

[1945]

State Com. Against Disc

File
Chm

EXECUTIVE DEPARTMENT
STATE COMMISSION AGAINST DISCRIMINATION

CHAPTER 118

AN ACT to amend the executive law, in relation to prevention and elimination of practices of discrimination in employment and otherwise against persons because of race, creed, color or national origin, creating in the executive department a state commission against discrimination, defining its functions, powers and duties and providing for the appointment and compensation of its officers and employees.

Became a law March 12, 1945, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter twenty-three of the laws of nineteen hundred nine, entitled "An act in relation to executive officers, constituting chapter eighteen of the consolidated laws," is hereby amended by inserting therein, after article eleven, a new article, to be article twelve, to read as follows:

ARTICLE 12

STATE COMMISSION AGAINST DISCRIMINATION

- Section 125. Purposes of article.
- 126. Opportunity for employment without discrimination a civil right.
- 127. Definitions.
- 128. State commission against discrimination.
- 129. General policies of commission.
- 130. General powers and duties of commission.
- 131. Unlawful employment practices.
- 132. Procedure.
- 133. Judicial review and enforcement.
- 134. Penal provision.
- 135. Construction.
- 136. Separability.

§ 125. Purposes of article. This article shall be known as the "Law Against Discrimination." It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights; and the legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color or national origin are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is hereby created with

power to eliminate and prevent discrimination in employment because of race, creed, color or national origin, either by employers, labor organizations, employment agencies or other persons, and to take other actions against discrimination because of race, creed, color or national origin, as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

§ 126. **Opportunity for employment without discrimination a civil right.** The opportunity to obtain employment without discrimination because of race, creed, color or national origin is hereby recognized as and declared to be a civil right.

§ 127. **Definitions.** When used in this article: 1. The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

2. The term "employment agency" includes any person undertaking to procure employees or opportunities to work.

3. The term "labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

4. The term "unlawful employment practice" includes only those unlawful employment practices specified in section one hundred thirty-one of this article.

5. The term "employer" does not include a club exclusively social, or a fraternal, charitable, educational or religious association or corporation, if such club, association or corporation is not organized for private profit, nor does it include any employer with fewer than six persons in his employ.

6. The term "employee" and this article do not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

7. The term "commission," unless a different meaning clearly appears from the context, means the state commission against discrimination created by this article.

8. The term "national origin" shall, for the purposes of this article, include "ancestry."

§ 128. **State commission against discrimination.** There is hereby created in the executive department a state commission against discrimination. Such commission shall consist of five members, to be known as commissioners, who shall be appointed by the governor, by and with the advice and consent of the senate, and one of whom shall be designated as chairman by the governor. The term of office of each member of the commission shall be for five years, provided, however, that of the commissioners first appointed, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years.

Any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. Three members of the commission shall constitute a quorum for the purpose of conducting the business thereof. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

Each member of the commission shall receive a salary of ten thousand dollars a year and shall also be entitled to his expenses actually and necessarily incurred by him in the performance of his duties.

Any member of the commission may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.

§ 129. **General policies of commission.** The commission shall formulate policies to effectuate the purposes of this article and may make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes.

§ 130. **General powers and duties of commission.** The commission shall have the following functions, powers and duties: 1. To establish and maintain its principal office in the city of Albany, and such other offices within the state as it may deem necessary.

2. To meet and function at any place within the state.

3. To appoint such attorneys, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

4. To obtain upon request and utilize the services of all governmental departments and agencies.

5. To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this article, and the policies and practice of the commission in connection therewith.

6. To receive, investigate and pass upon complaints alleging discrimination in employment because of race, creed, color or national origin.

7. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual commissioners.

No person shall be excused from attending and testifying or from producing records, correspondence, documents or other evidence in obedience to the subpoena of the commission or of any individual commissioner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any

transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons so compelled to testify.

8. To create such advisory agencies and conciliation councils, local, regional or state-wide, as in its judgment will aid in effectuating the purposes of this article and of section eleven of article one of the constitution of this state, and the commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of race, creed, color or national origin, and to foster through community effort or otherwise good-will, cooperation and conciliation among the groups and elements of the population of the state, and make recommendations to the commission for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary traveling expenses; and the commission may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance.

9. To issue such publications and such results of investigations and research as in its judgment will tend to promote good-will and minimize or eliminate discrimination because of race, creed, color or national origin.

10. To render each year to the governor and to the legislature a full written report of all its activities and of its recommendations.

11. To adopt an official seal.

§ 131. **Unlawful employment practices.** It shall be an unlawful employment practice: 1. For an employer, because of the race, creed, color or national origin of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

2. For a labor organization, because of the race, creed, color or national origin of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer.

