

ACT 180

A Bill for an Act Relating to Employment, Making Unlawful Certain Discriminatory Practices With Respect to Employment.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Discriminatory practices made unlawful; offenses defined. It shall be unlawful employment practice or unlawful discrimination:

(a) For an employer to refuse to hire or employ or to bar or discharge from employment, any individual because of his race, sex, age, religion, color or ancestry, provided that an employer may refuse to hire an individual for good cause relating to the ability of the individual to perform the work in question;

(b) For an employer to discriminate against any individual in compensation or in the terms, conditions or privileges of employment because of race, sex, age, religion, color or ancestry;

(c) For any employer or employment agency to print, circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, sex, age, religion, color or ancestry, unless based on a bona fide occupational qualification;

(d) For any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employer or employees because of race, sex, age, religion, color or ancestry;

(e) For any employer, labor organization or employment agency to discharge, expel, or otherwise discriminate against any person because he has opposed any practice forbidden by this Act or because he has filed

a complaint, testified or assisted in any proceeding respecting the employment practices and discrimination prohibited under this Act;

(f) For any person whether an employer, employee or not, to aid, abet, incite, compel or coerce the doing of any of the practices forbidden by the Act, or to attempt to do so.

SECTION 2. Enforcement jurisdiction: power of department to prevent unlawful discrimination. The state department of labor and industrial relations, hereinafter referred to as "department", shall have jurisdiction over the subject of employment practices and discrimination made unlawful by this Act. When it shall appear to it that an unlawful employment practice or discrimination may have been committed, the department shall make a prompt investigation in connection therewith. If it is determined after such investigation that further action is warranted, the department shall immediately endeavor to eliminate the unlawful employment practice or discrimination complained of by conference, conciliation and persuasion.

SECTION 3. Complaint against unlawful discrimination. Any person claiming to be aggrieved by an alleged unlawful employment practice or discrimination may file with the department a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice or discrimination complained of and which shall set forth the particulars thereof and contain such other information as may be required by the department. The state attorney general may, in like manner, make, sign, and file such complaint.

No complaint shall be filed after the expiration of ninety days after the alleged act of unlawful employment practice or discrimination.

SECTION 4. Proceeding on complaint. After the filing of any accusation, an investigation shall be made and an attempt to eliminate such practice or discrimination shall be made as provided in section 2 unless such attempt has previously been made.

In case of failure to eliminate such practice or discrimination, or in advance thereof if in the judgment of the department, circumstances warrant, a written accusation, together with a copy of such complaint, as the same may have been amended, shall be issued and served requiring the person, employer, labor organization or employment agency named in such accusation, hereinafter referred to as "respondent", to answer the charges of such accusation at a hearing.

SECTION 5. Same: hearing under administrative procedure act. Hearings held under the provisions of this part shall be conducted in accordance with the Hawaii administrative procedure act, chapter 6C.

SECTION 6. Same: findings and orders thereon: requirement that order show rights of appeal. If the department finds that a respondent has engaged in any unlawful employment practice or discrimination as defined in this part, the department shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or discrimination and to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership in

any respondent labor organization, as, in the judgment of the department, will effectuate the purpose of this part, and including a requirement for report of the manner of compliance. If the department finds that a respondent has not engaged in any such unlawful employment practice or discrimination, the department shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said accusation as to such respondent. A copy of its order shall be delivered in all cases to the attorney general, and such other public officers as the department deems proper.

Any order issued by the department shall have printed on its face references to the provisions of the Hawaii administrative procedure act which prescribe the rights of appeal of any party to the proceeding to whose position the order is adverse.

SECTION 7. Rules and regulations. The department shall make such rules and regulations, not inconsistent with this Act as in the judgment of the department seem appropriate for the carrying out of the provisions of this Act and for the efficient administration thereof.

SECTION 8. Certain other laws not affected. Nothing contained in this Act shall be construed to conflict with the laws relating to child labor, nor to prohibit the establishment and maintenance of bona fide occupational qualifications, nor to prevent the termination or change of the employment of any person who is unable to perform his duties, nor to interfere with the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan, nor to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

SECTION 9. Penalties. Whoever shall wilfully resist, prevent, impede or interfere with the department or any of its agents or representatives in the performance of duties pursuant to this part, or who shall in any manner wilfully violate an order of the department, shall be fined not more than \$200 for the first offense and for the second and any subsequent offense, shall be fined not more than \$500, or imprisoned for not more than 90 days, or both.

SECTION 10. Severability. If any section, sentence, clause or phrase of this Act, or its application to any person or other circumstance, is for any reason held to be unconstitutional or invalid, the remaining portions of this Act, or the application of this Act to other persons or circumstances, shall not be affected. The legislature hereby declares that it would have passed this Act in the interests of protecting the public welfare and individual civil rights, and each and every section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, clauses or phrases be declared unconstitutional or invalid.

SECTION 11. Effective date. This Act shall become effective on January 1, 1964.

(Approved June 3, 1963.) **H.B. 21.**