

ACT 386

S.B. NO. 1413

A Bill for an Act Relating to Civil Rights.

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

SECTION 1. Chapter 368, Hawaii Revised Statutes, is amended by adding seven new sections to be appropriately designated and to read as follows:

“§368- Complaint against unlawful discrimination. (a) The commission shall have jurisdiction over the subject of discriminatory practices made unlawful by chapters 489 and 515 and part I of chapter 378. Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may file with the commission a verified complaint in writing that shall state the name and address of the person or party alleged to have committed the unlawful discriminatory practice

complained of, set forth the particulars thereof, and contain other information as may be required by the commission. The attorney general, or the commission upon its own initiative may, in like manner, make and file a complaint.

(b) A complaint may be filed on behalf of a class by the attorney general or the commission, and a complaint so filed may be investigated, conciliated, heard, and litigated on a class action basis.

(c) No complaint shall be filed after the expiration of one hundred eighty days after the date:

- (1) Upon which the alleged unlawful discriminatory practice occurred; or
- (2) Of the last occurrence in a pattern of ongoing discriminatory practice.

§368- Notice of right to sue. The commission may issue a notice of right to sue upon written request of the complainant. Within ninety days after receipt of a notice of right to sue, the complainant may bring a civil action under this chapter. The commission may intervene in a civil action brought pursuant to this chapter if the case is of general importance.

§368- Investigation and conciliation of complaint. (a) After the filing of any complaint, or whenever it appears to the commission that an unlawful discriminatory practice may have been committed, the commission shall make an investigation in connection therewith. At any time after the filing of a complaint but prior to the issuance of a determination as to whether there is or is not reasonable cause to believe that chapter 489, 515, or part I of chapter 378 have been violated, the parties may agree to resolve the complaint through a predetermination settlement.

(b) In the event that the commission determines after the investigation that there is reasonable cause to believe that an unlawful discriminatory practice within the commission's jurisdiction has been committed, the commission shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods, such as, conference, conciliation, and persuasion.

(c) Where the commission has been unable to secure from the respondent a conciliation agreement acceptable to the commission within sixty days of the filing of the complaint, the commission shall demand that the respondent cease the unlawful discriminatory practice. The commission's determination that a final conciliation demand is to be made shall be subject to reconsideration by the commission on its own initiative but shall not be subject to judicial review. The commission may demand appropriate affirmative action as, in the judgment of the commission, will effectuate the purpose of this chapter, and include a requirement for reporting on the manner of compliance.

§368- Commission hearings. (a) If, fifteen days after service of the final conciliation demand, the commission finds that conciliation will not resolve the complaint, the commission shall appoint a hearings examiner and schedule a public hearing that shall be held in accordance with chapter 91. The case in support of the complaint shall be presented at the hearing by the commission. Following the completion of the hearing, the hearings examiner shall issue a written decision. If the hearings examiner finds that discrimination occurred, the commission shall issue an order requiring the respondent to cease the unlawful practice and to take appropriate remedial action. If there is no finding of discrimination, the commission shall issue an order dismissing the case.

(b) At any time after a complaint is filed, the commission may file a petition in the circuit court in the circuit in which the subject of the complaint occurred, or in the circuit in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this chapter, including an order or decree restraining the respondent from

doing or procuring any act tending to render ineffectual any order the commission may enter with respect to the complaint. The court may grant the temporary relief or restraining order as it deems just and proper, but no relief or order extending beyond five days shall be granted except by consent of the respondent or after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice.

If a complaint is dismissed by final order of the commission or a court after a court has granted temporary relief or a restraining order under this subsection, the respondent is entitled to recover from the State damages and costs, not to exceed a total of \$500, sustained by reason of the temporary relief or restraining order in an action in the court that granted the temporary relief or restraining order.

§368- Compliance review. At any time in its discretion but not later than one year from the date of a conciliation agreement, or after the date of a commission's order to cease an unlawful practice and to take appropriate remedy, the commission shall investigate whether the terms of the agreement or order are being complied with by the respondent. Upon a finding that the terms of the agreement or the terms of the commission's order, are not being complied with by the respondent, the commission shall take affirmative action as authorized in section 368-3.

