

MICHIGAN
SIXTY-FIFTH LEGISLATURE
SESSION OF 1949

HOUSE BILL No. 148

February 8, Introduced by Reps. Mrs. Griffiths and Leo J. Doyle, ordered printed and referred to the Committee on State Affairs.

A bill to protect and promote the welfare of the people of this state, relating to the prevention and elimination of practices of discrimination in employment and otherwise against persons because of race, creed, color or national origin; to create the fair practices commission and to prescribe its functions, duties, and powers; to provide for the appointment and compensation of its officers and employees; to provide for judicial review and enforcement of its findings and orders; to make an appropriation for carrying out the provisions of this act; and to prescribe penalties for the violation of the provisions of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "fair prac-
2 tices act."

1 Sec. 2. The legislature acting in the exercise of the police power of
2 the state for the protection of the public welfare, health and peace of
3 the people of this state, hereby finds and declares that practices of dis-
4 crimination against any of its inhabitants because of race, creed, color
5 or national origin are a matter of state concern, and that such dis-
6 crimination threatens not only the rights and proper privileges of its

7 inhabitants but menaces the institutions and foundation of a free demo-
8 cratic state.

1 Sec. 3. When used in this act:

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

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

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

12 4. The term "unlawful employment practice" includes only those
13 unlawful employment practices specified in section 6 of this act.

14 5. The term "employer" does not include a club exclusively social,
15 or a fraternal, charitable, educational or religious association or corpora-
16 tion, if such club, association or corporation is not organized for private
17 profit, nor does it include any employer with fewer than 8 persons in
18 his employ.

19 6. The term "employee" as used in this act does not include any

20 individual employed by his parents, spouse or child, or in the domestic
21 service of any person.

22 7. The term "commission", unless a different meaning clearly ap-
23 pears from the context, means the state fair practices commission cre-
24 ated by this act.

25 8. The term "national origin" shall, for the purpose of this act,
26 include "ancestry."

1 Sec. 4. A commission to be known and designated as the "Michigan
2 fair practices commission", hereinafter referred to as the commission, is
3 hereby created with power to eliminate and prevent discrimination in
4 employment because of race, creed, color or national origin, and to take
5 other actions against discrimination because of race, creed, color or na-
6 tional origin, as hereinafter provided. The commission is hereby given
7 general jurisdiction and power for such purposes.

8 The commission shall consist of 5 members to be known as commis-
9 sioners, who shall be appointed by the governor, by and with the advice
10 and consent of the senate, 1 of whom shall be designated as chairman
11 by the governor. The term of office of each member of the commission
12 shall be for 5 years: Provided, however, That of the commissioners
13 first appointed, 1 shall be appointed for a term of 1 year, 1 for a term
14 of 2 years, 1 for a term of 3 years, 1 for a term of 4 years, and 1 for a

15 term of 5 years: Provided further, That the members shall serve
 16 until the appointment and qualification of their successors. Upon the
 17 expiration of said terms, successors shall be appointed in like manner
 18 for terms of 5 years each. Vacancies shall be filled in the same manner
 19 as is provided for appointment in the first instance for the unexpired
 20 term.

21 Three members of the commission shall constitute a quorum for the
 22 purpose of conducting the business thereof. A vacancy in the commis-
 23 sion shall not impair the right of the remaining members to exercise
 24 all the powers of the commission.

25 Any member of the commission may be removed by the governor for
 26 misfeasance, malfeasance or nonfeasance in office, after being given
 27 a written statement of the charges and an opportunity to be heard
 28 thereon.

29 The members of the commission shall not actively engage in their re-
 30 spective business professions or callings but shall devote their entire
 31 time to the duties of their respective offices. Each member of the com-
 32 mission shall receive a salary of \$..... a year and shall also
 33 be entitled to his expenses actually and necessarily incurred by him in
 34 the performance of his duties.

35 All salaries and expenses authorized by this act shall be paid in the

36 same manner as the salaries and expenses of other state officers and
 37 employees are paid.

1 Sec. 5. The commission shall formulate policies to effectuate the
 2 purposes of this act and may make recommendations to agencies and
 3 officers of the state or local subdivisions of government in aid of such
 4 policies and purposes.

1 Sec. 6. The commission shall have the following functions, powers
 2 and duties:

3 1. To establish and maintain such offices within the state as it may
 4 deem necessary.

5 2. To meet and function at any place within the state.

