 or more dwelling units is to be remodeled, the remodeling is not subject to the standards in par. (c) unless the alteration involves work on doors, entrances, exits or toilet rooms, in which case the doors, entrances, exits or toilet rooms shall conform to the standards in par. (c) regardless of when the housing was first intended for occupancy.

4. The department may grant a variance or waiver from the requirements under this paragraph relating to exterior accessibility using the standards and procedures under par. (e).

(e) *Permit and variance procedures.* 1. Plans and specifications for all covered multifamily housing sub-

ject to par. (c) and proposed remodeling subject to par. (d) shall be submitted to the department or its authorized representative for examination and approval before commencing work. The department shall promulgate rules that specify the materials to be included in the submittal, the procedures to be followed upon receipt of a submittal, reasonable time limitations for reviewing submittals and issuing or denying permits and qualifications for authorized representatives.

2. The department may grant a variance from the requirements relating to exterior accessibility under par. (c) 1. or (d), or from administrative rules promulgated under sub. (1s), if the person designing, constructing or remodeling the housing shows that meeting those requirements is impractical because of the terrain or unusual characteristics of the site. The department shall use a slope analysis of the undisturbed site for covered multifamily housing under par. (c) or the existing site for remodeling under par. (d) to determine the minimum number of accessible entrances at each site, with a minimum goal of exterior accessibility of 50% of the dwelling units of covered multifamily housing at one site. The department may impose specific conditions in granting a variance to promote exterior accessibility of the housing to persons with disabilities. If the department finds that exterior accessibility is impractical as to all dwelling units at a site, it may grant a waiver from the requirements under par. (c) 1. or (d).

(f) *Safe harbor.* 1. Except as provided in subd. 2, covered multifamily housing and remodeled housing are accessible for purposes of this subsection if they comply with one of the following:

a. The applicable requirements of ANSI A117.1.

b. Final guidelines issued by the federal department of housing and urban development, published in the federal register on March 6, 1991.

c. Another standard that affords persons with disabilities access that is essentially equivalent to or greater than that required by ANSI A117.1.

2. Subdivision 1 does not apply to remodeled or covered multifamily housing for which a building permit is issued on or after the first day of the 7th month beginning after the effective date of administrative rules promulgated by the department under this subsection establishing the accessibility standards for design and construction under par. (c).

(g) *General powers and duties of department.* 1. The requirements under this subsection are in addition to, and do not supplant, the requirements under s. 101.13 relating to the use of public buildings by persons with disabilities. Any conflict between this subsection and s. 101.13 or the rules promulgated under s. 101.13 shall be resolved in favor of the provision providing the greatest degree of access by persons with disabilities, as determined by the department.

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2. The department shall promulgate rules establishing minimum accessibility requirements for design and construction of covered multifamily housing and the remodeling of housing that are consistent with this subsection, that incorporate the applicable standards under ANSI A117.1 and that set forth permit and variance procedures for purposes of par. (e).

3. The department shall promulgate rules creating standards for interior and exterior accessibility of grade level portions of multilevel dwelling units without elevators in any housing consisting of 3 or more dwelling units with separate exterior entrances. The rules shall ensure that access to a grade-level floor is provided to at least 25% of the dwelling units first ready for occupancy on or after the effective date of the rule.

NOTE: This subsection prohibits the segregation, separation, exclusion or unequal treatment of persons, based on disability, in the sale or rental of housing; in the terms, conditions, privileges, services or facilities connected with housing; in permitting reasonable modifications to be made to housing; and in the design and construction of various types of housing.

1. *Definitions:* The bill includes the following key definitions:

a. “Accessible”, defined as able to be approached, entered and used by persons with disabilities. This definition is based on the definition in federal fair housing regulations.

b. “Accessible route”, defined as a continuous, unobstructed path connecting accessible spaces in a building, within a site, or from a site to a vehicular route that can be negotiated by all persons with disabilities. The definition is based on the definition under federal fair housing regulations as well as guidelines for accessibility issued by the federal department of housing and urban development.

c. “ANSI A117.1” which refers to the 1986 edition of the American national standards institute’s code for buildings and facilities providing accessibility and usability for physically handicapped people. This designation is also included in the federal regulations. According to the preamble of the federal regulations, the 1986 edition of ANSI was specifically designated due to concerns that an open-ended reference to future ANSI standards would represent an unlawful delegation of the federal department of housing and urban development’s rule-making authority.

Current state law relating to accessibility requirements for public buildings requires DILHR to “consider the specifications established in the most current revision of” the ANSI standards in promulgating administrative rules setting forth accessibility standards. However, this provision does not require DILHR to incorporate any part of these standards.

d. “Covered multifamily housing” is based on the definition, in federal fair housing regulations, of the term “covered multifamily dwelling”, except that the definition in this bill refers to “3 or more units”, whereas the federal definition refers to “4 or more units”.

e. “Remodeling” cross-references a current definition of the term, and means “to substantially improve, alter, extend or otherwise change the structure of a building or change the location of exits, but shall not include maintenance, redecoration, reroofing or alteration of mechanical or electrical systems”. Under this definition, “remodeling” includes adding on additional space.

