

# *Industrial Relations Center*

*Older workers - Laws, statutes, etc.*

*C. 2*

**STATE LEGISLATION**

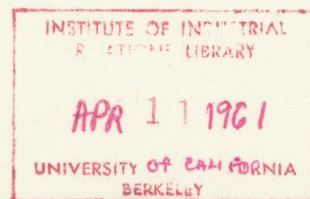
**ON**

**AGE DISCRIMINATION IN EMPLOYMENT**

**by**

**Joyce A. Matsumoto**

**MARCH 1961**



**UNIVERSITY OF HAWAII • HONOLULU 14, HAWAII**

## PREFACE

Since New York enacted in 1945 the first law placing problems dealing with discrimination in employment according to race, religion, color or national origin under administrative regulation, other states have passed similar laws or have banned discrimination in enumerated situations. Today 24 states have some type of legislation prohibiting discrimination in employment. Twenty of these states have enacted what are known as Fair Employment Practices laws, which generally ban discrimination in employment because of race, religion, color or national origin. More than half of the states (11 out of 20) with FEP laws declare the opportunity to obtain employment without discrimination because of race, religion, color or national origin to be a civil right. Enactment of these laws is deemed as an "exercise of the police power to protect the public welfare" in 8 of the 20 FEP laws. Only three states--New Jersey, New York and Washington--specifically declare enactment of these laws as in "fulfillment of the provisions of the constitution of the state concerning civil rights."

Of the 24 states which have some type of legislation prohibiting discrimination in employment, one-half or 12 proscribe discrimination on account of age as an unlawful employment practice. Most of the provisions prohibiting age discrimination in employment were incorporated into the FEP laws following the laws' original enactment. The inclusion of the age factor indicates an awareness and interest on the part of the states in the problems of the older worker.

The following materials summarize the major provisions of the state laws which ban age discrimination in employment. Tables outlining these provisions and the full text of some of the laws are also included.

Special acknowledgement is extended to Mrs. Eva L. Goo for the extra care in the clerical and typing work. The cover was designed by Mrs. Mary M. Tachibana.

Harold S. Roberts, Director  
Industrial Relations Center  
University of Hawaii

## TABLE OF CONTENTS

General Provisions of State Laws .....	1
Definition of Age .....	3
Advertisements .....	3
Application Forms .....	4
Retirement Plans .....	5
Privileges of Employment .....	6
Coverage .....	6
Bona Fide Occupational Qualifications .....	7
Penalty Provisions .....	8
Administrative Experience .....	8
Tables:	
1. State Laws Prohibiting Discrimination in Employment According to Age, February 1961 .....	10
2. Brief Summary of Provisions of the Laws of Eleven States and the Commonwealth of Puerto Rico Prohibiting Discrimination in Employment According to Age, February 1961 .....	11
Appendixes:	
1. Provisions of Laws Prohibiting Age Discrimination in Employment (Colorado) .....	13
2. Fair Employment Practice Act (Delaware) .....	14
3. Fair Employment Practice Act (New York) .....	15

## STATE LEGISLATION PROHIBITING AGE DISCRIMINATION IN EMPLOYMENT<sup>1</sup>

While the enactment of fair employment practice laws and the prohibition of discrimination based on color, creed and national origin dates from 1945 (N.Y.), the enactment of laws prohibiting age discrimination in employment goes back much earlier to 1903 when the state of Colorado enacted legislation to that effect. It is interesting to note that since 1958 the number of states which have laws prohibiting age discrimination in employment has nearly doubled. Eleven states and the Commonwealth of Puerto Rico now have laws prohibiting age discrimination in employment. The enactment of these laws is grounded in the same cause to which fair employment legislation banning discrimination based on color, creed and national origin owes its enactment: the desire to utilize the Nation's human resources to the maximum, unhindered by discrimination. It also reflects an awareness and interest on the part of the states in the problems of the older worker.

### GENERAL PROVISIONS OF STATE LAWS

Some type of legislation banning certain age-discriminatory employment practices have been enacted by eleven states--Alaska, Colorado, Connecticut, Delaware, Louisiana, Massachusetts, New York, Oregon, Pennsylvania, Rhode Island, and Wisconsin--and the Commonwealth of Puerto Rico. While the Colorado law dates back to 1903, most of the laws date from 1955 with the Alaska and Delaware laws being enacted as recently as 1960.

The specific provisions of the laws vary from one state to another, but the laws may be grouped into two general categories: (1) those which do not integrate and (2) those which integrate age in the fair employment practice laws and ban age discrimination as an unlawful employment practice along with discrimination based on race, color, creed and national origin. Seven of the eleven states include age discrimination in the fair employment practices laws. (See Table 1.) The laws of Alaska, Colorado, Louisiana, Puerto Rico and Rhode Island do not.

The Louisiana statute, which was enacted in 1934, prohibits age discrimination in the hiring or discharge of an employee. The law specifically states that the elements for employment shall not be determined by age but by the mental and physical fitness and by the experience and trustworthiness of the employee or applicant, except in hazardous occupations or occupations requiring unusual skill and endurance. Hence, bus drivers have been exempted from the law because they are engaged in a hazardous occupation.<sup>2</sup>

---

<sup>1</sup>An excellent report summarizing the provisions of these laws in six states was prepared in 1958 by Kathleen Kepner, Research Associate, Wisconsin Legislative Reference Library: A Brief Resume of State Legislation to Prohibit Discrimination in Employment on the Grounds of Age, Informational Bulletin No. 117, August 1958.

<sup>2</sup>Louisiana, Atty. Gen. Op., April 24, 1944.



Colorado's law simply prohibits age discrimination in the discharge of an employee. Like the Louisiana statute, there is no designated enforcement agency except that an aggrieved person may appeal to the courts.

Massachusetts has two laws prohibiting age discrimination in hiring and discharge, and an individual has the option of resorting to one or the other. Under the one not part of the Fair Employment Practice Act (Ch. 367, enacted in 1937), domestic workers and farm labor are exempted and the only penalty provision for violation of the law is publication of the name of the employer in the newspapers. The Division on Employment of the Aging of the Department of Labor and Industries is charged with enforcement of the 1937 law. (See Table 2.)

