

*B. G. Brooks*

98th Congress  
2d Session

COMMITTEE PRINT

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**FEDERAL CIVIL RIGHTS LAWS:  
A SOURCEBOOK**

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**SUBCOMMITTEE ON THE CONSTITUTION  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
NINETY-EIGHTH CONGRESS  
SECOND SESSION**



NOVEMBER 1984

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## LETTER OF TRANSMITTAL

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U.S. SENATE,  
SUBCOMMITTEE ON THE CONSTITUTION,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C., September 25, 1984.*

Senator STROM THURMOND,  
*Chairman, Committee on the Judiciary,  
U.S. Senate, Washington, D.C.*

DEAR CHAIRMAN THURMOND: This is to request your authorization to have printed, as a document of the U.S. Senate Committee on the Judiciary, a publication to be entitled "Federal Civil Rights Laws." This publication, prepared by the Subcommittee on the Constitution, in conjunction with the Congressional Research Service of the Library of Congress, is designed to serve as a concise reference to the general civil rights statutes of the Nation, as well as to constitutional amendments, Supreme Court decisions, executive orders, and State laws relating to civil rights. I believe that such a publication will prove extremely useful to Members of Congress and their staffs, as well as to the public, in providing convenient and authoritative access to this information. Thank you very much for your consideration of this request.

Sincerely,

ORRIN G. HATCH,  
*Chairman,  
Subcommittee on the Constitution.*

## FOREWORD

This is to authorize the Subcommittee on the Constitution to publish its proposed Committee print: *Sourcebook to Federal Civil Rights Laws*. I am in agreement that such a document will prove useful to Members of Congress, staff, and the public in better understanding the variety of statutes, executive orders, and court decisions that set forth the civil rights policy of the United States in the mid-1980's. I am confident that the proposed *Sourcebook* will provide an extremely useful reference for those interested in better understanding this policy.

STROM THURMOND

*Chairman, Committee on the Judiciary.*

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## I. CONSTITUTIONAL AMENDMENTS/CIVIL RIGHTS

### A. FIFTH AMENDMENT

The fifth amendment, ratified in 1791 as part of the Bill of Rights, protects persons from being deprived of life, liberty, or property "without due process of law". The due process clause has been interpreted to include the guarantees of the "equal protection" clause of the fourteenth amendment and therefore to apply such guarantees to the national government, as well as the State governments.

#### ARTICLE [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

#### LEGISLATIVE HISTORY

##### ANNALS OF THE CONGRESS (GALES & SEATON, 1834)—1ST CONG.

Based on proposed amendments to the Constitution of Mr. Madison in the House offered June 8, 1789, 424-50 (Fourth Proposition); referred to Select Committee, 660-65; reported with amendments, 672; debated, 703, 761, 765; passed House, 779; debated in Senate, 69 (Journal of the Senate, 1st Cong.); passed Senate, 77.

#### RATIFICATION

The first 10 amendments to the Constitution, and 2 others that failed of ratification, were proposed by the Congress on September 25, 1789. They were ratified by the following States, and the notifications of the ratification by the Governors thereof were successively communicated by the President to the Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; New York, February 24, 1790; Pennsylvania, March 10, 1790; Rhode Island, June 7, 1790; Vermont, November 3, 1791; and Virginia, December 15, 1791.

Ratification was completed on December 15, 1791.

The amendments were subsequently ratified by Massachusetts, March 2, 1939; Georgia, March 18, 1939; and Connecticut, April 19, 1939.

### B. THIRTEENTH AMENDMENT

The thirteenth amendment, ratified in 1865, outlaws slavery in the United States. The amendment gave clear constitutional effect to President Lincoln's Emancipation Proclamation of 1863.

## ARTICLE XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

## LEGISLATIVE HISTORY

CONG. GLOBE (38TH CONG., 1ST SESS.)

S.J. Res. 16, 38th Cong., by Mr. Wilson, to propose an amendment to the Constitution of the United States outlawing slavery. Referred to Committee on Judiciary, 145. Reported with amendment, 1314. Debate, 1130, 1283, 1313, 1346, 1364, 1405, 1419, 1437, 1456, 1479; Passed Senate, 1490; Debated in House, 2612, 2722, 2939, 2947, 2977; rejected by House, 2995; debated in House, 3000, 3014, 3357; passed House, 530-2 (2d. Sess.).

## RATIFICATION

The 13th amendment to the Constitution was proposed by the Congress on January 31, 1865. It was declared, in a proclamation of the Secretary of State, dated December 18, 1865, to have been ratified by the legislatures of 27 of the 36 States. The dates of ratification were: Illinois, February 1, 1865; Rhode Island, February 2, 1865; Michigan, February 2, 1865; Maryland, February 3, 1865; New York, February 3, 1865; Pennsylvania, February 3, 1865; West Virginia, February 3, 1865; Missouri, February 6, 1865; Maine, February 7, 1865; Kansas, February 7, 1865; Massachusetts, February 7, 1865; Virginia, February 9, 1865; Ohio, February 10, 1865; Indiana, February 13, 1865; Nevada, February 16, 1865; Louisiana, February 17, 1865; Minnesota 23, 1865; Wisconsin, February 24, 1865; Vermont, March 9, 1865; Tennessee, April 7, 1865; Arkansas, April 14, 1865; Connecticut, May 4, 1865; New Hampshire, July 1, 1865; South Carolina, November 13, 1865; Alabama, December 2, 1865; North Carolina, December 4, 1865; Georgia, December 6, 1865.

Ratification was completed on December 6, 1865.

The amendment was subsequently ratified by Oregon, December 8, 1865; California, December 19, 1865; Florida, December 28, 1865 (Florida again ratified on June 9, 1868, upon its adoption of a new constitution); Iowa, January 15, 1866; New Jersey, January 23, 1866 (after having rejected it on March 16, 1865); Texas, February 18, 1870; Delaware, February 12, 1901 (after having rejected it on February 8, 1865; Kentucky, March 18, 1876 (after having rejected it on February 24, 1865).

The amendment was rejected (and not subsequently ratified) by Mississippi, December 4, 1865.

## C. FOURTEENTH AMENDMENT

The fourteenth amendment, ratified in 1868, is the Nation's most far-reaching constitutional provision on civil rights. The amendment prohibits the denial to any person of "the equal protection of the laws."

## ARTICLE XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of

the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,<sup>1</sup> and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## LEGISLATIVE HISTORY

### CONG. GLOBE (39TH CONG., 1ST SESS.)

H.J. Res. 127, 39th Cong., by Mr. Bingham, to propose an amendment to the Constitution of the United States guaranteeing due process and equal protection of the laws. Referred to the Select Joint Committee on Reconstruction. Reported with amendment, 2286. Debated, 2433, 2458, 2459, 2498, 2530; passed House, 2545; debated in Senate, 2764, 2789, 2869, 2890, 2914, 2938, 2960, 2984, 3010, 3026; passed Senate with amendments, 3041; amendments concurred in by House, 3149; examined and signed in Senate, 3178; signed in House, 3237; message from President, 3349.

### RATIFICATION

The 14th amendment to the Constitution was proposed by the Congress on June 13, 1866. It was declared, in a certificate by the Secretary of State dated July 28, 1868, to have been ratified by the legislatures of 28 of the 37 States. The dates of ratification were: Connecticut, June 25, 1866; New Hampshire, July 6, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866 (subsequently the legislature rescinded its ratification, and on March 5, 1868, readopted its resolution of rescission over the Governor's veto); Oregon, September 19, 1866 (and rescinded its ratification on October 15, 1868); Vermont, October 30, 1866; Ohio, January 4, 1867 (and rescinded its ratification on January 15, 1868); New York, January 10, 1867; Kansas, January 11, 1867; Illinois, January 15, 1867; West Virginia, January 16, 1867; Michigan, January 16, 1867; Minnesota, January 16, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Indiana, January 23, 1867; Missouri, January 25, 1867; Rhode Island, February 7, 1867; Wisconsin, February 7, 1867; Pennsylvania, February 12, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, March 16, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; North Carolina, July 4, 1868 (after having rejected it on December 14, 1866); Louisiana, July 9, 1868 (after having rejected it on February 6, 1867); South Carolina, July 9, 1868 (after having rejected it on December 20, 1866).

Ratification was completed on July 9, 1868.<sup>2</sup>

<sup>1</sup> Cf., the 26th amendment.

<sup>2</sup> The certificate of the Secretary of State, dated July 20, 1868 [15 Stat. 706, 707], was based on the assumption of invalidity of the rescission of ratification by Ohio and New Jersey. The follow-

Continued



The amendment was subsequently ratified by Alabama, July 13, 1868; Georgia, July 21, 1868 (after having rejected it on November 9, 1866); Virginia, October 8, 1869 (after having rejected it on January 9, 1867); Mississippi, January 17, 1870; Texas, February 18, 1870 (after having rejected it on October 27, 1866); Delaware, February 12, 1901 (after having rejected it on February 8, 1867); Maryland, April 4, 1959 (after having rejected it on March 23, 1867); California, May 6, 1959; Kentucky, March 18, 1976 (after having rejected it on January 8, 1867).

## D. FIFTEENTH AMENDMENT

The fifteenth amendment, ratified in 1870, prohibits the denial of any citizen's right to vote by the United States or by any State on account of race, color, or previous condition of servitude. It is the third of the Reconstruction constitutional amendments passed following the Civil War.

### ARTICLE XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

## LEGISLATIVE HISTORY

### CONG. GLOBE (40TH CONG., 3D SESS.)

S.J. Res. 8, 40th Cong., by Mr. Henderson, to propose an amendment to the Constitution of the United States relating to the right of citizens not to be denied or abridged in the right to vote on account of race, color, or condition of servitude. Reported to Committee on Judiciary, 13 (1st Sess.). Reported with amendment (3d Sess.), 378, 491. Discussed 541; made special order, 543; amendment printed, 580; discussed, 668, 705, 1300; passed, 1318; passed House with amendments, 1436; discussed, 1440, 1481; conference, 1481, 1495; conference report, 1593; discussed, 1623, 1638; agreed to by Senate, 1641; by House, 1583; enrolled, 1644. In House: Received from Senate, 1329; discussed, 1425; passed with amendments, 1428; conference, 1466, 1470; conference report, 1563; agreed to by House, 1564; by Senate, 1615; enrolled, 1615.

H.R. No. 402—by Mr. Boutwell, to propose an amendment to the Constitution of the United States. Reported and recommitted, 286; motion to reconsider, 286; discussed, 428, 528, 555, 567, 583, 538, 641, 642, 686, 721, 742; passed, 745; passed Senate with amendments, 1055; amendment, 1107; discussed, 1224; non-concurred in, 1226; Senate recedes and rejects resolution, 1329. In Senate: Received from House, 740; referred, 741; motion to reconsider, 754; discussed, 827, 854; amendment, 897; discussed, 899, 909, 938, 978, 980, 1029; passed with amendment, 1044; conference asked, 1212; discussed, 1284, 1294; Senate recedes, 1295; resolution rejected, 1300.

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ing day, the Congress adopted a joint resolution declaring the amendment a part of the Constitution. On July 28, 1868, the Secretary of State issued a proclamation of ratification without reservation [15 Stat. 708-711]. In the interim, two other States, Alabama on July 13 and Georgia on July 21, 1868, had added their ratifications.

## RATIFICATION

The 15th amendment to the Constitution was proposed by the Congress on February 26, 1869. It was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of 29 of the 37 States. The dates of ratification were: Nevada, March 1, 1869; West Virginia, March 3, 1869; Illinois, March 5, 1869; Louisiana, March 5, 1869; North Carolina, March 5, 1869; Michigan, March 8, 1869; Wisconsin, March 9, 1869; Maine, March 11, 1869; Massachusetts, March 12, 1869; Arkansas, March 15, 1869; South Carolina, March 15, 1869; Pennsylvania, March 25, 1869; New York, April 14, 1869 (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it, which action it rescinded on March 30, 1870); Indiana, May 14, 1869; Connecticut, May 19, 1869; Florida, June 14, 1869; New Hampshire, July 1, 1869; Virginia, October 8, 1869; Vermont, October 20, 1869; Missouri, January 7, 1870; Minnesota, January 13, 1870; Mississippi, January 17, 1870; Rhode Island, January 18, 1870; Kansas, January 19, 1870; Ohio, January 27, 1870 (after having rejected it on April 30, 1869); Georgia, February 2, 1870; Iowa, February 3, 1870.

Ratification was completed on February 3, 1870, unless the withdrawal of ratification by New York was effective; in which event ratification was completed on February 17, 1870, when Nebraska ratified.

The amendment was subsequently ratified by Texas, February 18, 1870; New Jersey, February 15, 1871 (after having rejected it on February 7, 1870); Delaware, February 12, 1901 (after having rejected it on March 18, 1869); Oregon, February 24, 1959; California, April 3, 1962 (after having rejected it on January 23, 1870); Kentucky, March 18, 1976 (after having rejected it on March 12, 1869).

The amendment was approved by the Governor of Maryland, May 7, 1973; Maryland having previously rejected it on February 26, 1870.

The amendment was rejected (and not subsequently ratified) by Tennessee, November 16, 1869.

## E. NINETEENTH AMENDMENT

The nineteenth amendment, ratified in 1920, extended the franchise to women. Eleven States had already guaranteed men and women equal suffrage by the time that efforts were initiated to secure this amendment.

## ARTICLE [XIX]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

## LEGISLATIVE HISTORY

## 59 CONG. REC.

H.J. Res. 1, 66th Cong., by Mr. Mann, to propose an amendment to the Constitution of the United States extending the right to suffrage to women. Referred to the Committee on Woman Suffrage, 24. Reported (H. Rept. 1), 70. Debated, 78-94; passed House, 94; Referred to Senate Committee on Woman Suffrage, 128; Reported back, 348; debated, 129, 226-233, 343, 556, 561-571, 615-635; passed Senate, 635; examined and signed, 662, 669.

## HEARINGS

"Woman Suffrage," hearings before the House Committee on Election of President, Vice President, and Representatives in Congress, 64th Congress, 1st session (1916).

"Woman Suffrage," hearings before the House Committee on the Judiciary, 65th Congress, 1st session (1917).

"Woman Suffrage," hearings before the Senate Committee on Woman Suffrage, 64th Congress, 1st session (1915).

"Woman Suffrage," hearings before the Senate Committee on Woman Suffrage, 65th Congress, 1st session (1917).

#### RATIFICATION

The 19th amendment to the Constitution was proposed by the Congress on June 4, 1919. It was declared, in a certificate by the Secretary of State, dated August 26, 1920, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Illinois, June 10, 1919 (and that State readopted its resolution of ratification June 17, 1919); Michigan, June 10, 1919; Wisconsin, June 10, 1919; Kansas, June 16, 1919; New York, June 16, 1919; Ohio, June 16, 1919; Pennsylvania, June 24, 1919; Massachusetts, June 25, 1919; Texas, June 28, 1919; Iowa, July 2, 1919; Missouri, July 3, 1919; Arkansas, July 28, 1919; Montana, August 2, 1919; Nebraska, August 2, 1919; Minnesota, September 8, 1919; New Hampshire, September 10, 1919; Utah, October 2, 1919; California, November 1, 1919; Maine, November 5, 1919; North Dakota, December 1, 1919; South Dakota, December 4, 1919; Colorado, December 15, 1919; Kentucky, January 6, 1920; Rhode Island, January 6, 1920; Oregon, January 13, 1920; Indiana, January 16, 1920; Wyoming, January 27, 1920; Nevada, February 7, 1920; New Jersey, February 9, 1920; Idaho, February 11, 1920; Arizona, February 12, 1920; New Mexico, February 21, 1920; Oklahoma, February 28, 1920; West Virginia, March 10, 1920; Washington, March 22, 1920; Tennessee, August 18, 1920.