2. *Substantive protections:* The bill:

a. Prohibits discrimination in the sale, rental or availability of housing to a buyer or renter because of a disability of: 1) that buyer or renter; 2) a person residing in or intending to reside in that housing after it is sold, rented or made available; or 3) a person associated with the buyer or renter.

b. Prohibits discrimination against a person in the terms, conditions or privileges of sale or rental of housing, or in the provision of services or facilities in connection with that housing, because of a disability of a person described under item a. 2. above.

c. Prohibits a refusal to permit, at the expense of the person with a disability, the reasonable modification of existing housing if the modification may be necessary to afford the person full enjoyment of the housing. In the case of rental housing, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the housing to the condition that existed before the modification, other than reasonable wear and tear. The bill also authorizes landlords to require a tenant to escrow funds to cover the cost of the restorations.

d. Prohibits a refusal to make reasonable accommodations in rules, policies, practices or services that are associated with the housing under certain circumstances.

e. Requires specified types of newly constructed multifamily housing to be designed and constructed in a manner that ensures internal and external accessibility. The bill provides requirements for accessibility and for determining accessibility although the department may grant variances and waivers when it is impractical to design and construct the housing to be accessible.

f. Requires specified types of existing multifamily housing undergoing remodeling to meet various accessibility requirements, depending on how extensively the housing is being remodeled. The accessibility requirements first apply to remodeling projects, the building permit for which is issued on the effective date of the bill.

SECTION 17. 101.22 (3) of the statutes is renumbered 101.22 (1s) and amended to read:

101.22 (1s) DEPARTMENT TO ADMINISTER. This section shall be administered by the department through its division of equal rights. The department may promulgate such rules as are necessary to carry out this section. No rule may prohibit the processing of any class action complaint or the ordering of any class-based remedy, or may provide that complaints may be consolidated for administrative convenience only. ~~No publicity shall be given a complaint in those cases where the department obtains compliance with this section or the department finds that the complaint is without foundation.~~

NOTE: 1. Renumbers the provision setting forth the general authority of DILHR to administer s. 101.22, to place it before some of the substantive provisions.

2. Deletes the prohibition against publicizing complaints that have been conciliated or found to be without foundation. The bill, in s. 101.22 (6) (e), creates new language relating to publicizing complaints after conciliation has been successful.

SECTION 18. 101.22 (4) of the statutes is renumbered 101.22 (10) (a) and amended to read:

101.22 (10) (a) (title) *Claims filed with department.*

1. The department may receive and investigate a complaint charging a violation of ~~this section sub. (9)~~ if the complaint is filed with the department no more than 300 days after the alleged ~~discrimination or~~ act prohibited

under sub. (9) occurred. A complaint shall be a written statement of the essential facts constituting the ~~discrimination or~~ act prohibited under sub. (9) charged, and shall be verified.

2. In carrying out this ~~section~~ subsection, the department and its duly authorized agents may hold hearings, subpoena witnesses, take testimony and make investigations as provided in this chapter. The department, upon its own motion, may test and investigate for the purpose of establishing violations of ~~this section sub. (9)~~, and may make, sign and file complaints alleging violations of ~~this section sub. (9)~~, and initiate investigations and studies to carry out the purposes of sub. (9) and this section subsection.

3. The department shall employ such examiners as are necessary to hear and decide complaints of ~~discrimination and~~ acts prohibited under sub. (9) and to assist in the effective administration of this ~~section~~ subsection. The examiners may make findings and orders under this ~~section~~ subsection.

4. If the department finds probable cause to believe that any ~~discrimination or~~ act prohibited under sub. (9) has been or is being committed ~~in violation of this section~~, it may endeavor to eliminate the discrimination or other act by conference, conciliation and persuasion. If the department determines that such conference, conciliation and persuasion has not eliminated the alleged ~~discrimination or~~ act prohibited under sub. (9), the department shall issue and serve a written notice of hearing, specifying the nature and acts of ~~discrimination or~~ acts prohibited under sub. (9), which appear to have been committed, and requiring the person named, in this ~~section~~ subsection called the “respondent”, to answer the complaint at a hearing before an examiner. The notice shall specify a time of hearing, not less than 10 days after service of the complaint, and a place of hearing within the county in which the violation of ~~this section sub. (9)~~ is alleged to have occurred. A party’s attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding. The testimony at the hearing shall be recorded by the department. In all hearings before an examiner, except those for determining probable cause, the burden of proof is on the party alleging ~~discrimination or~~ an act prohibited under sub. (9). If, after the hearing, the examiner finds by a fair preponderance of the evidence that the respondent has violated ~~this section sub. (9)~~, the examiner shall make written findings and order such action by the respondent as will effectuate the purpose of sub. (9) and this section subsection. The department shall serve a certified copy of the examiner’s

findings and order on the respondent and complainant, the order to have the same force as other orders of the department and be enforced as provided in this ~~section~~ subsection except that the enforcement of the order is automatically stayed upon the filing of a petition for review with the commission. If the examiner finds that the respondent has not engaged in ~~discrimination or~~ an act prohibited under sub. (9) as alleged in the complaint, the department shall serve a certified copy of the examiner’s findings on the complainant and the respondent together with an order dismissing the complaint. If the complaint is dismissed, costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be assessed against the department in the discretion of the department.

5. At any time after a complaint is filed, the department may file a petition in the circuit court for the county in which the act of ~~discrimination or~~ act prohibited under sub. (9) allegedly occurred, or for the county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this ~~section~~ subsection, including an order or decree restraining the respondent from performing an act tending to render ineffectual an order the department may enter with respect to the complaint. The court may grant such temporary relief or restraining order as it deems just and proper.