Age discrimination in the hiring, discharge, terms, conditions and privileges of employment is prohibited under the laws of Alaska, Connecticut, Delaware, Massachusetts, New York, Pennsylvania and Wisconsin. (See pages 13-20 for examples of statutory language.)

Most of the laws prohibit discharge or discrimination because a person filed a complaint, testified or assisted in a proceeding under the law. The provision of the Wisconsin statute is typical. It provides:

For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he has opposed any discriminatory practices under this section or because he has made a complaint, testified or assisted in any proceeding under this section. (Wisc. Statutes, Ch. 111, Subchapter II.)

Protection against age discrimination in the licensing of persons is provided under the Delaware, New York and Wisconsin statutes.

A stipulation requiring posting of notices regarding prohibition of age discrimination in employment by employers, employment agencies and labor organizations is included in the laws of Pennsylvania, Massachusetts and New York. An example of this type of provision may be found in the Massachusetts law which reads as follows:

Every employer, employment agency and labor union subject to this act, shall post in a conspicuous place or places on his premises a notice to be prepared or approved by the commission, which shall set forth excerpts of this chapter and such other relevant information which the commission deems necessary to explain the act. Any employer, employment agency or labor union refusing to comply with the provisions of this section shall be punished by a fine of not less than ten dollars nor more than one hundred dollars. (Mass. General Laws, Sec. 56, Ch. 151B.)

Posting of notices at places of employment is required under the Wisconsin statute.

Three of the four FEP laws--Delaware, New York and Pennsylvania--which include a provision regarding a time limit for the filing of complaints, set a period of 90 days after the alleged act of violation within which an aggrieved person must file his complaint. Under the Massachusetts statute, a time limit of six months is stipulated. The Pennsylvania statute stipulates in this respect as follows:

Any complaint filed pursuant to this section must be so filed within ninety days after the alleged act of discrimination. Any complaint may be withdrawn at any time by the party filing the complaint. (Purdon's Statutes Annotated, Title 43, Sec. 959.)

The enforcement function is charged to the state departments of labor in the states of Alaska, Delaware, Oregon, R.I., Wisconsin and the Commonwealth of Puerto

Rico. Special commissions charged with enforcement of the law have been set up in Connecticut, Massachusetts, New York and Pennsylvania. A full list of prohibited practices is written into the New York and Pennsylvania laws and administrative rulings interpreting lawful and unlawful practices have been issued by enforcement agencies in Massachusetts, Wisconsin, Pennsylvania, and New York.

The full text of selected sections of the Colorado, Delaware and New York statutes appear at the end of this report along with tables which briefly summarize the provisions of the twelve laws.

### DEFINITION OF AGE

The purpose of this type of protective legislation is presumably to extend equal employment opportunity to those who have not reached retirement age but who have arrived at an age when it is difficult to move into new employment. This "critical age" varies under the twelve statutes presently in effect. Four states-- Delaware, Massachusetts, New York and Rhode Island--define "age" as 45 to 65 years old. Pennsylvania defines it as 40 to 62 years old; Wisconsin, 40 to 65 years old; Colorado, 18 to 60 years old; Oregon, 25 to 65 years old; and Louisiana, under 50 years old. "Age" is not specifically defined in the statutes of Alaska and Connecticut. (See also Table 1.) Termination of employment at a particular age in cases where a bona fide retirement or pension plan is operative, is permitted under the laws of Alaska, Connecticut, Delaware, Louisiana, Massachusetts, New York, Pennsylvania, Rhode Island and Wisconsin.

Examples of administrative rulings interpreting the age provisions follow:

### Advertisements

Blind advertisements setting forth a box number and using the phrase "State age" are permissible because of the amendment to Section 5(b)(1) of the Act. Pa., Rulings of legal counsel of the Pennsylvania Fair Employment Practice Commission, published December 1958. Hereafter referred to as Pa., Rulings of legal counsel.

Whether advertisements qualified by such statements as "not over 39," "recent college or high school graduate," "young women" and "18 to 25" are unlawful depends upon the facts of each case. If such advertisements have requirements reasonably related to the duties of a particular job they would not be unlawful. Wisconsin: Atty. Gen. Op., Dec. 7, 1959.

The responsibility of avoiding illegal advertisements dealing with age is that of the newspaper as well as the employer who seeks to place the "ad". Pa., Rulings of legal counsel.

Advertisements from airplane companies on the West Coast for insertion in Pennsylvania newspapers stating, "Only between 25 and 35 need apply" are illegal. Pa., Rulings of legal counsel.

A given phrase is proper for use in "help wanted" advertisements if: (1) it conceivably includes applicants between ages 40 and 62; or (2) it is a phrase which describes a well-recognized job title in the vicinity in which it is being used. Applying these tests, the following phrases in advertisements have been ruled to be lawful: Middle age or elderly man; Night watchman, retired or pensioned; Mature woman, man, couple; College student wanted; Korean veteran preferred; Draft exempt; Grocery clerk, student; College graduate; Trainee; Waiter, over 21; Minimum age 20; Girl or woman; Recent high school graduate; Boy or man.

The following phrases in advertisements have been ruled to be unlawful because they do not conceivably include the group between 40 and 62: The word "young" used as an adjective, such as "young man", "young woman", "young trainee", "young college graduate" and "young veteran". The word "boy". The word "girl". Any expression specifically limiting the age limits, such as "draftsmen between ages 25 and 35". The phrase "teen-age". Pa., Rulings of legal counsel.

An employer's request to an employment agency to refer "only women under 45" constitutes an unlawful employment practice. Pa., Rulings of legal counsel.