Ratification was completed on August 18, 1920.

The amendment was subsequently ratified by Connecticut on September 14, 1920 (and that State reaffirmed on September 21, 1920); Vermont, February 8, 1921; Delaware, March 12, 1923 (after having rejected it on June 2, 1920); Maryland, March 29, 1941 (after having rejected it on February 24, 1920); ratification certified on February 25, 1958); Virginia, February 21, 1952 (after rejecting it on February 12, 1920); Alabama, September 8, 1953 (after rejecting it on September 22, 1919); Florida, May 13, 1969; South Carolina, July 1, 1969 (after rejecting it on January 28, 1920); ratification certified on August 22, 1973); Georgia, February 20, 1970 (after rejecting it on July 24, 1919); Louisiana, June 11, 1970 (after rejecting it on July 1, 1920); North Carolina, May 6, 1971; Mississippi, March 22, 1984 (after having rejected it on March 29, 1920).

#### F. TWENTY-FOURTH AMENDMENT

The twenty-fourth amendment, ratified in 1964, prohibited the use of poll taxes as a means of denying or abridging the right of citizens to vote. Although only five States still possessed any form of poll tax at the time of final ratification of this amendment, the poll tax had been employed since the Reconstruction as a means of denying the franchise to black citizens.

#### ARTICLE [XXIV]

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

#### LEGISLATIVE HISTORY

108 CONG. REC.

S.J. Res. 29, 87th Congress, by Mr. Javits, to provide for the establishment of the former dwelling house of Alexander Hamilton as a national monument (as amended by the text of S.J. Res. 58,

87th Congress, Mr. Holland, to propose an amendment to the Constitution of the United States relating to the qualification of electors, referred to the Committee on the Judiciary, 107 Cong. Rec. 2766, 3446, 4841, 9232), referred to the Committee on Interior and Insular Affairs, 671. Reported with amendment (S. Rept. 1227), 3595. Debated, 4150, 4171, 4185, 4198, 4243, 4363, 4377, 4380, 4408, 4509, 4528, 4547, 4551, 4559, 4567, 4575, 4633, 4635, 4658, 4669, 4791, 4807, 4810, 4828, 4843, 4881, 4901, 4910, 4923, 4937, 4959, 5007, 5018, 5041, 5043, 5072, 5080, 5088, 5102; amended and passed Senate, title amended, 5105; referred to House Committee on the Judiciary, 5358; reported (H. Rept. 1821), 10462; rules suspended, passed House, 17654; examined and signed, 17881, 17988; presented to Administrator of General Services Administration, 18132.

#### HEARINGS

"Poll Tax and Disenfranchisement of D.C.," hearings before the Subcommittee on Constitutional Amendments, Senate Committee on the Judiciary, 86th Congress, 1st session (1959).

"Nomination and Election of President and Vice President and Qualifications for Voting," hearings before the Subcommittee on Constitutional Amendments, Senate Committee on the Judiciary, 87th Congress, 1st session (1961).

"Abolition of Poll Tax in Federal Elections," hearings before Subcommittee No. 5, House Committee on the Judiciary, 87th Congress, 2d session (1962).

#### RATIFICATION

The 24th amendment to the Constitution was proposed by the Congress on August 27, 1962. It was declared, in a certificate of the Administrator of General Services, dated February 4, 1964, to have been ratified by the legislatures of 38 of the 50 States. The dates of ratification were : Illinois, November 14, 1962; New Jersey, December 3, 1962; Oregon, January 25, 1963; Montana, January 28, 1963; West Virginia, February 1, 1963; New York, February 4, 1963; Maryland, February 6, 1963; California, February 7, 1963; Alaska, February 11, 1963; Rhode Island, February 14, 1963; Indiana, February 19, 1963; Utah, February 20, 1963; Michigan, February 20, 1963; Colorado, February 21, 1963; Ohio, February 27, 1963; Minnesota, February 27, 1963; New Mexico, March 5, 1963; Hawaii, March 6, 1963; North Dakota, March 7, 1963; Idaho, March 8, 1963; Washington, March 14, 1963; Vermont, March 15, 1963; Nevada, March 19, 1963; Connecticut, March 20, 1963; Tennessee, March 21, 1963; Pennsylvania, March 25, 1963; Wisconsin, March 26, 1963; Kansas, March 28, 1963; Massachusetts, March 28, 1963; Nebraska, April 4, 1963; Florida, April 18, 1963; Iowa, April 24, 1963; Delaware, May 1, 1963; Missouri, May 13, 1963; New Hampshire, June 12, 1963; Kentucky, June 27, 1963; Maine, January 16, 1964; South Dakota, January 23, 1964; Virginia, February 25, 1977.

Ratification was completed on January 23, 1964.

The amendment was rejected (and not subsequently ratified) by Mississippi on December 20, 1962.

#### G. TWENTY-SIXTH AMENDMENT

The twenty-sixth amendment, ratified in 1971, prohibited the denial or abridgement of the right to vote to individuals who are eighteen years of age or older. It was proposed in response to the Supreme Court's decision in *Oregon v. Mitchell*, 400 U.S. 112 (1970), which rejected Congress' assertion of authority to establish age requirements for participation in State and local elections.

## ARTICLE [XXVI]

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

## LEGISLATIVE HISTORY

## 118 CONG. REC.

S.J. Res. 7, 92d Cong. by Mr. Randolph, to propose an amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age or older. Referred to Committee on Judiciary, 271, 918, 3052. Reported with amendment (S. Rept. 92-26), 5304. Debated, 5488, 5517, 5519, 5577, 5802, 5814, 5816; amended and passed Senate, 5830; examined and signed, 7505, 7640; presented to the Administrator of G.S.A., 7505; passed House (in lieu of H.J. Res. 223), 7570.

H.J. Res. 223—Proposing an amendment to the Constitution of the United States, extending the right to vote to citizens 18 years of age or older. Mr. Celler; Committee on the Judiciary, 1047; reported (H. Rept. 92-37), 5642; made special order (H. Res. 299), 6779; debated, 7532; passed House, 7569; proceedings vacated. Laid on the table (S.J. Res. 7), passed in lieu, 7570.

## HEARINGS

“Lowering the Voting Age to 18,” hearings before the Subcommittee on Constitutional Amendments, Senate Committee on the Judiciary, 91st Congress, 2d session (1970).

## RATIFICATION

The 26th amendment to the Constitution was proposed by the Congress on March 23, 1971. It was declared, in a certificate of the Administrator of General Services, dated July 5, 1971, to have been ratified by the legislatures of 39 of the 50 States. The dates of ratification were: Connecticut, March 23, 1971; Delaware, March 23, 1971; Minnesota, March 23, 1971; Tennessee, March 23, 1971; Washington, March 23, 1971; Hawaii, March 24, 1971; Massachusetts, March 24, 1971; Montana, March 29, 1971; Arkansas, March 30, 1971; Idaho, March 30, 1971; Iowa, March 30, 1971; Nebraska, April 2, 1971; New Jersey, April 3, 1971; Kansas, April 7, 1971; Michigan, April 7, 1971; Alaska, April 8, 1971; Maryland, April 8, 1971; Indiana, April 8, 1971; Maine, April 9, 1971; Vermont, April 16, 1971; Louisiana, April 17, 1971; California, April 19, 1971; Colorado, April 27, 1971; Pennsylvania, April 27, 1971; Texas, April 27, 1971; South Carolina, April 28, 1971; West Virginia, April 28, 1971; New Hampshire, May 13, 1971; Arizona, May 14, 1971; Rhode Island, May 27, 1971; New York, June 2, 1971; Oregon, June 4, 1971; Missouri, June 14, 1971; Wisconsin, June 22, 1971; Illinois, June 23, 1971; Alabama, June 30, 1971; Ohio, June 30, 1971; North Carolina, July 1, 1971; Oklahoma, July 1, 1971.

Ratification was completed on July 1, 1971.

The amendment was subsequently ratified by Virginia, July 8, 1971; Wyoming, July 8, 1971; Georgia, October 4, 1971.

## H. EQUAL RIGHTS AMENDMENT (PROPOSED)

The Equal Rights Amendment was proposed as the twenty-seventh amendment to the Constitution in 1972 but failed to be ratified by the requisite number of States, despite an unprecedented extension in its ratification period by the United States Congress in

1978. The amendment proposed to establish "equality of rights under the law" between men and women.

ARTICLE —

SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

SEC. 3. This amendment shall take effect two years after the date of ratification.

LEGISLATIVE HISTORY

117 CONG. REC.

S.J. Res. 8—Proposing an amendment to the Constitution of the United States relative to equal rights for men and women. Mr. Bayh, Mr. Beall, Mr. Bible, Mr. Case, Mr. Church, Mr. Cook, Mr. Gravel, Mr. Gurney, Mr. Harris, Mr. Hatfield, Mr. Hughes, Mr. Inouye, Mr. Jordon, of North Carolina, Mr. McClellan, Mr. McGovern, Mr. McIntyre, Mr. Mathias, Mr. Montoya, Mr. Moss, Mr. Nelson, Mr. Pell, Mr. Proxmire, Mr. Randolph, Mr. Ribicoff, Mr. Schweiker, Mrs. Smith, Mr. Stevens, Mr. Stevenson, Mr. Taft, Mr. Thurmond, Mr. Tunney, Mr. Williams, and Mr. Young; Committee on the Judiciary, 271, 1557, 4530, 5062, 12655, 25806, 37906.

H.J. Res. 208—Proposing an amendment to the Constitution of the United States relative to equal rights for men and women. Mrs. Griffiths; Committee on the Judiciary, 526; reported with amendment (H. Rept. 92-359), 24935; made special order H. Res. 548, 25783; debated 35295, 35782; amended and passed House, 35815; referred to Committee on the Judiciary, 35957.

118 CONG. REC.

From Committee on the Judiciary, 8224; reported (S. Rept. 92-689), 8224; debated, 8451, 8452, 8899, 9080, 9314, 9337, 9517, 9524, 9538, 9544; passed Senate, 9598; examined and signed, 9809, 9907; cleared for ratification by the States.

HEARINGS

"Equal Rights 1970," hearings before the Committee on the Judiciary, United States Senate, 91st Congress, 2d session (1970).

"The 'Equal Rights' Amendment," hearings before the Subcommittee on Constitutional Amendments, Senate Committee on the Judiciary, 91st Congress, 2d session (1970).

"Equal Rights Amendment Extension," hearings before the Subcommittee on the Constitution, Senate Committee on the Judiciary, 95th Congress, 2d session (1978).

"The Impact of the Equal Rights Amendment," hearings before Subcommittee on the Constitution, Senate Committee on the Judiciary, 98th Congress, 1st & 2d sessions (3 parts) (1983-84).

"Equal Rights for Men and Women 1971," hearings before Subcommittee No. 4, House Committee on the Judiciary, 92d Congress, 1st session (1971).

"Equal Rights Amendment Extension," hearings before the Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, 95th Congress, 1st & 2d sessions (1977-78).

"The Equal Rights Amendment," hearings before Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, 98th Congress, 1st session (1983).

#### RATIFICATION

Never ratified by necessary three quarters of the States (38). By its expiration date on June 30, 1982, the proposed Equal Rights Amendment had been ratified by 35 States, with five of those States attempting to rescind or withdraw their ratification.

The Equal Rights Amendment was proposed by Congress on March 22, 1972. The States ratifying the amendment were: Hawaii, March 22, 1972; New Hampshire, March 23, 1972; Delaware, March 23, 1972; Iowa, March 24, 1972; Idaho, March 24, 1972 (voted to rescind, February 8, 1977); Kansas, March 28, 1972; Nebraska, March 29, 1972 (voted to rescind, March 15, 1973); Texas, March 30, 1972; Tennessee, April 4, 1972 (voted to rescind, April 23, 1974); Alaska, April 5, 1972; Rhode Island, April 14, 1972; New Jersey, April 17, 1972; Colorado, April 21, 1972; West Virginia, April 22, 1972; Wisconsin, April 26, 1972; New York, May 18, 1972; Michigan, May 22, 1972; Maryland, May 26, 1972; Massachusetts, June 21, 1972; Kentucky, June 26, 1972 (voted to rescind, March 17, 1978); Pennsylvania, September 27, 1972; California, November 13, 1972; Wyoming, January 26, 1973; South Dakota, February 5, 1973 (voted to rescind, March 1, 1979); Oregon, February 8, 1973; Minnesota, February 8, 1973; New Mexico, February 28, 1973; Vermont, March 1, 1973; Connecticut, March 15, 1973; Washington, March 22, 1973; Maine, January 8, 1974; Montana, January 25, 1974; Ohio, February 7, 1974; North Dakota, March 19, 1975; Indiana, January 24, 1977. On October 6, 1978, the Congress extended the ratification deadline of the Equal Rights Amendment to June 30, 1982. (See, however, *Idaho v. Freeman*, (529 F. Supp. 1107 (D. Ct. Id. 1981), stayed *NOW v. Idaho*, 455 U.S. 918 (1982)).

## II. FEDERAL STATUTES/CIVIL RIGHTS

### A. CIVIL RIGHTS ACT OF 1866

(Act of April 9, 1866, ch. 31, § 1, 14 Stat. 27)

Following the Civil War, Congress enacted several civil rights statutes to give force to the newly ratified thirteenth, fourteenth, and fifteenth amendments. The first of these, the Civil Rights Act of 1866, was enacted pursuant to the authority conferred on Congress by the thirteenth amendment to eradicate slavery and its incidents. Section 1 of that law had two objectives: first, it granted citizenship to all persons born in the United States; and second, it granted those persons the same rights as white citizens. With only minor changes in wording, the act was reenacted four years later, following ratification of the fourteenth amendment, to allay any doubts as to its constitutionality. Thereafter, as part of a general recodification of Federal law, the original section 1 was split into two parts—sections 1981 and 1982 of U.S. Code title 42. Section 1982 grants all persons the same property rights as white citizens, while section 1981 relates to other rights, including the right to make and enforce contracts.

#### LEGISLATIVE HISTORY

CONG. GLOBE, 39TH CONG., 1ST SESS. (1866)

S. 61, introduced by Sen. Trumbull, January 5, 1866, 129; debated in Senate, 474-80, 497-508, 516-530, 575-78, 595-605; passed Senate, February 2, 1866, 606-07; called up for consideration in the House, March 1, 1866, 1115-19; debated in House, 1115-25, 1151-67, 1265-67, 1290-96; motion to recommit carried, March 9, 1866, 1296; reported from House Judiciary Committee, with amendments, March 13, 1866, 1366; passed House, March 13, 1866, 1367; Senate concurs in House amendments, March 15, 1866, 1413-16; vetoed by President A. Johnson, March 27, 1866, 1679-81; Senate reconsideration, April 4, 1866, 1755-61, 1775-87, 1799-1807; Senate overrides veto, April 6, 1866, 1809; House reconsideration, April 7, 1866, 1828-37; House overrides veto, April 9, 1866, 1857-61.

#### *Congressional Documents*

H. Exec. Doc. 118, 39th Cong., 1st session (1866).

S. Exec. Doc. No. 6, 39th Cong., 2d session (1867).

Report of C. Schurz, S. Exec. Doc. No. 2, 39th Cong., 1st session (1866).



