

ACT 85

H.B. NO. 207

**A Bill for an Act Relating to the Enforcement of the Employment Practices Law
and Amending Chapter 378, Hawaii Revised Statutes.**

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

SECTION 1. Section 378-3, Hawaii Revised Statutes, is amended to read:

"Sec. 378-3 Enforcement jurisdiction; power of department to prevent unlawful discrimination. (a) The 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 part. When it appears 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.

(b) If the department is unable to eliminate the unlawful employment practice or discrimination, it shall state its findings in a letter of accusation and shall issue and cause to be served on the respondent an order requiring the 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.

(c) If the department is unable to secure from the respondent a conciliation agreement acceptable to the department, the department may upon the written request of the complainant bring any legal action necessary to enjoin the respondent from engaging in such unlawful employment practice or discrimination and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay, or any other equitable relief as the court deems appropriate. The court in any action brought under this part shall in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of action, including costs of fees of any nature, and reasonable attorney's fees, to be paid by the defendant. 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 and proceedings. The director may join various complainants in one cause of action.

(d) If any judgment obtained by the director against the respondent for violation of this part remains unsatisfied for a period of thirty days after the time to appeal therefrom has expired and no appeal is pending or after such judgment has been finally affirmed on appeal, the director may institute proceedings in the name of the State in the circuit court of the circuit in which the respondent has his principal place of business to compel the respondent to cease doing business until the judgment has been satisfied.

(e) If the department finds that a union, employer, labor organization or employment agency has not engaged in any such unlawful employment practice or discrimination, the department shall so notify the complainant.

(f) Whenever it appears to the director that any union, 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, he

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may in his discretion 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.”

SECTION 2. Sections 378-5, 378-6, and 378-7, Hawaii Revised Statutes, are hereby repealed.

SECTION 3. Section 378-10, Hawaii Revised Statutes, is amended to read:

“**Sec. 378-10 Penalties.** Whoever wilfully resists, prevents, impedes, or interferes with the department or any of its agents or representatives in the performance of duties pursuant to this part, or who in any manner wilfully violates an order of the department of labor and industrial relations, shall be fined not more than \$500, or imprisoned for not more than ninety days, or both.”

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 5. This Act shall take effect upon its approval.

(Approved May 12, 1977.)

*Edited accordingly.