An employer specifies that he wants a bookkeeper under 35 years of age. Since the age specification necessarily bars all applicants over 35 years of age, including those between 45 and 65, it is unlawful, under subdivision 1 and under subdivision 3-a of section 296 of the Law, unless the employer comes within one of the statutory exceptions. N.Y.S.C.A.D., Guides to interpretation of the age provisions of the N.Y. State Law Against Discrimination, effective July 1, 1958. Hereafter referred to as N.Y.S.C.A.D., Guides, 1958.

An employer specifies that he wants a bookkeeper over 35 years of age. A 29 year old applicant refused employment because he is under 35 is not an "aggrieved person" within the meaning of the Law. N.Y.S.C.A.D., Guides, 1958.

An employer specifies "15 years of experience required". A 25 year old applicant refused employment is not an "aggrieved person" within the meaning of the Law, although the specification would bar him from employment. N.Y.S.C.A.D., Guides, 1958.

The general test as to whether an advertisement placed in a newspaper is lawful or unlawful is whether the advertisement states an age barrier excluding applicants over an indicated age.

1. The use of an age specification or limitation which bars workers over a maximum age is unlawful.

Example: "Wanted--Handyman between 35 and 45."

"Wanted--Stenographers under 35."

2. The use of the word "young" in describing an applicant is unlawful.

Example: "Wanted--Young man."

"Wanted--Young woman." N.Y.S.C.A.D., Guides, 1958.

#### Application Forms

The mere insertion of age or date of birth in an employment application form would not, in and of itself, constitute discrimination under the state law. Wisconsin: Atty. Gen. Op., December 7, 1959.

Examples of the lawful use of an application form with inquiry "state age" or "state date of birth" accompanied by the statement "The New York Law Against Discrimination prohibits discrimination because of age":

1. An employer requires age information in order to check upon an applicant's personal history, educational background or prior work record.
2. An applicant is required to give his age to a medical examiner in connection with a pre-employment medical examination.
3. An employer requires age information in order to carry out a policy of advising prospective employees of their potential rights under the employer's pension plan and insurance systems. N.Y.S.C.A.D., Guides, 1958.

An employer has a policy of not hiring persons over 35 years of age as file clerks regardless of individual abilities. The employer's application form asks

the applicant's date of birth to fulfill this policy. THIS IS UNLAWFUL. N.Y.S.C.A.D., Guides, 1958.

A pre-employment inquiry as to age on an application form will not be deemed to express a "limitation or specification" and will not be in violation of the Law when (1) the inquiry is made in good faith for a non-discriminatory purpose and (2) the application form states that the New York Law Against Discrimination prohibits discrimination because of age. N.Y.S.C.A.D., Guides, 1958.

#### Retirement Plans

The age provisions in the Pennsylvania Law do not apply where employment is terminated under a bona fide retirement, pension, group life or group health and accident plan. Pa., Rulings of legal counsel.

A bona fide plan of retirement which has been approved for federal tax deductions under the provisions of the Internal Revenue Code is not in violation of the provisions of the FEP Act, even though the retirement age set forth in the plan is less than 62. Pa., Rulings of legal counsel.

A condition in a bona fide group insurance plan that an employee is not eligible to join unless he has been employed in that firm for a minimum period of ten years is valid and not in violation of the age provisions of the Act. Pa., Rulings of legal counsel.

A provision in a bona fide group life insurance or group health and accident plan which makes any employee of age 41 or more ineligible is valid and not in violation of the age provisions of the Act. Pa., Rulings of legal counsel.

Retirement or pension plan provisions calling for involuntary retirement of employees between 45 and 65 are invalid. Memo. of Mass. Commission Against Discrimination, Oct. 1958.

It would be unlawful for an employer to comply with the terms of an insurance contract covering pensions which provides that no one shall be hired over age 30. Wisconsin: Atty. Gen. Op., Dec. 7, 1959.

An employer has a funded retirement plan which provides for compulsory retirement and the receipt of retirement benefits at age 60. The plan was established before July 1, 1958, has been filed and found qualified under the Internal Revenue Code and has been uniformly applied to those under its coverage. A qualified employee reaches 60 years of age and his employment is terminated pursuant to the retirement plan. THIS IS LAWFUL. N.Y.S.C.A.D., Guides, 1958.

An employer has a retirement policy which provides for compulsory retirement at age 60. The employer does not have a funded pension plan, but does have a policy of paying pension benefits on a non-funded pay-as-you-go basis. The policy as to compulsory retirement and the payment of retirement benefits on a non-funded, pay-as-you-go basis has governed the employer's operations for a substantial period prior to July 1, 1958, the effective date of the age amendment to the Law Against Discrimination, and such policy has been communicated to and uniformly applied to all employees. A qualified employee reaches age 60 and his employment is terminated pursuant to the retirement policy. THIS IS LAWFUL. N.Y.S.C.A.D., Guides, 1958.

The existence of a provision in a retirement plan stating a maximum eligibility age for entrance into a retirement plan shall not in itself authorize rejection of an applicant who is over the maximum eligibility age for the retirement plan,



provided, however, that the compulsory retirement age provision set forth in the retirement plan may be made applicable to such employee. Examples:

1. An employer has a bona fide retirement plan or system which provides for a maximum entrance age of 45 and a compulsory retirement age of 65. A qualified applicant for employment, age 46, is rejected for employment on the basis that he is ineligible for the employee's retirement plan. The employer asserts that he does not choose to employ anyone who is not eligible for such plan, although the employer could do so without causing the plan to become disqualified under the Internal Revenue Code. THIS IS UNLAWFUL. N.Y.S.C.A.D., Guides, 1958.

2. An employer has a bona fide retirement plan or system which provides for a maximum entrance age of 45 and a compulsory retirement age of 65. A qualified applicant for employment, age 46, applies for employment. The employer advises such applicant that he will be accepted for employment but that the terms of his employment must provide for exclusion from the retirement plan and compulsory retirement at 65 (or that the employee will receive some form of reduced benefits upon retirement at age 65 based on his entrance age). THIS IS LAWFUL. N.Y.S.C.A.D., Guides, 1958.