## TEXT OF THE LAW

*Sec. 1981 (title 42). Equal rights under the law*

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

*Sec. 1982 (title 42). Property rights of citizens*

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

## B. CIVIL RIGHTS ACT OF 1871

(Act of April 20, 1871, ch. 22, § 1, 17 Stat. 13)

Also known as the "Ku Klux Klan Act," this law was originally enacted to enforce the fourteenth amendment against secret, conspiratorial, and terrorist organizations, like the Klan, which were effectively thwarting black registration, voting, jury service, and office-holding after the Civil War. Two provisions of the 1871 act, with derivatives in current Federal law found at sections 1983 and 1985 of title 42 of the United States Code, provided civil remedies for the denial of constitutional rights of the newly emancipated slaves. Thus, section 1983 provides for damages or injunctive relief against any person who "under color of law" deprives another of any right, privilege, or immunity secured by Federal law or the Constitution. This is coupled with section 1985 which provides a civil remedy against conspiracies to commit a listed series of acts, ranging from forcible interference with the processes of justice to deprivation of civil or constitutional rights, particularly those protected by the fourteenth and fifteenth amendments. Section 1983 has become one of the most frequently utilized civil rights provisions in Federal law. Recent Supreme Court decisions have expanded the scope of this section into areas of non-civil rights controversies. *Thiboutot v. Maine*, 448 U.S. 1 (1980).

## LEGISLATIVE HISTORY

CONG. GLOBE, 42D CONG., 1ST SESS. (1871)

H.R. 320, introduced by Mr. Shellabarger, to enforce the provisions of the fourteenth amendment to the Constitution of the United States. Reported from the Committee on the Judiciary, 317; debated in the House, 317, 329, 335, 351, 361, 364, 376, 393, 397, 408, 409, 421, 436, 441, 463, 475, 489, 490, 508; passed House, 522; explanation, 532; passed Senate with amendments, 716; debated, 723; conference, 725, 734; conference report, 749; debated, 750, 787, 798; report agreed to by Senate, 749; rejected by House, 801; new conference, 801, 802; second conference report, 804; agreed to by House, 808; agreed to by Senate, 804; enrolled, 833; approved 838.

In Senate.—Received from House, 523; referred to Committee on the Judiciary, 523; reported, 538; debated, 567, 599, 645, 653, 685, 686; passed with amendments, 709; conference, 727, 728; conference

report, 754; debated, 754, 769, 773; concurred in by Senate, 779; disagreed to by House, 810; new conference, 810; second conference report, 819; debated, 819; concurred in by Senate, 831; concurred in by House, 832; enrolled, 832.

#### TEXT OF THE LAW

##### *Sec. 1983 (title 42). Civil action for deprivation of rights*

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

\* \* \* \* \*

##### *Sec. 1985 (title 42). Conspiracy to interfere with civil rights—Preventing officer from performing duties*

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

*Obstructing justice; intimidating party, witness, or juror.*—(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

*Depriving persons of rights or privileges.*—(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

## C. CIVIL RIGHTS ACT OF 1957

(Public Law 85-315; 71 Stat. 634)

The first Federal civil rights legislation enacted since the Reconstruction, the Civil Rights Act of 1957 is significant primarily as an indication of renewed Federal legislative concern with the protection of civil rights. As finally enacted, following lengthy and turbulent debate, the act accomplished essentially three things: (1) established the U.S. Commission on Civil Rights to investigate civil rights violations and make recommendations; (2) created a Civil Rights Division in the Department of Justice; and (3) adopted certain provisions to enforce the fifteenth amendment guarantee of the right to vote.

The most enduring feature of the 1957 act may well have been the creation of the U.S. Commission on Civil Rights which, as originally enacted, was only temporary in nature and due to terminate within 2 years of its establishment. However, subsequent legislation extended the life of the Commission in 1959, 1961, 1963, 1964, 1967, 1972, and 1978, so that its expiration was tolled until September 30, 1983. As the result of controversy stirred by President Reagan's firing of three sitting commission members, and appointment of new members strongly opposed to racial quotas or entitlement programs, Congress acted in 1983 to reconstitute the panel and extend its life for another six years. As signed by the President on November 30, 1983, P. L. 98-183 replaced the original six-member presidentially appointed commission with an eight-member panel appointed half by the President and half by Congress. Commissioners would be removable only for cause under the new legislation.

## LEGISLATIVE HISTORY

*Original Act*

103 CONG. REC. (1957)

H.R. 6127, 85th Cong. by Mr. Celler, to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States. Referred to the Committee on the Judiciary, 4026. Reported (H. Rept. 291), 4951.

Made special order (H. Res. 259), 8408; debated, 8484, 8643, 8838, 9018, 9182, 9365; passed House, 9516; in Senate debate on referring to a committee, 9618, 9624, 9634, 9777, 9799; ordered placed on the calendar, 9828; objected to, 10322, 10975; debate on motion to consider, 10986, 11008, 11057, 11078, 11089, 11095, 11195, 11222, 11232, 11307, 11312, 11314, 11327, 11339, 11346, 11347, 11444, 11449, 11454, 11460, 11468, 11503, 11566, 11568, 11590, 11599, 11623, 11642, 11645, 11655, 11682, 11688, 11699, 11816, 11829; motion to consider agreed to, 11832; debated, 11832, 11838, 11974, 11997, 12003, 12073, 12075, 12142, 12283, 12292, 12297, 12304, 12314, 12403, 12439, 12449, 12454, 12520, 12530, 12549, 12569, 12689, 12713, 12801, 12818, 12832, 12838, 12878, 12909, 12917, 13003, 13116, 13133, 13137, 13142, 13269, 13288, 13295, 13333, 13449, 13460, 13472, 13716, 13724, 13733, 13750, 13832, 13833, 13847, 13858, 13870, 13890; amended and passed Senate, 13900; pursuant to H. Res. 410 House agrees to Senate amendments

except Nos. 7 and 15, 16086; Senate debate on amendments Nos. 7 and 15, 16073, 16201, 16227, 16261, 16383, 16427, 16435, 16446, 16457, 16468; Senate concurs in House amendments to Senate amendments, 16478; examined and signed, 16659, 16779; presented to the President, 16781; approved [Public Law 315], 16784.

#### HEARINGS

“Civil Rights,” hearings before Subcommittee No. 5, House Committee on the Judiciary, 85th Congress, 1st session, Serial No. 1 (1957).

“Civil Rights—1957,” hearings before the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 85th Congress, 1st session (1957).

#### *Amendments*

1970.—Public Law 91-521, an act to authorize appropriation for the Civil Rights Commission, and for other purposes

115 CONG. REC. (1969)

S. 2455, 91st Cong., by Mr. Hart et al. Referred to the Committee on the Judiciary, 16526.

116 CONG. REC. (1970)

From Committee on the Judiciary, 23201; reported with amendment (S. Rept. 91-1006), 23201; debated, 23893, 24182, 24186; amended and passed Senate, 24189; referred to House Committee on the Judiciary, 24561; reported (H. Rept. 91-1339), 26102; debated, 37356; rules suspended; passed House, 37360; examined and signed, 37880, 37925; presented to the President, 37889; approved [Public Law 91-521], 39682.

#### HEARINGS

“Civil Rights Act of 1967,” hearings before the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 90th Congress, 1st session (1967).

1972.—Public Law 92-496, the Civil Rights Commission Extension Act

118 CONG. REC. (1972)

H.R. 12652, 92d Cong., by Messrs. Celler and McCulloch, to extend the life of the Commission on Civil Rights, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes. Referred to the Committee on the Judiciary, 1295; reported with amendment (H. Rept. 92-946), 10302; amended and passed House, title amended, 15017; referred to Committee on the Judiciary, 15227; reported with amendment (S. Rept. 91-1006), 26272; amended and passed Senate, 26796; House disagreed to Senate amendment and asked for a conference, 28357; conferees appointed, 28357; Senate insisted on its amendment and agreed to a confer-

ence, 30455; conferees appointed, 30455; conference report (H. Rept. 92-1444) submitted in House and agreed to, 32130, 33727; conference report submitted in Senate and agreed to, 32243; examined and signed, 33684, 33803; presented to the President, 34188; approved [Public Law 92-496], 37200.

#### HEARINGS

"Civil Rights Commission," hearings before Subcommittee No. 5, House Committee on the Judiciary, 92d Congress, 2d session (1972).

"Civil Rights Commission," hearings before the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 92d Congress, 2d session (1972).

1978.—Public Law 95-444, the Civil Rights Commission Act of 1978

124 CONG. REC. (1978)

S. 3067, 98th Cong., by Mr. Bayh, to extend the Commission on Civil Rights for five years, to authorize appropriations for the Commission, to prohibit the Commission from becoming involved in the issue of abortion, to effect certain technical changes to comply with other changes in the law, and for other purposes. Ordered held at the desk, 13403; ordered placed on the calendar, 14019; cosponsors added, 14076, 19155; amended and passed Senate, title amended, 19177; amended and passed House (in lieu of H.R. 12432), title amended, 28097; Senate disagreed with House amendments and asked for a conference. Conferees appointed, 29813; House insisted on its amendments and agreed to a conference. Conferees appointed, 30125; conference report (H. Rept. 95-1626), submitted in House, 31297; conference report submitted in Senate and agreed to, 32274; conference report agreed to in House, 32339; examined and signed, 32597, 32741; presented to the President, 35573; approved [Public Law 95-444], 35573.

#### HEARINGS

"Civil Rights Commission Authorization Act of 1978," hearings before the Subcommittee on the Constitution, Senate Committee on the Judiciary, 95th Congress, 1st and 2d sessions (1977-78).

1983.—Public Law 98-183, the United States Commission on Civil Rights Act of 1983

129 CONG. REC. (1983)—DAILY EDITION

H.R. 2230, 98th Cong., by Mr. Edwards, to amend the Civil Rights Act of 1957 to extend the life of the Civil Rights Commission and for other purposes. Referred to the Committee on the Judiciary, H. 1560; reported with amendment (H. Rept. 98-197), 3029; called up by Special rule (H. Res. 273), 6448; debated, 6484-5, 6487-98; motion to recommit with instructions rejected, H. 6499; amended and passed House, 6499; debated in Senate, S. 15752-65, 15839-43, 15907-11, 16064-79; amended and passed Senate, S. 16079; House concurs in Senate amendment, H. 9967; Presented to the President, Nov. 18, 1983; approved (Public Law 98-183) 10665.

## HEARINGS

“Civil Rights Commission Nominations,” hearings before the Senate Committee on the Judiciary, 98th Congress, 1st session (1983).

“Civil Rights Commission Extension,” hearings before the Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, 98th Congress, 1st session (1983).

## TEXT OF THE LAW

*Establishment of Commission*

SEC. 2. (a) There is established a Commission on Civil Rights (hereafter in this Act referred to as the “Commission”).

(b)(1) The Commission shall be composed of eight members. Not more than four of the members shall at any one time be of the same political party. Members of the Commission shall be appointed as follows:

(A) four members of the Commission shall be appointed by the President;

(B) two members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the Majority Leader and the Minority Leader, and of the members appointed not more than one shall be appointed from the same political party; and

(C) two members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the Majority Leader and the Minority Leader, and of the members appointed not more than one shall be appointed from the same political party.

(2) The term of office of each member of the Commission shall be six years; except that (A) members first taking office shall serve as designated by the President, subject to the provisions of paragraph (3), for terms of three years, and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed.

(3) The President shall designate terms of members first appointed under paragraph (2) so that two members appointed under clauses (B) and (C) of paragraph (1) and two members appointed under clause (A) of paragraph (1) are designated for terms of three years and two members appointed under clauses (B) and (C) of paragraph (1) and two members appointed under clause (A) of paragraph (1) are designated for terms of six years. No more than two persons of the same political party shall be designated for three year terms.

(c) The President shall designate a Chairman and a Vice Chairman from among the Commission's members with the concurrence of a majority of the Commission's members. The Vice Chairman shall act in the place and stead of the Chairman in the absence of the Chairman.

(d) The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

(e) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliation as the original appointment was made.

(f) Five members of the Commission shall constitute a quorum.

[Public Law 98-183]

[42 U.S.C. 1975]

*Rules of procedure of the Commission hearings*

SEC. 3. (a) At least thirty days prior to the commencement of any hearing, the Commission shall cause to be published in the Federal Register notice of the date on which such hearing is to commence, the place at which it is to be held and the subject of the hearing. The Chairman, or one designated by him to act as Chairman at a hearing of the Commission, shall announce in an opening statement the subject of the hearing.

[Public Law 88-352]

(b) A copy of the Commission's rules shall be made available to any witness before the Commission, and a witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the Commission's rules at the time of service of the subpoena.

【Public Law 88-352】

(c) Any person compelled to appear in person before the Commission shall be accorded the right to be accompanied and advised by counsel, who shall have the right to subject his client to reasonable examination, and to make objections on the record and to argue briefly the basis for such objections. The Commission shall proceed with reasonable dispatch to conclude any hearing in which it is engaged. Due regard shall be had for the convenience and necessity of witnesses.

【Public Law 88-352】

(d) The Chairman or Acting Chairman may punish breaches of order and decorum by censure and exclusion from the hearings.

【Public Law 88-352】

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony. In the event the Commission determines to release or use such evidence or testimony in such manner as to reveal publicly the identity of the person defamed, degraded, or incriminated, such evidence or testimony, prior to such public release or use, shall be given at a public session, and the Commission shall afford such person an opportunity to appear as a voluntary witness or to file a sworn statement in his behalf and to submit brief and pertinent sworn statements of others. The Commission shall receive and dispose of requests from such person to subpoena additional witnesses. If a report of the Commission tends to defame, degrade or incriminate any person, then the report shall be delivered to such person thirty days before the report shall be made public in order that such person may make a timely answer to the report. Each person so defamed, degraded or incriminated in such report may file with the Commission a verified answer to the report not later than twenty days after service of the report upon him. Upon a showing of good cause, the Commission may grant the person an extension of time within which to file such answer. Each answer shall plainly and concisely state the facts and law constituting the person's reply or defense to the charges or allegations contained in the report. Such answer shall be published as an appendix to the report. The right to answer within these time limitations and to have the answer annexed to the Commission report shall be limited only by the Commission's power to except from the answer such matter as it determines has been inserted scandalously, prejudicially or unnecessarily.

【Public Law 88-352; 91-521】

(f) Except as provided in this section and section 6(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpoena additional witnesses.

(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than \$1,000, or imprisoned for not more than one year.

【Public Law 88-352】

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission shall determine the pertinency of testimony and evidence adduced at its hearings.

【Public Law 88-352】

(i) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that a witness in a hearing held in executive session may for good cause be limited to inspection of the official transcript of his testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof. An accurate transcript shall be made of the testimony of all witnesses at all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof.

【Public Law 88-352】

(j) A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Mileage pay-

ments shall be tendered to the witness upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

【Public Law 88-352; 92-496】

(k) The Commission shall not issue any subpoena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpoenaed at a hearing to be held outside of the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpoenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.

【Public Law 88-352】

(l) The Commission shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organizations including the established places at which, and methods whereby, the public may secure information or make requests; (2) statements of the general course and method by which its functions are channeled and determined, and (3) rules adopted as authorized by law. No person shall in any manner be subject to or required to resort to rules, organization, or procedure not so published.

【Public Law 88-352】

(m) The provisions of subchapter II of chapter 5 of title 5 of the United States Code, relating to administrative procedure and freedom of information, shall, to the extent not inconsistent with this section, apply to the Commission established under this Act.

【Public Law 98-183】

【42 U.S.C. 1975a】

#### *Compensation of members of the Commission*

SEC. 4. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5, United States Code, prorated on a daily basis for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5703 of title 5 of the United States Code.

