

1 IN THE HOUSE BY MR. ROADY AND MR. HELLENTIAL

2 HOUSE BILL NO. 120

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to prohibit unjust discrimination
7 in employment because of age; providing for
8 administration and investigation by the
9 Department of Labor; providing for penalties
10 and for enforcement; and providing for an
11 effective date."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 Section 1. SHORT TITLE. This Act may be cited as the "Act
14 Prohibiting Unjust Discrimination in Employment Because of Age".

15 Sec. 2. FINDINGS AND DECLARATION OF POLICY. (a) The Legis-
16 lature hereby finds that the practice of discriminating in employ-
17 ment against properly qualified persons because of their age is
18 contrary to American principles of liberty and equality of oppor-
19 tunity, is incompatible with the Constitution, deprives the State
20 of the fullest utilization of its capacities for production, and
21 endangers the general welfare.

22 (b) Hiring bias against workers over forty-five years
23 of age deprives the State of its most important resource of experi-
24 enced employees, adds to the number of persons receiving public
25 assistance, and deprives older people of the dignity and status of
26 self-support.

27 (c) The right to employment otherwise lawful without
28 discrimination because of age, where the reasonable demands of the
29 position do not require such an age distinction, is hereby recog-

1 nized as and declared to be a right of all the people of the State
2 which shall be protected as provided herein.

3 (d) It is hereby declared to be the policy of the State to
4 protect the right recognized and declared in subdivision (c) hereof
5 and to eliminate all such discrimination to the fullest extent per-
6 mitted. This Act shall be construed to effectuate such policy.

7 Sec. 3. DEFINITIONS. As used in this Act unless the context
8 otherwise requires:

9 (a) The term "person" includes one or more individuals,
10 partnerships, associations or corporations.

11 (b) The term "employer" means a person in this State
12 having in his employ one or more individuals; and any person acting
13 in the interest of an employer, directly or indirectly.

14 (c) The term "labor organization" means any organization
15 of employees which exists for the purpose, in whole or in part, of
16 collective bargaining or of dealing with employers concerning
17 grievances, terms, or conditions of employment, or for other mutual
18 aid or protection in connection with employment.

19 Sec. 4. EXEMPTIONS. This Act shall not apply to any religious,
20 charitable, fraternal, social, educational, or sectarian corporation
21 or association, not organized for private profit, other than labor
22 organizations. Nothing herein shall affect the retirement policy
23 or system of any employer where such policy or system is not merely
24 a subterfuge to evade the purposes of that Act.

25 Sec. 5. UNLAWFUL EMPLOYMENT PRACTICES DEFINED. (a) It shall
26 be an unlawful employment practice for an employer

27 (1) to refuse to hire, to discharge, or otherwise to
28 discriminate against any individual with respect to his terms,
29 conditions, or privileges of employment, otherwise lawful,

1 because of such individual's age, when the reasonable demands
2 of the position do not require such an age distinction; and,

3 (3) to utilize in the hiring or recruitment of
4 individuals for employment otherwise lawful, any employment
5 agency, placement service, training school or center, labor
6 organization, or any other source which so discriminates
7 against such individuals because of their age.

8 (b) It shall be an unlawful employment practice for any
9 labor organization to so discriminate against any individual or to
10 limit, segregate, or classify its membership in any way which
11 would deprive or tend to deprive such individual of otherwise law-
12 ful employment opportunities, or would limit such employment
13 opportunities or otherwise adversely affect his status as such an
14 employee or as such an applicant for employment, or would affect
15 adversely his wages, hours, or employment conditions, because of
16 such individual's age.

17 (c) It shall be an unlawful employment practice for any
18 employer or labor organization to discharge, expel, or otherwise
19 discriminate against any person, because he opposed any unlawful
20 employment practice specified in this Act or has filed a charge,
21 testified, participated, or assisted in any proceeding under this
22 Act.

23 Sec. 6. ANNUAL REPORT OF DEPARTMENT OF LABOR: POWERS OF
24 AGENCY. (a) The Department of Labor, hereinafter referred to
25 as the Agency, shall at the close of each fiscal year report
26 to the Legislature and to the Governor under this Act concerning
27 the cases it has heard; the decisions it has rendered; the
28 names, salaries, and duties of all individuals in its employ
29 and the moneys it has disbursed; and shall make such further

1 reports on the cause of and means of eliminating discrimination
2 and such recommendations for further legislation as may appear
3 desirable.

4 (b) The Agency may by such duly authorized representa-
5 tive as it may designate, conduct any investigation, proceeding,
6 or hearing necessary to his functions in any part of the State.

7 (c) The Agency shall have power

8 (1) to appoint such agents and employees as he
9 deems necessary to assist him in the performance of his func-
10 tions under this Act.

11 (2) to pay to witnesses whose depositions are
12 taken or who are summoned before it or any of its duly author-
13 ized representatives the same witness and mileage fees as are
14 paid to witnesses in the courts of the State.

15 (3) to furnish to persons subject to this Act such
16 technical assistance as they may request to further their
17 compliance with this Act or any order issued thereunder.

