



General Assembly

February Session, 2016

Raised Bill No. 468

LCO No. 2954



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

AN ACT CONCERNING THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 46a-84 of the 2016 supplement to
2 the general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2016*):

4 (b) [Upon] Except as provided in this section, upon (1) certification
5 of a complaint filed pursuant to subsection (a) or (b) of section 46a-82,
6 (2) the filing of a complaint pursuant to subsection (c) of said section,
7 or (3) a decision to hear a complaint, which is made pursuant to
8 subsection (e) of section 46a-83, as amended by this act, the Chief
9 Human Rights Referee shall appoint a human rights referee to act as a
10 presiding officer to hear the complaint. The chief referee shall also
11 appoint an individual authorized by subsection (e) of this section or a
12 referee, other than the referee appointed to hear the complaint, to
13 conduct settlement negotiations. The chief referee shall serve in the
14 name of the commission a copy of the complaint, as the same may
15 have been amended, requiring the respondent to answer the charges of

16 the complaint, together with a written notice requiring the respondent
17 to appear at a hearing or settlement conference at a date and time
18 specified in the notice. A hearing on a complaint filed pursuant to
19 subsection (a) or (b) of section 46a-82 shall be commenced by
20 convening a hearing conference not later than forty-five days after (A)
21 the certification of the complaint, or (B) the decision made pursuant to
22 subsection (e) of section 46a-83, as amended by this act, to hear the
23 complaint, as applicable. Such hearing shall be a de novo hearing on
24 the merits of the complaint and not an appeal of the commission's
25 processing of the complaint prior to its certification or of its decision
26 made pursuant to subsection (e) of section 46a-83, as amended by this
27 act, to hear the complaint. A hearing on a complaint filed pursuant to
28 subsection (c) of section 46a-82 shall be commenced by convening a
29 hearing conference not later than twenty days after the date of notice
30 of such complaint. [Hearings shall proceed with reasonable dispatch
31 and be concluded in accordance with the provisions of section 4-180.]

32 Sec. 2. Section 46a-84 of the 2016 supplement to the general statutes
33 is amended by adding subsections (h), (i) and (j) as follows (*Effective*
34 *October 1, 2016*):

35 (NEW) (h) Each party shall be afforded the opportunity to inspect
36 and copy relevant and material records, papers and documents not in
37 the possession of the party, except as otherwise provided by applicable
38 state or federal law. The presiding officer may order the production of
39 such records, papers and documents, and where a party fails to
40 comply within thirty days of such order, the presiding officer may
41 issue a nonmonetary order deemed just and appropriate, including,
42 but not limited to, an order (1) finding that the matters that are the
43 subject of the production order are established in accordance with the
44 claim of the party requesting such order, (2) prohibiting the party who
45 has failed to comply from introducing designated matters into
46 evidence, (3) limiting the participation of the noncomplying party with
47 regard to issues or facts relating to the production order, or (4)
48 drawing of an adverse inference against the noncomplying party.

49 (NEW) (i) Hearings shall proceed with all reasonable speed and be
50 concluded in accordance with the provisions of this subsection and
51 section 4-180. The presiding officer shall issue a final order not later
52 than eighteen months from the date (1) the complaint is certified
53 pursuant to subsection (a) of this section, or (2) the decision is made
54 pursuant to subsection (e) of section 46a-83, as amended by this act, to
55 hear the complaint, as applicable. The commission, the complainant or
56 the respondent may apply to the superior court for the judicial district
57 of Hartford for an order requiring the presiding officer to comply with
58 the provisions of this subsection and section 4-180. The court, after
59 hearing, shall issue an appropriate order. Not later than January 1,
60 2017, and annually thereafter, the Chief Human Rights Referee shall
61 annually report, in accordance with the provisions of section 11-4a, to
62 the joint standing committee of the General Assembly having
63 cognizance of matters relating to the judiciary on: (A) The number of
64 final decisions in the previous fiscal year that exceeded the time frame
65 and the reasons for the failure to comply; and (B) the number of
66 complaints pending final decision in the previous fiscal year that have
67 exceeded the time frame and the reasons for the failure to comply.

