

ACT 252

S.B. NO. 1539

A Bill for an Act Relating to Practices and Procedures of the Hawaii Civil Rights Commission.

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

SECTION 1. Findings and purpose. The legislature has established the Hawaii civil rights commission to create a mechanism which would provide a uniform procedure for the enforcement of the state's laws prohibiting discrimination in employment, housing, and public accommodations. The legislature finds that in implementing its legislative mandate, there are ambiguous and inconsistent provisions.

The purpose of this measure is to clarify and conform those provisions, especially those that relate to contested case hearings and appeal procedures provided under chapter 91, Hawaii Revised Statutes. It is not the intent of this measure to make statutory amendments that would create substantive changes to chapter 368 or increase or decrease the rights provided under chapters 489 and 515 and part I of chapter 378, Hawaii Revised Statutes.

SECTION 2. 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 chapters 489 [and], 515 [and], part I of chapter 378, and complaints filed under this chapter, and conduct proceedings on complaints alleging unlawful practices where conciliatory efforts are inappropriate or unsuccessful.
- (2) To hold hearings and make inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of these hearings and inquiries, administer oaths and affirmations, conduct depositions, compel the attendance of parties and witnesses and the production of documents by the issuance of subpoenas, examine parties and witnesses under oath, require answers to interrogatories issued, and delegate 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[.], conciliation agreement, or predetermination settlement.
- (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.
- (6) To issue publications and results of investigations and research that, in its judgment, will tend to promote goodwill and minimize or eliminate discrimination in employment, housing, and public accommodations.
- (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.
- (9) To adopt rules under chapter 91.”

SECTION 3. Section 368-11, Hawaii Revised Statutes, is amended to read as follows:

“[§368-11] 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[.], and this chapter. Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may file with the [commission] commission’s executive director 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.

(d) For the purposes of this chapter "unlawful discriminatory practice" means an unfair discriminatory practice or like terms, as may be used in chapters 489, 515, or part I of chapter 378."

SECTION 4. Section 368-13, Hawaii Revised Statutes, is amended to read as follows:

“[[§368-13]] Investigation and conciliation of complaint. (a) After the filing of [any] a complaint, or whenever it appears to the commission that an unlawful discriminatory practice may have been committed, the [commission] commission's executive director 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, or this chapter has been violated, the parties may agree to resolve the complaint through a predetermination settlement.

(b) The executive director shall issue a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred within one-hundred and eighty days from the date of filing a complaint unless the commission grants an extension of time to issue a determination.

(c) If the executive director makes a determination that there is no reasonable cause to believe that an unlawful discriminatory practice has occurred in a complaint filed, the executive director shall promptly notify the parties in writing. The notice to complainant shall indicate also that the complainant may bring a civil action as provided under section 368-12.

[(b) In the event that the commission] (d) When the executive director 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] executive director shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods[,] such as[,] conference, conciliation, and persuasion.

[(c)] (e) Where the [commission] executive director has determined that there is reasonable cause to believe that an unlawful discriminatory practice has occurred and has been unable to secure from the respondent a conciliation agreement acceptable to the commission within [sixty] one-hundred and eighty days of the filing of the complaint unless the commission has granted an extension of time, the [commission] executive director shall demand that the respondent cease the unlawful discriminatory practice. The [commission's] executive director'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] executive director may demand appropriate affirmative action as, in the judgment of the [commission,] executive director,

will effectuate the purpose of this chapter, and include a requirement for reporting on the manner of compliance.”

SECTION 5. Section 368-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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] contested case hearing that shall be held in accordance with chapter 91. The case in support of the complaint shall be presented at the hearing by counsel provided by the commission. Following the completion of the contested case hearing, the hearings examiner shall issue a [written decision. If the hearings examiner finds that discrimination occurred,] proposed decision containing a statement of reasons including a determination of each issue of fact or law necessary to the proposed decision which shall be served upon the parties. Any party adversely affected by the proposed decision may file exceptions and present argument to the commission which shall consider the whole record or such portions thereof as may be cited by the parties. If the commission finds that unlawful discrimination has occurred, the commission shall issue [an] a decision and order in accordance with chapter 91 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.”

SECTION 6. Section 368-15, Hawaii Revised Statutes, is amended to read as follows:

“[[§368-15]] **Compliance review.** At any time in its discretion but not later than one year from the date of a conciliation agreement, predetermination settlement, 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, settlement, or order are being complied with by the respondent. Upon a finding that the terms of the agreement, settlement, 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.”

SECTION 7. Section 368-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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, or this chapter, 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."

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 12, 1991.)

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