6 3. To appoint such employees and agents as it may deem necessary,
 7 and prescribe their duties.

8 4. To obtain upon request and utilize the services of all governmental
 9 departments and agencies.

10 5. To adopt, promulgate, amend, and rescind suitable rules and
 11 regulations to carry out the provisions of this act, and the policies and
 12 practices of the commission in connection therewith.

13 6. To receive, investigate and pass upon complaints alleging dis-
 14 crimination in employment because of race, creed, color or national
 15 origin.

16 7. To hold hearings. Any member of the commission or its duly au-
17 thorized agents may issue a subpoena requiring any person to appear
18 before the commission, or its duly authorized agent at any reasonable
19 time and place, and be examined with reference to any matter within
20 the scope of the inquiry or investigation being conducted by the com-
21 mission and to produce any books, records or papers pertaining to the
22 question involved. Any member of the commission or its duly author-
23 ized agents may administer an oath or affirmation to a witness in
24 any matter before the commission, certify to official acts, and take depo-
25 sitions. In case of disobedience of a subpoena, the commission may in-
26 voke the aid of any circuit court in the state of Michigan in requiring
27 the attendance and testimony of witnesses and the production of books,
28 records and papers pertaining to the question involved. Any circuit
29 courts of the state within the jurisdiction of which such inquiry is
30 carried on may, in case of contumacy or refusal to obey subpoena, issue
31 an order requiring such person to appear before said commission and
32 to produce books, records, and papers if so ordered and give evidence
33 touching the matter in question. Any failure to obey such order of the
34 court may be punished by such court as a contempt thereof.

35 No person shall be excused from attending and testifying or from
36 producing records, correspondence, documents or other evidence in obe-

37 dience to the subpoena of the commission or of any individual commis-
38 sioner, on the ground that the testimony or evidence required of him
39 may tend to incriminate him or subject him to a penalty or forfeiture,
40 but no person shall be prosecuted or subjected to any penalty or for-
41 feiture for or on account of any transaction, matter or thing concern-
42 ing which he is compelled, after having claimed this privilege against
43 self-incrimination, to testify or produce evidence, except that such per-
44 son so testifying shall not be exempt from prosecution and punishment
45 for perjury committed in so testifying. The immunity herein provided
46 shall extend only to natural persons so compelled to testify.

47 8. To create such advisory agencies and conciliation councils, local,
48 regional or state-wide, as in its judgment will aid in effectuating the
49 purposes of this act and the commission may empower them to study
50 the problems of discrimination in all or specific fields of human rela-
51 tionships or in specific instances of discrimination because of race, creed,
52 color or national origin, and to foster through community effort or
53 otherwise good-will, cooperation, and conciliation among the groups and
54 elements of the population of the state, and make recommendations to
55 the commission for the development of policies and procedures in gen-
56 eral and in specific instances, and for programs of formal and informal
57 education which the commission may recommend to the appropriate

58 state agency. Such advisory agencies and conciliation councils shall be
59 composed of representative citizens, serving without pay, but with re-
60 imbursement for actual and necessary traveling expenses; and the com-
61 mission may make provision for technical and clerical assistance to such
62 agencies and councils and for the expenses of such assistance.

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

67 10. To make an annual survey of the existence and effect of dis-
68 crimination because of race, creed, color or national origin on the en-
69 joyment of civil rights by persons within the state.

70 11. To render each year to the governor and to the legislature a full
71 written report of all its activities and of its recommendations, which
72 report shall include a report of the survey prescribed in subsection 10
73 of this section and shall include the recommendations of the commission
74 as to remedial action.

75 12. To adopt a suitable official seal of which all courts of the state
76 shall take judicial notice.

1 Sec. 7. It shall be an unlawful employment practice:

2 1. For an employer, because of the race, creed, color or national

3 origin of any individual, to refuse to hire or employ or to bar or to dis-
4 charge from employment such individual or to discriminate against such
5 individual in compensation or in terms, conditions or privileges of em-
6 ployment.

7 2. For a labor organization, because of the race, creed, color or na-
8 tional origin of any individual, to exclude or to expel from its full mem-
9 bership such individual or to discriminate in any way against any of
10 its members or against any employer or any individual employed by an
11 employer.

12 3. For an employer or employment agency to print or circulate or
13 cause to be printed or circulated any statement, advertisement or pub-
14 lication, or to use any form of application for employment or to make
15 any inquiry in connection with prospective employment, which ex-
16 presses, directly or indirectly, any limitation, specification or discrim-
17 ination as to race, creed, color or national origin, or any intent to make
18 any such limitation, specification or discrimination unless based upon a
19 bona fide occupational qualification.