### Privileges of Employment

An employer may vary insurance coverages according to an employee's age, and such varying of insurance coverages may apply to persons between the ages of 45 and 65, or any age.

Example: An employer establishes a life insurance plan under which the benefits are an amount equal to two years' straight time earnings up to age 60 with a gradual reduction thereafter to an ultimate of one year's straight time earnings at age 65. THIS IS LAWFUL. N.Y.S.C.A.D., Guides, 1958.

### COVERAGE

Four states--Connecticut, Massachusetts, Pennsylvania and Rhode Island--specifically extend the law to include state and local government. Puerto Rico includes government agencies and instrumentalities operating as private businesses or enterprises. Labor organizations are also prohibited from exercising age discrimination against their members under nine of the twelve statutes. Employment agencies are included in the coverage of the laws in six states. (See Table 2.) The Wisconsin and New York laws extend the prohibition to licensing agencies. Usually exempted from these prohibitions are social, religious, fraternal, charitable and non-profit organizations.

Administrative rulings interpreting the provisions of the New York and Pennsylvania laws as they apply to employment agencies follow:

College placement bureaus, although situated in non-profit schools and colleges, are nevertheless employment agencies which are bound by the provisions of the Act. Pa., Rulings of legal counsel.

Private employers and employment agencies soliciting employees within Pennsylvania for jobs outside the State are bound by the provisions of the Act. Other states seeking employees in Pennsylvania must conform with the provisions of the Act. Pa., Rulings of legal counsel.

An employment agency undertaking to fill a job order containing an age specification will share responsibility with the employer placing the job order if it is

determined upon complaint or otherwise that the age specification was not based upon a bona fide occupational qualification. The employment agency, however, will not be deemed by the Commission to be in violation of the Law, regardless of the determination as to the employer, if the employment agency acts in good faith to comply with the Law and does the following: makes and maintains a written record, available to the Commission, of each job order which it seeks to fill upon the basis of a claim of bona fide occupational qualification. Such record shall include the name of the employer, the description of the job and the basis of the claim for bona fide occupational qualification. N.Y.S.C.A.D., Guides, 1958.

An employment agency may use an application form containing the inquiry "state age" or "state date of birth" provided that (1) such inquiry is accompanied by the statement "The New York Law Against Discrimination prohibits discrimination because of Age," and (2) the information obtained is used to fill job orders with age specifications only under the above procedure. N.Y.S.C.A.D., Guides, 1958.

### BONA FIDE OCCUPATIONAL QUALIFICATIONS

Recognizing that employers may be required to impose age limitations in jobs where age is related to job performance, such as those requiring great physical strength and endurance, eight states have provisions in their laws exempting such jobs on the grounds that age is a "bona fide occupational qualification." Thus, the automatic termination of employment of all pilots at age 60, without reference to the individual's physical condition at terminal age is permitted under the New York law.<sup>3</sup>

The Wisconsin statute provides in this respect as follows:

Nothing in this subsection shall be construed to prevent termination of the employment of any person physically or otherwise unable to perform his duties, nor to affect any retirement policy or system of any employer where such policy or system is not a subterfuge to evade the purposes of this subsection, nor to preclude the varying of insurance coverage according to an employee's age: nor to prevent the exercise of an age distinction with respect to employment of persons in capacities in which the knowledge and experience to be gained might reasonably be expected to aid in the development of capabilities required for future advancement to supervisory, managerial, professional or executive positions.

Law enforcement or fire fighting departments, and persons who employ individuals in any other hazardous occupation are thus exempted in the application of the Wisconsin law.<sup>4</sup> Bona fide apprenticeship training programs have been interpreted to be exempt under these clauses.

---

<sup>3</sup> N.Y. State Commission Against Discrimination, Guides to Interpretation of the Age Provisions of the N.Y. State Law Against Discrimination, effective July 1, 1958. However, the termination of employment based on the employer's general belief that persons over the age of 60 usually become physically unable to perform the duties required in the job category in question is unlawful unless the employer can establish (a) that his general belief has a substantial basis in fact and (b) that it is not practicable to pass upon each individual employee's qualifications.

<sup>4</sup> Wisconsin, Atty. Gen. Op., Dec. 7, 1959.

## PENALTY PROVISIONS

Some form of penalty for violation of the law and/or violation of the orders of the enforcement agency is provided for in 9 of the 12 laws. Fines range from \$100 to \$500 and imprisonment terms from 30 days to one year. Three states--Connecticut, Rhode Island and Wisconsin--have no penalty provisions in their laws, but they all provide that the enforcement agency may appeal to the courts for enforcement of orders.

Puerto Rico's law sets forth the following penalties: (a) (1) civil liability for a sum equal to twice the amount of the damages sustained by the employee or applicant for employment, (2) or for a sum not less than \$100 nor more than \$1,000, if no pecuniary damages are determinable, (3) or twice the amount of damages sustained if it were under \$100; and (b) a fine of not less than \$100 nor more than \$500, and/or imprisonment for a term not less than 30 days nor more than 90 days.

## ADMINISTRATIVE EXPERIENCE

In the spring of 1958, a summary of the administrative experience under the age-discrimination laws of the five states which had such laws in effect in 1958 appeared in the Northwestern University Law Review.<sup>5</sup> According to that report little was known of the existence of these laws in Colorado and Louisiana. In Pennsylvania, where the law went into effect in 1956, only 15 cases of alleged age discrimination were brought during the first year of operation and factors other than age were dominant in all of them. In Rhode Island where the law also went into effect in 1956, there had not been a single complaint filed through the end of 1957. The Massachusetts Commission Against Discrimination handled over 300 cases of alleged age discrimination during the period 1953-1957, but none of them went to court and only an average of 10 cases per year were brought by employees themselves.<sup>6</sup>

According to an interim report by the Massachusetts Legislative Research Council, the age-discrimination law has not worked out too well.<sup>7</sup> The following quotation contains this explanation:

With the enactment of 1950 amendments to the Fair Employment Practice Law, the "policeman's approach" to discrimination against older workers came to a close. After several years of practical experience with the negative type of legislation, administrative officers, legislators and the organizations representing the aged began to urge positive action to improve the employment opportunities for workers over 40 years of age through such measures as: (1) educational programs designed to reduce prejudice and to sell the abilities of older workers; (2) vocational training of older workers, with especial emphasis on the latter in the case of workers unemployed because of technological changes, plant closures or plant emigrations; (3) improvements in

---

<sup>5</sup>Northwestern University Law Review, "Age Discrimination in Employment: Legislative and Collective Bargaining Solutions," Mar.-Apr., 1958, pp. 96-108.