§368- Appeals; de novo review; procedure. (a) A complainant and a respondent shall have a right of appeal from a final order of the commission, including cease and desist orders and refusals to issue charges in the circuit court for the circuit in which the alleged violation occurred or where the person against whom the complaint is filed, resides, or has the person's principal place of business. An appeal before the circuit court shall be reviewed de novo. If an appeal is not taken within thirty days after the service of an appealable order of the commission, the commission may obtain an order for the enforcement of the order from the circuit court that has jurisdiction of the appeal.

(b) Where a respondent petitions for an appeal to the circuit court, the commission shall be a party to any proceeding as the appellee. The complainant shall have the right to intervene.

(c) A proceeding for review or enforcement of an appealable order is initiated by filing a petition in the circuit court. Copies of the petition shall be served upon the parties of record. Within thirty days after the service of the petition upon the commission or filing of the petition by the commission, or within further time as the court may allow, the commission shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including a transcript of the testimony, which need not be printed. By stipulation of the parties to the review proceeding, the record may be shortened. The court may grant temporary relief as it considers just, or enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the commission, or may remand the case to the commission for further proceedings. The commission's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(d) The final judgment or decree of the circuit court shall be subject to review by appeal in the same manner and form as other appeals from that court.

(e) A proceeding under this section shall be initiated not more than thirty days after a copy of the order of the commission is received, unless the commission is the petitioner or the petition is filed under subsection (d). If a proceeding is not so initiated, the commission may obtain a court order for enforcement of its order upon showing that a copy of the petition for enforcement was served on the re-

spondent, that the respondent is subject to the jurisdiction of the court, that the order sought to be enforced is an order of the commission, regularly entered, and that the commission has jurisdiction over the subject matter and the respondent.

§368- Remedies. (a) The remedies ordered by the commission or the court under this chapter may include compensatory and punitive damages and legal and equitable relief, including, but not limited to:

- (1) Hiring, reinstatement, or upgrading of employees with or without back pay;
- (2) Admission or restoration of individuals to labor organization membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program, with the utilization of objective criteria in the admission of persons to those programs;
- (3) Admission of persons to a public accommodation or an educational institution;
- (4) Sale, exchange, lease, rental, assignment, or sublease of real property to a person;
- (5) Extension to all persons of the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the respondent;
- (6) Reporting as to the manner of compliance;
- (7) Requiring the posting of notices in a conspicuous place that the commission may publish or cause to be published setting forth requirements for compliance with civil rights law or other relevant information that the commission determines necessary to explain those laws;
- (8) Payment to the complainant of damages for an injury or loss caused by a violation of chapters 489 and 515 and part I of chapter 378, including a reasonable attorney's fee;
- (9) Payment to the complainant of all or a portion of the costs of maintaining the action before the commission, including reasonable attorney's fees and expert witness fees, when the commission determines that award to be appropriate; and
- (10) Other relief the commission or the court deems appropriate.

(b) Section 386-5 notwithstanding, a workers' compensation claim or remedy does not bar relief on complaints filed with the commission."

SECTION 2. Chapter 489, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§489- Suits by persons injured; amount of recovery, injunctions. (a)

Any person who is injured by an unlawful discriminatory practice may:

- (1) Sue for damages sustained, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys' fees together with the costs of suit; and
- (2) Bring proceedings to enjoin the unlawful discriminatory practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorneys' fees together with the cost of suit.

(b) The remedies provided in subsection (a) shall be applied in class action and de facto class action lawsuits or proceedings provided that:

- (1) The minimum \$1,000 recovery provided in subsection (a) shall not apply in a class action or a de facto class action lawsuit; and

- (2) That portion of threefold damages in excess of compensatory damages shall be apportioned and allocated by the court in its exercise of discretion so as to promote effective enforcement of this chapter and deterrence from violation of its provisions.
- (c) The remedies provided in this section are cumulative and may be brought in one action."

SECTION 3. Section 378-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

" "Commission" means the civil rights commission."

SECTION 4. Section 515-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

" "Commission" means the civil rights commission."

SECTION 5. Section 368-2, Hawaii Revised Statutes, is amended to read as follows:

"[§368-2] Civil rights commission established. (a) There is established a civil rights commission composed of five members nominated and, by and with the advice and consent of the senate, appointed by the governor for staggered terms in accordance with section 26-34. The members appointed to the commission shall be selected on the basis of their knowledge and experience in civil rights matters and on the basis of a demonstrated commitment to the preservation of the civil rights of all individuals. The governor shall designate one of the commissioners as the chair of the commission.