68 (NEW) (j) The Chief Court Administrator shall designate judge trial
69 referees who shall be available to the Commission on Human Rights
70 and Opportunities to act as presiding officers at any hearing or
71 proceeding of the commission conducted pursuant to this section,
72 subsection (l) of section 46a-83, as amended by this act, or subsection
73 (c) or (d) of section 46a-56. Any judge trial referee so designated shall
74 have the same powers and duties as a human rights referee appointed
75 pursuant to section 46a-57. A judge trial referee may also hear
76 complaints filed under subsection (e) of section 4-61dd. Whenever the
77 total number of complaints at public hearings that have not been
78 resolved by final decision pursuant to section 46a-86 exceeds one
79 hundred or subsection (e) of section 4-61dd exceeds one hundred, the
80 executive director of the commission, within available appropriations,
81 may appoint a judge trial referee designated by the Chief Court

82 Administrator to preside at a settlement conference or to hear and
83 decide a complaint. The executive director shall make the appointment
84 of a judge trial referee not later than fifteen days following the date of
85 (1) the certification of the complaint, or (2) the decision made pursuant
86 to subsection (e) of section 46a-83, as amended by this act, to hear the
87 complaint, as applicable. In lieu of appointing a judge trial referee to
88 conduct a settlement conference, the executive director may appoint an
89 individual authorized by subsection (e) of this section to conduct
90 settlement negotiations. If the executive director fails to appoint a
91 judge trial referee or individual authorized by subsection (e) of this
92 subsection, the chief human rights referee, as provided in subsection
93 (b) of this section, shall appoint a human rights referee to hear the
94 complaint, or a human rights referee or an individual authorized by
95 subsection (e) of this section to conduct a settlement conference.

96 Sec. 3. Section 46a-55 of the 2016 supplement to the general statutes
97 is amended by adding subsections (c) and (d) as follows (*Effective*
98 *October 1, 2016*):

99 (NEW) (c) The executive director, through the supervising attorney,
100 may assign a commission legal counsel to represent the interests of the
101 state in any suit or other proceeding in which civil or human rights are
102 at issue. Commission legal counsel may intervene as a matter of right
103 in any such suit or proceeding without permission of the parties, the
104 presiding officer or the court.

105 (NEW) (d) The executive director, through the supervising attorney,
106 may, within available appropriations, assign a commission legal
107 counsel to bring a civil action, in accordance with this subsection, in
108 lieu of an administrative hearing pursuant to section 46a-83, as
109 amended by this act, or 46a-84, as amended by this act, when the
110 executive director determines that a civil action is in the public interest.
111 The commission legal counsel shall bring a civil action in the Superior
112 Court not later than ninety days following the date the commission
113 legal counsel notifies the parties of the executive director's

114 determination. Such civil action may be served by certified mail and is
115 not subject to the provisions of section 46a-100, 46a-101, as amended
116 by this act, or 46a-102. The jurisdiction of the Superior Court in an
117 action brought under this subsection shall be limited to such claims,
118 counterclaims, defenses or the like that could be presented at an
119 administrative hearing before the commission, had the complaint
120 remained with the commission for disposition. A complainant may
121 intervene as a matter of right without permission of the court or the
122 parties. The civil action shall be tried to the court without a jury. If the
123 commission legal counsel determines that the interests of the state will
124 not be adversely affected, the complainant or attorney for the
125 complainant shall present all or part of the case in support of the
126 complaint. The court may grant any relief available under section 46a-
127 104. Where the Superior Court finds that a respondent has committed
128 a discriminatory practice, the court shall grant the commission its fees
129 and costs and award the commission a civil penalty, not exceeding ten
130 thousand dollars, which shall be payable to the commission and used
131 by the commission to advance the public interest in eliminating
132 discrimination.