NOTE: Renumbers and amends the provision setting forth administrative enforcement procedures, currently applicable to violations of both the state fair housing law and the public accommodations law, to: 1) clarify that these procedures apply only to the public accommodations law under sub. (9), in light of the creation of new procedures applicable to the fair housing law under s. 101.22 (6) in the bill; and 2) make technical changes in the provision to reflect the renumbering.

SECTION 19. 101.22 (4m) of the statutes is repealed.

NOTE: Repeals the prohibition against interference, coercion or intimidation of persons exercising their rights under the state fair housing law. This provision has been recreated as s. 101.22 (2) (j) in the bill.

SECTION 20. 101.22 (4n) (title) of the statutes is repealed.

SECTION 21. 101.22 (4n) of the statutes is renumbered 101.22 (5m) (f) and amended to read:

101.22 (5m) (f) Nothing in this section prohibits an owner or agent from requiring that ~~any a~~ person who seeks to buy, ~~or rent or lease~~ housing supply information concerning family, status and marital, financial and business status but not concerning race, color, physical condition, ~~developmental disability as defined in s. 51.01 (5)~~, sexual orientation, age, ancestry, national origin, religion or creed.

NOTE: Renumbers sub. (4n) to incorporate it into the general exemptions under sub. (5m), as affected in the bill. Also substitutes the defined term “disability” for the term “developmental disability as defined in s. 51.01 (5)”; and adds age, ancestry, national origin and religion to the list of information an owner or agent may not require.

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SECTION 22. 101.22 (4p) of the statutes is renumbered 101.22 (10) (b), and 101.22 (10) (b) 1., as renumbered, is amended to read:

101.22 (10) (b) 1. Any ~~A~~ respondent or complainant who is dissatisfied with the findings and order of the examiner under par. (a) may file a written petition with the department for review by the commission of the findings and order.

NOTE: Renumbers and amends s. 101.22 (4p) to consolidate it with the public accommodations enforcement provisions, as affected in this bill.

SECTION 23. 101.22 (5) of the statutes is renumbered 101.22 (10) (c) and amended to read:

101.22 (10) (c) *Judicial review.* Within 30 days after service upon all parties of any an order of the commission under ~~this section par. (b)~~, the respondent or complainant may appeal the order to the circuit court for the county in which the alleged ~~discrimination or~~ act prohibited under sub. (9) took place by the filing of a petition for review. The respondent or complainant shall receive a new trial on all issues relating to any alleged ~~discrimination or~~ act prohibited under sub. (9) and a further right to a trial by jury, if so desired. The department of justice shall represent the commission. In any such trial the burden shall be to prove ~~discrimination or~~ an act prohibited under sub. (9) by a fair preponderance of the evidence. Costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be taxed to the prevailing party on the appeal.

NOTE: Renumbers and amends current s. 101.22 (5) to incorporate it into the enforcement provisions applicable to violations of the public accommodations law.

SECTION 24. 101.22 (5m) (title) and (a) of the statutes are created to read:

101.22 (5m) (title) EXEMPTIONS AND EXCLUSIONS. (a) 1. Nothing in this section prohibits discrimination based on age or family status with respect to housing for older persons.

1e. Under this paragraph, housing under sub. (1m) (m) 3. may qualify as housing for older persons only if the owner of the housing provides the department with written certification that all of the following factors apply to the housing:

a. There exists significant facilities and services specifically designed to meet the physical or social needs of older persons under sub. (1m) (m) 3.

b. At least 80% of the dwelling units under sub. (1m) (m) 3. are occupied by at least one person 55 years of age or older.

c. Policies are published and procedures are adhered to that demonstrate an intent by the owner or manager to provide housing under sub. (1m) (m) 3. for persons 55 years of age or older.

1m. No person may discriminate by refusing to continue renting to a person living in housing for older per-

sons under sub. (1m) (m) 3. who is subject to a hardship condition.

2. Under this paragraph, housing may qualify as housing for older persons with respect to persons first occupying the housing on or after the effective date of this subdivision ... [revisor inserts date], regardless of whether a person who had not attained the age of 62 resided in the housing on that date or regardless of whether one or more dwelling units were unoccupied on that date, if the persons who first occupy the housing on or after that date have attained the age of 62.

NOTE: 1. Adopts federal language permitting special housing for older persons, defined elsewhere in the bill.

2. Includes a provision to “grandfather” persons who were residents of housing as of the effective date of this bill for purposes of applying the definition of “housing for older persons” under the exemption.

3. Clarifies that units that were vacant on the effective date of this bill are not disqualified from meeting the definition of “housing for older persons”.

SECTION 25. 101.22 (5m) (d) of the statutes is created to read:

101.22 (5m) (d) Nothing in this section requires that housing be made available to an individual whose tenancy would constitute a direct threat to the safety of other tenants or persons employed on the property or whose tenancy would result in substantial physical damage to the property of others, if the risk of direct threat or damage cannot be eliminated or sufficiently reduced through reasonable accommodations. A claim that an individual’s tenancy poses a direct threat or a substantial risk of harm or damage must be evidenced by behavior by the individual which caused harm or damage, which directly threatened harm or damage or which caused a reasonable fear of harm or damage to other tenants, persons employed on the property or the property. No claim that an individual’s tenancy would constitute a direct threat to the safety of other persons or would result in substantial damage to property may be based on the fact that a tenant has been or may be the victim of domestic abuse, as defined in s. 813.12 (1) (a).

NOTE: Creates a new exemption, based on federal law, permitting persons to discriminate by not making housing available to an individual whose tenancy would constitute a direct threat to the safety of other tenants or persons employed on the property, or whose tenancy would result in substantial physical damage to the property of others.