(b) Any action taken by the commission shall be by a simple majority of the members of the commission. All decisions of the commission shall be reduced to writing and shall state separately its findings of fact and conclusions. Any vacancy in the commission shall not impair the authority of the remaining members to exercise all the powers of the commission. The governor may appoint an acting member of the commission during the temporary absence from the State or the illness of any regular member. An acting member, during the acting member's term of service, shall have the same powers and duties as the regular member.

(c) The members shall serve without compensation but shall be paid per diem and travel expenses when attending meetings of the commission. The commission shall be within the department of labor and industrial relations for administrative purposes only."

SECTION 6. Section 368-3, Hawaii Revised Statutes, is amended to read as follows:

"[§368-3] Powers and functions of commission. The commission shall have the following powers and functions:

- (1) To receive, investigate, and conciliate complaints alleging any unlawful discriminatory practice under [existing state laws] chapters 489 and 515 and part I of chapter 378 and conduct proceedings on complaints alleging unlawful practices where conciliatory efforts are inappropriate or unsuccessful.
- (2) To hold [such] hearings and make [such] inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of [such] these hearings and inquiries, administer oaths and

affirmations, compel the attendance of witnesses and the production of documents by the issuance of subpoenas, examine witnesses [and documents, take testimony and receive documents by the issuance of subpoenas,] under oath, require answers to interrogatories issued, and delegate [such] these powers to any member of the commission or any person appointed by the commission for the performance of its functions.

- (3) To commence civil action in circuit court to seek appropriate relief[.], including the enforcement of any commission order.
- (4) To issue the right to sue to a complainant.
- (5) To order appropriate legal and equitable relief or affirmative action when a violation is found.
- [(5)] (6) To issue publications and results of investigations and research [as] that, in its judgment, will tend to promote goodwill and minimize or eliminate discrimination in employment, housing, and public accommodations.
- [(6)] (7) To submit annually to the governor and the legislature a written report of its activities and of its recommendations for administrative or statutory changes required to further the purposes of this chapter.
- (8) To appoint an executive director, attorneys, and hearings examiners who shall be exempt from chapters 76 and 77, and investigators and other necessary support personnel who shall be subject to chapters 76 and 77. Section 103-3 notwithstanding, an attorney employed by the commission as a full-time staff member may represent the commission in litigation, draft legal documents for the commission, provide other necessary legal services to the commission, and shall not be deemed to be a deputy attorney general.
- [(7)] (9) To adopt rules under chapter 91."

SECTION 7. Section 386-4,¹ Hawaii Revised Statutes, is amended to read as follows:

"[§368-4]] Records; confidentiality; reporting requirements. All records of the commission shall be kept confidential and shall not be disclosed to anyone except as may be required by order of a court with jurisdiction in a case arising from a complaint filed with the commission or as otherwise provided by law. The commission shall maintain complete records of all complaints filed with the commission and shall compile annual statistical data on the number of complaints filed and the status or disposition of [such] those complaints by types of complaints. The commission shall provide to the governor and the legislature a report of [such] that statistical data on an annual basis, not less than thirty days prior to the convening of the legislative session."

SECTION 8. Section 378-4, Hawaii Revised Statutes, is amended to read as follows:

"§378-4 Enforcement jurisdiction[; complaint against unlawful discrimination]. [(a)] The [department] commission shall have jurisdiction over the subject of discriminatory practices made unlawful by this part. Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may file with the [department] commission 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 discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information

as may be required by the department. The attorney general, or the department upon its own initiative, may, in like manner, make and file such complaint.] accordance with the procedure established under chapter 368.

[(b) A complaint may be filed on behalf of a class by the attorney general or the department, and a complaint so filed may be investigated, conciliated, and litigated on a class action basis.

(c) No complaint shall be filed after the expiration of ninety days after the date upon which the alleged unlawful discriminatory practice occurred.]”

SECTION 9. Section 378-5, Hawaii Revised Statutes, is amended to read as follows:

“§378-5 [Power of department to prevent unlawful discrimination. (a) After the filing of any complaint, or whenever it appears to the department that an unlawful discriminatory practice may have been committed, the department shall make an investigation in connection therewith. At any time after the filing of a complaint but prior to the issuance of a determination as to whether there is or is not reasonable cause to believe that this part has been violated, the parties may agree to resolve the complaint through a predetermination settlement.

(b) In the event that the department determines after such investigation that there is reasonable cause to believe that this part has been violated, the department shall immediately endeavor to eliminate any such alleged unlawful discriminatory practice by informal methods of conference, conciliation, and persuasion.