<sup>6</sup>Kepner, A Brief Resume of State Legislation to Prohibit Discrimination in Employment on the Grounds of Age, pp. 3-4.

<sup>7</sup>Report Relative to Means of Absorbing the Labor Surplus in Older Age Groups, submitted by the Mass. Legislative Research Council, Feb. 12, 1957.

state job placement programs; (4) economic and social research; (5) liberalization of the compulsory retirement provisions of the State Retirement Law.<sup>8</sup>

During the period from December 1, 1957 to November 30, 1958, the Massachusetts Commission handled over 1,000 complaints and investigations based upon alleged discrimination because of age. Most of these cases dealt with unlawful inquiries in application forms and unlawful age specifications in newspaper advertisements. A tabulation of the complaints and investigations follows:

Nature of Complaints and Investigations:

Based upon alleged color discrimination .....	1059
Based upon alleged religious discrimination .....	277
Based upon alleged discrimination because of race .....	47
Based upon alleged discrimination because of national origin	294
Based upon alleged discrimination because of ancestry .....	32
Based upon alleged discrimination because of age .....	1125
Total	2834 9

In the first six months following the amendment of the N.Y. FEP Act to include age discrimination, 70 complaints were filed with the State Commission Against Discrimination alleging discrimination under this provision. During 1958, of the total 719 cases handled by the SCAD, 464 complaints alleged discrimination because of color; 63 because of creed; 106 because of national origin; 70 because of age; 5 alleged unlawful pre-employment inquiries or specifications, and 11 charged discrimination because the complainants had opposed discriminatory acts. The 70 complainants alleging age discrimination in employment ranged in age from 38 years to 81. Eleven of them involved those in the age group 35-44 years; 15 in the age group 45-54 years; 29 in the age group 55-64 years; 11 in the age group 65-74; 4 in the age group 75-84. A refusal to hire was reported as the most frequent charge of discrimination, occurring in 35 complaints. Another 10 complaints alleged dismissal from employment, 6 forcing of retirement, and one discrimination in the conditions of employment (the complainant alleged that he received small raises because of his age). Eleven complaints alleged that referral to a job was withheld by an employment agency. One complaint alleged that union membership was withheld, and five that the unions discriminated in the conditions and privileges of union membership. The remaining complaint charged that a newspaper help-wanted advertisement contained an unlawful specification that applicants should be between 30 and 40 years of age.

The jobs involved in the complaints included 13 professional and managerial (engineers, auditor, accountant, writer, draftsman, chemical worker, auto equipment supervisor, office managers, and games manager); 5 salesmen and salesclerks; 18 clerical workers of various kinds; 13 skilled workers (foremen, inspectors, painters, plasterers, lathers, steamfitter, railroad fireman and oiler, and baker); 13 semi-skilled and unskilled workers (truck drivers, machine operators, factory worker, egg candler, building fireman, warehouseman, park helper, sewage treatment workers); and 8 service workers (Santa Claus, doorman, elevator operator, pantry maid, cleaning woman, guards, ward attendant, and lunch room worker). 10

---

<sup>8</sup>Ibid., p. 50.

<sup>9</sup>Executive Dept., The Commonwealth of Massachusetts, Annual Report of the Massachusetts Commission Against Discrimination, Dec. 1, 1957-Nov. 30, 1958, pp.4-5, 14.

<sup>10</sup>Executive Dept., State Commission Against Discrimination, Report of Progress, 1958, pp. 26-27, 32-33.

Table 1

STATE LAWS PROHIBITING DISCRIMINATION IN EMPLOYMENT  
ACCORDING TO AGE, FEBRUARY 1961

State	Chapter No. and Year Enacted	Effective Date	Included in FEP Act	Ages Protected	Enforcement Agency
Alaska	Ch.10 1960	2/24/60	No	----	Dept. of Labor <sup>2</sup>
Colorado	Ch.137 1903	----	No	18-60 yrs.	----
Connecticut	Ch.563 1959	10/1/59	Yes	----	Commission on Civil Rights <sup>2</sup>
Delaware	Ch.337 1960	7/9/60	Yes	45-65 yrs.	Division Ag. Discrimination, Labor Comms.
Louisiana	Ch.226 1934	----	No <sup>1</sup>	Under 50 yrs.	----
Massachusetts	Ch.367 1937	10/1/37	No	45-65 yrs.	Dept. of Labor and Industries <sup>2</sup>
	Ch.697 1950	----	Yes	45-65 yrs.	Fair Employment Practice Comm. <sup>2</sup>
New York	Ch.738 1958	7/1/58	Yes	45-65 yrs.	State Comms. Ag. Discrimination <sup>2</sup>
Oregon	Ch.547 1959	----	Yes	25-65 yrs.	Commissioner, Bureau of Labor <sup>2</sup>
Pennsylvania	Ch.222 1955	7/1/56	Yes	40-62 yrs.	Fair Employment Practice Comm. <sup>2</sup>
Puerto Rico	Ch.100 1959	6/30/59	No <sup>1</sup>	30-65 yrs.	Secretary of Labor
Rhode Island	Ch.3795 1956	10/1/56	No	45-65 yrs.	Dept. of Labor <sup>2</sup>
Wisconsin	Ch.149 1959	----	Yes	40-65 yrs.	Industrial Commission <sup>2</sup>

<sup>1</sup>Louisiana and Puerto Rico have no fair employment practices act.

