

Introduced in the House: January 21, 2003
Referred: Labor and Commerce

Introduced in the Senate: January 21, 2003
Referred: State Affairs

EXECUTIVE ORDER NO. 104

1 Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance
 2 with AS 24.08.210, I order the following:

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
 4 to read:

5 FINDINGS. As governor, I find that the transfer of the function of administering the
 6 equal employment opportunity program from the Office of the Governor to the division of
 7 personnel in the Department of Administration would be in the best interests of efficient
 8 administration. The director of personnel would administer those functions along with the
 9 director's existing statutory duties. The transfer will permit closer coordination of equal
 10 employment opportunity policy within state government and with the existing system of
 11 personnel administration.

12 * **Sec. 2.** AS 39 is amended by adding a new chapter to read:

Chapter 28. Equal Employment Opportunity Program.

13 **Sec. 39.28.010. Administration of equal employment opportunity**
 14 **program.** The director of personnel shall administer the equal employment
 15 opportunity program for the executive branch of state government to assure
 16 compliance with this chapter.
 17

18 **Sec. 39.28.020. Powers and duties of the director of personnel regarding**
 19 **the administration of the equal employment opportunity program.** The director
 20 of the division of personnel shall

21 (1) assist state officials to carry out their equal employment
 22 opportunity responsibilities, including promoting the recruitment, employment,
 23 training, and retention of members of protected classes, and recommend solutions to

1 any problems identified;

2 (2) train state managers and supervisors in their equal employment
3 opportunity and affirmative action responsibilities and offer orientation programs to
4 employees to inform them of their rights and responsibilities under this chapter;

5 (3) monitor records of personnel actions, develop auditing and
6 reporting systems to acquire statistical information, and prepare federal and state
7 reports concerning the composition of the work force;

8 (4) prepare and submit the affirmative action plan for employment in
9 the executive branch of state government to the governor;

10 (5) prepare guidelines for the affirmative action programs of agencies
11 and review, audit, and make recommendations concerning the programs;

12 (6) ensure that agencies comply with the affirmative action plan and
13 with the agency affirmative action program;

14 (7) implement standards by which performance evaluations of
15 supervisors reflect compliance with affirmative action plans and objectives, including
16 the granting or denial of merit increases;

17 (8) assist the division of labor relations in collective bargaining
18 negotiations between the state and employee bargaining organizations to ensure that
19 each collective bargaining agreement negotiated by the state ensures equal
20 employment opportunity;

21 (9) file quarterly reports with the governor and the legislature
22 concerning agency compliance with and progress in its affirmative action program, the
23 affirmative action plan, state and federal equal employment opportunity laws and
24 regulations;

25 (10) accept, investigate, and resolve complaints of discrimination from
26 employees, previous employees, or applicants for employment;

27 (11) serve as primary liaison between the executive branch and state
28 and federal agencies, minority and women's organizations, and community groups
29 concerned with equal employment opportunity; and

30 (12) prepare and submit an annual report to the governor and the
31 legislature by February 15 on the progress and problem areas in the equal employment

1 opportunity program and the implementation of the affirmative action plan.

2 (b) The director of personnel may

3 (1) recommend legislative or administrative action to the governor,
4 through the commissioner of administration, relating to equal employment opportunity
5 and affirmative action matters;

6 (2) require the purging of the records of a complaint of unlawful
7 discrimination from the personnel file of an employee who has filed a complaint of
8 unlawful discrimination;

9 (3) forbid an agency to hire or promote employees based on a
10 discriminatory employment practice;

11 (4) require an agency to reverse a personnel action including a hiring
12 decision if the director finds that the action was based on a discriminatory employment
13 practice;

14 (5) require an agency to change its selection procedures if the director
15 finds that the procedures violate state or federal laws prohibiting employment
16 discrimination; and

17 (6) when there is reason to believe that an employee has violated this
18 subsection, require the agency to investigate and to impose discipline if the
19 investigation reveals facts warranting it.

20 (c) A collective bargaining agreement adopted under AS 23.40.070 -
21 23.40.260 (Public Employment Relations Act) must be consistent with principles of
22 equal employment opportunity and affirmative action. This chapter supersedes the
23 provisions of AS 39.25 (State Personnel Act).

24 **Sec. 39.28.030. Administrative regulations.** The department shall adopt
25 regulations under AS 44.62 (Administrative Procedure Act) to carry out the division of
26 personnel's duties under this chapter.

27 **Sec. 39.28.040. Affirmative action plan.** The department shall establish an
28 equal employment opportunity program and adopt annually an affirmative action plan
29 for the executive branch of state government. The plan remains in effect until the
30 department establishes a subsequent plan. The director of personnel shall work with
31 each agency to enhance equal employment opportunity.