133 Sec. 4. Section 46a-68c of the 2016 supplement to the general statutes
134 is repealed and the following is substituted in lieu thereof (*Effective*
135 *October 1, 2016*):

136 In addition to the provisions of section 4a-60, each contractor with
137 fifty or more employees awarded a public works contract, municipal
138 public works contract or contract for a quasi-public agency project in
139 excess of fifty thousand dollars in any fiscal year, but not subject to the
140 provisions of section 46a-68d, shall develop and file with the
141 Commission on Human Rights and Opportunities an affirmative
142 action plan which shall comply with regulations adopted by the
143 commission. Failure to develop an approved affirmative action plan
144 pursuant to this section shall act as a bar to bidding on or the award of
145 future contracts until such requirement has been met. The commission
146 shall review and formally approve, conditionally approve or

147 disapprove the content of the affirmative action plan not later than
148 ninety days following the date of the submission of the plan to the
149 commission. If the executive director or the executive director's
150 designee, fails to approve, conditionally approve or disapprove a plan
151 within such period, the plan shall be deemed to be approved. When
152 the commission approves an affirmative action plan pursuant to this
153 section, it shall issue a certificate of compliance to the contractor. This
154 certificate shall be prima facie proof of the contractor's eligibility to bid
155 or be awarded contracts for a period of two years from the date of the
156 certificate. Such certificate shall not excuse the contractor from
157 monitoring by the commission or from the reporting and record-
158 keeping requirements of sections 46a-68e and 46a-68f. The commission
159 may revoke the certificate of a contractor if the contractor does not
160 implement its affirmative action plan in compliance with this section
161 and sections 4a-60, 4a-60g, 4a-62, 46a-56, 46a-68b, 46a-68d, and 46a-68e
162 to 46a-68k, inclusive.

163 Sec. 5. Section 46a-83 of the 2016 supplement to the general statutes
164 is repealed and the following is substituted in lieu thereof (*Effective*
165 *October 1, 2016*):

166 (a) Not later than fifteen days after the date of filing of any
167 discriminatory practice complaint pursuant to subsection (a) or (b) of
168 section 46a-82, or an amendment to such complaint adding an
169 additional respondent, the commission shall serve the respondent as
170 provided in section 46a-86a with the complaint and a notice advising
171 of the procedural rights and obligations of a respondent under this
172 chapter. The respondent shall either (1) file a written answer to the
173 complaint as provided in subsection (b) of this section, or (2) not later
174 than ten days after the date of receipt of the complaint, provide written
175 notice to the complainant and the commission that the respondent has
176 elected to participate in pre-answer conciliation, except that a
177 discriminatory practice complaint alleging a violation of section 46a-
178 64c or 46a-81e shall not be subject to pre-answer conciliation. A
179 complaint sent by first class mail shall be considered to be received not

180 later than two days after the date of mailing, unless the respondent
181 proves otherwise. The commission shall conduct a pre-answer
182 conciliation conference not later than thirty days after the date of
183 receiving the respondent's request for pre-answer conciliation.

184 (b) Except as provided in this subsection, not later than [thirty]
185 forty-five days after the date (1) of receipt of the complaint, or (2) on
186 which the commission determines that the pre-answer conciliation
187 conference was unsuccessful, the respondent shall file a written
188 answer to the complaint, under oath, with the commission. The
189 respondent may request, and the commission may grant, one
190 extension of time of not more than fifteen days within which to file a
191 written answer to the complaint. An answer to any amendment to a
192 complaint shall be filed within twenty days of the date of receipt to
193 such amendment. The answer to any complaint alleging a violation of
194 section 46a-64c or 46a-81e shall be filed not later than ten days after the
195 date of receipt of the complaint.