The exemption applies as long as the risk of direct threat or damage cannot be eliminated or sufficiently reduced through reasonable accommodations. This language is derived from a U.S. supreme court decision, *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987), interpreting federal employment discrimination laws, cited in the house report accompanying the federal fair housing amendments act of 1988.

The provision also provides a standard for determining when a threat to the safety or property of others is present. The language, also based on the house report accompanying the federal fair housing amendments act, requires evidence of behavior on the part of the individual which caused harm or

damage, which directly threatened harm or damage or which caused a reasonable fear of harm or damage. As stated in the house report, generalized assumption, subjective fears and speculation are insufficient to prove the requisite direct threat to others. For example, the fact of a prospective tenant's history of a physical or mental illness is an insufficient basis for a landlord to use in determining whether to rent to that individual. Further, the provision is not intended to give landlords and owners the right to ask prospective tenants and buyers blanket questions about the individual's disabilities. Only an inquiry into a prospective tenant's ability to meet tenancy requirements would be justified.

Finally, the provision specifies that a claim of dangerousness under this subsection may not be based on the fact that a tenant has been or may be the victim of domestic abuse.

SECTION 26. 101.22 (5m) (e) and (f) of the statutes are created to read:

101.22 (5m) (e) It is not discrimination based on family status to comply with any reasonable federal, state or local government restrictions relating to the maximum number of occupants permitted to occupy a dwelling unit.

(f) 1. Subject to subd. 2, nothing in this section applies to a decision by an individual as to the person with whom he or she will, or continues to, share a dwelling unit, as defined in s. 101.71 (2) except that dwelling unit does not include any residence occupied by more than 5 persons.

2. Any advertisement or written notice published, posted or mailed in connection with the rental or lease of a dwelling unit under subd. 1 may not violate sub. (2) (d), 42. USC 3604 (c), or any rules or regulations promulgated under this section or 42 USC 3601 to 3619, except that such an advertisement or written notice may be for a person of the same sex as the individual who seeks a person to share the dwelling unit for which the advertisement or written notice is placed.

SECTION 27. 101.22 (6) of the statutes is renumbered 101.22 (10) (d) and amended to read:

101.22 (10) (d) *Penalty.* 1. ~~Any~~ A person who willfully violates ~~this section sub. (9)~~ or any lawful order issued under ~~this section subsection~~ shall, for the first violation, forfeit not less than \$100 nor more than \$1,000.

2. ~~Any~~ A person adjudged to have violated ~~this section sub. (9)~~ within 5 years after having been adjudged to have violated ~~this section sub. (9)~~, for every violation committed within the 5 years, shall forfeit not less than \$1,000 nor more than \$10,000.

3. Payment of a forfeiture under ~~this section paragraph~~ shall be stayed during the period in which ~~any~~ an appeal may be taken and during the pendency of an appeal under ~~sub. (5) par. (c)~~.

NOTE: Renumbers and amends current s. 101.22 (6) to incorporate it into the enforcement provisions applicable to violations of the public accommodations law.

SECTION 28. 101.22 (6) of the statutes is created to read:

101.22 (6) FAIR HOUSING ADMINISTRATIVE ENFORCEMENT. (a) *Complaints.* 1. The department may receive and investigate a complaint charging a violation of sub. (2), (2m) or (2r) if the complaint is filed with the department not later than one year after the alleged discrimination occurred or terminated.

2. The complaint shall include a written statement of the essential facts constituting the discrimination that is charged, and shall be signed by the complainant.

3. The complaint may be filed by an aggrieved person, by an interested person, or by the department under par. (b). The department shall, upon request, provide appropriate assistance in completing and filing complaints.

4. The department shall serve notice on the aggrieved person acknowledging the filing of the complaint and advising the complainant of the time limits and choice of forums provided under this subsection and the right to bring a private civil action under sub. (6m).

5. Upon the filing of an initial, amended, final or supplemental complaint, the department shall promptly serve a copy of the complaint upon the respondent, except where testing may be conducted. The initial complaint shall be served before the commencement of the investigation by the department, except where testing may be conducted. The notice shall be sent by certified mail, return receipt requested. The notice to the respondent shall include a written statement from the department directing the respondent to respond in writing to the allegations in the complaint within 20 days after the date of the notice and further stating that, if the respondent fails to answer the complaint in writing, the department will make an initial determination as to whether discrimination has occurred based only on the department's investigation and the information supplied by the complainant.

6. The department may dismiss the complaint if the complainant fails to respond to the department within 20 days from the date of mailing of any correspondence from the department concerning the complaint, if the department's correspondence requests a response and if the correspondence is sent by certified mail, return receipt requested, to the last known address of the complainant.

(b) *Powers and duties of department.* The department and its duly authorized agents may hold hearings, subpoena witnesses, take testimony and make investigations as provided in this subsection. The department may test and investigate for the purpose of establishing violations of sub. (2), (2m) or (2r) and may make, sign and file complaints alleging violations of sub. (2), (2m) or (2r). The department shall employ examiners to hear and decide complaints of discrimination under this section, and to assist in the administration of this section. The examiners may make findings and issue orders under this

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subsection. The department shall develop and implement an investigation manual for use in conducting investigations under par. (c).

(c) *Investigation and finding of probable cause.* 1. The department shall investigate all complaints that allege a violation of this section and that are filed within the time specified under par. (a). The department may subpoena persons or documents for the purpose of investigation. If during an investigation it appears that the respondent has engaged in discrimination against the complainant which is not alleged in the complaint, the department may advise the complainant that the complaint should be amended. If the complaint is amended, the department shall also investigate the allegations of the amended complaint.