(c) Where the department has been unable to secure from the respondent a conciliation agreement acceptable to the department, the department shall demand that the respondent cease such unlawful discriminatory practice. The department’s determination that a final conciliation demand is to be made shall be subject to reconsideration by the department on its own initiative but shall not be subject to judicial review.] **Remedies. (a)** The[department] commission may order appropriate affirmative action,¹ including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, [or] restoration to membership in any respondent labor organization, or other remedies as provided under chapter 368, [as,] which in the judgment of the [department,] commission, will effectuate the purpose of this part, [and] including a requirement for reporting on the manner of compliance.

[(d) The department may commence a civil action in circuit court seeking appropriate relief. In a civil action brought pursuant to this subsection:

- (1) The complainant shall have the right to intervene;
 - (2) The director may join various complainants in one cause of action;
 - (3) The director shall not be required to pay the filing fee or other costs or fees of any nature or to file a bond or other security of any nature in connection with such action or with proceedings supplementary thereto, or as a condition precedent to the availability to the director of any process in aid of such action or proceedings;
 - (4) In no event shall any action be brought more than three years after the complaint to which the action relates was filed with the department; provided that the running of the said three-year period shall be suspended during the life of the conciliation agreement.
- (e) Notice of right to sue.
- (1) The department may issue a right to sue upon written request of the complainant;
 - (2) Within ninety days after receipt of a notice of right to sue, the complainant may bring a civil action under this part;

(3) The department may intervene in a civil action brought pursuant to this subsection if the case is of general importance.

(f) (b) In [an] any civil action brought [pursuant to subsection (d) or (e),] under this part, if the court finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this part, the court may enjoin the respondent from engaging in such unlawful discriminatory practice and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement, hiring, or upgrading of employees, with or without backpay, or restoration of membership in any respondent labor organization, or any other equitable relief [as] the court deems appropriate. Backpay liability shall not accrue from a date more than two years prior to the filing of the complaint with the [department.] commission.

(g) In an action brought pursuant to subsection (d) or (e), if any judgment obtained by the director or by the complainant against the respondent remains unsatisfied for a period of thirty days, the director or the complainant, may request the circuit court to compel the respondent to comply with the judgment, including, but not limited to, an order directing the respondent to cease doing business until the respondent has complied with the judgment.

(h) Whenever it appears to the director that a person, employer, labor organization, or employment agency is engaged in any act or practice which constitutes or will constitute a violation of this part, or any related regulation, the director may bring an action, in the circuit court of the circuit in which it is charged the act or practice complained of occurred, to enjoin the act or practice and to enforce compliance with this part or with the regulation, and upon a proper showing, a permanent or temporary injunction or decree or restraining order shall be granted without bond.

(i) It is an unlawful discriminatory practice for a party to a predetermination settlement or conciliation agreement made pursuant to this part to violate the terms of the settlement or agreement.

(j) (c) In any action brought under this part, the court,¹ [shall] in addition to any judgment awarded to the plaintiff or plaintiffs, shall allow costs of action, including costs of fees of any nature[,], and reasonable attorney's fees, to be paid by the defendant."

SECTION 10. Section 378-6, Hawaii Revised Statutes, is amended to read as follows:

"§378-6 Inspection; investigation; records. (a) In connection with an investigation of a complaint filed under this part, or whenever it appears to the [department] commission that an unlawful discriminatory practice may have been or is being committed, the [director or the director's] commission's authorized representative shall have access to the premises of the parties or persons reasonably connected thereto, records, documents, and other material relevant to the complaint and shall have the right to examine, photograph, and copy [such] that material, and may question [such] employees and make [such] investigation to determine whether any person has violated this part or any rule [or regulation] issued hereunder or which may aid in the enforcement of this part.

(b) Every employer, employment agency, and labor organization shall:

(1) Make and keep records relevant to this part, and

(2) Make such reports therefrom, as the [department] commission shall prescribe by [regulation] rule or order."