196 (c) Not later than sixty days after the date of the filing of the
197 respondent's answer, the executive director or the executive director's
198 designee shall conduct a case assessment review to determine whether
199 the complaint should be retained for further processing or dismissed
200 because (1) it fails to state a claim for relief or is frivolous on its face, (2)
201 the respondent is exempt from the provisions of this chapter, or (3)
202 [there is no reasonable possibility that investigating the complaint will
203 result in a finding of reasonable cause] the executive director or the
204 executive director's designee is unable to determine whether the
205 information provided by the complainant and the respondent sets
206 forth that a discriminatory practice has occurred, except that any
207 dismissal pursuant to this subdivision shall not be deemed to have
208 conclusively established that the respondent has not engaged in a
209 discriminatory practice. The case assessment review shall include the
210 complaint, the respondent's answer and the responses to the
211 commission's requests for information, and the complainant's
212 comments, if any, to the respondent's answer and information

213 responses. The executive director or the executive director's designee
214 shall send notice of any action taken pursuant to the case assessment
215 review in accordance with section 46a-86a. For any complaint
216 dismissed pursuant to this subsection, the executive director or the
217 executive director's designee shall issue a release of jurisdiction
218 allowing the complainant to bring a civil action under section 46a-100.
219 This subsection and subsection (e) of this section shall not apply to any
220 complaint alleging a violation of section 46a-64c or 46a-81e. The
221 executive director shall report the results of the case assessment
222 reviews made pursuant to this subsection to the commission quarterly
223 during each year.

224 (d) Not later than sixty days after the date of sending notice that a
225 complaint has been retained after a case assessment review, the
226 executive director or the executive director's designee shall assign an
227 investigator or commission legal counsel to hold a [mandatory]
228 voluntary mediation conference. A mediation conference may but
229 need not be held if the commission has held a pre-answer conciliation
230 conference. The investigator or commission legal counsel assigned to
231 conduct the mediation shall not be assigned to investigate the
232 complaint. The [mandatory] voluntary mediation conference may not
233 be scheduled for the same time as a fact-finding conference held
234 pursuant to subsection (f) of this section. The mediator may hold
235 additional mediation conferences to accommodate settlement
236 discussions.

237 (e) If the complaint is not resolved after the [mandatory] voluntary
238 mediation conference, the complainant, the respondent or the
239 commission may at any time after such conference request early legal
240 intervention. If a request for early legal intervention is made, a
241 commission legal counsel shall determine not later than ninety days
242 after the date of the request whether the complaint should be (1) heard
243 pursuant to section 46a-84, as amended by this act, (2) processed
244 pursuant to subsection (f) of this section, or (3) released from the
245 jurisdiction of the commission. In making such determination,

246 commission legal counsel may hold additional proceedings and may
247 utilize and direct commission staff. If a commission legal counsel
248 determines that the complaint should be processed pursuant to
249 subsection (f) of this section, the commission legal counsel may
250 recommend that the investigator make a finding of no reasonable
251 cause. The investigator shall make such a finding unless the
252 investigator believes the commission legal counsel made a mistake of
253 fact. If the investigator intends to make a finding of reasonable cause
254 after the commission legal counsel recommends otherwise, the
255 investigator shall consult with the commission legal counsel.

256 (f) Not later than fifteen days after the date of (1) a [mandatory]
257 voluntary mediation conference that fails to resolve a complaint, or (2)
258 an early legal intervention decision to investigate a complaint, the
259 executive director or the executive director's designee shall assign an
260 investigator to process the complaint. The investigator may process the
261 complaint by any lawful means of finding facts, including, but not
262 limited to, a fact-finding conference, individual witness interviews,
263 requests for voluntary disclosure of information, subpoenas of
264 witnesses or documents, requests for admission of facts,
265 interrogatories, site visits or any combination of these means for the
266 purpose of determining whether there is reasonable cause for believing
267 that a discriminatory practice has been or is being committed as
268 alleged in the complaint. As used in this section and section 46a-84,
269 "reasonable cause" means a bona fide belief that the material issues of
270 fact are such that a person of ordinary caution, prudence and judgment
271 could believe the facts alleged in the complaint.