2. At the conclusion of the investigation of the allegations, the department shall make a determination as to whether probable cause exists to believe that discrimination has occurred or is about to occur. In making a determination of probable cause, the department shall consider whether the facts concerning the alleged discrimination are sufficient to warrant the initiation of a civil action. If the department determines that probable cause exists, the department shall immediately issue a charge on behalf of the aggrieved person. Service of copies of the charge shall be made on the complainant, the respondent and the aggrieved person by certified mail, return receipt requested. When a charge is filed, a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in that charge decided in a civil action under sub. (6m) in lieu of a hearing under par. (f). The election shall be made no later than 20 days after the receipt by the electing person of service of the charge, along with information about how to make the election. If an election is made, the person making the election shall give notice of doing so to the department and to all other complainants and respondents to whom the charge relates. The department shall notify the aggrieved persons that an election is made.

3. No charge may be issued regarding alleged discrimination after the beginning of the trial of a civil action commenced by the aggrieved party under sub. (6m) or 42 USC 3613, seeking relief with respect to that discriminatory act.

4. If the department initially determines that there is no probable cause to believe that discrimination occurred as alleged in the complaint, it may dismiss those allegations. The department shall, by a notice to be served with the determination, notify the parties of the complainant's right to appeal the dismissal of the claim to the secretary for a hearing on the issue by a hearing examiner. Service of the determination shall be made by certified mail, return receipt requested. If the hearing examiner determines that no probable cause exists, that determination is

the final determination of the department and may be appealed under par. (j).

(d) *Temporary judicial relief.* At any time after a complaint is filed alleging discrimination in violation of sub. (2), (2m) or (2r), the department may file a petition in the circuit court for the county in which the act of discrimination allegedly occurred or for the county in which a respondent resides or transacts business, seeking a temporary injunction or restraining order against the respondent to prevent the respondent from performing an act that would tend to render ineffectual an order that the department may enter with respect to the complaint, pending final determination of proceedings under this section.

(e) *Conciliation.* 1. Upon the filing of a complaint alleging discrimination in violation of sub. (2), (2m) or (2r), the department may endeavor to eliminate the discrimination by conference, conciliation and persuasion. The department shall notify the parties that conciliation services are available.

2. Conciliation efforts may be undertaken by the department during the period beginning with the filing of the complaint and ending with the dismissal of the complaint under par. (c) 4. or the issuance of a charge under par. (c) 2.

3. If conciliation resolves the dispute, a written conciliation agreement shall be prepared which shall state all measures to be taken by each party. The agreement may provide for dismissal of the complaint if the dismissal is without prejudice to the complainant's right to pursue the complaint against any respondent who fails to comply with the terms of the agreement. The agreement shall be signed by the respondent, the complainant and the aggrieved person and is subject to approval by the department. A conciliation agreement entered into under this subdivision is a public record and is subject to inspection under s. 19.35, unless the parties to the agreement request that the record be exempt from disclosure and the department finds that disclosure is not required to further the purposes of this section.

4. Whenever the department has reasonable cause to believe that a respondent has breached a conciliation agreement, the department shall refer the matter to the department of justice with a recommendation that a civil action be filed for enforcement of the agreement.

(f) *Hearing procedures.* 1. After the department issues a charge under par. (c) 2, the department shall serve the charge, along with a written notice of hearing, specifying the nature and acts of discrimination which appear to have been committed, and requiring the respondent to answer the charge at a hearing before an examiner. The notice shall specify a time of hearing, not less than 10 days after service of the charge, and a place of hearing within the county in which the violation is alleged to have occurred.

2. If an election is not made under par. (c) 2., the hearing shall be conducted by a hearing examiner. A person who is aggrieved, with respect to the issues to be determined at the hearing, may be represented by counsel.

3. The department or a party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney shall be in substantially the same form as provided in s. 805.07 (4) and shall be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the hearing examiner who is responsible for conducting the hearing.

4. The testimony at the hearing shall be recorded by the department. Discovery shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence. The hearing under this paragraph shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record. The burden of proof is on the party alleging discrimination.

5. If after the hearing the examiner finds by a fair preponderance of the evidence that the respondent has violated sub. (2), (2m) or (2r), the examiner shall make written findings and order the respondent to take actions that will effectuate the purpose of sub. (2), (2m) or (2r), and may order other penalties, damages and costs as provided in pars. (h) and (i). The department shall serve a certified copy of the final findings and order on the aggrieved party, the complainant and the respondent. The order shall have the same force as other orders of the department and be enforced as provided in this subsection except that the enforcement of the order is automatically stayed upon the filing of a petition for review under par. (j).

6. If the examiner finds that the respondent has not engaged in discrimination as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the aggrieved party, the complainant and the respondent together with an order dismissing the complaint. If the complaint is dismissed, costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be assessed against the department in the discretion of the department.

(g) *Time limitations.* 1. The department shall commence proceedings with respect to a complaint before the end of the 30th day after receipt of the complaint.

2. The department shall investigate the allegations of the complaint and complete the investigation not later than 100 days after receipt of the complaint. If the department is unable to complete the investigation within 100 days, it shall notify the complainant and respondent in writing of the reasons for not doing so.

3. The department shall make final administrative disposition of a complaint within one year after the date of receipt of a complaint, unless it is impracticable to do

so. If the department is unable to do so, it shall notify the complainant and respondent in writing of the reasons for not doing so.