18 (4) upon the request of any employer, whose employ-
19 ees or some of them refuse or threaten to refuse to cooperate
20 in effectuating the provisions of this Act, to assist in
21 such effectuation by conciliation or other remedial action.

22 (5) to make such technical studies as are appro-
23 priate to effectuate the purposes and policies of this Act
24 and to make the results of such studies available to interested
25 governmental and nongovernmental agencies.

26 Sec. 7. PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES. (a)

27 Whenever a sworn written complaint has been filed by or on behalf
28 of any person claiming to be aggrieved, or a written accusation
29 has been filed by a duly authorized representative of the Agency

1 that any person subject to the Act has engaged in any unlawful
2 employment practice defined in this Act, the Agency shall investi-
3 gate such complaint or accusation and if it shall determine after
4 such preliminary investigation that probable cause exists in
5 support of such written complaint or accusation, it shall endeavor
6 to eliminate any unlawful employment practice by informal methods
7 of conference, conciliation, and persuasion. Nothing said or done
8 during such endeavors may be used as evidence in any subsequent
9 proceeding.

10 (b) If the Agency fails to effect the elimination of
11 such unlawful employment practice and to obtain voluntary com-
12 pliance with this Act, or in advance thereof if circumstances so
13 warrant, it shall cause a copy of such written complaint or accu-
14 sation to be served upon such person who has allegedly committed
15 any unlawful employment practice, hereinafter called the respond-
16 ent. Form of complaint or accusation and all procedures thereafter
17 shall be conducted in accordance with Chapter 2 of the Administra-
18 tive Procedures Act and the Agency shall have the power granted
19 therein.

20 (c) If the Agency shall find that any person named in
21 the written complaint or accusation has engaged in any unlawful
22 employment practice, the Agency shall issue and cause to be served
23 on such person an order or decision requiring him to cease and
24 desist from such unlawful employment practice and to take such
25 affirmative action, including reinstatement or hiring of employees
26 with or without back pay, as will effectuate the policies of this
27 Act. If the Agency shall find that no person named in the written
28 complaint or accusation has engaged or is engaging in any unlawful
29 employment practice, the Agency shall state its findings of fact

1 and shall issue an order dismissing the said complaint.

2 (d) Any person who violates any provision of any deci-
3 sion of the Agency is guilty of a misdemeanor, punishable by fine
4 of not more than five hundred dollars (\$500.00).

5 (e) The Agency may make application to the Superior
6 Court, or District Court until the Superior Court is possessed of
7 jurisdiction, of the district or division wherein the unlawful
8 employment practice occurred for an order enjoining the unlawful
9 acts and practices specified in the order or decision of the
10 Agency and upon showing by the Agency that such person has engaged
11 or is about to engage, in such acts or practices, an injunction,
12 restraining order, or such other order as may be appropriate shall
13 be granted by such court without bond.

14 Sec. 8. INVESTIGATORY POWERS. (a) For the purpose of all
15 investigations, proceedings, or hearings which the Agency deems
16 necessary or proper for the exercise of the powers vested in it
17 by this Act, the Agency or his duly authorized representative shall
18 have power to issue subpoenas requiring the attendance and testimony
19 of witnesses and the production of any evidence relating to any
20 investigation, proceeding, or hearing before it or its duly author-
21 ized representative conducting such investigation, proceeding, or
22 hearing.

23 (b) The Agency or its duly authorized representative
24 for such purposes, may administer oaths, examine witnesses, and
25 receive evidence.

26 (c) Such attendance of witnesses and the production of
27 such evidence may be required, from any place in the State of any
28 designated place of hearing.

29 (d) In case of contumacy or refusal to obey a subpoena

1 issued to any person under this Act, any Superior Court for the
2 district in which said person guilty of contumacy or refusal to
3 obey is found or resides upon application by the Agency shall have
4 jurisdiction to issue to such person an order requiring him to
5 appear before the Agency or its duly authorized representative,
6 there to produce evidence if so ordered, or there to give testi-
7 mony relating to the investigation, proceeding, or hearing.

8 Sec. 9. RULES AND REGULATIONS. (a) The Agency shall have
9 authority from time to time to issue, amend, or rescind regulations
10 pursuant to the provisions of Chapter 1 of the Administrative
11 Procedures Act to carry out the provisions of this Act.

12 Sec. 10. FORCIBLY RESISTING THE ADMINISTRATOR OR HIS DULY
13 AUTHORIZED REPRESENTATIVE. Whoever shall forcibly resist, oppose,
14 impede, intimidate or interfere with a duly authorized representa-
15 tive of the Agency while engaged in the performance of duties under
16 this Act, or because of such performance, shall be punished by a
17 fine of not more than five hundred dollars (\$500.00) or by
18 imprisonment for not more than one year, or by both.

19 Sec. 11. SEPARABILITY CLAUSE. If any provision of this Act
20 or the application of such provision to any person or circumstance
21 shall be held invalid, the remainder of this Act or the application
22 of such provision to persons or circumstances other than those
23 to which it is held invalid shall not be affected thereby.

24 Sec. 12. EFFECTIVE DATE. This Act shall take effect imme-
25 diately upon its passage and approval, or upon its becoming law
26 without such approval.