272 (g) (1) Before issuing a finding of reasonable cause or no reasonable
273 cause, the investigator shall afford each party and each party's
274 representative an opportunity to provide written or oral comments on
275 all evidence in the commission's file, except as otherwise provided by
276 federal law or the general statutes. The investigator shall consider such
277 comments before making a finding. The investigator shall make a
278 finding of reasonable cause or no reasonable cause in writing and shall

279 list the factual findings on which it is based not later than one hundred
280 ninety days from the date of the case assessment review, except that
281 for good cause shown, the executive director or the executive director's
282 designee may grant no more than two extensions of the investigation
283 of three months each.

284 (2) If the investigator makes a finding that there is reasonable cause
285 to believe that a violation of section 46a-64c has occurred, the
286 complainant and the respondent shall have twenty days from sending
287 of the reasonable cause finding to elect a civil action in lieu of an
288 administrative hearing pursuant to section 46a-84, as amended by this
289 act. If either the complainant or the respondent requests a civil action,
290 the commission, through the Attorney General or a commission legal
291 counsel, shall commence an action pursuant to subsection (b) of section
292 46a-89, not later than ninety days after the date of receipt of the notice
293 of election. If the Attorney General or a commission legal counsel
294 believes that injunctive relief, punitive damages or a civil penalty
295 would be appropriate, such relief, damages or penalty may also be
296 sought. The jurisdiction of the Superior Court in an action brought
297 under this subdivision shall be limited to such claims, counterclaims,
298 defenses or the like that could be presented at an administrative
299 hearing before the commission, had the complaint remained with the
300 commission for disposition. A complainant may intervene as a matter
301 of right in a civil action without permission of the court or the parties.
302 If the Attorney General or commission legal counsel, as the case may
303 be, determines that the interests of the state will not be adversely
304 affected, the complainant or attorney for the complainant shall present
305 all or part of the case in support of the complaint. If the Attorney
306 General or a commission legal counsel determines that a material
307 mistake of law or fact has been made in the finding of reasonable
308 cause, the Attorney General or a commission legal counsel may decline
309 to bring a civil action and shall remand the file to the investigator for
310 further action. The investigator shall complete any such action not later
311 than ninety days after receipt of such file.

312 (h) If the investigator issues a finding of no reasonable cause or if
313 the complaint is dismissed pursuant to subsection (m) of this section,
314 the complainant may file a written request for reconsideration with the
315 executive director or the executive director's designee, not later than
316 fifteen days from the sending of such finding or dismissal. A request
317 for reconsideration shall state specifically the reasons why
318 reconsideration should be granted. A commission legal counsel shall
319 grant or reject reconsideration not later than ninety days after the date
320 of the sending of such finding or dismissal. A commission legal
321 counsel shall conduct such additional proceedings as may be necessary
322 to render a decision on the request.

323 (i) After finding that there is reasonable cause to believe that a
324 discriminatory practice has been or is being committed as alleged in
325 the complaint, an investigator shall attempt to eliminate the practice
326 complained of by conference, conciliation and persuasion not later
327 than fifty days after the date of the finding. The refusal to accept a
328 settlement shall not be grounds for dismissal of any complaint.

329 (j) No commissioner or employee of the commission may disclose,
330 except to the parties or their representatives, what has occurred in the
331 course of the commission's processing of a complaint, provided the
332 commission may publish the facts in the case and any complaint that
333 has been dismissed and the terms of conciliation when a complaint has
334 been adjusted. Each party and his or her representative shall have the
335 right to inspect and copy documents, statements of witnesses and
336 other evidence pertaining to the complaint, except as otherwise
337 provided by federal law or the general statutes.

338 (k) In the investigation of any complaint filed pursuant to this
339 chapter, commission legal counsel may issue subpoenas requiring the
340 production of records and other documents or compelling the
341 attendance of witnesses.