(h) *Damages and penalties.* 1. If the hearing examiner finds that a respondent has engaged in or is about to engage in a discriminatory act prohibited under sub. (2), (2m) or (2r), the hearing examiner shall promptly issue an order for such relief as may be appropriate, which may include economic and noneconomic damages suffered by the aggrieved person, regardless of whether he or she intervened in the action, and injunctive or other equitable relief. The hearing examiner may not order punitive damages.

2. In addition to any damages ordered under subd. 1, the hearing examiner may assess a forfeiture against a respondent who is not a natural person in an amount not exceeding \$10,000, unless the respondent who is not a natural person has been adjudged to have committed any prior discriminatory act under sub. (2), (2m) or (2r). If a respondent who is not a natural person has been adjudged to have committed one other discriminatory act under sub. (2), (2m) or (2r) during the preceding 5-year period, based on the offense date of the prior discriminatory act, the hearing examiner may assess a forfeiture in an amount not exceeding \$25,000. If a respondent who is not a natural person has been adjudged to have committed 2 or more prior discriminatory acts under sub. (2), (2m) or (2r) during the preceding 7-year period, based on the offense date of the prior discriminatory act, the hearing examiner may assess a forfeiture in an amount not exceeding \$50,000.

3. In addition to any damages ordered under subd. 1, the administrative law judge may assess a forfeiture against a respondent who is a natural person in an amount not exceeding \$10,000, unless the respondent who is a natural person has been adjudged to have committed any prior discriminatory act under sub. (2), (2m) or (2r). If a respondent who is a natural person has been adjudged to have committed one other prior discriminatory act under sub. (2), (2m) or (2r) based on an offense date that is before the effective date of this subdivision [revisor inserts date], the administrative law judge may assess a forfeiture in an amount not exceeding \$25,000. If a respondent who is a natural person has been adjudged to have committed 2 or more prior discriminatory acts under sub. (2), (2m) or (2r) based on an offense date that is before the effective date of this subdivision [revisor inserts date], the administrative law judge may assess a forfeiture in an amount not exceeding \$50,000.

(i) *Attorney fees and costs.* The hearing examiner may allow a prevailing complainant, including the state, reasonable attorney fees and costs. The state shall be liable for those fees and costs if the state is a respondent and is determined to have committed a discriminatory act under sub. (2), (2m) or (2r).

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(j) *Judicial review.* Within 30 days after service upon all parties of an order or determination of the department under this subsection, the respondent, the complainant or the aggrieved party may appeal the order or the determination to the circuit court for the county in which the alleged discrimination took place by the filing of a petition for review. The court shall review the order or determination as provided in ss. 227.52 to 227.58.

NOTE: The bill makes the following changes in the procedures used in administrative enforcement of the bill:

1. *Complaints:* A complaint alleging housing discrimination must be filed with DILHR no later than one year after the alleged discrimination occurred or terminated, rather than within 300 days after the alleged discrimination occurred.

The bill extends the current time limit from 10 days to 20 days for persons to respond to any correspondence from DILHR, sent by certified mail, concerning the complaint. The penalty for a complainant who fails to respond within that time limit may be dismissal of the complaint.

The bill also requires DILHR to send an acknowledgement to the complainant of the receipt of a complaint. The acknowledgement provides information on the choice of forums, information on the various time limits for pursuing a claim and information on the right to bring a civil action.

2. *Conciliation; determination of cause:* The bill permits DILHR to attempt conciliation of the case during the investigation period.

The bill specifies that a conciliation agreement must be agreed to by the respondent, the aggrieved person and the complainant and is subject to the approval of DILHR.

The bill also amends a current prohibition against publicizing conciliation agreements in cases where DILHR obtains compliance with the state fair housing law. Under the bill, a conciliation agreement is subject to the state open records law, unless the parties otherwise agree and the agency determines that disclosure is not required to further the purpose of the law.

The bill also requires DILHR to develop and implement an investigation manual for use in conducting investigations.

If at the conclusion of the investigation of the allegations DILHR determines that cause exists to believe that discrimination has occurred or is about to occur, DILHR is required to immediately issue a charge on behalf of the aggrieved person.

3. *Election of forum; prosecution of charge:* Once a charge has been issued by DILHR, the complainant, respondent and any aggrieved person on whose behalf the complaint was filed may elect to have the claim decided in a civil action in circuit court.

4. *Penalties:* DILHR may impose any of the following penalties for violation of the fair housing law:

a. Economic and noneconomic damages suffered by the aggrieved person, regardless of whether he or she intervened in the action, but not including punitive damages.

b. Injunctive or other equitable relief.

c. Costs and attorney fees.

d. A forfeiture, for a person other than a natural person, in the amount of up to \$10,000 for a first offense, up to \$25,000 for a 2nd offense within a 5-year period and up to \$50,000 for a 3rd or subsequent offense during a 7-year period.

e. In the amount of up to \$10,000 for a first offense, up to \$25,000 for a 2nd offense or up to \$50,000 for a 3rd or subsequent offense.

If an election is made to pursue the action in circuit court, the remedies are the same except that a court is authorized under the bill to grant punitive damages.

5. *Time limitations:* The bill imposes new time limitations on DILHR for processing complaints relating to housing violations. DILHR is required to commence proceedings within 30 days after receiving a complaint and complete the investigation within 100 days after receiving the complaint. DILHR must make final administrative disposition of the complaint within one year after receiving the complaint. If DILHR is unable to comply with the time limitations relating to investigation and administrative disposition of the complaint, it must notify the complainant and respondent, in writing, of the reasons for not doing so.