【Public Law 88-352; 91-521; 92-496; 95-444】

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with subchapter I of chapter 57 of title 5 of the United States Code.

【Public Law 88-352】

【42 U.S.C. 1975b】

#### *Duties of the Commission*

SEC. 5. (a) The Commission shall—

(1) investigate allegations in writing under oath or affirmative that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, sex, age, handicap, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

(2) study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice;

(3) appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or the administration of justice;



(4) serve as national clearinghouse for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, and transportation, or in the administration of justice; and

(5) investigate allegations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of the Presidential electors, Members of the United States Senate, or the House of Representatives, as a result of any patterns or practice of fraud or discrimination in the conduct of such election.

【Public Law 88-352; 92-496; 95-444】

(b) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club or any religious organization.

【Public Law 86-383; 87-264; 88-152; 88-352; 90-198; 95-444】

(c) The Commission shall submit reports to the Congress and the President at such times as the Commission, the Congress, or the President shall deem desirable.

【Public Law 90-198; 95-444; 98-183】

(d) As used in this section, the term "handicap" means, with respect to an individual, a circumstance that would make that individual a handicapped individual as defined in the second sentence of section 7(6) of the Rehabilitation Act of 1973 (29 U.S.C. 706(6)).

【Public Law 95-444】

(e) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to appraise, or to study and collect information about, laws and policies of the Federal Government, or any other governmental authority in the United States, with respect to abortion.

【Public Law 95-444】

(f) The Commission shall appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution involving Americans who are members of eastern and southern European ethnic groups and shall report its findings to the Congress. Such reports shall include an analyses of the adverse consequences of affirmative action programs encouraged by the Federal Government upon the equal opportunity rights of these Americans.

【Public Law 96-81】

【42 U.S.C. 1975c】

### *Powers of the Commission*

SEC. 6. (a)(1) There shall be a full-time staff director for the Commission who shall be appointed by the President with the concurrence of a majority of the Commission.

(2)(A) Effective November 29, 1983, or on the date of enactment of this Act, whichever occurs first, all employees (other than the staff director and the members of the Commission of the Commission on Civil Rights are transferred to the Commission established by section 2(a) of this Act.

(B) Upon application of any individual (other than the staff director or a member of the Commission who was an employee of the Commission on Civil Rights established by the Civil Rights Act of 1957 on September 30, 1903, the Commission shall appoint such individual to a position the duties and responsibilities of which and the rate of pay for which, are the same as the duties, responsibilities and rate of pay of the position held by such employee on September 30, 1983.

(C)(i) Notwithstanding any other provision of law, employees transferred to the Commission under subparagraph (A) shall retain all rights and benefits to which they were entitled or for which they were eligible immediately prior to their transfer to the Commission.

(ii) Notwithstanding any other provision of law the Commission shall be bound by those provisions of title 5, United States Code, to which the Commission on Civil Rights, established by the Civil Rights Act of 1957, was bound.

(3) Within the limitation of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5, United States Code.

【Public Law 98-183】

(b) The Commission shall not accept or utilize services of voluntary or uncompensated personnel, and the term "whoever" as used in subsection (g) of section 3 hereof shall be construed to mean a person whose services are compensated by the United States.

(c) The Commission may constitute such advisory committees within States as it deems advisable, but the Commission shall constitute at least one advisory committee within each State composed of citizens of that State. The Commission may consult with governors, attorneys general, and other representatives of State and local governments and private organizations, as it deems advisable.

【Public Law 95-444】

(d) Members of the Commission, and members of advisory committees constituted pursuant to subsection (c) of this section, shall be exempt from the operation of sections 203, 205, 207, 208, and 209 of title 18 of the United States Code.

【Public Law 95-444】

(e) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

【Public Law 88-352】

(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this resolution, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 3 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman. The holding of hearings by the Commission, or the appointment of a subcommittee to hold hearings pursuant to this subparagraph, must be approved by a majority of the Commission, or by a majority of the members present at a meeting at which at least a quorum of five members is present.

【Public Law 88-352; 98-183】

(g) In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce pertinent, relevant and nonprivileged evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

【Public Law 88-352】

(h) Without limiting the application of any other provision of the Act, each member of the Commission shall have the power and authority to administer oaths or take statements of witnesses under affirmation.

【Public Law 86-449】

(i)(1) The Commission shall have the power to make such rules and regulations as are necessary to carry out the purposes of this Act.

(2) To the extent not inconsistent with the provisions of this Act, the Commission established by section 2(a) of this Act shall be bound by all rules issued by the Civil Rights Commission established by the Civil Rights Act of 1957 which were in effect on September 30, 1983, until modified by the Commission in accordance with applicable law.

(3) The Commission shall make arrangements for the transfer of all files, records, and balances of appropriations of the Commission on Civil Rights as established by the Civil Rights Act of 1957 to the Commission established by this Act.

[Public Law 88-352; 88-183]

[42 U.S.C. 1975d]

#### *Authorization of appropriations*

SEC. 7. There are authorized to be appropriated \$12,180,000 for the fiscal year 1984, and such sums as may be necessary for each succeeding fiscal year ending prior to October 1, 1989.

[Public Law 90-198; 91-521; 92-64; 92-496; 94-292; 95-444; 96-81; 96-447; 98-183]

[42 U.S.C. 1975e]

#### *Termination*

SEC. 8. The provisions of this Act shall terminate 6 years after its date of enactment.

[Public Law 98-183]

[42 U.S.C. 1975f]

\* \* \* \* \*

### PART II—TO PROVIDE FOR AN ADDITIONAL ASSISTANT ATTORNEY GENERAL

[Section 111 Created an Additional Assistant Attorney General.]

### PART III—TO STRENGTHEN THE CIVIL RIGHTS STATUTES, AND FOR OTHER PURPOSES

SEC. 121. [Amends 28 U.S.C. 1343.]

SEC. 122. [Repeals § 1989 of the Revised Statutes (42 U.S.C. 1993).]

### PART IV—TO PROVIDE MEANS OF FURTHER SECURING AND PROTECTING THE RIGHT TO VOTE

SEC. 131. [Amends Sec. 2004 of the Revised Statutes (42 U.S.C. 1971).]

### PART V—TO PROVIDE TRIAL BY JURY FOR PROCEEDINGS TO PUNISH CRIMINAL CONTEMPTS OF COURT GROWING OUT OF CIVIL RIGHTS CASES AND TO AMEND THE JUDICIAL CODE RELATING TO FEDERAL JURY QUALIFICATIONS

SEC. 151. In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: *Provided however*, That in case the accused is a natural person the fine to be paid shall not exceed the sum of \$1,000, nor shall imprisonment exceed the term of six months: *Provided further*, That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: *Provided further, however*, That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of the sum of \$300 or imprisonment in excess of forty-five days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in other criminal cases.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court.

Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

SEC. 152. [Amends 28 U.S.C. 1861.]

SEC. 161. This Act may be cited as the "Civil Rights Act of 1957".

\* \* \* \* \*

*Code of Federal Regulations*

Organization and function of the Civil Rights Commission, 45 CFR Part 701.

Rules of Hearings of the Commission, 45 CFR Part 702.

Operations and functions of State Advisory Committees, 45 CFR Part 703.

Information disclosure and communications, 45 CFR Part 704.

## D. CIVIL RIGHTS ACT OF 1960

(Public Law 86-449; 74 Stat. 86)

This century's second installment of Federal civil rights legislation, the Civil Rights Act of 1960, emerged from a sharply divided Congress to reinforce certain provisions of the 1957 law, but it also included limited criminal provisions related to racially motivated bombings and burning, and obstruction of Federal court orders; a clause to enlarge the powers of the Civil Rights Commission; and a section providing for desegregated education for children of Armed Forces personnel. The most important new provision added by the act made available to persons improperly denied the right to vote a remedy affording a voter-referee procedure enforced by the Federal courts.

## LEGISLATIVE HISTORY

## 105 CONG. REC.

H.R. 8601, 85th Cong., by Mr. Celler, to enforce constitutional rights, and for other purposes. Referred to the Committee on the Judiciary, 15398; reported (H. Rept. 956), 16621.

## 106 CONG. REC.

Made special order (H. Res. 359), 5192; debated, 5199, 5295, 5441, 5635, 5752, 5897, 6009, 6159, 6277, 6369; amended and passed House, 6509; referred to Senate Committee on the Judiciary with instructions, 6452; reported with amendments (S. Rept. 1205), (S. Rept. 1205, pt. 2), 7187; debated (in lieu of H.R. 8315), 6931, 6945, 6954, 7023, 7049, 7051, 7053, 7129, 7137, 7208, 7213, 7219, 7244, 7312, 7343, 7344, 7354, 7401, 7408, 7409, 7417, 7448, 7497, 7536, 7558, 7563, 7578, 7728, 7746, 7763, 7803; amended and passed Senate, 7811; pursuant to H. Res. 503 House concurs in Senate amendments, 8491; examined and signed, 8574, 8581; presented to the President, 8677; approved [Public Law 449], 9796.

## HEARINGS

"Civil Rights—1959," hearings before the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 86th Congress, 1st session (1959) (5 parts).

"Federal Registrars," hearings before Senate Rules and Administration Committee, 86th Congress, 2d session (1960).

"Civil Rights Act of 1960," hearings before the Senate Committee on the Judiciary, 86th Congress, 2d session (1960).

“Civil Rights,” hearings before House Committee on the Judiciary, 86th Congress, 1st session (1959).

#### TEXT OF THE LAW

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Civil Rights Act of 1960”.*

#### TITLE I

##### OBSTRUCTION OF COURT ORDERS

SEC. 101. [Adds a new Sec. 1509 at the end of chapter 73 of title 18, U.S.C.]

SEC. 102. [Amends the analysis of chapter 73 of title 18, by adding at the end thereof, the chapter heading for § 1509.]

#### TITLE II

FLIGHT TO AVOID PROSECUTION FOR DAMAGING OR DESTROYING ANY BUILDING OR OTHER REAL OR PERSONAL PROPERTY; AND, ILLEGAL TRANSPORTATION, USE OR POSSESSION OF EXPLOSIVES; AND, THREATS OR FALSE INFORMATION CONCERNING ATTEMPTS TO DAMAGE OR DESTROY REAL OR PERSONAL PROPERTY BY FIRE OR EXPLOSIVES

SEC. 201. [Adds a new § 1074 at the end of chapter 49 of title 18, U.S.C.]

SEC. 202. [Amends the analysis of chapter 49 of title 18, by adding thereto, the chapter heading for Sec. 1074.]

SEC. 203. [Adds a new Sec. 837 at the end of chapter 39 of title 18, U.S.C.]

[Repealed by P.L. 91-452.]

SEC. 204. [Amends the analysis of chapter 39 of title 18, by adding thereto, the chapter heading for § 837.]

#### TITLE III

##### FEDERAL ELECTION RECORDS

SEC. 301. Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

[42 U.S.C. 1974]

SEC. 302. Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 301 to be retained and preserved shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

[42 U.S.C. 1974a]

SEC. 303. Any record or paper required by section 301 to be retained and preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or his representative. This demand shall contain a statement of the basis and the purpose therefor.

[42 U.S.C. 1974b]

SEC. 304. Unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other

representative of the Attorney General, shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress and any committee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury.

[42 U.S.C. 1974c]

SEC. 305. The United States district court for the district in which a demand is made pursuant to section 303, or in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record of paper.

[42 U.S.C. 1974d]

SEC. 306. As used in this title, the term "officer of election" means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

[42 U.S.C. 1974e]

#### TITLE IV

##### EXTENSION OF POWERS OF THE CIVIL RIGHTS COMMISSION

SEC. 401. [Amends § 105 of the Civil Rights Act of 1957 (42 U.S.C. Supp. v. 1975d) by adding a new subsection (h).]

#### TITLE V

##### EDUCATION OF CHILDREN OF MEMBERS OF ARMED FORCES

SEC. 501. [Amends subsections (a) and (d) of section 6 of the Act of September 30, 1950, as amended (20 U.S.C. 241).]

SEC. 502. [Amends section 10 of the Act of September 23, 1950, as amended (20 U.S.C. 640).]

#### TITLE VI

SEC. 601. [Amends section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957.]

#### TITLE VII

##### SEPARABILITY

SEC. 701. If any provision of this Act is held invalid the remainder of this Act shall not be affected thereby.

### E. THE EQUAL PAY ACT

(Public Law 88-38; 77 Stat. 56)

In 1963, Congress amended the Fair Labor Standards Act to deal with the problem of discrimination in rates of pay for men and women performing the same or similar jobs. In contrast to the civil rights act of a year later, which may also apply to such situations, the Equal Pay Act is a relatively narrow, circumscribed law that applies only to sex discrimination in rates of pay, and then only as to pay differentials between male and female workers who are performing equal work within the same establishment of the employer. It also requires an evaluation of jobs encompassed under the concept of "equal work" to ensure that their performance calls for "equal skill, effort, and responsibility," and that they are per-

formed under similar working conditions. Authority to administratively enforce the Act was transferred from the Department of Labor to the Equal Employment Opportunity Commission by the Reorganization Plan of 1978.

### LEGISLATIVE HISTORY

109 CONG. REC. (1963)

H.R. 6060—To prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce. Mrs. Green of Oregon; Committee on Education and Labor, 7848; reported (H. Rept. 309), 8976; made special order (H. Res. 362), 9192; debated, amended, and passed House, 9195; proceedings vacated; laid on the table (S. 1409 passed in lieu), 9217.

S. 1409, 88th Cong., by Mr. McNamara *et al.*, to prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce and to provide for the restitution of wages lost by employees by reason of any such discrimination. Referred to the Committee on Labor and Public Welfare, 7293; reported with amendment (S. Rept. 176), 8264; debated, 8866, 8892, 8913; amended and passed Senate, 8916; amended and passed House (in lieu of H.R. 6060), and 9217; title amended, 9218; Senate concurs in House amendment, 9761; examined and signed, 9854, 9941; presented to the President, 9970; approved [Public Law 88-38], 10440.

### HEARINGS

“Equal Pay for Equal Work,” hearings before Select Subcommittee on Labor, House Committee on Education and Labor, 87th Congress, 2d session (2 parts) (1962).

“Equal Pay Act,” hearings before the Special Subcommittee on Labor, House Committee on Education and Labor, 88th Congress, 1st session (1963).

“Equal Pay Act of 1962,” hearings before the Subcommittee on Labor, Senate Committee on Labor and Public Welfare, 87th Congress, 2d session (1962).

“Equal Pay Act of 1963,” hearings before the Subcommittee on Labor, Senate Committee on Labor and Public Welfare, 88th Congress 1st session (1963).

### TEXT OF THE LAW

#### SEC. 3

\* \* \* \* \*

*Prohibition of sex discrimination.*—(d)(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a

wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

[Public Law 88-38]

[29 U.S.C. 206(d)(1)]

## F. CIVIL RIGHTS ACT OF 1964

(Public Law 88-352; 78 Stat. 241)

The Civil Rights Act of 1964 is by far the most significant civil rights legislation in this Nation's history. Forged during the civil rights movement of the early 1960's, the act consists of eleven titles, of which the most consequential are titles II, VI, and VII. Title II bars discrimination in all places of "public accommodation," if their operations affect commerce (including hotels and other places of lodging of more than five rooms, restaurants and other eating places, gasoline stations, theatres, motion picture houses, stadiums, and other places of exhibition or entertainment). In title VI, Congress made broad use of its spending power to prohibit racial discrimination in any program or activity receiving Federal financial assistance. More important, title VI goes on to provide that compliance with the nondiscrimination requirement is to be effected by the termination or refusal to grant Federal funds to any recipient who has been found guilty of racial discrimination. Finally, title VII makes it an unfair employment practice for any employer or labor organization engaged in commerce to refuse to hire, fire, or otherwise discriminate against any individual because of race, religion, sex, or national origin. Title VII is enforced by the Equal Employment Opportunity Commission.