342 (l) The executive director or the executive director's designee may

343 enter an order of default against a respondent who (1) after notice, fails
344 to answer a complaint in accordance with subsection (a) of this section
345 or within such extension of time as may have been granted; (2) fails to
346 answer interrogatories issued pursuant to subdivision (11) of section
347 46a-54 or fails to respond to a subpoena issued pursuant to subsection
348 (k) of this section or subdivision (9) of section 46a-54, provided the
349 executive director or the executive director's designee shall consider
350 any timely filed objection; (3) after notice and without good cause, fails
351 to attend a fact-finding conference; or (4) after notice and without good
352 cause, fails to attend a [mandatory] voluntary mediation conference.
353 The respondent may make application to the executive director to
354 vacate the default. Upon entry of an order of default or upon the
355 decision of the executive director not to vacate the default, the
356 executive director or the executive director's designee shall appoint a
357 presiding officer to enter, after notice and hearing, an order
358 eliminating the discriminatory practice complained of and making the
359 complainant whole. The commission or the complainant may petition
360 the Superior Court for enforcement of any order for relief pursuant to
361 section 46a-95.

362 (m) The executive director or the executive director's designee may
363 enter an order of dismissal against a complainant who (1) after notice
364 and without good cause, fails to attend a fact-finding conference; (2)
365 after notice and without good cause, fails to attend a [mandatory]
366 voluntary mediation conference; or (3) refuses to accept an offer of
367 settlement where the respondent has eliminated the discriminatory
368 practice complained of, taken steps to prevent a like occurrence in the
369 future and offered full relief to the complainant. Unless otherwise
370 agreed to by the complainant and the respondent, no fact-finding
371 conference shall exceed eight hours, nor shall witnesses be sequestered
372 when the complainant is questioned at the fact-finding conference.

373 Sec. 6. Subsection (a) of section 46a-94a of the 2016 supplement to
374 the general statutes is repealed and the following is substituted in lieu
375 thereof (*Effective October 1, 2016*):

376 (a) The commission, any respondent or any complainant, aggrieved
377 by a final order of a presiding officer, may appeal to the Superior
378 Court in accordance with section 4-183. Any complainant may appeal
379 to the Superior Court in accordance with section 4-183 if the
380 complainant is aggrieved by (1) the dismissal of his or her complaint
381 by the commission for failure to attend a [mandatory] voluntary
382 mediation session as provided in subsection (m) of section 46a-83, as
383 amended by this act, (2) a finding of no reasonable cause as provided
384 in subsection (g) of section 46a-83, as amended by this act, or (3)
385 rejection of reconsideration as provided in subsection (h) of section
386 46a-83, as amended by this act.

387 Sec. 7. Subsection (b) of section 46a-101 of the 2016 supplement to
388 the general statutes is repealed and the following is substituted in lieu
389 thereof (*Effective October 1, 2016*):

390 (b) The complainant and the respondent, by themselves or their
391 attorneys, may jointly request that the complainant receive a release
392 from the commission at any time from the date of filing the complaint.
393 The complainant or the complainant's attorney may request a release
394 from the commission if the complaint is still pending after the
395 expiration of one hundred eighty days from the date of its filing or
396 after a case assessment review in accordance with subsection (c) of
397 section 46a-83, as amended by this act, whichever is earlier. The
398 executive director or the executive director's designee shall conduct an
399 expedited case assessment review in accordance with subsection (c) of
400 section 46a-83, as amended by this act, if the commission receives a
401 request for a release of jurisdiction from the complainant prior to one
402 hundred eighty days from the date a complaint is filed. Upon request
403 from the complainant or the respondent, the commission may grant a
404 release of jurisdiction if the commission determines there is a pending
405 civil action or arbitration between the parties.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	46a-84(b)
Sec. 2	<i>October 1, 2016</i>	46a-84
Sec. 3	<i>October 1, 2016</i>	46a-55
Sec. 4	<i>October 1, 2016</i>	46a-68c
Sec. 5	<i>October 1, 2016</i>	46a-83
Sec. 6	<i>October 1, 2016</i>	46a-94a(a)
Sec. 7	<i>October 1, 2016</i>	46a-101(b)

Statement of Purpose:

To (1) revise certain administrative proceedings relating to the filing of discriminatory practice claims with the Commission on Human Rights and Opportunities, and (2) expedite the processing of affirmative action plans filed by contractors with the commission.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]