1 **Sec. 39.28.050. Compliance with affirmative action plan.** (a) Each agency
2 shall comply with the affirmative action plan. Each commissioner or executive head
3 of an agency shall adopt an affirmative action program to implement the plan within
4 the agency. At the request of the director of personnel, a state official shall report to
5 the director of personnel about agency employment practices and activities to
6 implement and comply with the plan or program.

7 (b) When the director of personnel finds that an agency has violated the
8 affirmative action plan or its affirmative action program, the director of personnel may

9 (1) suspend the hiring authority of the agency; and

10 (2) impose mandatory affirmative action measures on the agency to
11 bring the agency into compliance.

12 **Sec. 39.28.060. Employment discrimination complaints.** (a) The division
13 of personnel shall accept complaints of employment discrimination in the executive
14 branch of state government and shall confer with the complainant and the agency
15 involved to bring about an informal resolution of a complaint.

16 (b) An agency shall notify the division of personnel when the agency receives
17 a complaint alleging employment discrimination.

18 (c) The director of personnel may not make public the records of a complaint
19 or investigation under this chapter.

20 **Sec. 39.28.070. Retaliation prohibited.** (a) An agency, officer, or state
21 employee may not directly or indirectly refuse to hire, transfer, or promote, or dismiss,
22 demote, suspend, lay off, or otherwise discipline a person for filing a complaint with
23 the division of personnel for a failure to comply with affirmative action or equal
24 employment opportunity or for assisting the division of personnel in an investigation
25 of a complaint.

26 (b) A person who knowingly violates this section is liable for a civil penalty of
27 not more than \$1,000.

28 **Sec. 39.28.080. Access to confidential records.** The director of personnel
29 may have access to all data, records, and reports necessary to carry out its functions
30 under this chapter. The director of personnel may not make public information
31 designated as confidential by AS 39.25.080 or another law. However, the director of

1 personnel may make public statistical information compiled from confidential records.

2 **Sec. 39.27.900. Definitions.** In this chapter, unless the context requires
3 otherwise,

4 (1) "agency" means a department, office, agency, public corporation,
5 board, commission, authority, or other organizational unit of the executive branch;

6 (2) "department" means the Department of Administration;

7 (3) "director of personnel" means the director of personnel appointed
8 under AS 39.25.040;

9 (4) "division of personnel" means the division of personnel established
10 by AS 39.25.030;

11 (5) "employment in the executive branch of state government"
12 includes employment as a permanent, probationary, provisional, nonpermanent, or
13 temporary employee in the classified, partially exempt, or exempt services in the
14 executive branch of state government;

15 (6) "member of a protected class" means a person protected by federal
16 or state laws that prohibit discrimination in employment or a person who experiences
17 or has experienced difficulty in obtaining employment or advancement in employment
18 because of another factor not related to merit.

19 * **Sec. 3.** AS 39.25.050(a) is amended to read:

20 (a) The director of personnel shall direct and supervise the administrative and
21 technical activities of the division of personnel. In addition to the other duties imposed
22 on the director, the director shall

23 (1) administer this chapter and the personnel rules;

24 (2) encourage and exercise leadership in the development of effective
25 personnel administration in the state government;

26 (3) develop, in cooperation with appointing authorities and others,
27 programs for the improvement of employee effectiveness and morale;

28 (4) attend meetings of the personnel board and serve as secretary for
29 the board;

30 (5) establish and maintain a roster of employees subject to this chapter;

31 (6) prepare the rules, not inconsistent with this chapter, that are

1 required to implement and administer this chapter;

2 (7) perform other lawful acts that the director considers necessary or
3 desirable to carry out the purposes of this chapter;

4 **(8) administer the equal employment opportunity program under**
5 **AS 39.28.**

6 * **Sec. 4.** AS 44.19.450, 44.19.451, 44.19.452, 44.19.453, 44.19.454, 44.19.455, 44.19.456,
7 44.19.457, and 44.19.458 are repealed.

8 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITION. (a) Litigation, hearings, investigations, and other proceedings
11 pending under a law repealed by this Order, or in connection with functions transferred by
12 this Order, continue in effect and may be continued and completed notwithstanding a transfer
13 or repeal provided for in this Order.

14 (b) Regulations adopted under authority of former AS 44.19.452 and in effect on
15 March 22, 2003, remain in effect until regulations are adopted under AS 39.28 by the
16 Department of Administration, and take effect. The director of personnel may implement and
17 enforce the regulations adopted under former AS 44.19.452 until the Department of
18 Administration's regulations take effect.

19 (c) Contracts, rights, liabilities, and obligations created by or under a law repealed by
20 this Order, and in effect on March 22, 2003, remain in effect notwithstanding this Order's
21 taking effect. Records, equipment, appropriations, and other property of an agency of the
22 state whose functions are transferred under this Order shall be transferred to implement the
23 provisions of this Order.

24 * **Sec. 6.** This Order takes effect March 23, 2003.

DATED: _____

Frank H. Murkowski
Governor