20 4. For any employer, labor organization or employment agency to
21 discharge, expel or otherwise discriminate against any person because
22 he has opposed any practices forbidden under this act or because he has
23 filed a complaint, testified or assisted in any proceeding under this act.

24 5. For any person, whether an employer or an employee or not, to
25 aid, abet, incite, compel or coerce the doing of any of the acts forbidden
26 under this act, or to attempt to do so.

1 Sec. 8. Any person claiming to be aggrieved by an alleged unlawful
2 employment practice may, by himself or his agent make, sign and file
3 with the commission a verified complaint in writing which shall state the
4 name and address of the person, employer, labor organization or em-
5 ployment agency alleged to have committed the unlawful employment
6 practice complained of and which shall set forth the particulars thereof
7 and contain such other information as may be required by the commis-
8 sion. The chairman of the Michigan unemployment compensation com-
9 mission, the attorney general, or the prosecuting attorney of any county
10 (for alleged unlawful employment practices committed within his
11 county) may, in like manner, make sign and file such complaint. Any
12 employer whose employees, or some of them refuse or threaten to re-
13 fuse to cooperate with the provisions of this act, may file with the com-
14 mission a verified complaint asking for assistance by conciliation or
15 other remedial action.

16 After the filing of any complaint, the chairman of the commission
17 shall designate 1 of the commissioners to make, with the assistance of
18 the commission's staff, prompt investigation in connection therewith;

19 and if such commissioner shall determine after such investigation that
20 probable cause exists for crediting the allegations of the complaint, he
21 shall immediately endeavor to eliminate the unlawful employment prac-
22 tice complained of by conference, conciliation and persuasion. The
23 members of the commission and its staff shall not disclose what has
24 transpired in the course of such endeavors.

25 In case of failure so to eliminate such practice, or in advance thereof
26 if in his judgment circumstances so warrant, he shall cause to be issued
27 and served in the name of the commission, a written notice, together
28 with a copy of such complaint, as the same may have been amended,
29 requiring the person, employer, labor organization or employment
30 agency named in such complaint hereinafter referred to as respondent,
31 to answer the charges of such complaint at a hearing before 3 members
32 of the commission, sitting as the commission at a time and place to be
33 specified in such notice. The place of any such hearing shall be the
34 office of the commission or such other place as may be designated by
35 it. The case in support of the complaint shall be presented before the
36 commission by 1 of its attorneys or agents, and the commissioner who
37 shall have previously made the investigation and caused the notice to
38 be issued shall not participate in the hearing except as a witness, nor
39 shall he participate in the deliberations of the commission in such case;

40 and the aforesaid endeavors at conciliation shall not be received in evi-
41 dence. The respondent may file a written verified answer to the com-
42 plaint and appear at such hearing in person or otherwise with or with-
43 out counsel, and submit testimony. In the discretion of the commission,
44 the complainant may be allowed to intervene and present testimony in
45 person or by counsel.

46 The commission or the complainant shall have the power reason-
47 ably and fairly to amend any complaint, and the respondent shall have
48 like power to amend his answer. The commission shall not be bound
49 by the rules of evidence prevailing in courts of law or equity. The
50 testimony taken at the hearing shall be under oath and be recorded.
51 If, upon all the evidence at the hearing the commission shall find that
52 a respondent has engaged in any unlawful employment practice as de-
53 fined in this act, the commission shall state its findings of facts and
54 shall issue and cause to be served on all parties a copy of its findings
55 of facts and an order requiring the respondent to cease and desist
56 from such unlawful employment practice and to take such affirma-
57 tive action including, but not limited to, hiring, reinstatement or up-
58 grading of employees, with or without back pay, or restoration to mem-
59 bership in any respondent labor organization, as, in the judgment of the
60 commission, will effectuate the purposes of this act, and including a re-

61 quirement for report of the manner of compliance. If, upon all the
62 evidence, the commission shall find that a respondent has not engaged
63 in any such employment practice the commission shall state its findings
64 of facts and shall issue and cause to be served on all parties a copy of
65 its findings of facts and an order dismissing the said complaint as to
66 such respondent.

