

Introduced: 1/31/84
Referred: State Affairs
and Finance

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

2 SENATE BILL NO. 395

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating a division of equal employment
7 opportunity in the Department of Administration."

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

9 * Section 1. AS 44.21.020 is amended to read:

10 Sec. 44.21.020. DUTIES OF DEPARTMENT. The Department of Adminis-
11 tration shall

12 [(1) Repealed.]

13 (1) [(2)] make surveys and studies to improve administra-
14 tive procedures, methods, and organization;

15 (2) [(3)] keep general accounts;

16 (3) [(4)] approve vouchers and disburse funds for all
17 purposes;

18 (4) [(5)] operate centralized purchasing and supply ser-
19 vices, and necessary storerooms and warehouses;

20 (5) [(6)] allot space in state buildings to the various
21 departments according to need and available space;

22 (6) [(7)] supervise telephone, mailing, messenger, duplicat-
23 ing, and similar services adaptable to centralized management;

24 (7) [(8)] administer the public employees' retirement
25 system and teachers' retirement system;

26 (8) [(9)] administer a statewide personnel program, includ-
27 ing central personnel services such as recruitment, examination,
28 position classification, and pay administration;

29 (9) [(10)] administer the Alaska Pioneers' Homes;

1 (10) [(11)] administer and supervise a statewide automatic
2 data processing program;

3 [(12) Repealed.]

4 (11) [(13)] study, design, implement, and manage the telecom
5 munications systems and services of the state under AS 44.21.300 -
6 44.21.330;

7 (12) study, formulate, recommend, review, and administer equal
8 employment opportunity and affirmative action programs, policies, and
9 practices under AS 44.21.400 - 44.21.480.

10 * Sec. 2. AS 44.21 is amended by adding new sections to read:

11 ARTICLE 8. DIVISION OF EQUAL EMPLOYMENT OPPORTUNITY.

12 Sec. 44.21.400. DIVISION CREATED. The division of equal employ-
13 ment opportunity is established in the Department of Administration.

14 Sec. 44.21.405. DIRECTOR. (a) The division shall be adminis-
15 tered by a director appointed by the commissioner.

16 (b) The director shall advise the governor and the commissioner
17 on equal employment and affirmative action programs, policies, and
18 practices.

19 Sec. 44.21.410. POWERS AND DUTIES OF THE DIVISION. (a) The
20 division shall

21 (1) act to ensure the recruitment of members of protected
22 classes for employment and to ensure that all employees and applicants
23 for employment are treated fairly and not subjected to discrimination
24 prohibited by state or federal law as to employment, applications for
25 employment, or recruitment;

26 (2) formulate policies and programs to promote equal em-
27 ployment opportunity and affirmative action;

28 (3) establish and periodically review an affirmative action
29 plan for employment in the executive branch of state government;

1 (4) advise the governor and the commissioner on procedures
2 to

3 (A) ensure the effective recruitment of members of
4 protected classes into the work force of the executive branch;

5 (B) identify and eliminate barriers in departments and
6 agencies and in the personnel system to the employment and
7 advancement of members of protected classes and under-represented
8 groups; and

9 (C) provide assistance to members of protected
10 classes, under-represented groups, and others who are applying
11 for positions in the executive branch of state government;

12 (5) periodically review the activities of departments and
13 agencies to implement affirmative action and equal employment oppor-
14 tunity; and

15 (6) provide information and training on equal employment
16 opportunity principles and affirmative action requirements to depart-
17 ments, agencies, and employees and assist them in eliminating any
18 discriminatory procedures and practices;

19 (7) provide technical advice to agencies in the executive
20 branch of state government on compliance with AS 18.80 and provisions
21 of federal law prohibiting discrimination;

22 (8) report annually to the governor and the commissioner on
23 equal employment opportunity and affirmative action matters encoun-
24 tered in the previous year;

25 (9) adopt regulations necessary to carry out the duties
26 imposed by AS 44.21.400 - 44.21.480.

27 (b) The division may recommend legislative or administrative
28 action to the governor and the commissioner relating to equal employ-
29 ment opportunity and affirmative action matters.

1 Sec. 44.21.420. LIAISON WITH AGENCIES. The division is the
2 primary liaison between the executive branch and other federal or
3 state compliance agencies for all equal employment opportunity and
4 affirmative action matters. Executive branch agencies and departments
5 receiving inquiries from these compliance agencies concerning an equal
6 employment opportunity or affirmative action matter shall refer the
7 inquiry to the division.

8 Sec. 44.21.430. PARTICIPATION IN EMPLOYMENT DISCRIMINATION
9 INQUIRIES AGAINST THE STATE. An executive branch agency or department
10 that is the responding party in an official inquiry, complaint investi-
11 gation, or hearing based on equal employment opportunity or affirma-
12 tive action issues from a state or federal compliance agency shall ask
13 for advice from the division before participating in the inquiry,
14 investigation, or hearing. The division may take part in all conversa-
15 tions and meetings between the parties and review all written communi-
16 cations from the agency or department about the inquiry, investiga-
17 tion, or hearing.

18 Sec. 44.21.440. SERVICE OF PROCESS IN ADMINISTRATIVE HEARINGS.
19 An agency or individual filing charges of employment discrimination in
20 an administrative proceeding against any department, agency, or offi-
21 cial in the executive branch shall serve the charge on the division
22 and deliver a copy to the respondent.

