

# The Vermont Statutes Online

## Title 9: Commerce and Trade

### *Chapter 141: HUMAN RIGHTS COMMISSION*

§ 4551. Human rights commission; members; compensation

(a) The Human Rights Commission is hereby established. It shall consist of five members to be appointed by the Governor, with the advice and consent of the Senate, who shall designate one member to be its Chair. No more than three members shall be of the same political party. At least one member shall be of a racial minority.

(b) The members of the Commission shall be appointed for terms of five years each, except that of the members first appointed, the Governor shall designate one for a term of one year, one for a term of two years, one for a term of three years and one for a term of four years. A member of the Commission appointed to fill a vacancy occurring other than by expiration of a term shall be appointed only for the unexpired portion of the term. Members of the Commission shall be eligible for reappointment.

(c) A member of the Commission whose term has expired or who resigned during a term shall be eligible to act as an alternate at the request of the Executive Director of the Commission if necessary to convene a quorum of the Commission to act upon complaints pursuant to section 4554 of this title. An alternate shall only participate in the consideration of complaints at meetings attended and shall not be involved in setting the policies of the Commission.

(d) Each member of the Commission, including an alternate who is called to act, shall receive compensation as provided by 32 V.S.A. § 1010 with a maximum of \$1,000.00 a year, and shall be entitled to expenses actually and necessarily incurred in the performance of his or her duties.

(e) Three members of the Commission shall constitute a quorum. Alternate members may not make up a majority of a quorum. (Added 1987, No. 234 (Adj. Sess.), § 1; amended 2005, No. 71, § 98b; 2007, No. 192 (Adj. Sess.), § 6.000.)

§ 4552. Duties; jurisdiction

(a) The commission shall endeavor through public education to increase awareness of the importance of full civil and human rights for each inhabitant of this state. The commission shall also examine and evaluate generally the effectiveness of this chapter as well as the existence of practices of discrimination which detract from the enjoyment of full civil and human rights and shall recommend measures designed to protect those rights.

(b) The commission shall have jurisdiction to investigate and enforce complaints of unlawful discrimination in violation of chapter 139 of this title, discrimination in public accommodations and rental and sale of real estate. The commission shall also have

jurisdiction when the party complained against is a state agency in matters for which the attorney general would otherwise have jurisdiction under subsection (c) of this section.

(c) All complaints of unlawful discrimination in violation of sections 495 et seq. and 710 of Title 21, the Fair Employment Practices Act and the provisions for workers' compensation discrimination, respectively, and of section 471 et seq. of Title 21 shall be referred to the attorney general's office, for investigation and enforcement. (Added 1987, No. 234 (Adj. Sess.), § 1; amended 1989, No. 150 (Adj. Sess.), § 1.)

#### § 4553. Powers

(a) To carry out its duties the commission may:

(1) establish and maintain a principal office and such other offices within the state as it deems necessary;

(2) meet and hold hearings at any place within the state;

(3) appoint employees as necessary to carry out the purposes of this chapter;

(4) administer oaths and take the testimony of any person under oath in connection with a complaint filed under section 4554 of this title;

(5) issue subpoenas to compel testimony or access to or production of records, documents and other evidence or possible sources of evidence or the appearance of persons, provided that the subpoena is issued pursuant to a complaint filed in accordance with section 4554 of this title and that there is reasonable cause to believe that those materials or the testimony of the person are material to the complaint. Subpoenas issued under this subdivision shall be accompanied with a notice that informs the person that the person has a right to contest the subpoena at a hearing before not less than three members of the commission and that the person has the additional right to contest the subpoena in court. Subpoenas issued under this subdivision shall be enforced as provided in sections 809a and 809b of Title 3;

(6)(A) enforce conciliation agreements and prohibitions against discrimination by bringing an action in the name of the commission seeking any of the following:

(i) temporary or permanent injunctive relief in the public interest and for an individual aggrieved by unlawful discrimination;

(ii) the imposition of a civil penalty of not more than \$10,000.00 for each violation of law including violations of any temporary restraining order issued pursuant to this section. For an intentional and continuing violation of a court order after a date set in the order, each day of violation shall be a separate offense;

(iii) compensatory and punitive damages on behalf of an aggrieved individual or class of individuals similarly situated;

(iv) costs and reasonable attorney's fees associated with the investigation and enforcement of actions; any such costs or fees recovered by the human rights commission under this chapter shall be deposited in the commission's special fund and shall be available to the commission to offset the costs of providing legal services;

(v) other appropriate relief;

(vi) trial by jury.

(B) The action may be brought in the superior court of the county in which the violation is alleged to have occurred, or in Washington county, and the court is authorized to render all of the relief listed in this subdivision (6);

(7) utilize voluntary and uncompensated services of private individuals and organizations for administrative and educational purposes as may from time to time be offered and needed; however, volunteers may not be used to investigate complaints;

(8) conduct educational activities and publicize how and where to file complaints.