### LEGISLATIVE HISTORY

#### *Original Act*

110 CONG. REC. (1964)

H.R. 7152, 88th Cong., by Mr. Celler, to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in education, to establish a Community Relations Service, to extend for 4 years the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes. Referred to the Committee on the



Judiciary, 11227; reported with amendment (H. Rept. 914), 22550; additional views (H. Rept. 914, pt. 2), 23027.

Made special order (H. Res. 616), 1511; debated, 1516, 1582, 1677, 1899, 1961, 2250, 2462, 2548, 2705; amended and passed House, 2805; read the first time in Senate, 2882; read the second time, 3692; ordered placed on the calendar, 3719; reference to Committee on the Judiciary objected to, 3830, 6455; motion to consider bill, 4742, 4754, 4758, 4782, 4816, 4851, 4994, 5016, 5058, 5078, 5081, 5219, 5220, 5243, 5246, 5263, 5328, 5337, 5403, 5427, 5431, 5458, 5600, 5636, 5642, 5686, 5690, 5720, 5725, 5789, 5792, 5829, 5857, 5871, 5930, 5933, 5956, 5989, 6042, 6056, 6071, 6196, 6197, 6199, 6249, 6415; motion to consider agreed to, 6417; debated, 6417, 6428, 6441, 6527, 6573, 6641, 6713, 6746, 6775, 6792, 6796, 6810, 6812, 6837, 6857, 6862, 6950, 6951, 6969, 6994, 7008, 7045, 7051, 7069, 7098, 7190, 7198, 7227, 7230, 7240, 7372, 7375, 7397, 7417, 7495, 7508, 7557, 7601, 7667, 7685, 7691, 7728, 7736, 7770, 7868, 7870, 7898, 8043, 8052, 8081, 8169, 8192, 8197, 8200, 8221, 8243, 8253, 8292, 8333, 8343, 8410, 8420, 8441, 8482, 8499, 8613, 8626, 8649, 8697, 8714, 8749, 8886, 8887, 8912, 8929, 8934, 8991, 9023, 9024, 9048, 9082, 9105, 9122, 9144, 9169, 9257, 9304, 9563, 9565, 9586, 9640, 9644, 9661, 9680, 9783, 9786, 9810, 9816, 9847, 9897, 9899, 9916, 9938, 10073, 10077, 10081, 10089, 10110, 10157, 10158, 10186, 10188, 10212, 10340, 10346, 10370, 10383, 10415, 10423, 10502, 10508, 10563, 10579, 10626, 10628, 10667, 10783, 10794, 10839, 10905, 10931, 10938, 10954, 11002, 11003, 11022, 11028, 11030, 11044, 11081, 11087, 11102, 11193, 11204, 11225, 11228, 11284, 11310, 11504, 11513, 11531, 11534, 11571, 11584, 11594, 11614, 11737, 11756, 11771, 11775, 11854, 11875, 11917, 12127, 12151, 12161, 12196, 12215, 12304, 12334, 12381, 12435, 12564, 12569, 12593, 12613, 12669, 12673, 12680, 12699, 12702, 12722, 12807, 12822, 12831, 12859, 12863, 12873, 12877, 12943, 12966, 13050, 13118, 13125, 13307; vote to end cloture agreed to, 13327; debate continued, 13327, 13419, 13420, 13434, 13442, 13447, 13469, 13473, 13641, 13652, 13666, 13694, 13708, 13723, 13799, 13825, 13830, 13834, 13871, 13873, 13875, 13878, 13880, 13904, 13909, 13913, 13930, 13935, 14179, 14195, 14200, 14215, 14219; Mansfield-Dirksen substitute (amendment No. 1052) as amended agreed to, 14239; debate continued, 14275, 14283, 14291, 14294, 14299, 14310, 14326, 14335, 14432, 14443, 14506; amended and passed Senate, 14511; concurrence in Senate amendment objected to in House, 14631; pursuant to House Resolution 789, House concurs in Senate amendment, 15869; examined and signed, 15831, 15981; presented to the President, 15981; approved [Public Law 88-352], 17783.

#### HEARINGS

"Equal Employment Opportunity," hearings before the General Subcommittee on Labor, House Committee on Education and Labor, 88th Congress, 1st session (3 parts) (1963).

"Civil Rights," hearings before Subcommittee No. 5, House Committee on the Judiciary, 88th Congress, 1st session (4 parts) (1964).

"Civil Rights—Public Accommodations," hearings before the Senate Committee on Commerce, 88th Congress, 1st session (3 parts) (1963).

*Amendments*

## 1966.—Public Law 89-750, the Elementary and Secondary Education Amendments of 1966

112 CONG. REC. (1966)

S. 3046—To strengthen and improve programs of assistance for our elementary and secondary schools. Mr. Morse and Mr. McGee; Committee on Labor and Public Welfare, 5080, 5613, 8300; reported with amendment (S. Rept. 1674), 25067; debated, 25236, 25243, 25465, 25469, 25496; amended and passed Senate, 25499; indefinitely postponed (H.R. 13161 passed in lieu), 25837.

H.R. 13161, 89th Cong., by Mr. Perkins to strengthen and improve programs of assistance for our elementary and secondary schools. Referred to the Committee on Education and Labor, 4527; reported with amendment (H. Rept. 1814), 18449; supplemental (H. Rept. 1814, pt. 2), 20144; made special order (H. Res. 1025), 25027; Debated, 25328, 25527; amended and passed House, 25589; amended and passed Senate (in lieu of S. 3046), 25836; House disagrees to Senate amendments and asks for a conference, 25937; conferees appointed, 25938, 26996; Senate insists on its amendments and agrees to a conference, 25837; conferees appointed, 25837; conference report (H. Rept. 2309) submitted in House and agreed to, 28192; conference report submitted in Senate and agreed to, 27578; examined and signed, 28416, 28747; presented to the President, 28900; approved [Public Law 89-750], 28902.

## 1967.—Public Law 90-247, the Elementary and Secondary Education Amendments of 1967

113 CONG. REC. (1967)

H.R. 7819, 90th Cong., by Mr. Brademas to strengthen and improve programs of assistance for elementary and secondary education . . . and for other purposes. Referred to the Committee on Education and Labor, 8178; reported with amendment (H. Rept. 185), 9110; made special order (H. Res. 444), 13325; debated, 13330, 13581, 13814; amended and passed House, 13581; referred to Senate Committee on Labor and Public Welfare, 14353; reported with amendments (S. Rept. 726), 31152; debated, 34482, 34682, 34906, 34907, 34961, 34980, 35041, 35052, 35057, 35068, 35077, 35083, 35093, 35333, 35334, 35336; 35351, 35379, 35381, 35413, 35464, 35592, 35594, 35637, 35642, 35652, 35690, 35699, 35721, 35724; amended and passed Senate, 35734; House disagrees to Senate amendments and requests a conference, 35842; conferees appointed, 35842; Senate insists on its amendments, 36328; Senate agrees to a conference, 36061; conferees appointed, 36061; conference report (H. Rept. 1049) submitted in House and agreed to, 37145; conference report submitted in Senate and agreed to, 37025; examined and signed, 37124, 37386; presented to the President, 37386; approved [Public Law 90-247], omitted in Record.

1970.—Public Law 91-230, the Elementary, Secondary, and Other Education Amendments of 1969

115 CONG. REC. (1969)

H.R. 514, 91st Cong., by Mr. Perkins to extend programs of assistance for elementary and secondary education and for other purposes. Referred to the Committee on Education and Labor, 66; reported with amendment (H. Rept. 114), 7169; made special order (H. Res. 366), 9096; debated, 9697, 9705, 9906, 10050; passed House, 10099; referred to Committee on Labor and Public Welfare, 10338.

116 CONG. REC. (1970)

From Committee on Labor and Public Welfare, 507; reported with amendment (S. Rept. 634), 507; debated, 2440, 2467, 2546, 2565, 2569, 2577, 2582, 2740, 2756, 2760, 2763, 2873, 2883, 2903, 2919, 3072, 3073, 3104, 3105, 3123, 3404, 3437, 3559, 3568, 3573, 3779, 3801, 3803, 3812, 3813, 4135, 4147, 4168; amended and passed Senate, 4170; House disagrees to Senate amendments and asks for a conference, 6396; conferees appointed, 6396; Senate insists on its amendments and agrees to a conference, 6463; conferees appointed, 6463; conference report (H. Rept. 937) submitted in Senate and agreed to, 8873, 8851, 8899, 8912, 8975, 9009, 9013, 9280, 9284, 9300, 9616, 9844, 9999, 10012, 10020; conference report submitted in House and agreed to, 10609, 10623; examined and signed, 10747, 10770; presented to the President, 10747; approved [Public Law 91-230], 11861.

1972.—Public Law 92-261, the Equal Employment Opportunity Act of 1972

117 CONG. REC. (1971)

H.R. 1746, 92d Cong., by Mr. Hawkins et al., to further promote equal employment opportunities for American workers. Referred to the Committee on Education and Labor, 212; reported (H. Rept. 92-238), 17539; made special order H. Res. 542, 25288; debated, 31959, 32088; passed House, 32144; referred to the Committee on Labor and Public Welfare, 32365; reported (S. Rept. 92-416), 38030.

118 CONG. REC. (1972)

Amended and passed Senate (in lieu of S. 2515), 4948; Senate insisted on its amendment and agreed to a conference, 5184; conferees appointed, 5184; House disagreed to Senate amendments and asked for a conference, 5187; conferees appointed, 5187; conference report (H. Rept. 92-899), submitted in House and agreed to, 6643, 7563; conference report submitted in Senate and agreed to, 7166, 7170; examined and signed, 7961, 8114; presented to the President, 8207; approved [Public Law 92-261], 10242.

HEARINGS

“Equal Employment Opportunity Enforcement Procedures,” hearings before the General Subcommittee on Labor, House Education and Labor Committee, 92d Congress, 1st session (1971).

“Equal Employment Opportunities Enforcement Act of 1971,” hearings before the Subcommittee on Labor, Senate Labor and Public Welfare Committee, 92d Congress, 1st session (1971).

1972.—Public Law 92-317, the Education Amendments of 1972

117 CONG. REC. (1971)

S. 659, 92d Cong., by Mr. Pell to amend the Higher Education Act of 1965, the Vocational Education Act of 1963, and related acts, and for other purposes.

[For a complete legislative history of S. 659, see page 95 *infra*.]

1978.—Public Law 95-555, the Pregnancy Discrimination Act of 1978

123 CONG. REC. (1977)

S. 995, 95th Cong., by Mr. Williams et al., to amend title VII of the 1964 Civil Rights Act to prohibit sex discrimination on the basis of pregnancy. Referred to the Committee on Human Resources, 7538; cosponsors added, 7959, 8542, 8776, 9628, 10502, 11676, 12190, 15233, 16663, 19636, 25401, 28699; reported with amendment (S. Rept. 95-331), 22188; debated, 29384, 29422, 29640; amended and passed Senate 29664; referred to Committee on Education and Labor, 29874.

124 CONG. REC. (1978)

H.R. 6075—To amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy. From Committee on Education and Labor. Reported with amendment (H. Rept. 95-948), 6676; debated, 21434, rules suspended. Amended and passed House, 21450; laid on the table (S. 995 passed in lieu), 21452.

Committee on Education and Labor discharged. Amended and passed House (in lieu of H.R. 6075). House asked for a conference. Conferees appointed, 21452; Senate disagreed to House amendment and agreed to a conference. Conferees appointed, 21418; conference report submitted in Senate, 36815; conference report considered and agreed to in Senate, 36817; conference report (H. Rept. 95-1786) submitted in House, 37004; conference report considered and agreed to in House, 38573; examined and signed, 38775, 38082; presented to the President, 38084; approved [Public Law 95-555], 38086.

#### HEARINGS

“Discrimination on the Basis of Pregnancy, 1977,” hearings before the Subcommittee on Labor, Senate Labor and Public Welfare Committee, 95th Congress, 1st session (1977).

“Legislation to Prohibit Sex Discrimination on the Basis of Pregnancy,” hearings before the Subcommittee on Employment Opportunities, House Education and Labor Committee, 95th Congress, 1st session (2 parts) (1977).

## Hearings on Busing

"Busing of Schoolchildren," hearings before the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 93d Congress, 1st session (1973).

"Busing of Schoolchildren," hearings before the Senate Committee on the Judiciary, 95th Congress, 1st session (1977).

"The 14th Amendment and School Busing," hearings before the Subcommittee on the Constitution, Senate Committee on the Judiciary, 97th Congress, 1st session (1981).

"Court-Ordered School Busing," hearings before the Subcommittee on the Separation of Powers, Senate Committee on the Judiciary, 97th Congress, 1st session (1981).

### TEXT OF THE LAW

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Civil Rights Act of 1964."

SEC. 101. [AMENDS § 2004 OF THE REVISED STATUTES (42 U.S.C. 1971); AS AMENDED BY § 131 OF THE CIVIL RIGHTS ACT OF 1957, AND AS FURTHER AMENDED BY § 601 OF THE CIVIL RIGHTS ACT OF 1960.]

#### TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination, or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serve the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, other facility principally engaged in selling food for consumption on the premises, including but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried

on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) The provisions of this title shall not apply to private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

**[42 U.S.C. 2000a]**

SEC. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

**[42 U.S.C. 2000a-1]**

SEC. 203. No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202.

**[42 U.S.C. 2000a-2]**

SEC. 204. (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant, and may authorize the commencement of the civil action without the payment of fees, costs, or security.

(b) In any action commenced pursuant to this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

(d) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a): *Provided*, That the court may refer the matter to the Community Relations Service established by title X of this Act for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: *Provided further*, That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

**[42 U.S.C. 2000a-3]**

SEC. 205. The Service is authorized to make a full investigation of any complaint referred to it by the court under section 204(d) and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

## [42 U.S.C. 2000a-4]

SEC. 206. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

## [42 U.S.C. 2000a-5]

SEC. 207. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title, but nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

## [42 U.S.C. 2000a-7]

## TITLE III—DESEGREGATION OF PUBLIC FACILITIES

SEC. 301. (a) Whenever the Attorney General receives a complaint in writing signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied equal utilization of any public facility, which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 401 of title IV hereof, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States

against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

SEC. 302. In any action or proceeding under this title the United States shall be liable for costs, including a reasonable attorney's fee, the same as a private person.

SEC. 303. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this title.

SEC. 304. A complaint as used in this title is a writing or document within the meaning of section 1001, title 18, United States Code.

[42 U.S.C. 2000b]

## TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

### DEFINITIONS

SEC. 401. As used in this title—

(a) The "Secretary" means the Secretary of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

[Public Law 92-318]

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

[42 U.S.C. 2000c]

### SURVEY AND REPORT OF EDUCATIONAL OPPORTUNITIES

SEC. 402. The Secretary shall conduct a survey and make a report to the President and the Congress, within two years of the enactment of this title, concerning the lack of availability of equal educational opportunities for individuals by reason of race, color, religion, or national origin in public educational institutions at all levels in the United States, its territories and possessions, and the District of Columbia.

[42 U.S.C. 2000c-1]

### TECHNICAL ASSISTANCE

SEC. 403. The Secretary is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Department of Education or other persons specially equipped to advise and assist them in coping with such problems.