SECTION 11. Section 489-6, Hawaii Revised Statutes, is amended to read as follows:

“[[§489-6]] Complaint against unfair discrimination; reporting requirements. The [department of labor and industrial relations, hereinafter referred to as “department”], civil rights commission shall receive [all] complaints of unfair discriminatory treatment in public accommodations[. Any person claiming to be aggrieved by an unfair discriminatory practice contrary to the purposes of this act may file a verified complaint with the department on a form provided by the department, which shall state the name and address of the public accommodation alleged to have committed the unfair discriminatory practice complained of and set forth the particulars thereof and such other information as may be required by the department. The department shall provide to the legislature a complete record of all complaints that it has received on an annual basis, not less than thirty days prior to the commencement of the legislative session. For each public accommodation alleged to have committed an unfair discriminatory practice, the report shall specify the number and types of complaints that were received.] in accordance with the procedures established under chapter 368.”

SECTION 12. Section 489-8, Hawaii Revised Statutes, is amended to read as follows:

“[[§489-8]] Violations of this chapter.] Civil penalty. It shall be unlawful for a person to discriminate unfairly in public accommodations. [Violations of] Any person, firm, company, association, or corporation who violates this chapter shall be [per se violations of section 480-2 and the rights and penalties provided for in sections 480-3.1 and 480-13 applicable to the violations of section 480-2 shall apply to violations of this chapter.] fined a sum of not less than \$500 nor more than \$10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the civil rights commission on behalf of the State. The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of this State. Each day of violation under this chapter shall be a separate violation.”

SECTION 13. Section 515-9, Hawaii Revised Statutes, is amended to read as follows:

“§515-9 Enforcement[; powers of department to prevent unlawful discrimination]. The [department of commerce and consumer affairs] civil rights commission has jurisdiction over the subject of real property transaction practices and discrimination made unlawful by this chapter. The [department] commission has the following powers:

- (1) To receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints alleging violations of this chapter[;] in accordance with the procedure established in chapter 368;
- (2) At any time after a complaint is filed, to require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath or affirmation, and require the production of documents relevant to the complaint. The [department] commission may make rules authorizing any individual designated to exercise these powers in the performance of official duties;
- (3) To furnish technical assistance requested by persons subject to this chapter to further compliance with the chapter or an order issued thereunder;
- (4) To make studies appropriate to effectuate the purposes and policies of this chapter and to make the results thereof available to the public;

- (5) To render at least annually a comprehensive written report to the governor and to the legislature. The report may contain recommendations of the [department] commission for legislative or other action to effectuate the purposes and policies of this chapter;
- (6) In accordance with chapter 91 to adopt[, promulgate, amend, and rescind] rules [and regulations] to effectuate the purposes and policies of this chapter, including [regulations] rules requiring the inclusion in advertising material of notices prepared or approved by the [director of commerce and consumer affairs.] commission.”

SECTION 14. Section 515-13, Hawaii Revised Statutes, is amended to read as follows:

“§515-13 [Determination of discriminatory practice; relief.] Remedies.

(a) If the [department of commerce and consumer affairs] commission determines that the respondent has engaged in a discriminatory practice, the [department] commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory practice and to take such affirmative actions as in the judgment of the [department] commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, the attorney general, and to such other public officers and persons as the [department] commission deems proper.

(b) Affirmative action ordered under this section may include, but is not limited to:

- (1) Sale, exchange, lease, rental, assignment, or sublease of real property to an individual;
- (2) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent;
- (3) Reporting as to the manner of compliance;
- (4) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the [department] commission and inclusion of such notices in advertising material;
- (5) Cancellation, rescission, or revocation of a contract, deed, lease, or other instrument transferring real property, which is the subject of a complaint of a discriminatory practice, to a person who had actual knowledge or record notice, prior to the transfer or the execution of the legally binding obligation to make the transfer, that a determination of reasonable cause had been made with respect to the discriminatory practice;
- (6) Payment to an injured party of profits obtained by the respondent through a violation of section 515-7, subject to the principles of equity;
- (7) Payment to the complainant of damages for an injury caused by the discriminatory practice and costs, including a reasonable attorney's fee. Unless greater damages are proven, damages may be assessed at \$500 for each violation.

(c) In the case of a respondent who is found by the [department] commission to have engaged in a discriminatory practice in the course of performing under a contract or subcontract with the State or a county, or agency thereof, if the discriminatory practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the [department] commission shall so certify to the contracting agency. Unless the [department's] commission's finding of a discriminatory practice is reversed in the course of judicial review [under section 515-14], the finding of discrimination is binding on the contracting agency.

(d) Thirty days after an order is issued under this section, unless an appeal by the respondent is pending, the [department] commission may publish or cause to be published the name of a person who has been determined to be engaged in a discriminatory practice.”