(b) The human rights commission shall forward, on or before January 1 of each year, to the speaker of the house and the president of the senate an annual report on the status of commission program operations, the number and type of calls received, complaints filed and investigated, closure of litigated and nonlitigated complaints, public educational activities undertaken and recommendations for improved human rights advocacy and activities.

(c) To carry out its duties under this chapter, the commission shall adopt procedural and substantive rules in accordance with the provisions of chapter 25 of Title 3. (Added 187, No. 234 (Adj. Sess.), § 1; amended 1989, No. 89, § 5; 1995, No. 172 (Adj. Sess.), § 1; 2005, No. 71, § 98a.)

#### § 4554. Complaint; investigation and conciliation

(a) Any person who believes he or she has been subject to unlawful discrimination may file a complaint under oath with the commission stating the facts concerning the alleged discrimination. Every complaint shall be reviewed by the staff of the commission. If a complaint states a prima facie case, it may be accepted for investigation.

(b) An employee of the commission may file a complaint alleging a prima facie violation of a prohibition against discrimination, for the benefit of the victim of the alleged discrimination or of a described class. If at any time it is determined that a complaint filed under this subsection or under subsection (a) of this section does not state a prima facie case, it shall be dismissed.

(c) Upon receipt of such complaint under subsection (a) or (b) of this section, the commission or its designated representative shall make every reasonable effort to resolve the matter by informal means prior to a determination whether there are reasonable grounds to believe that unlawful discrimination has occurred. The commission or its designated representative shall conduct such preliminary investigation as it deems necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred. In conducting an investigation, the commission or its designated representative shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy those materials and take and record the testimony or statements of such persons as are reasonably necessary. The commission shall make every reasonable effort to interview each relevant and noncumulative witness identified by a party. If a witness is interviewed, a summary of the witness statement shall be included in any report prepared in connection with the complaint. Such statement shall be taken into

consideration in determining whether or not there are reasonable grounds to believe that unlawful discrimination has occurred.

(d) If, after investigation, the staff of the commission makes a preliminary recommendation that there are no reasonable grounds to believe unlawful discrimination occurred, the parties shall be notified of this preliminary recommendation of no reasonable grounds of unlawful discrimination prior to their appearance before the full commission. If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding.

(e) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, but does not find an emergency, it shall make every reasonable effort to eliminate the discrimination by informal means such as conference, conciliation and persuasion. If the case is disposed of by informal means in a manner satisfactory to a majority of the commission, it shall dismiss the proceeding. If the case is not disposed of by informal means in a manner satisfactory to a majority of the commission within six months, it shall either bring an action in superior court as provided in section 4553 of this title or dismiss the proceedings, unless an extension is necessary to complete ongoing good faith negotiations and all parties consent to the extension.

(f) Failure to file a complaint under this section shall not affect any other remedies available under any other provision of state or federal law, unless the other provision of law specifically so provides.

(g) The commission shall not represent the charging party or the respondent nor shall it favor any party in its handling of a complaint.

(h) In attempting to resolve the matter informally, the commission may transmit to a party an offer of settlement. When an offer is transmitted the commission shall:

(1) indicate which portion of the offer represents the settlement offer of the other party and which portion represents an offer by the commission; and

(2) state that it has made no finding nor takes a position as to the reasonableness of the party's offer. (Added 1987, No. 234 (Adj. Sess.), § 1; 1995, No. 172 (Adj. Sess.), § 2.)

#### § 4555. Information; disclosure and confidentiality

(a) The human rights commission's complaint files and investigative files shall be confidential except that the human rights commission shall make the investigative file available to the charging party, the respondent, their attorneys, and any state or federal law enforcement agency seeking to enforce anti-discrimination statutes, upon reasonable request. The identities of nonparty witnesses to the investigation may be revealed as part of the investigative file, upon request, unless good cause is shown to protect the witness' confidentiality.

(b) Nothing said or done as part of conciliation efforts under this chapter may be made a matter of public record or used as evidence in a subsequent civil action without written consent of the parties. Final settlement agreements shall be public documents and the parties shall be so informed.

(c) If the commission determines that there are reasonable grounds to believe that discrimination has occurred, that determination and the names of the parties may be made public after the parties have been notified of the commission's determination. If the commission finds that there are no reasonable grounds to find discrimination, the identity of the parties and any information that would identify the parties shall remain confidential. The commission shall inform the parties about the provisions of this subsection. In all cases, even if the records are confidential, the facts may be used for educational purposes if sufficiently altered so that no person involved in a case can be identified. (Added 1989, No. 89, § 6; 1995, No. 172 (Adj. Sess.), § 3.)

§ 4556. Performance standards; audit

The human rights commission shall adopt formal performance standards for all of the commission's staff. (Added 1995, No. 172 (Adj. Sess.), § 4.)

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