3. For any employer or employment agency to print or 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, creed, color or national origin, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

4. For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

5. For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.

§ 132. **Procedure.** Any person claiming to be aggrieved by an alleged unlawful employment practice may, by himself or his attorney-at-law, make, sign and file with the 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 employment practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The industrial commissioner or attorney-general may, in like manner, make, sign and file such complaint. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this article, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

After the filing of any complaint, the chairman of the commission shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation in connection therewith; and if such commissioner shall determine after such investigation that probable cause exists for crediting the allegations of the complaint, he shall immediately endeavor to eliminate the unlawful employment practice complained of by conference, conciliation and persuasion. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors. In case of failure so to eliminate such practice, or in advance thereof if in his judgment circumstances so warrant, he shall cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before three members of the commission, sitting as the commission, at a time and place to be specified in such notice. The place of any such hearing shall be the office of the commission or such other place as may be designated by it. The case in support of the complaint shall be presented before the commission by one of its attorneys or agents, and the commissioner who shall have previously made the investigation and caused the notice to be issued shall not participate in the hearing except as a witness, nor shall he participate in the deliberations of the commission in such case; and the aforesaid endeavors at conciliation shall not be received in evidence. The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit

testimony. In the discretion of the commission, the complainant may be allowed to intervene and present testimony in person or by counsel. The commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed. If, upon all the evidence at the hearing the commission shall find that a respondent has engaged in any unlawful employment practice as defined in this article, the commission 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 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 commission, will effectuate the purposes of this article, and including a requirement for report of the manner of compliance. If, upon all the evidence, the commission shall find that a respondent has not engaged in any such unlawful employment practice, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent. A copy of its order shall be delivered in all cases to the industrial commissioner, the attorney-general, and such other public officers as the commission deems proper. The commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Any complaint filed pursuant to this section must be so filed within ninety days after the alleged act of discrimination.

§ 133. **Judicial review and enforcement.** Any complainant, respondent or other person aggrieved by such order of the commission may obtain judicial review thereof, and the commission may obtain an order of court for its enforcement, in a proceeding as provided in this section. Such proceeding shall be brought in the supreme court of the state within any county wherein the unlawful employment practice which is the subject of the commission's order occurs or wherein any person required in the order to cease and desist from an unlawful employment practice or to take other affirmative action resides or transacts business. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing before the commission, and the issuance and service of a notice of motion returnable at a special term of such court. Thereupon the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the commission. No objection that has not been urged before the com-

mission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. Any party may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, provided he shows reasonable grounds for the failure to adduce such evidence before the commission. The findings of the commission as to the facts shall be conclusive if supported by sufficient evidence on the record considered as a whole. All such proceedings shall be heard and determined by the court and by any appellate court as expeditiously as possible and with lawful precedence over other matters. The jurisdiction of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the appellate division of the supreme court and the court of appeals in the same manner and form and with the same effect as provided in the civil practice act for appeals from a final order in a special proceeding. The commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost and for the purposes of judicial review of the order of the commission. The appeal shall be heard on the record without requirement of printing. The commission may appear in court by one of its attorneys. A proceeding under this section when instituted by any complainant, respondent or other person aggrieved must be instituted within thirty days after the service of the order of the commission.

§ 134. **Penal provision.** Any person, employer, labor organization or employment agency, who or which shall wilfully resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of duty under this article, or shall wilfully violate an order of the commission, shall be guilty of a misdemeanor and be punishable by imprisonment in a penitentiary, or county jail, for not more than one year, or by a fine of not more than five hundred dollars, or by both; but procedure for the review of the order shall not be deemed to be such wilful conduct.

§ 135. **Construction.** The provisions of this article shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this article shall be deemed to repeal any of the provisions of the civil rights law or of any other law of this state relating to discrimination because of race, creed, color or national origin; but, as to acts declared unlawful by section one hundred thirty-one of this article, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. If such individual institutes any action based on such grievance without resorting to the procedure provided in this article, he may not subsequently resort to the procedure herein.

§ 136. **Separability.** If any clause, sentence, paragraph or part of this article or the application thereof to any person or circum-

stances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this article.

Section 2. Existing article twelve of such chapter, as added by chapter eight hundred fifty-four of the laws of nineteen hundred forty-one and renumbered by chapter five of the laws of nineteen hundred forty-four, section one hundred forty-four having been amended by chapter two hundred sixteen of the laws of nineteen hundred forty-two, is hereby renumbered article twelve-a.

Section 3. This act shall take effect July first, nineteen hundred forty-five.

STATE OF NEW YORK, }
Department of State. } ss.:

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

THOMAS J. CURRAN,
Secretary of State