## [42 U.S.C. 2000c-2]

## TRAINING INSTITUTES

SEC. 404. The Secretary is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute on a fulltime basis may be paid stipends for the period of their attendance at such institute in amounts specified by the Secretary in regulations, including allowances for travel to attend such institute.

## [42 U.S.C. 2000c-3]

## GRANTS

SEC. 405. (a) The Secretary is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

(1) giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and

(2) employing specialists to advise in problems incident to desegregation.

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Secretary shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

## [42 U.S.C. 2000c-4]

## PAYMENTS

SEC. 406. Payments pursuant to a grant or contract under this title may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

## [42 U.S.C. 2000c-5]

## SUITS BY THE ATTORNEY GENERAL

SEC. 407. (a) Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

## [Public Law 92-318]

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this

section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, title 18, United States Code.

[42 U.S.C. 2000c-6]

SEC. 408. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

[42 U.S.C. 2000c-7]

SEC. 409. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

[42 U.S.C. 2000c-8]

SEC. 410. Nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, sex or national origin.

[Public Law 92-318]

[42 U.S.C. 2000c-9]

#### TITLE V—COMMISSION ON CIVIL RIGHTS

SEC. 501. [Amends § 102 of the Civil Rights Act of 1957 (42 U.S.C. 1975a).]

SEC. 502. [Amends § 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a)).]

SEC. 503. [Amends § 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(b)).]

SEC. 504. (a) [Amends § 104(a) of the Civil Rights Act of 1959 (42 U.S.C. 1975c(a)).]

(b) [Amends § 104(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975c(b)).]

SEC. 505. [Amends § 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(b)).]

SEC. 506. [Amends § 105(f) and § 105(g) of the Civil Rights Act of 1957 (42 U.S.C. 1975d (f) and (g)).]

SEC. 507. [Adds subsection (i) to § 105 of the Civil Rights Act of 1957 (42 U.S.C. 1975d).]

#### TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

[42 U.S.C. 2000d]

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity

involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

[42 U.S.C. 2000d-1]

Sec. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

[42 U.S.C. 2000d-2]

Sec. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

[42 U.S.C. 2000d-3]

Sec. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

[42 U.S.C. 2000d-4]

*Compliance of local agencies with Civil Rights Act of 1964*

The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965, by the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress), or by the Cooperative Research Act, on the basis of alleged noncompliance with the provisions of title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d-2000d-4] for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 602 of title VI of the Civil Rights Act of 1964 [42 USCS § 2000d-1], such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d-2000d-4]: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with title VI of the Civil Rights Act of 1964 (Public Law 88-352) [42 USCS §§ 2000d-2000d-4], compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with such title VI [42 USCS §§ 2000d-2000d-4], insofar as the matters covered in the order of judgment are concerned.

[Public Law 89-750; 90-247]

[42 U.S.C. 2000d-5]

*Policy with respect to the application of certain provisions of Federal law*

(a) *Declaration.* It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d-2000d-4] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 USCS § 2000d-5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) *Uniformity.* Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) *Compliance.* Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in

order to eliminate discrimination in federally-assisted programs and activities as required by title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d-2000d-4].

(d) *Additional funds.* It is the sense of the Congress that the Department of Justice and the Department of Health and Human Services should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

【Public Law 91-230】

【42 U.S.C. 2000d-6】

## TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

### DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term “person” includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code, or receivers.

【Public Law 92-261; 95-598】

(b) The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

【Public Law 89-554; 92-261】

(c) The term “employment agency” means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

【Public Law 92-261】

(d) The term “labor organization” means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other items or conditions or employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the

local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

【Public Law 92-261】

(f) The term “employee” means an individual employed by an employer, except that the term “employee” shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

【Public Law 92-261】

(g) The term “commerce” means trade, traffic, commerce, transportation, transmission or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term “industry affecting commerce” means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry “affecting commerce” within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, and further includes any governmental industry, business, or activity.

【Public Law 92-261】

(i) The term “State” includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term “religion” includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

【Public Law 92-261】

(k) The terms “because of sex” or “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

【Public Law 95-555】

【42 U.S.C. 2000e】

#### EXEMPTION

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

【Public Law 92-261】

#### DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

【Public Law 92-261】

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership or applicants for membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

【Public Law 92-261】

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other education institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by any employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is

subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by any employer, referred to or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to or employed in any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in community, State, section, or other area.

[42 U.S.C. 2000e-2]

#### OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

[Public Law 92-261]

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

[Public Law 92-261]

[42 U.S.C. 2000e-3]

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b), shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.

[Public Law 92-261; 95-251]

(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title.

[Public Law 92-261]

(c) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

[Public Law 92-261]

(d) The Commission shall have an official seal which shall be judicially noticed.

[Public Law 92-261]

(e) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

[Public Law 92-261; 93-608]

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

(g) The Commission shall have power—



(1) to cooperate with, and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 706 by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

【Public Law 92-261】

(h) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(i) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 9 of the Act of August 2, 1939, as amended (the Hatch Act), notwithstanding any exemption contained in such section.

【42 U.S.C. 2000e-4】

#### PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

【Public Law 92-261】

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

## 【Public Law 92-261】

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

## 【Public Law 92-261】

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

## 【Public Law 92-261】

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

## 【Public Law 92-261】

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A)

by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

**[Public Law 92-261]**

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a).

【Public Law 92-261】

(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101-115), shall not apply with respect to civil actions brought under this section.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

【Public Law 92-261】

(j) Any civil action brought under this section and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

【Public Law 92-261】

(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

【42 U.S.C. 2000e-5】

SEC. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Effective two years after the date of enactment of the Equal Employment Opportunity Act of 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, United States Code, inconsistent with the

provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

【Public Law 92-261】

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all courts orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General as appropriate.

【Public Law 92-261】

(e) Subsequent to the date of enactment of the Equal Employment Opportunity Act of 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 706 of this Act.

【Public Law 92-261】

【42 U.S.C. 2000e-6】

#### EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

【42 U.S.C. 2000e-7】

#### INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

【Public Law 92-261】

(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this title including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission

upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall upon application of the Commission, or the Attorney General in a case involving a government governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

[Public Law 92-261]

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

[Public Law 92-261]

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one year.

[42 U.S.C. 2000e-8]

#### INVESTIGATORY POWERS

SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply.

[Public Law 92-261]

[42 U.S.C. 2000e-9]

#### NOTICES TO BE POSTED

SEC. 711. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

[42 U.S.C. 2000e-10]

#### VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

[42 U.S.C. 2000e-11]

## RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

[42 U.S.C. 2000e-12]

## FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of sections 111 and 1114, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, United States Code, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

[Public Law 92-261]

[42 U.S.C. 2000e-13]

## COORDINATION OF EFFORTS BY THE COMMISSION

SEC. 715. The Equal Employment Opportunity Commission shall have the responsibility for developing and implementing agreements, policies and practices designed to minimize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions, and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

[Public Law 92-261; 94-273]

[42 U.S.C. 2000e-14]

## EFFECTIVE DATE

SEC. 716. (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil

Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

[42 U.S.C. 2000e-15]

NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

[Public Law 92-261]

(b) Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

● (2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

[Public Law 92-261]

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or



order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

【Public Law 92-261】

(d) The provisions of section 706 (f) through (k), as applicable, shall govern civil actions brought hereunder.

【Public Law 92-261】

(e) Nothing contained in this act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

【Public Law 92-261】

【42 U.S.C. 2000e-16】

#### SPECIAL PROVISION WITH RESPECT TO DENIAL, TERMINATION, AND SUSPENSION OF GOVERNMENT CONTRACTS

SEC. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

【Public Law 92-261】

【42 U.S.C. 2000e-17】

#### TITLE VIII—REGISTRATION AND VOTING STATISTICS

SEC. 801. The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, only include a count of persons of voting age by race, color, and national origin, and determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the Nineteenth Decennial Census, and at such other times as the Congress may prescribe. The provisions of section 9 and chapter 7 of title 13, United States Code, shall apply to any survey, collection, or compilation of registration and voting statistics carried out under this title: *Provided, however*, That no person shall be compelled to disclose his race, color, national origin, or questioned about his political party affiliation, how he voted, or the reasons therefor, nor shall any penalty be imposed for his failure or refusal to make such disclosure. Every person interrogated orally, by written survey or questionnaire or by any other means with respect to such information shall be fully advised with respect to his right to fail or refuse to furnish such information.

[42 U.S.C. 2000f]

**TITLE IX—INTERVENTION AND PROCEDURE AFTER REMOVAL IN CIVIL RIGHTS CASES**

Sec. 901 [Amends 28 U.S.C. 1447(d).]

Sec. 902. Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

[Public Law 92-318]

**TITLE X—ESTABLISHMENT OF COMMUNITY RELATIONS SERVICE**

Sec. 1001. (a) There is hereby established in and as a part of the Department of Commerce a Community Relations Service (hereinafter referred to as the "Service"), which shall be headed by a Director who shall be appointed by the President with the advice and consent of the Senate for a term of four years. The Director is authorized to appoint, subject to the civil service laws and regulations, such other personnel as may be necessary to enable the Service to carry out its functions and duties, and to fix their compensation in accordance with the Classification Act of 1949, as amended.

[Public Law 95-624]

(b) [Amends section 106(a) of the Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2205(a)) by adding the Director of the Community Relations Service to the list of persons paid under that section.]

[42 U.S.C. 2000g]

Sec. 1002. It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce. The Service may offer its services in cases of such disputes, disagreements, or difficulties whenever, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby, and it may offer its services either upon its own motion or upon the request of an appropriate State or local official or other interested person.

[42 U.S.C. 2000g-1]

Sec. 1003. (a) The Service shall, whenever possible, in performing its functions, seek and utilize the cooperation of appropriate State or local, public, or private agencies.

(b) The activities of all officers and employees of the Service in providing conciliation assistance shall be conducted in confidence and without publicity, and the Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held. No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he acted on behalf of the Service. Any officer or other employee of the Service, who shall make public in any manner whatever any information in violation of this subsection, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned not more than one year.

[42 U.S.C. 2000g-2]

Sec. 1004. Subject to the provisions of sections 205 and 1003(b), the Director shall, on or before January 31 of each year, submit to the Congress a report of the activities of the Service during the preceding fiscal year.

[42 U.S.C. 2000g-3]

## TITLE XI—MISCELLANEOUS

SEC. 1101. In any proceeding for criminal contempt arising under title II, III, IV, V, VI, or VII of this Act, the accused, upon demand therefore, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than \$1,000 or imprisoned for more than six months.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court. No person shall be convicted of criminal contempt hereunder unless the act or omission constituting such contempt shall have been intentional, as required in other cases of criminal contempt.

Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

[42 U.S.C. 2000h]

SEC. 1102. No person should be put twice in jeopardy under the laws of the United States for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime under the laws of the United States shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime under the laws of the United States based upon the same act or omission.

SEC. 1103. Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

[42 U.S.C. 2000h-3]

Sec. 1104. Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

[42 U.S.C. 2000h-4]

Sec. 1105. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

[42 U.S.C. 2000h-5]

Sec. 1106. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

[42 U.S.C. 2000h-6]

### *Code of Federal Regulations*

#### Nondiscrimination in federally assisted programs.

Department of Agriculture, see 7 CFR 15.1 et seq.

Department of Commerce, see 15 CFR 8.1 et seq.

Department of Defense, see 32 CFR 300.1 et seq.

Department of Education, see 34 CFR 100.1 et seq.

Department of Energy, see 10 CFR 1040.1 et seq.

Department of Health and Human Services, see 45 CFR 80.1 et seq.

Department of Housing and Urban Development, see 24 CFR 1.1 et seq.

Department of Interior, see 43 CFR 17.1 et seq.

Department of Justice, see 28 CFR 42.101 to 42.112, 50.3.

Department of Labor, see 29 CFR 31.1 et seq.

Department of State, see 22 CFR 141.1 et seq.

Department of Transportation, see 49 CFR 21.1 et seq.

Equal Employment Opportunity Commission enforcement of Title VII, 29 CFR Part:

1600—Employee Responsibilities and Conduct

1601—Procedural Regulations

1602—Records and Reports

1604—Guidelines on Discrimination because of Sex

1605—Guidelines on Discrimination because of Religion

1606—Guidelines on Discrimination because of National Origin

1607—Guidelines on Employee Selection Procedures

1608—Affirmative Action Appropriate Under Title VII

1610—Availability of Records

1611—Privacy Act Regulations

1612—Government in the Sunshine Act Regulations

### G. VOTING RIGHTS ACT OF 1965

(Public Law 88-352; 78 Stat. 241)

The Voting Rights Act of 1965, as amended, is viewed by many as the most effective civil rights legislation ever enacted having extended the elective franchise to millions of once excluded minority group individuals. At the heart of the act is the section 4 triggering formula, providing for automatic coverage of jurisdictions with low minority electoral participation, and the section 5 requirement of preclearance of all voting law changes by such jurisdictions with the Attorney General or the Federal district court for the District of Columbia. Additionally, other sections authorize the appointment of Federal examiners to enforce the right to vote guaranteed by the fifteenth amendment and permit Federal observers to attend elections in order to monitor the election process. The act as amended also incorporates a permanent ban on the use of literacy tests and imposes bilingual election requirements on many covered jurisdictions.

The 1982 amendments to the Voting Rights Act, particularly the amendments to section 2 of the act incorporating the basic prohibition on voting discrimination contained in the fifteenth amendment, proved extremely controversial. Opponents of the amendments to section 2, overturning the Supreme Court's decision in *Mobile v. Bolden*, 448 U.S. 48 (1980) and establishing a "results" test for identifying voting discrimination, argued that the new focus in the act upon collective rather than individual voting rights would usher in an underlying requirement of "proportional representation" of racial and ethnic minorities in the voting and electoral processes. Proponents of the new language argued that it simply restored the law that had existed prior to the Supreme Court's decision. See *White v. Regester*, 412 U.S. 755 (1973).

## LEGISLATIVE HISTORY

*Original Act*

111 CONG. REC. (1965)

H.R. 6400—To enforce the 15th amendment to the Constitution of the United States. Mr. Celler; Committee on the Judiciary, 5325; reported with amendment (H. Rept. 439), 12106; made special order (H. Res. 440), 15637; debated, 15644, 15705, 15979, 16207; amended and passed House; title amended, 16286; proceedings vacated; laid on the table (S. 1564 passed in lieu), 16286.

S. 1564, 89th Cong., by Mr. Mansfield, et al to enforce the 15th Amendment to the Constitution of the United States. Referred to the Committee on the Judiciary, 5411; reported with amendments (S. Rept. 162) without recommendation, 7724; debated, 7801, 7889, 7908, 8292, 8358, 8423, 8428, 8467, 8475, 8558, 8813, 8818, 8828, 8968, 8975, 8984, 8985, 9070, 9072, 9077, 9086, 9098, 9235, 9263, 9269, 9384, 9342, 9483, 9488, 9772, 9839, 9912, 9920, 10028, 10056, 10073, 10102, 10145, 10352, 10354, 10356, 10362, 10364, 10370, 10444, 10555, 10559, 10562, 10570, 10720, 10734, 10741, 10843, 10846, 10849, 10866, 11004, 11060, 11076, 11107, 11113, 11188, 11208, 11213, 11215, 11397, 11427, 11453, 11455, 11457, 11463, 11465, 11714, 11715, 11724; amended and passed Senate, 11752; amended and passed House (in lieu of H.R. 6400), 16286; title amended, 16286; Senate disagrees to House amendments and asks for a conference 16483; conferees appointed, 16485; House insists on its amendments and agrees to a conference, 16795; conferees appointed, 16795; conference report (H. Rept. 711) submitted in House and agreed to, 19187, 19191; conference report submitted in Senate and agreed to, 19374; examined and signed, 19533, 19535; presented to the President, 19538; approved [Public Law 89-110], 19743.