6. *Appeal:* An order of a DILHR hearing examiner is appealable directly to a circuit court, rather than first taking an appeal to the labor and industry review commission. The appeal in circuit court is an administrative review, rather than a new trial.

SECTION 29. 101.22 (6m) of the statutes is created to read:

101.22 (6m) CIVIL ACTIONS. (a) Any person, including the state, alleging a violation of sub. (2), (2m) or (2r) may bring a civil action for injunctive relief, for damages, including punitive damages, and, in the case of a prevailing plaintiff, for court costs and reasonable attorney fees.

(b) An action commenced under par. (a) may be brought in the circuit court for the county where the alleged violation occurred or for the county where the person against whom the civil complaint is filed resides or has a principal place of business, and shall be commenced within one year after the alleged violation occurred or terminated. The one-year statute of limitations under this paragraph shall be tolled while an administrative proceeding with respect to the same complaint is pending.

(c) The court may issue a permanent or temporary injunction or restraining order to assure the rights granted by this section. The court may order other relief that the court considers appropriate, including monetary damages, actual and punitive, a forfeiture as provided in sub. (6) (h) and costs and fees as provided in sub. (6) (i).

(d) If the attorney general has reasonable cause to believe that any person is engaged in a pattern or practice of discrimination in violation of sub. (2), (2m) or (2r) or that any person has been denied any of the rights granted under sub. (2), (2m) or (2r), and such denial raises an issue of general public importance, the department of justice may commence a civil action.

SECTION 30. 101.22 (7) of the statutes is renumbered 101.22 (10) (e) and amended to read:

101.22 (10) (e) *Civil actions.* 1. ~~Any~~ A person, including the state, alleging a violation of ~~this section sub. (9)~~ may bring a civil action for appropriate injunctive relief, for damages including punitive damages, and, in the case of a prevailing plaintiff, for court costs and reasonable attorney fees ~~in the case of a prevailing plaintiff.~~ The attorney general shall represent the department in ~~any~~ an action to which the department is a party.

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2. An action commenced under ~~par. (a)~~ this paragraph may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has a principal place of business, and shall be commenced within one year after the alleged violation occurred.

3. The remedies provided for in this ~~subsection paragraph~~ shall be in addition to any other remedies contained in this ~~section subsection~~.

NOTE: Renumbers and amends current s. 101.22 (7) to incorporate it into the enforcement provisions that apply to violations of the public accommodations law.

SECTION 31. 101.22 (8) (a) of the statutes is amended to read:

101.22 (8) (a) If the department finds ~~probable reasonable~~ cause to believe that an act of discrimination has been or is being committed in violation of this section by a person taking an action prohibited under sub. (2), ~~(2m)~~ or (2r), or probable cause to believe that an act has been or is being committed in violation of sub. (9), and the person is licensed or chartered under state law, the department shall notify the licensing or chartering agency of its findings, and ~~shall may~~ file a complaint with such agency together with a request that the agency initiate proceedings to suspend or revoke the license or charter of such person or take other less restrictive disciplinary action.

SECTION 32. 101.22 (9) (a) 1., 3. and 4. of the statutes are amended to read:

101.22 (9) (a) 1. Deny to another or charge another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of sex, race, color, creed, ~~handicap~~ disability, sexual orientation, national origin or ancestry.

3. Directly or indirectly publish, circulate, display or mail any written communication which the communicator knows is to the effect that any of the facilities of any public place of accommodation or amusement will be denied to any person by reason of sex, race, color, creed, ~~handicap~~ disability, sexual orientation, national origin or ancestry or that the patronage of a person is unwelcome, objectionable or unacceptable for any of those reasons.

4. Refuse to furnish or charge another a higher rate for any automobile insurance because of race, color, creed, ~~handicap~~ disability, national origin or ancestry.

NOTE: Amends the public accommodations law to substitute the defined term "disability" for the term "handicap".

SECTION 33. 101.22 (10) (title) of the statutes is created to read:

101.22 (10) (title) INVESTIGATION AND REVIEW OF CLAIMS, PUBLIC PLACES.

SECTION 34. 101.223 (4) (a) of the statutes is amended to read:

101.223 (4) (a) The department shall receive and investigate complaints charging discrimination or discriminatory practices in particular cases, and publicize its

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findings with respect thereto. The department has all powers provided under s. 111.39 with respect to the disposition of such complaints. The findings and orders of examiners may be reviewed as provided under s. 101.22 ~~(4p)~~ (10) (b).

NOTE: Corrects a cross-reference to reflect renumbering elsewhere in this bill.

SECTION 35. 101.62 of the statutes is amended to read:

101.62 Dwelling code council; power. The dwelling code council shall review the standards and rules for one- and 2-family dwelling construction and recommend a uniform dwelling code for adoption by the department which shall include rules providing for the conservation of energy in the construction and maintenance of dwellings and for costs of specific code provisions to home buyers to be related to the benefits derived from such provisions. The council shall study the need for and availability of one-family and 2-family dwellings that are accessible to persons with disabilities, as defined in s. 101.22 (1m) (g), and shall make recommendations to the department for any changes to the uniform dwelling code that may be needed to ensure an adequate supply of one-family and 2-family dwellings. Upon its own initiative or at the request of the department, the council shall consider and make recommendations to the department pertaining to rules and any other matters related to this subchapter. The council shall recommend variances for different climate and soil conditions throughout the state.