<sup>2</sup>Provides for judicial review.



Table 2. BRIEF SUMMARY OF PROVISIONS OF THE LAWS OF ELEVEN STATES AND THE COMMONWEALTH OF PUERTO RICO PROHIBITING DISCRIMINATION IN EMPLOYMENT ACCORDING TO AGE, FEBRUARY 1961

State	Coverage	Employment Practices in Which Age Discrimination Prohibited	Penalty Provisions
Alaska	Private employers of 1 or more employees <sup>1</sup> Labor organizations	Hire, discharge, <sup>2</sup> discriminate in terms, conditions or privileges of employment <sup>3</sup> Use in hiring and recruitment, an employment agency and other sources which discriminate against persons because of their age	Willful violation of order of enforcement agency: Fine of \$500 or less
Colo.	Private employers	Discharge <sup>3</sup>	Violation of law: Fine of \$100 to \$250 for each offense
Conn.	Private employer of 5 or more employees (exempts domestics) <sup>1</sup> Employment agencies Labor organizations State and local govt.	Hire, discharge, <sup>2</sup> discriminate in compensation or in terms, conditions or privileges of employment <sup>3</sup> Advertisements of employment opportunities <sup>3</sup>	No penalty for willful violation except that comms. may appeal to the court for enforcement order
Del.	Private employers Labor organizations Employment agencies	Hire, license, discharge, <sup>2</sup> discriminate in compensation, terms, conditions or privileges of employment Print, circulate statement or advertisement or to use application form expressing age discrimination <sup>3</sup>	Violation of law: 1st offense-Fine of \$200 or less; 2nd offense-Fine of \$500 or less and/or imprisonment of 90 da. or less
La.	Employer of 25 or more employees Ch. 367: Private employers (exempts domestic and farm labor) Ch. 697: Private employers of 6 or more employees; <sup>1</sup> labor organizations; state and local govt.; employment agencies	Hire and discharge <sup>2</sup>  Hire and discharge  Hire, discharge, <sup>2</sup> discriminate in compensation or in terms, conditions or privileges of employment <sup>3</sup> Print, circulate statement or advertisement or to use application form expressing age discrimination <sup>3</sup>	Violation of law: Fine of \$500 or less and/or imprisonment of 90 da. or less Violation of law: publication of employer's name in newspapers Willful violation of order of enforcement agency: Fine of \$500 or less and/or imprisonment of 1 yr. or less
Mass.	Private employers of 6 or more employees <sup>1</sup> Employment agencies Labor organizations Licensing agencies	Hire, discharge, <sup>2</sup> license, discriminate in compensation or in terms, conditions or privileges of employment <sup>3</sup> Print, circulate statement or advertisement or to use application form expressing age discrimination <sup>3</sup>	Willful violation of enforcement agency's order: Fine of \$500 or less and/or imprisonment of 1 yr. or less
N.Y.	Private employers of 6 or more employees <sup>1</sup> Employment agencies Labor organizations Licensing agencies	Hire, discharge, <sup>2</sup> license, discriminate in compensation or in terms, conditions or privileges of employment <sup>3</sup> Print, circulate statement or advertisement or to use application form expressing age discrimination <sup>3</sup>	Willful violation of enforcement agency's order: Fine of \$500 or less and/or imprisonment of 1 yr. or less

Oreg.	Private employers of 6 or more employees <sup>4</sup>	Hire, discharge, suspend, demote <sup>3</sup>	Violation of law: Fine of \$500 or less and/or imprisonment of 1 yr. or less
Pa.	Private employers of 12 or more employees <sup>1</sup> Labor organizations Employment agencies State and local govt. Private employers Govt. agencies operating as private businesses or enterprises Labor organizations, inc. the officers, directors or representatives	Hire, discharge, <sup>2</sup> discriminate in compensation or in terms, conditions or privileges of employment <sup>3</sup> Print, circulate statement or advertisement indicating limitation or preference as to age Limit hiring to emp. agencies which so discriminate Hire, rehire, discharge, suspend, demote or discriminate in compensation and working conditions	Willful violation of order of enforcement agency: Fine of \$100 to \$500 and/or imprisonment of 30 da. or less
P.R.			See page 8.
R.I.	Private employers of 1 or more employees <sup>1</sup> Labor organizations State and local govt. Private employers <sup>1</sup> Labor organizations Person in fields of housing, recreation, education, health and social welfare, or any licensing agency; employment agencies	Hire, admit, license, terminate <sup>2</sup> or discriminate in promotion, compensation or in terms, conditions or privileges of employment Print, circulate advertisement or application form expressing age discrimination <sup>3</sup>	No penalty for willful violation except that comms. may appeal to the court for enforcement order
Wisc.			No penalty for willful violation except that comms. may appeal to the court for enforcement order

- 1 General exemption of social, fraternal, charitable, educational, religious, non-profit corporations. Conn., Mass., N.Y., Oreg., Pa., and R.I. exempt domestic workers; Pa. and R.I. exempt agricultural workers. R.I. includes in its coverage non-profit organizations engaged in social service work.
- 2 Employment may be terminated in cases of a bona fide retirement or pension plan. Ia. specifically requires that the pension plan requires no more than 35 years of experience and with pension allowances not less than \$45 per quarter. The N.Y. and Wisc. laws specifically protect termination of employment because of inability to perform the work and the varying of insurance coverages according to an employee's age.
- 3 Unless based upon a bona fide occupational qualification. A policy ruling of the Mass. Comms. Ag. Discrimination, adopted Dec. 10, 1946 and revised Jan. 1958, states that the requirement that "employment shall not be denied a person because of race, color, religion, creed, national origin, age or ancestry applies also to and includes rehiring, reinstatement and upgrading of employees."
- 4 State and local government is not included as an "employer" under this law. Provisions prohibiting discrimination on account of age by public employers were enacted by Chapter 689, L. 1959.

Source: Commerce Clearing House, Labor Law Reporter, State Laws, Vols. 1 and 2.