23 Sec. 44.21.450. INTERNAL DISCRIMINATION COMPLAINTS. (a) The
24 division shall establish an internal discrimination complaint proce-
25 dure for complaints of employment discrimination in the executive
26 branch of state government. The procedures shall be informal and
27 oriented toward resolution of complaints without resort to judicial
28 proceedings. A complainant may pursue resolution of a complaint under
29 AS 18.80 or other federal or state laws or regulations at the same

1 time the complainant is pursuing resolution of the complaint under
2 this procedure.

3 (b) The division shall accept complaints of employment dis-
4 crimination from employees or applicants for employment who believe
5 that they have been discriminated against because of race, religion,
6 color or national origin, age, physical handicap, sex, marital status,
7 changes in marital status, pregnancy or parenthood.

8 (c) The division may accept a complaint filed by an employee who
9 is not directly affected by an alleged discriminatory activity if the
10 complaint is on behalf of an employee or applicant.

11 (d) The division may initiate a complaint if it has reason to
12 believe prohibited employment discrimination has occurred.

13 (e) The division may not accept a complaint until the complain-
14 ant has made reasonable efforts to resolve the dispute within the
15 department or agency where the alleged discriminatory activity occur-
16 red.

17 (f) The complaint shall be in writing on a form approved by the
18 division.

19 (g) The division shall investigate complaints accepted for
20 processing and notify the parties of its findings of fact. If it
21 finds evidence of discrimination, the division shall try to resolve
22 the dispute by conference, conciliation, and persuasion and may recom-
23 mend a settlement to the parties.

24 (h) Either party may appeal the findings of fact or the recom-
25 mended settlement to the commissioner. If the division is unable to
26 bring about a settlement between the parties, it may certify the case
27 to the commissioner. After reviewing the case, the commissioner shall
28 issue a written ruling in which the commissioner approves, amends, or
29 reverses the division's findings of fact and recommended settlement.

1 (i) The division may not make public the records of an ongoing
2 investigation or conciliation. After a case is closed the division
3 shall release information that is not otherwise confidential upon
4 request to do so.

5 Sec. 44.21.460. RIGHTS AND PROHIBITIONS. (a) Complainants may
6 have an individual of their choice present at an interview, discus-
7 sion, or other conference held during the investigation and concilia-
8 tion of their complaint.

9 (b) A complainant may request the division to close an inves-
10 tigation or conciliation by filing a written request with the divi-
11 sion.

12 (c) Retaliation for exercising rights provided under AS 44.21.-
13 400 - 44.21.480, threats of retaliation, or any other form of coer-
14 cion that discourages or attempts to discourage a person from filing
15 or cooperating in an investigation of a complaint or that incites or
16 compels or attempts to incite or compel an act forbidden by state or
17 federal anti-discrimination law is prohibited.

18 (d) The immediate supervisor of an employee who violates (c) of
19 this section may discipline the employee under AS 39.25, or an agree-
20 ment entered under AS 23.40, or other disciplinary procedures and
21 regulations that apply to that employee.

22 Sec. 44.21.470. ACCESS TO CONFIDENTIAL RECORDS. (a) Notwith-
23 standing AS 39.25.080, the division may have access to all records
24 necessary to carry out its functions under AS 44.21.400 - 44.21.480.

25 (b) The division may not make public any confidential informa-
26 tion obtained under (a) of this section. However, the division may
27 make public statistical information compiled from confidential re-
28 cords.

29 Sec. 44.21.480. DEFINITIONS. In AS 44.21.400 - 44.21.480,

1 (1) "applicant" includes applicants for positions in the
2 classified, partially exempt, and exempt services in the executive
3 branch of state government;

4 (2) "commissioner" means the commissioner of administra-
5 tion;

6 (3) "employee" includes permanent, probationary, provi-
7 sional, and nonpermanent employees in the classified, partially
8 exempt, and exempt services in the executive branch of state govern-
9 ment;

10 (4) "member of a protected class" means a woman, a minority
11 person, a handicapped person, a Viet Nam era veteran, a disabled
12 veteran, or a man who is an applicant for a position in which men have
13 not been traditionally employed. As used in this paragraph

14 (A) "minority person" means a member of one or more of
15 the following groups:

16 (i) a person having origins in any of the origi-
17 nal peoples of North America and who maintains cultural
18 identification through tribal affiliation or community
19 recognition with those peoples;

20 (ii) a person having origins in any of the black
21 racial groups of Africa;

22 (iii) a person of Mexican, Puerto Rican, Cuban,
23 South American, or other Spanish culture origin, regardless
24 of race; or

25 (iv) a person with ancestry in the Indian subcon-
26 tinent, the region referred to as the Far East, Southeast
27 Asia, or the Pacific Islands, but not the region referred to
28 as the Middle East;

29 (B) "handicapped person" means a person who has a

1 physical, sensory, mental, or emotional disability that substan-
2 tially limits one or more major life activities;

3 (C) "Viet Nam era veteran" means a person with 181
4 days or more active service in the armed forces of the United
5 States who has been honorably discharged after having served
6 during any period between August 4, 1964, and November 7, 1975;
7 membership in the class lasts for a period of four years from the
8 date on which the veteran is honorably discharged from the armed
9 forces;

10 (D) "disabled veteran" has the meaning given in AS 39.
11 25.150(19)(B).