## HEARINGS

“Voting Rights,” hearings before Subcommittee No. 5, House Committee on the Judiciary, 89th Congress, 1st session (1965)

“Voting Rights,” hearings before the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 89th Congress, 1st session (1965)

*Amendments*

1970.—Public Law 91-285, the Voting Rights Act Amendments of 1970

115 CONG. REC. (1969)

H.R. 4249, 91st Cong., by Mr. Celler to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices. Referred to the Committee on the Judiciary, 1629; reported (H. Rept. 397), 20938; made special order H. Res. 714, 34981; debated, 38130, 38485; amended and passed House, 38537; ordered placed on the calendar, 39098; referred to Committee on the Judiciary, 39335.

## 116 CONG. REC. (1970)

Judiciary Committee returned bill to Senate without report, 5354; debated, 5480, 5516, 5542, 5552, 5669, 5689, 6012, 6034, 6149, 6160, 6170, 6172, 6341, 6352, 6505, 6515, 6618, 6642, 6668, 6927, 6952, 6960, 6968, 6996, 7004, 7082, 7091, 7096, 7102, 7160, 7316, 7322, 7329; amended and passed Senate, 7336; amendments objected to, 10713; made special order (H. Res. 914), 18453; resolution (H. Res. 914) agreed to, 20200; examined and signed, 20331, 20517; presented to the President, 20517; approved [Public Law 91-285], 23514.

## HEARINGS

“Voting Rights Act Extension,” hearings before Subcommittee No. 5, House Committee on the Judiciary, 91st Congress, 1st session (1970).

“Amendments to the Voting Rights Act of 1965,” hearing before the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 91st Congress, 1st and 2d sessions (1969-70)

1975.—Public Law 94-73, the Voting Rights Act Amendments of 1975

## 121 CONG. REC. (1975)

H.R. 6219, 94th Cong., by Mr. Edwards et al, to amend the Voting Rights Act of 1965 to extend certain provisions for an additional ten years, to make permanent the ban against certain prerequisites to voting, and for other purposes. Referred to the Committee on the Judiciary, 11319, reported with amendment (H. Rept. 94-196), 13664; made special order H. Res. 469, 14407; debated, 16244, 16754, 16880; amended and passed House, 16917; ordered placed on the calendar, 17267; debated, 23737, 23738, 23744, 23750, 23762, 24107, 24110, 24118, 24128, 24139, 24206, 24207, 24211, 24214, 24240, 24249, 24251, 24694, 24705, 24720, 24721, 24747, 24766; amended and passed Senate, 24780; made special order H. Res. 640, 24886; title amended, 24889; examined and signed, 25303, 25384; presented to the President, 25597; approved [Public Law 94-731], 27200.

## HEARINGS

“Extension of the Voting Rights Act,” hearings before the Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, 94th Congress, 1st session, Serial No. 1. (1975).

“Extension of the Voting Rights Act of 1965,” hearings before the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 94th Congress, 1st session, (1975).

1982.—Public Law 97-205, the Voting Rights Act Amendments of 1982

## 127 CONG. REC. (1981)

H.R. 3112, 97th Cong., by Mr. Rodino to extend the Voting Rights Act of 1965. Referred to the Committee on the Judiciary, April 7;

reported (H. Rept. 277), July 31; debated, October 2, 5; passed in House, October 5.

S. 1992, 97th Cong., by Mr. Mathias to extend the Voting Rights Act of 1965. Referred to the Committee on the Judiciary, December 16.

128 CONG. REC. (1982)

Reported from Subcommittee (Report of Subcommittee on the Constitution), March 24; reported from Committee (S. Rept. 417), May 4; debated, June 9, 10, 14-17; H.R. 3112 considered in Senate, June 18, passed Senate, amended, in lieu of S. 1992; House concurred in Senate amendment, June 23; signed by President, July 8.

HEARINGS

"Extension of the Voting Rights Act," hearings before the Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, 97th Congress, 1st session, Serial No. 24 (3 parts) (1982).

"Voting Rights Act," hearings before the Subcommittee on the Constitution, Senate Committee on the Judiciary, 97th Congress, 2d session (2 parts) (1982).

TEXT OF THE LAW

AN ACT To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965".*

TITLE I—VOTING RIGHTS<sup>1</sup>

SEC. 2. (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

[Public Law 94-73; 97-205]

[42 U.S.C. 1973]

SEC. 3. (a) Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the voting

<sup>1</sup> The text of the Voting Rights Act reproduced in this publication reflects the acts wording as it appeared on August 5, 1984, the effective date of the major amendments enacted in the Voting Rights Act Amendments of 1982.

guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

【Public Law 94-73】

(b) If in a proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

【Public Law 94-73】

(c) If in any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

【Public Law 94-73】

【42 U.S.C. 1973a】

SEC. 4. (a)(1) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though, such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State) though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court de-



termines that during the ten years preceding the filing of the action, and during the pendency of such action—

(A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2);

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

(C) no Federal examiners under this Act have been assigned to such State or political subdivision;

(D) such State or political subdivision and all governmental units within its territory have complied with section 5 of this Act, including compliance with the requirement that no change covered by section 5 has been enforced without preclearance under section 5, and have repealed all changes covered by section 5 to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 5, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 5, and no such submissions or declaratory judgment actions are pending; and

(F) such State or political subdivision and all governmental units within its territory—

(i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;

(ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under this Act; and

(iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority group participation.

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. Any aggrieved party may as of right intervene at any stage in such action.

(5) An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for ten years after judgment and shall reopen the action upon motion of the Attorney General or any

aggrieved person alleging that conduct has occurred which, had that conduct occurred during the ten-year periods referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection. The court, upon such reopening, shall vacate the declaratory judgment issued under this section if, after the issuance of such declaratory judgment, a final judgment against the State or subdivision with respect to which such declaratory judgment was issued, or against any governmental unit within that State or subdivision, determines that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision which sought a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) have occurred anywhere in the territory of such State or subdivision, or if, after the issuance of such declaratory judgment, a consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds.

(6) If, after two years from the date of the filing of a declaratory judgment under this subsection, no date has been set for a hearing in such action, and that delay has not been the result of an avoidable delay on the part of counsel for any party, the chief judge of the United States District Court for the District of Columbia may request the Judicial Council for the Circuit of the District of Columbia to provide the necessary judicial resources to expedite any action filed under this section. If such resources are unavailable within the circuit, the chief judge shall file a certificate of necessity in accordance with section 292(d) of title 28 of the United States Code.

(7) The Congress shall reconsider the provisions of this section at the end of the fifteen-year period following the effective date of the amendments made by the Voting Rights Act Amendments of 1982.

(8) The provisions of this section shall expire at the end of the twenty-five-year period following the effective date of the amendments made by the Voting Rights Act Amendments of 1982.

(9) (a) Nothing in this section shall prohibit the Attorney General from consenting to any entry of judgment if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of section 4(a)(1). Any aggrieved party may as of right intervene at any stage in such action.

[Public Law 94-73; 97-205]

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968.

[Public Law 94-73]

On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

[Public Law 94-73]

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achieve-

ment or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

【Public Law 94-73】

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

(f)(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

(3) In addition to the meaning given the term under section 4(c), the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to section 4(b), the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of section 4(a) provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten, or in the case of Alaskan Natives and American Indians, if the predominant language is historically unwritten the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

[Public Law 94-73]

[42 U.S.C. 1973b]

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualifications or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

[Public Law 94-73]

[42 U.S.C. 1973c]

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fourteenth or fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fourteenth or fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to

the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

【Public Law 94-73】

【42 U.S.C. 1973d】

SEC. 7. (a) The examiners for each political subdivision shall, at such places as the Civil Service Commission shall by regulation designate, examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote.

(b) Any person whom the examiner finds, in accordance with instructions received under section 9(b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9(a) and shall not be the basis for a prosecution under section 12 of this Act. The examiner shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): *Provided*, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States.

【42 U.S.C. 1973e】

SEC. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Commission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the court.

【42 U.S.C. 1973f】

SEC. 9. (a) Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the

application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

(b) The times, places, procedures, and form for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

(c) Upon the request of the applicant or the challenger or on its own motion the Civil Service Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service or process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

[42 U.S.C. 1973g]

SEC. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment, section 2 of the fifteenth amendment and section 2 of the twenty-fourth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

[Public Law 94-73]

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

[42 U.S.C. 1973h]

SEC. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than \$10,000 or imprisoned not more than five years, or both: *Provided, however*, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

【Public Law 91-405; 94-73】

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(e)(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term "votes more than once" does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 202 of this Act, to the extent two ballots are not cast for an election to the same candidacy or office.

【Public Law 94-73】

【42 U.S.C. 1973i】

SEC. 12. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, 7, or 10 or shall violate section 11(a), shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

【Public Law 90-284】

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marketing of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, 4, 5, 7, 10, or 11(a) shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

【Public Law 90-284】

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification the Attorney General may forthwith file with the district court an application for an order providing for the marking, cast-

ing, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law.

[42 U.S.C. 1973j]

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney General's refusal to request such survey or census to be arbitrary or unreasonable.

[Public Law 94-73]

[42 U.S.C. 1973k]

SEC. 14. (a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c)(1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such a ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(3) The term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.

[Public Law 94-73]

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 of this Act, subpoenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: *Provided*, That no writ of subpoena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.



【Public Law 94-73】

【42 U.S.C. 1973I】

SEC. 15. Amends section 2004 of the Revised Statutes (42 U.S.C. 1971).

SEC. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting against citizens serving the Armed Forces of the United States.

SEC. 17. Nothing in the Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

【42 U.S.C. 1973n】

SEC. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

【42 U.S.C. 1973o】

SEC. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

【42 U.S.C. 1973p】

## TITLE II—SUPPLEMENTAL PROVISIONS

### APPLICATION OF PROHIBITION TO OTHER STATES

SEC. 201. (a) No citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.

【Public Law 91-285; 94-73】

(b) As used in this section, the term "test or device" means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement of his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

【Public Law 91-285】

【42 U.S.C. 1973aa】

### RESIDENCE REQUIREMENTS FOR VOTING

SEC. 202. (a) The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections—

(1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;

(2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;

(3) denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;

(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;

(5) has the effect of denying to citizens the equality of civil rights, and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment; and

(6) does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.

## 【Public Law 91-285】

(b) Upon the basis of these findings, Congress declares that in order to secure and protect the above stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.

## 【Public Law 91-285】

(c) No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

## 【Public Law 91-285】

(d) For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

## 【Public Law 91-285】

(e) If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

## 【Public Law 91-285】

(f) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration.

## 【Public Law 91-285】

(g) Nothing in this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein.

## 【Public Law 91-285】

(h) The term "State" as used in this section includes each of the several States and the District of Columbia.

[Public Law 91-285]

(i) The provisions of section 11(c) shall apply to false registrations, and other fraudulent acts and conspiracies, committed under this section.

[Public Law 91-285]

[42 U.S.C. 1973aa-1]

#### BILINGUAL ELECTION REQUIREMENTS

SEC. 203. (a) The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

[Public Law 94-73]

(b) Prior to August 6, 1982, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: *Provided*, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

[Public Law 94-73; 97-205]

(c) Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

[Public Law 94-73; 97-205]

(d) Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for a declaratory judgement permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

[Public Law 94-73]

(e) For purposes of this section, the term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

[Public Law 94-73]

[42 U.S.C. 1973aa-1a]

#### JUDICIAL RELIEF

SEC. 204. Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 201, or (b) undertakes to deny the right to vote in any election in violation of section 202, or 203, he may institute for the United States, or in the name of the United States, an

action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall be to the Supreme Court.

【Public Law 91-285; 94-73】

【42 U.S.C. 1973aa-2】

#### PENALTY

SEC. 205. Whoever shall deprive or attempt to deprive any person of any right secured by section 201, 202 or 203 of this title shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

【Public Law 91-285; 94-73】

【42 U.S.C. 1973aa-3】

#### SEPARABILITY

SEC. 206. If any provision of this Act or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such determination.

【Public Law 91-285; 94-73】

【42 U.S.C. 1973aa-4】

SEC. 207. (a) Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 4(a) of the Voting Rights Act of 1965 are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1974; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall only include a count of citizens of voting age, race or color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in the elections surveyed.

【Public Law 94-73】

(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information.

【Public Law 94-73】

(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

【Public Law 94-73】

(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section.

【Public Law 94-73】

【42 U.S.C. 1973aa-5】

#### VOTING ASSISTANCE

SEC. 208. Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

【Public Law 97-205】

## TITLE III—EIGHTEEN-YEAR-OLD VOTING AGE

## ENFORCEMENT OF TWENTY-SIXTH AMENDMENT

SEC. 301. (a)(1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

【Public Law 91-285; 94-73】

(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

【Public Law 91-285; 94-73】

(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

【Public Law 91-285; 94-73】

【42 U.S.C. 1973bb】

## DEFINITION

SEC. 302. As used in this title, the term "State" includes the District of Columbia.

【Public Law 91-285; 94-73】

【42 U.S.C. 1973bb-1】

*Code of Federal Regulations*Procedures, 28 CFR 51.1 *et seq.*Program and policies, 45 CFR 801.101 *et seq.*

## H. AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

(Public Law 90-202; 81 Stat. 602)

The Age Discrimination in Employment Act of 1967, as amended, forbids employers, employment agencies, and labor unions from discriminating against individuals between 40 and 70 because of age in regard to hiring, discharge, classification, union membership, and advertising. However, since the law is based on the commerce clause of the Federal Constitution, (Article I, Section 8, cl. 3) only employers, employment agencies, and labor unions that are engaged in an industry "affecting commerce" are covered. In addition, the law does not apply to individuals outside the specified age limits. The Act was originally administered and enforced by the Secretary of Labor, but under Reorganization Plan No. 1 of 1978, all enforcement functions were transferred to the Equal Employment Opportunity Commission.

## LEGISLATIVE HISTORY

*Original Act*

113 CONG. REC. (1967)

H.R. 13054—Relative to age discrimination in employment. Mr. Dent, et al.; Committee on Education and Labor, 26473; reported (H. Rept. 805), 29654; rules suspended; passed House, 34738; proceedings vacated; laid on the table (S. 830 passed in lieu), 34753.

S. 830, 90th Cong., by Mr. Yarborough *et al.*, to prohibit age discrimination in employment. Referred to the Committee on Labor and Public Welfare, 2464, 3337; reported with amendment (S. Rept. 723), 31151; amended and passed Senate, 31248; amended and passed House (in lieu of H.R. 13054), 34753; Senate concurs in House amendment with amendments, 35053; House concurs in Senate amendments, 35133; examined and signed, 35698, 35918; presented to the President, 36083; approved [Public Law 90-202], 37125.

## HEARINGS

“Age Discrimination in Employment,” hearings before the General Subcommittee on Labor, House Committee on Education and Labor, 90th Congress, 1st session (1967).

“Age Discrimination in Employment,” hearings before the Subcommittee on Labor, House Committee on Labor and Public Welfare, 90th Congress, 1st session (1967).

