

HB 362-FN - AS INTRODUCED

2023 SESSION

23-0218

04/08

HOUSE BILL **362-FN**

AN ACT relative to complaint procedures in cases before the commission for human rights.

SPONSORS: Rep. McLean, Hills. 15; Rep. M. Smith, Straf. 10; Rep. DiLorenzo, Rock. 10

COMMITTEE: Judiciary

ANALYSIS

This bill provides that only the complainant can remove a case from the state commission for human rights to court.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to complaint procedures in cases before the commission for human rights.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 State Commission for Human Rights; Complaint Procedures; Choice of Forum. Amend RSA
2 354-A:21-a, I-II to read as follows:

3 I. ~~[Any party]~~ **A complainant** alleging to be aggrieved by any practice made unlawful
4 under this chapter may, at the expiration of 180 days after the timely filing of a complaint with the
5 commission, or sooner if the commission assents in writing, but not later than 3 years after the
6 alleged unlawful practice occurred, bring a civil action for damages or injunctive relief or both, in the
7 superior court for the county in which the alleged unlawful practice occurred or in the county of
8 residence of ~~[the]~~ **either** party. ~~[Any party alleged to have committed any practice made unlawful~~
9 ~~under this chapter may, in any case in which a determination of probable cause has been made by~~
10 ~~the investigating commissioner, remove said complaint to superior court for trial.]~~ A court in cases
11 so removed may award all damages and relief which could have been awarded by the commission,
12 except that in lieu of an administrative fine, enhanced compensatory damages may be awarded when
13 the court finds the respondent's discriminatory conduct to have been taken with willful or reckless
14 disregard of the ~~[charging party's]~~ **complainant's** rights under this chapter. A superior court trial
15 shall not be available to ~~[any party]~~ **the complainant** if a hearing before the commission has begun
16 or has concluded pursuant to RSA 354-A:21, II(b), or to a complainant whose charge has been
17 dismissed as lacking in probable cause who has not prevailed on an appeal to superior court
18 pursuant to RSA 354-A:21, II(a). In superior court, either party is entitled to a trial by jury on any
19 issue of fact in an action for damages regardless of whether the ~~[complaining party]~~ **complainant**
20 seeks affirmative relief.

21 II. The ~~[charging party]~~ **complainant** shall notify the commission of the filing of any
22 superior court action~~[- and the respondent shall notify the commission of the removal to superior~~
23 ~~court after a finding of probable cause].~~ After such notice, the commission shall dismiss the
24 complaint without prejudice. A ~~[party]~~ **complainant** electing to file a civil action with the superior
25 court under paragraph I shall be barred from bringing any subsequent complaint before the
26 commission based upon the same alleged unlawful discriminatory practice.

27 2 State Commission for Human Rights; Complaint Procedures. Amend RSA 354-A:21, II(a) to
28 read as follows:

29 II.(a) After the filing of any complaint, one of the commissioners designated by the chair
30 shall make, with the assistance of the commission's staff, prompt investigation in connection
31 therewith; during the course of the investigation, the commission shall encourage the parties to

1 resolve their differences through settlement negotiations; and if such commissioner shall determine
2 after such investigation that probable cause exists for crediting the allegations of the complaint, the
3 commissioner shall immediately endeavor to eliminate the unlawful discriminatory practice
4 complained of by conference, conciliation and persuasion. The members of the commission and its
5 staff shall not disclose what has occurred in the course of such endeavors, provided that the
6 commission may publish the facts in the case of any complaint which has been dismissed, and the
7 terms of conciliation when the complaint has been so disposed of. When the investigating
8 commissioner finds no probable cause to credit the allegations in the complaint, the complaint shall
9 be dismissed, subject to a right of appeal to superior court. To prevail on appeal, the moving party
10 shall establish that the commission decision is unlawful or unreasonable by a clear preponderance of
11 the evidence. The findings of the investigating commissioner upon questions of fact shall be upheld
12 as long as the record contains credible evidence to support them. If it reverses the finding of the
13 investigating commissioner, the superior court shall remand the case for further proceedings in
14 accordance with RSA 354-A:21, II, unless the complainant [~~or respondent~~] elects to proceed with a
15 hearing in superior court pursuant to RSA 354-A:21-a.

16 3 Judicial Review and Enforcement; Complainant. Amend RSA 354-A:22, II to read as follows:

17 II. Such proceeding shall be initiated by the filing of a petition in such court, together with a
18 written transcript of the record upon the hearing before the commission in the case of a petition for
19 judicial review, and issuance and service of a summons as in proceedings in equity. The court shall
20 have power to grant such temporary relief or restraining order as it deems just and proper, and to
21 make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order
22 or decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the
23 order of the commission, with full power to issue injunctions against any respondent and to punish
24 for contempt of court. No objection that has not been urged before the commission shall be
25 considered by the court, unless the failure or neglect to urge such objection shall be excused because
26 of extraordinary circumstances. In petitions to enforce commission orders, the court may, in its
27 discretion, award the [~~complainant~~] **complainant** reasonable attorney's fees and costs.

28 4 Effective Date. This act shall take effect 60 days after its passage.

**HB 362-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to complaint procedures in cases before the commission for human rights.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill provides that only the complainant can remove a case from the state Human Rights Commission to court. The New Hampshire Human Rights Commission indicates this bill seeks to change current law to retain respondents at the Commission through the adjudication of a public hearing. The Commission states the fiscal impact is indeterminable at this time because it is unknown how many cases will move forward to a public hearing or elect to settle as a result of the legislation. The Commission has no information at present to determine if additional resources or staff will be needed.

The Judicial Branch does not expect this bill would have a fiscal impact on the Branch. The bill would provide that only the complainant can remove a case from the state Human Rights Commission to the Superior Court. Current law allows any party to remove the case. In 2022, there were 22 cases filed in Superior Court, and 15 cases in 2021. The Branch assumes the bill would result in a small change in the number of cases removed from the Human Rights Commission to Superior Court, but the Branch does not believe it would have either a positive or negative fiscal impact.

AGENCIES CONTACTED:

New Hampshire Human Rights Commission and Judicial Branch