NOTE: Requires the dwelling code council, which is attached to DLHR, to study the need for and availability of accessible housing. The council is required to make recommendations to the department for changes in the uniform dwelling code for one-family and 2-family housing.

SECTION 37. 227.03 (2) of the statutes, as affected by 1991 Wisconsin Act 32, is amended to read:

227.03 (2) Except as provided in s. 108.105, only the provisions of this chapter relating to rules are applicable to matters arising out of s. 66.191, 1981 stats., s. 40.65 (2), ~~101.22~~, 144.445, 303.07 (7) or 303.21 or subch. II of ch. 107 or ch. 102, 108 or 949.

NOTE: Amends a provision in the administrative procedures law to reflect the creation of s. 227.03 (3m) in this bill.

SECTION 38. 227.03 (3m) of the statutes is created to read:

227.03 (3m) (a) This chapter does not apply to proceedings before the department of industry, labor and human relations relating to housing discrimination under s. 101.22 (1) to (8), except as provided in s. 101.22 (6).

(b) Only the provisions of this chapter relating to rules are applicable to matters arising out of protection against discrimination in a public place of accommodation or amusement under s. 101.22 (9) and (10).

NOTE: Clarifies that fair housing administrative proceedings are governed by s. 101.22 (6) rather than the administrative procedures law. Also retains the current law that only the administrative rule provisions, and none of the contested case

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provisions, of the administrative procedures act apply to the public accommodations laws.

SECTION 39. 703.10 (2m) of the statutes is amended to read:

703.10 (2m) LIMITATION ON ENFORCEMENT OF CERTAIN PROVISIONS. No bylaw or rule adopted under a bylaw and no covenant, condition or restriction set forth in a declaration or deed to a unit may be applied to discriminate against an individual in a manner described in s. 101.22 (2p).

NOTE: Current condominium law prohibits the enforcement of condominium bylaws, rules, covenants, conditions and restrictions that discriminate against persons with disabilities assisted by animals. This SECTION amends that provision so that it prohibits enforcement of any condominium restriction that discriminates in any manner specified in the state fair housing law, s. 101.22, as affected in this bill.

SECTION 40. 814.04 (intro.) of the statutes, as affected by 1991 Wisconsin Acts 39 and (Assembly Bill 194), is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 101.22 (6) (i) and (6m) (a), 814.025, 814.245, 895.035 (4), 895.75 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

NOTE: Exempts attorney fees that may be awarded under s. 101.22 (6) (i) or (6m) (a) from the statutory limits in s. 814.04 (1).

SECTION 41. 895.437 (1) (c) of the statutes is amended to read:

895.437 (1) (c) “Lodging establishment” has the meaning given in s. 101.22 (1m) ~~(b)~~ (n).

NOTE: Corrects a cross-reference to reflect renumbering elsewhere in this bill.

SECTION 42. Nonstatutory provisions; industry, labor and human relations. (1) **INTERIM RULES.** The department of industry, labor and human relations shall establish interim rules for accessible design and construction of housing which will be effective until the effective date of the final rule promulgated under section 101.22 (2r) (g) 2. of the statutes, as created by this act. The interim rules shall provide that compliance with the applicable requirements of the 1986 edition of the American national standards institute’s code for buildings and facilities, as specified by the department, or the federal guidelines issued by the federal department of housing and urban development, published in the federal register on March 6, 1991, shall be considered to satisfy the requirements of this subsection. Notwithstanding section 227.24 (1) (a) of the statutes, the department may

promulgate these interim rules using the procedures under section 227.24 of the statutes without the finding of an emergency.

(2) **DWELLING CODE COUNCIL.** (a) The dwelling code council shall submit its first report under section 101.62 of the statutes to the department of industry, labor and human relations and to the chief clerk of each house of the legislature for distribution to the legislature in the manner provided in section 13.172 (2) of the statutes no later than one year after the effective date of this paragraph.

(b) The initial term of the public member of the council who shall represent persons with disabilities and be appointed under section 15.227 (6) of the statutes, as affected by this act, shall begin when the first public member vacancy occurs after the effective date of this paragraph.

(3) **OCCUPANCY STANDARDS STUDY.** The department of industry, labor and human relations shall study occupancy standards and report to the legislature by June 30, 1993. The study shall include, but not be limited to, the following:

(a) Any existing state or local occupancy standards.

(b) The implications of occupancy standards on the availability of housing for persons with families.

(c) Any federal determinations of what occupancy standards are reasonable, based on court cases or studies by the federal department of housing and urban development and the federal department of justice.

(d) Problems incurred by landlords in the absence of occupancy standards.

NOTE: 1. Requires DILHR to adopt interim accessibility rules, to be effective until final administrative rules are promulgated. These interim rules may be adopted as “emergency rules” without the finding of an emergency.

SECTION 43. Initial applicability. This act first applies to acts of discrimination occurring on the effective date of this SECTION, except as follows:

(1) **REMODELING PROJECTS.** The treatment of section 101.22 (2r) (d) 1. to 3. of the statutes first applies to remodeling projects, the building permit for which is issued on the effective date of this subsection.

(2) **PRIOR ACTS.** For enhanced penalty calculations under section 101.22 (6) (h) 2 and 3 of the statutes, as created by this act, the offense date of a prior discriminatory act may be before the effective date of this subsection.

SECTION 44. Effective date. This act takes effect on September 1, 1992.