67 A copy of its findings and order may be delivered in any case to the
68 chairman of the Michigan unemployment compensation commission, the
69 attorney general, the prosecuting attorney of the county in which the
70 alleged unlawful employment practice occurred and such other public
71 officers as the commission deems proper.

72 The commission shall establish rules of practice to govern, expedite
73 and effectuate the foregoing procedure and its own actions thereunder.
74 Any complaint filed pursuant to this section must be so filed within 6
75 months after the alleged act of discrimination.

1 Sec. 9. Any complainant, respondent or other person aggrieved by
2 such order of the commission may obtain judicial review thereof, and
3 the commission may obtain an order of court for its enforcement, by
4 filing a bill of complaint in the circuit court in chancery in the county
5 in which the commission conducted the hearing upon which its order was
6 issued, or in any county wherein an unlawful employment practice which

7 is the subject of the commission's order occurs, or wherein any person re-
8 quired in the order to cease and desist from an unlawful employment
9 practice or take other affirmative action resides. A written transcript of the
10 record upon the hearing before the commission shall be filed with the bill
11 of complaint or as soon as possible thereafter. Upon service of a copy of
12 the bill of complaint and a notice to plead and upon the filing of an answer,
13 the matter shall be at issue and shall stand ready for hearing upon 10 days'
14 notice by either party. On leave of the court any interested party may
15 file an answer to said complaint. Upon initiation of the proceeding
16 the court shall have jurisdiction of the proceeding and of the questions
17 determined therein and shall have power to grant such temporary re-
18 lief or restraining order as it deems just and proper, but only after
19 reasonable notice to the opposite party and hearing thereon, and shall
20 have authority to make and enter upon the pleadings, transcript, and
21 testimony an order enforcing, modifying, and enforcing as so modi-
22 fied, or setting aside in whole or in part the order of the commission.
23 No objection that has not been urged before the commission shall be
24 considered by the court, unless the failure or neglect to urge such ob-
25 jection be excused because of extraordinary circumstances. Any party
26 may move the court to in the interests of justice for leave to intro-
27 duce additional specified and material evidence, provided he shows reas-

28 onable grounds for the failure to adduce such evidence before the com-
29 mission, and, if leave is so granted, the court shall make findings there-
30 on. The findings of the commission as to the facts shall be conclusive
31 if supported by substantial evidence on the record considered as a whole,
32 including such additional evidence as may be introduced on leave of
33 court. All suits brought under this section shall have precedence
34 over any civil cause of a different nature pending in such court, and
35 the said circuit court shall always be deemed open for the hearing
36 thereof, and the same shall be heard and determined as expeditiously as
37 possible and in the same manner as other chancery suits. Appeals to the
38 supreme court shall be governed by the statutes and rules governing
39 chancery appeals, except that no stay of proceeding shall be granted by
40 the trial court for a period of longer than 20 days from the entry of
41 the final order or decree, any further stay to be ordered only by the
42 supreme court or any justice thereof, upon such terms and conditions as
43 shall be just.

44 A proceeding under this section must be instituted within 30 days
45 after service of the order of the commission.

1 Sec. 10. Any person, employer, labor organization or employment
2 agency who or which shall wilfully resist, prevent, impede or interfere
3 with the commission or any of its members or representatives in the

4 performance of duty under this act, or shall wilfully violate an order
5 of the commission shall be guilty of a misdemeanor and be punishable
6 by imprisonment in the county jail or state prison for not more than
7 1 year, or by a fine of not more than \$500.00, or by both, but pro-
8 cedure for the review of the order shall not be deemed to be such wilful
9 conduct.

1 Sec. 11. The provisions of this act shall be construed liberally for
2 the accomplishment of the purposes thereof. Nothing contained in this
3 act shall be deemed to repeal any of the provisions of any other law of
4 this state relating to discrimination because of race, creed, color or na-
5 tional origin; but, as to acts declared unlawful by section 8 of this
6 act, the procedure herein provided shall, while pending, be exclusive;
7 and the final determination therein shall exclude any other action, civil
8 or criminal, based on the same grievance of the individual concerned.
9 If such individual institutes any action based on such grievance with-
10 out resorting to the procedure provided in this act, he may not subse-
11 quently resort to the procedure herein.

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Introduced by Reps. Mrs. Griffiths and Leo J. Doyle.

February 8, Introduced, ordered printed and referred to the Committee on State Affairs.

Passed the House 1949

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Clerk of the House of Representatives.

Passed the Senate 1949

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Secretary of the Senate.