SECTION 15. Section 515-16, Hawaii Revised Statutes, is amended to read as follows:

“§515-16 Other discriminatory practices. It is a discriminatory practice for a person, or for two or more persons to conspire:

- (1) To retaliate or discriminate against a person because the person has opposed a discriminatory practice, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter;
- (2) To aid, abet, incite, or coerce a person to engage in a discriminatory practice;
- (3) Wilfully to interfere with the performance of a duty or the exercise of a power by the [department of commerce and consumer affairs;] commission; or
- (4) Wilfully to obstruct or prevent a person from complying with this chapter or an order issued thereunder.”

SECTION 16. Section 515-19, Hawaii Revised Statutes, is amended to read as follows:

“§515-19 Public contractors. Upon receiving a certification made under section 515-13(c), a contracting agency may take appropriate action to:

- (1) Terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with this chapter[.]; and
- (2) Assist the State and all counties, and agencies thereof, to refrain from entering into further contracts, or extensions or other modifications of existing contracts, with the respondent until the [department of commerce and consumer affairs] commission is satisfied that the respondent will carry out policies in compliance with this chapter.”

SECTION 17. Section 378-1, Hawaii Revised Statutes, is amended by deleting the definitions of “department” and “director”.

[“ “Department” means the department of labor and industrial relations.
“Director” means the director of the department of labor and industrial relations.”]

SECTION 18. Section 378-7, Hawaii Revised Statutes, is repealed.

SECTION 19. Section 378-8, Hawaii Revised Statutes, is repealed.

SECTION 20. Section 378-9, Hawaii Revised Statutes, is repealed.

SECTION 21. Section 515-2, Hawaii Revised Statutes, is amended by deleting the definitions of “department” and “director”.

[“ “Department” means the department of commerce and consumer affairs.
“Director” means the director of commerce and consumer affairs.”]

SECTION 22. Section 515-10, Hawaii Revised Statutes, is repealed.

SECTION 23. Section 515-11, Hawaii Revised Statutes, is repealed.

SECTION 24. Section 515-12, Hawaii Revised Statutes, is repealed.

SECTION 25. Section 515-14, Hawaii Revised Statutes, is repealed.

SECTION 26. Section 515-15, Hawaii Revised Statutes, is repealed.

SECTION 27. It is the intent of this Act to preserve all existing rights and remedies relating to the enforcement of discriminatory practices under current laws, and to this end, this Act shall not be construed to impair any contractual agreement currently in force between the State and the federal Equal Employment Opportunities Commission under Title VII of the Civil Rights Act of 1964, or to affect any rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 28. It is the intent of the legislature that the civil rights commission share overlapping jurisdiction over complaints filed under chapters 489 and 515 and part I of chapter 378, Hawaii Revised Statutes, with the agencies which currently perform enforcement functions under this part. Jurisdiction and enforcement responsibilities shall be transferred after July 1, 1990, according to the transition plan developed by the commission and the departments and rules to be promulgated.

SECTION 29. The civil rights commission shall begin its operations by hiring its director, deputy director, and professional and necessary clerical staff. During the 1989-90 fiscal year, the commission shall adopt rules and draft a transition plan for the transfer of jurisdiction, functions, and records from the current enforcement agencies. Those agencies shall work with the civil rights commission on the transition plan.

SECTION 30. The civil rights commission shall assume jurisdiction over complaints filed under chapter 368 only upon the transfer of jurisdiction pursuant to the transition plan, agreements between the commission and the current enforcement agencies, and rules adopted by the commission. Until that time, all complaints shall be processed by those agencies pursuant to chapters 489 and 515 and part I of chapter 378. It is the intent of the legislature that after July 1, 1990, and until the transfer of enforcement jurisdiction to the commission, that the commission staff shall assist the department of labor and industrial relations where possible in processing complaints and eliminating backlog.

SECTION 31. The civil rights commission, prior to the convening of the 1990 regular session, shall prepare and submit to the legislature, a transition plan which includes specifications for the transfer of all permanent positions within the employment practices branch of the department of labor and industrial relations.

SECTION 32. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 33. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded

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by \$200,000 or 0.008 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 34. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1990-1991, to carry out the purposes of this Act.

The sums appropriated shall be expended by the civil rights commission for the purposes of this Act.

SECTION 35. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 36. This Act shall take effect on July 1, 1989, except section 2 through 4 and 8 through 25 shall take effect on January 1, 1991.

(Approved June 27, 1989.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.