## Appendix 1

### PROVISIONS OF LAWS PROHIBITING AGE DISCRIMINATION IN EMPLOYMENT

The following is the full text of the provisions which prohibit discrimination in employment because of age. Colorado Revised Statutes, 1953.

Sec. 80-4-16. Age of employee not ground for discharge. No person, firm, association or corporation, carrying on or conducting, within this state, any business requiring the employment of labor, shall discharge any individual between the ages of eighteen and sixty years, solely and only upon the ground of age; provided that such individual is well versed in the line of business carried on by such person, persons, firm, association or corporation, and is qualified physically, mentally and by training and experience to satisfactorily perform and does satisfactorily perform the labor assigned to him, or for which he applies.

80-4-17. Penalty for violation. Any person, firm, association or corporation, or officer, agent or representative of such corporation, who violates, or permits to be violated, any provision of such section 80-4-16, upon conviction thereof, shall be fined not less than one hundred dollars, nor more than two-hundred and fifty dollars, for each and every violation.

## Appendix 2

### FAIR EMPLOYMENT PRACTICE ACT

The following is the full text of the Delaware law which prohibits discrimination in employment because of age, race, creed, color or national origin. It was enacted by Ch. 337, L. 1960, approved and effective July 9, 1960.

Section 1. (Unlawful Employment Practices). It shall be unlawful employment practice or unlawful discrimination, as the case may be,

(a) for an employer or employment agency to refuse to hire, employ or license, or to bar or discharge from employment, any individual because of his race, creed, color or national origin, or because such individual is between 45 and 65 years of age;

(b) for an employer or employment agency to discriminate against any individual in compensation or in the terms, conditions or privileges of employment because of race, creed, color or national origin, or because such individual is between 45 and 65 years of age;

(c) for any employer or employment agency to print, circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or make any inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination or unless based on a bona fide occupational qualification;

(d) for any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employers or employees because of race, creed, color or national origin, or because any such person, member, employer or employee is between the ages of 45 and 65 years;

(e) for any employer, labor organization or employment agency to discharge, expel, penalize or otherwise discriminate against any person because he has opposed any practice forbidden by this act or because he has filed a complaint, testified or assisted in any proceeding respecting the employment practices and discrimination prohibited under this act;

(f) for any person, whether an employer, employee or not, to aid, abet, incite, compel or coerce the doing of any of the practices forbidden by the act, or to attempt to do so.

Sec. 2. (Division Against Discrimination: Powers). The "Division Against Discrimination" in the Labor Commission of Delaware is hereby created and shall have jurisdiction over the subject of employment practices and discrimination made unlawful by this act, provided, however, that any complaint that there has been a violation of Section 1 of this Act must be filed with the Division Against Discrimination within ninety days after the alleged act of violation. The said division shall make such rules and regulations as may be necessary to effectuate the purposes of this act.

Sec. 3. (Conflicting Laws; Occupational Qualifications; Retirement Plans). Nothing contained in this act shall be construed to conflict with the laws relating to child and female labor, nor to prohibit the establishment and maintenance of bona fide occupational qualifications, nor to prevent the termination or change of the employment of any person who is unable to perform his duties, nor to interfere with the operation of the terms or conditions of any bona fide retirement, pension, employee benefit or insurance plan.

Sec. 4. (Penalties). Whoever shall be guilty of this act, shall, for the first offense be fined not more than \$200 and for the second offense, shall be fined not more than \$500, or imprisoned for not more than 90 days, or both.

### Appendix 3

#### FAIR EMPLOYMENT PRACTICE ACT

The following is the full text of Ch. 18, Consolidated Laws, incorporated in the Executive Law of New York, Ch. 23, Laws 1909, by Ch. 118, Laws 1945, as recodified by Ch. 800, L. 1951, as amended.

Section 290. Purposes of Article. This article shall be known as the "Law Against Discrimination." It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights; and the legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color or national origin are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is hereby created with power to eliminate and prevent discrimination in employment in places of public accommodation, resort or amusement and in publicly-assisted housing accommodations because of race, creed, color or national origin, and to take other actions against discrimination because of race, creed, color or national origin, as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes. (Section 290 reads as amended by Ch. 285, L. 1952 and Ch. 340, L. 1955.)

Sec. 291. Opportunity for Employment Without Discrimination a Civil Right. The opportunity to obtain employment without discrimination because of race, creed, color or national origin is hereby recognized as and declared to be a civil right.

Sec. 292. Definitions. When used in this article:

1. The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

2. The term "employment agency" includes any person undertaking to procure employees or opportunities to work.

3. The term "labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

4. The term "unlawful discriminatory practice" includes only those practices specified in section two hundred ninety-six of this article. (Subd. 4 reads as amended by Ch. 285, L. 1952.)

5. The term "employer" does not include a club exclusively social, or a fraternal, charitable, educational or religious association or corporation, if such club, association or corporation is not organized for private profit, nor does it include any employer with fewer than six persons in his employ.

6. The term "employee" and this article do not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

7. The term "commission", unless a different meaning clearly appears from the context, means the state commission against discrimination created by this article.

8. The term "national origin" shall, for the purposes of this article, include "ancestry."

Sec. 293. State Commission Against Discrimination. There is hereby created in the executive department a state commission against discrimination. Such



commission shall consist of five members, to be known as commissioners, who shall be appointed by the governor, by and with the advice and consent of the senate, and one of whom shall be designated as chairman by the governor. The term of office of each member of the commission shall be for five years, provided, however, that of the commissioners first appointed, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years.

Any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. Three members of the commission shall constitute a quorum for the purpose of conducting the business thereof. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

Each member of the commission shall receive a salary of thirteen thousand seven hundred dollars a year and shall also be entitled to his expenses actually and necessarily incurred by him in the performance of his duties.

Any member of the commission may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.

Sec. 294. General Policies of Commission. The commission shall formulate policies to effectuate the purposes of this article and may make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes.

Sec. 295. General Powers and Duties of Commission. The commission shall have the following functions, powers and duties:

1. To establish and maintain its principal office in the city of Albany, and such other offices within the state as it may deem necessary.
2. To meet and function at any place within the state.
3. To appoint such attorneys, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.
4. To obtain upon request and utilize the services of all governmental departments and agencies.
5. To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this article, and the policies and practice of the commission in connection therewith.
6. To receive, investigate and pass upon complaints alleging violations of this article.
7. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual commissioners.

In any such investigation or hearing, the commission, or individual commissioner, or an officer duly designated by the commission to conduct such investigation or hearing, may confer immunity in accordance with the provisions of section two thousand four hundred forty-seven of the penal law.

8. To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purposes of this article and of section eleven of article one of the constitution of this state, and the commission may empower them to study the problems of discrimination in all or

specific fields of human relationships or in specific instances of discrimination because of race, creed, color or national origin, and to foster through community effort or otherwise good-will cooperation and conciliation among the groups and elements of the population of the state, and make recommendations to the commission for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary traveling expenses; and the commission may make provisions for technical and clerical assistance to such agencies and councils and for the expenses of such assistance.

9. To issue such publications and such results of investigations and research as in its judgment will tend to promote goodwill and minimize or eliminate discrimination because of race, creed, color or national origin.

10. To render each year to the governor and to the legislature a full written report of all its activities and of its recommendations.

11. To adopt an official seal.

Sec. 296. Unlawful Discriminatory Practices. 1. It shall be an unlawful discriminatory practice:

(a) For an employer, because of age, race, creed, color or national origin of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(b) For a labor organization, because of the age, race, creed, color or national origin of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer.

(c) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color or national origin, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

(d) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

3a. It shall be unlawful discriminatory practice: (a) For an employer or licensing agency, because an individual is between the ages of forty-five and sixty-five, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment.

(b) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination respecting individuals between the ages of forty-five and sixty-five, or any intent to make any such limitation, specification or discrimination.

(c) For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

But nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the termination of the employment of any person who is

physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this subdivision; nor shall anything in said subdivisions be deemed to preclude the varying of insurance coverages according to an employee's age.

4. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.

Sec. 297. Procedure. Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself or his attorney-at-law, make, sign and file with the commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The industrial commissioner or attorney-general may, in like manner, make, sign and file such complaint. In connection with the filing of such complaint, the attorney-general is authorized to take proof in the manner provided in section four hundred six of the civil practice act. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this article, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

After the filing of any complaint, the chairman of the commission shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation in connection therewith; and if such commissioner shall determine after such investigation that probable cause exists for crediting the allegations of the complaint, he shall immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors. In case of failure so to eliminate such practice, or in advance thereof if in his judgment circumstances so warrant, he shall cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before three members of the commission, sitting as the commission, at a time and place to be specified in such notice. The place of any such hearing shall be the office of the commission or such other place as may be designated by it. The case in support of the complaint shall be presented before the commission by one of its attorneys or agents, and the commissioner who shall have previously made the investigation and caused the notice to be issued shall not participate in the hearing except as a witness, nor shall he participate in the deliberations of the commission in such case; and the aforesaid endeavors at conciliation shall not be received in evidence. The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. In the discretion of the commission, the complainant may be allowed to intervene and present testimony in person or by counsel. The commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed. If, upon all the evidence at the hearing the commission shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this article, the commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back

pay, restoration to membership in any respondent labor organization, or the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, as, in the judgment of the commission, will effectuate the purposes of this article, and including a requirement for report of the manner of compliance. If, upon all the evidence, the commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent. A copy of this order shall be delivered in all cases to the industrial commissioner, the attorney-general, and such other public officers as the commission deems proper. The commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Any complaint filed pursuant to this section must be so filed within ninety days after the alleged act of discrimination.

Sec. 298. Judicial Review and Enforcement. Any complainant, respondent or other person aggrieved by such order of the commission may obtain judicial review thereof, and the commission may obtain an order of court for its enforcement, in a proceeding as provided in this section. Such proceeding shall be brought in the supreme court of the state within any county wherein the unlawful discriminatory practice which is the subject of the commission's order occurs or wherein any person required in the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing before the commission, and the issuance and service of a notice of motion returnable at a special term of such court. Thereupon the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the commission. No objection that has not been urged before the commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. Any party may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, provided he shows reasonable grounds for the failure to adduce such evidence before the commission. The findings of the commission as to the facts shall be conclusive if supported by sufficient evidence on the record considered as a whole. All such proceedings shall be heard and determined by the court and by any appellate court as expeditiously as possible and with lawful precedence over other matters. The jurisdiction of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the appellate division of the supreme court and the court of appeals in the same manner and form and with the same effect as provided in the civil practice act for appeals from a final order in a special proceeding. The commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost and for the purposes of judicial review of the order of the commission. The appeal shall be heard on the record without requirement of printing. The commission may appear in court by one of its attorneys. A proceeding under this section when instituted by any complainant, respondent or other person aggrieved must be instituted within thirty days after the service of the order of the commission.

Section 299. Penal Provision. Any person, employer, labor organization or employment agency, who or which shall wilfully resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of duty under this article, or shall wilfully violate an order of the commission, shall be guilty of a misdemeanor and be punishable by imprisonment in a penitentiary, or

county jail, for not more than one year, or by a fine of not more than five hundred dollars, or by both; but procedure for the review of the order shall not be deemed to be such wilful conduct.

Sec. 300. Construction. The provisions of this article shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this article shall be deemed to repeal any of the provisions of the civil rights law or of any other law of this state relating to discrimination because of race, creed, color or national origin; but, as to acts declared unlawful by section two hundred ninety-six of this article, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. If such individual institutes any action based on such grievance without resorting to the procedure provided in this article, he may not subsequently resort to the procedure herein.

Sec. 301. Separability. If any clause, sentence, paragraph, or part of this article or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this article.