*Amendments*

1978.—Public Law 95-256, the Age Discrimination in Employment Act Amendments of 1978

123 CONG. REC. (1977)

H.R. 5383, 95th Cong., by Messrs. Pepper and Findley, to amend the Age Discrimination in Employment Act of 1967 to provide that all Federal employees described in section 15 of such act shall be covered under the provisions of such act regardless of race. Referred to the Committee on Education and Labor, 8497; reported with amendment (S. Rept. 95-493), 24794; referred to Committee on Post Office and Civil Service, 24794; debated, 29002, 30554; amended and passed House; title amended, 30574; referred to Committee on Human Resources, 30830; reported with amendment (S. Rept. 95-493), 33370; debated, 34293, 34294, 34305, 34324; amended and passed Senate, 34324; Senate insisted on its amendments and asked for a conference. Conferees appointed, 34325; House disagreed to Senate amendments and asked for a conference. Conferees appointed, 34987; additional conferee appointed, 35029.

124 CONG. REC. (1978)

Conference report (H. Rept. 95-950) submitted in House and agreed to, 6841, 7880; conference report submitted in the Senate and agreed to, 8216; examined and signed, 8261, 8496; presented to the President, 8667; approved [Public Law 95-256], 11050.

## TEXT OF THE LAW

*Sec. 2. Congressional statement of findings and purpose*

(a) The Congress hereby finds and declares that—

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this Act [29 USCS §§ 621 et seq.] to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

[29 U.S.C. 621]

*Sec. 3. Education and research program; recommendation to Congress*

(a) The Equal Employment Opportunity Commission shall undertake studies and provide information to labor unions, management, and the general public concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy. In order to achieve the purposes of this Act [29 USCS §§ 621 et seq.], the Equal Employment Opportunity Commission shall carry on a continuing program of education and information, under which he may, among other measures—

(1) undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;

(2) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(3) foster through the public employment service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(4) sponsor and assist State and community informational and educational programs.

[Public Law 90-202]

[29 U.S.C. 622]

*Sec. 4. Prohibition of age discrimination*

(a) *Employer practices.* It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this Act [29 USCS §§ 621 et seq.].

(b) *Employment agency practices.* It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) *Labor organization practices.* It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit

such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) *Opposition to unlawful practices; Participation in investigations, proceedings, or litigation.* It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this Act [29 USCS §§ 621 et seq.].

(e) *Printing or publication of notice or advertisement indicating preference, limitation, etc.* It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

【Public Law 90-202】

(f) *Lawful practices; age and occupational qualification; other reasonable factors; seniority system; employee benefit plans; discharge or discipline for good cause.* It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age;

【Public Law 90-202】

(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

【Public Law 90-202; 95-256】

(g) *Entitlement to coverage under group health plan—*

(1) For purposes of this section, any employer must provide that any employee aged 65 through 69 shall be entitled to coverage under any group health plan offered to such employees under the same conditions as any employee under age 65.

(2) For purposes of paragraph (1), the term “group health plan” has the meaning given to such term in section 162(i)(2) of Title 26.

【Public Law 90-202; 97-248】

【29 U.S.C. 623】

*Sec. 5. Study by Secretary of Labor; reports to President and Congress; scope of study; implementation of study; transmittal date of reports*

(a)(1) The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress. Such study shall include—

(A) an examination of the effect of the amendment made by section 3(a) of the Age Discrimination in Employment Act Amendments of 1978 [amending 29 USCS § 631] in raising the upper age limitation established by section 12(a) of this Act [29 USCS § 631(a)] to 70 years of age;

(B) a determination of the feasibility of eliminating such limitation;

(C) a determination of the feasibility of raising such limitation above 70 years of age; and

(D) an examination of the effect of the exemption contained in section 12(c) [29 USCS § 631(c)], relating to certain executive employees, and the exemption contained in section 12(d) [29 USCS § 631(d)], relating to tenured teaching personnel.



(2) The Secretary may undertake the study required by paragraph (1) of this subsection directly or by contract or other arrangement.

(b) The report required by subsection (a) of this section shall be transmitted to the President and to the Congress as an interim report not later than January 1, 1981, and in final form not later than January 1, 1982.

【Public Law 90-202; 95-256】

【29 U.S.C. 624】

### *Sec. 6. Administration*

The Commission shall have the power—(a) to make delegations, to appoint such agents and employees, and to pay for technical assistance on a fee for service basis, as he deems necessary to assist him in the performance of his functions under this Act; to cooperate with regional, State, local, and other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act.

【Public Law 90-202】

【29 U.S.C. 625】

### *Sec. 7. Recordkeeping, investigation, and enforcement*

(a) *Attendance of witnesses; investigations, inspections, records, and homework regulations.* The Commission shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this Act in accordance with the powers and procedures provided in sections 9 and 11 of the Fair Labor Standards Act of 1938, as amended (29 USC 209 and 211) [29 USCS §§ 209, 211].

(b) *Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion.* The provisions of this Act shall be enforced in accordance with the powers, remedies, and procedures provided in sections 11(b), 16 (except for subsection (a) thereof), and 17 of the Fair Labor Standards Act of 1938, as amended (29 USC 211(b), 216, 217) [29 USCS §§ 211(b), 216, 217], and subsection (c) of this section. Any Act prohibited under section 4 of this Act [29 USCS § 623] shall be deemed to be a prohibited Act under section 15 of the Fair Labor Standards Act of 1938, as amended (29 USC 215) [29 USCS § 215]. Amounts owing to a person as a result of a violation of this Act shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 16 and 17 of the Fair Labor Standards Act of 1938, as amended (29 USC 216, 217) [29 USCS §§ 216, 217]: *Provided*, That liquidated damages shall be payable only in cases of willful violations of this Act. In any action brought to enforce this Act the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this Act, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Commission shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this Act through informal methods of conciliation, conference, and persuasion.

【Public Law 90-202】

(c) *Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Commission; jury trial—*

(1) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act: *Provided*, That the right of any person to bring such action shall terminate upon the commencement of an action by the Commission to enforce the right of such employee under this Act.

(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this Act, regardless of whether equitable relief is sought by any party in such action.

(d) *Filing of charge with Commission; timeliness; conciliation, conference, and persuasion.* No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Commission. Such a charge shall be filed—

(1) within 180 days after the alleged unlawful practice occurred; or

(2) in a case to which section 14(b) [29 USCS § 633(b)] applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

Upon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.

(e) *Statute of limitations; reliance in future on administrative rulings, etc.; tolling—*

(1) Sections 6 and 10 of the Portal-to-Portal Act of 1947 [29 USCS §§ 255 and 259] shall apply to actions under this Act.

(2) For the period during which the Commission is attempting to effect voluntary compliance with requirements of this Act through informal methods of conciliation, conference, and persuasion pursuant to subsection (b), the statute of limitations as provided in section 6 of the Portal-to-Portal Act of 1947 [29 USCS § 255] shall be tolled, but in no event for a period in excess of one year.

[Public Law 90-202; 95-256]

[29 U.S.C. 626]

#### *Sec. 8. Notices to be posted*

Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the Commission setting forth information as the Commission deems appropriate to effectuate the purposes of this Act [29 USCS §§ 621 et seq.].

[Public Law 90-202]

[29 U.S.C. 627]

#### *Sec. 9 Rules and Regulations; Exemptions*

In accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code [5 USCS §§ 551 et seq.], the Equal Employment Opportunity Commission may issue such rules and regulations as he may consider necessary or appropriate for carrying out this Act, and may establish such reasonable exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest.

[Public Law 90-202]

[29 U.S.C. 628]

#### *Sec. 10. Criminal Penalties*

Whoever shall forcibly resist, oppose, impede, intimidate or interfere with a duly authorized representative of the Commission while he is engaged in the performance of duties under this Act [29 USCS §§ 621 et seq.] shall be punished by a fine of not more than \$500 or by imprisonment for not more than one year, or by both: *Provided, however,* That no person shall be imprisoned under this section except when there has been a prior conviction hereunder.

[Public Law 90-202]

[29 U.S.C. 629]

#### *Sec. 11. Definitions*

For the purposes of this Act [29 USCS §§ 621 et seq.]—

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trusts, legal representatives, or any organized groups of persons.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: *Provided,* That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate

agency, but such term does not include the United States, or a corporation wholly owned by the Government of the United States.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is fifty or more prior to July 1, 1968, or twenty-five or more on or after July 1, 1968, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by any employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

[Public Law 90-202; 93-259]

[29 U.S.C. 630]

### Sec. 12. Age limits

(a) *Individuals at least 40 but less than 70 years of age.* The prohibitions in this Act [29 USCS §§ 621 et seq.] shall be limited to individuals who are at least 40 years of age but less than 70 years of age.

(b) *Employees or applicants for employment in Federal Government.* In the case of any personnel action affecting employees or applicants for employment which is subject to the provisions of section 15 of this Act [29 USCS § 633a], the prohibitions established in section 15 of this Act [29 USCS § 633a] shall be limited to individuals who are at least 40 years of age.

(c) *Bona fide executives of high policy makers—*

(1) Nothing in this Act [29 USCS §§ 621 et seq.] shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age but not 70 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least \$27,000.

(2) In applying the retirement benefit test of paragraph (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Commission after consultation with the Secretary of the Treasury, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(d) *Employees serving under contracts of unlimited tenure at institutions of higher education.* Nothing in this Act [29 USCS §§ 621 et seq.] shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age but not 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education (as defined by section 1201(a) of the Higher Education Act of 1965 [20 USCS § 1141(a)]).

[Public Law 90-202; 95-256]

[29 U.S.C. 631]

### Sec. 13. Annual report to Congress

The Commission shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable. Such report shall contain an evaluation and appraisal by the Commission of the effect of the minimum and maximum ages established by this Act together with his recommendations to the Congress. In making such evaluation and appraisal, the Commission shall take into consideration any changes which may have occurred in the general age level of the population, the effect of the Act upon workers not covered by its provisions, and such other factors as he may deem pertinent.

[Public Law 90-202]

[29 U.S.C. 632]

### Sec. 14. Federal-State relationship

(a) *Federal action superseding State action.* Nothing in this Act shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this Act such action shall supersede any State action.

(b) *Limitation of Federal action upon commencement of State proceedings.* In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 7 of this Act [29 USCS § 626] before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the

effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

【Public Law 90-202】

【29 U.S.C. 633】

*Sec. 15. Nondiscrimination on account of age in Federal Government employment*

(a) *Federal agencies affected.* All personnel actions affecting employees or applicants for employment who are at least 40 years of age (except personnel actions with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code [5 USCS § 102], in executive agencies as defined in section 105 of title 5, United States Code [5 USCS § 105] (including employees and applicants for employment who are paid from non-appropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

(b) *Enforcement by Equal Employment Opportunity Commission and by Librarian of Congress in the Library of Congress; remedies; rules, regulations, orders, and instructions of Commission: compliance by Federal agencies; powers and duties of Commission; notification of final action on complaint of discrimination; exemptions: bona fide occupational qualification.* Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission is authorized to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Equal Employment Opportunity Commission shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

- (1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each department, agency, or unit referred to in subsection (a);
- (2) consult with and solicit the recommendations of interested individuals, groups, and organizations, relating to nondiscrimination in employment on account of age; and
- (3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Equal Employment Opportunity Commission which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) *Civil actions; jurisdiction; relief.* Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act.

(d) *Notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices.* When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants

in the action and take any appropriate action to assure the elimination of any unlawful practice.

(e) *Duty of Government agency or official.* Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law.

(f) *Applicability of statutory provisions to personnel action of Federal departments, etc.* Any personnel action of any department, agency, or other entity referred to in subsection (a) of this section shall not be subject to, or affected by, any provision of this chapter, other than the provisions of section 631(b) of this title and the provisions of this section.

(g) *Study and report to President and Congress by Equal Employment Opportunity Commission; scope* (1) The Equal Employment Opportunity Commission shall undertake a study relating to the effects of the amendments made to this section by the Age Discrimination in Employment Act Amendments of 1978, and the effects of section 631(b) of this title. (2) The Equal Employment Opportunity Commission shall transmit a report to the President and to the Congress containing the findings of the Commission resulting from the study of the Commission under paragraph (1) of this subsection. Such report shall be transmitted no later than January 1, 1980.

【Public Law 90-202; 93-259; 95-256】

【29 U.S.C. 633a】

#### *Sec. 16. Authorization of appropriations*

There are hereby authorized to be appropriated such sums as may be necessary to carry out this Act.

【Public Law 90-202; 93-259; 95-256】

【29 U.S.C. 634】

### *Code of Federal Regulations*

#### Age Discrimination in Employment, 29 CFR 860.1 et seq.

#### I. CIVIL RIGHTS ACT OF 1968

(Public Law 90-284, 82 Stat. 73)

After enactment of the sweeping Civil Rights Act of 1964 and the Voting Rights Act of 1965, there followed unsuccessful attempts in the subsequent two years to pass further legislation protecting blacks from discrimination in the area of housing rentals and sales. These efforts jelled only after the assassination of Dr. Martin Luther King, Jr. moved the Congress to enact the omnibus Civil Rights Act of 1968. Although title VIII, the "fair housing" provisions, is probably the best known portion of the act, other titles affected the protection of minority rights as well. Thus, the law defined the rights of American Indians; set forth two anti-riot sections; and prescribed penalties for interfering, through violence, intimidation or other means, with any person's enjoyment of federally protected rights.

Efforts during the 96th Congress to expand the fair housing enforcement provisions of the act ultimately foundered on the basis of controversies relating to whether discrimination under the act would be identified through an "intent" or "effects" standard.

## LEGISLATIVE HISTORY

*Original Act*

113 CONG. REC. (1967)

H.R. 2516, 90th Cong., by Mr. Celler, to prescribe penalties for certain acts of violence or intimidation, and for other purposes. Referred to the Committee on the Judiciary, 713; reported with amendment (H. Rept. 473), 17975; made special order (H. Res. 856), 22670; debated, 22678, 22743; amended and passed House, 22778; referred to Senate Committee on the Judiciary, 24131; reported with amendment (S. Rept. 721), 31151; debated, 37117.

114 CONG. REC. (1968)

Debated in Senate, 329, 385, 532, 656, 668, 673, 912, 1014, 1150, 1157, 1275, 1276, 1287, 1382, 1391, 1394, 1689, 1708, 1790, 1795, 1817, 1990, 2083, 2094, 2102, 2264, 2524, 2687, 2703, 2717, 2984, 3119, 3121, 3133, 3235, 3331, 3345, 3421; cloture motion rejected, 3426; debated, 3746, 3805, 4048, 4049; cloture motion rejected, 4064; debated, 4143, 4287, 4295, 4544, 4568, 4672, 4678, 4688, 4697, 4700, 4831, 4845, 4847, 4848, 4954, 4960, 4964, 4971, 4984, 4985, 5032, 5186, 5200, 5211, 5214, 5225, 5227, 5513, 5517, 5522, 5525, 5529, 5530, 5531, 5631, 5633, 5634, 5638, 5639, 5667, 5709, 5807, 5812, 5819, 5824, 5840, 5983, 5986; amended and passed Senate, 5992; House concurs in Senate amendment, objected to 6474, 6489; pursuant to H. Res. 1100 House agrees to Senate Amendment, 9553, 9621; examined and signed, 9493, 9637; presented to the President, 9682; approved [Public Law 90-284], 10322.

## HEARINGS

"Miscellaneous Proposals Regarding the Civil Rights of Persons Within the Jurisdiction of the United States," hearings before the House Committee on the Judiciary, 89th Congress, 2d session (1966).

"To Prescribe Penalties For Certain Acts of Violence or Intimidation," hearings before House Committee on Rules, 90th Congress, 2d session (1968).

"Civil Rights Act of 1967," hearings before the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 90th Congress, 1st session (1967).

*Amendments*

1974.—Public Law 93-383, the Housing and Community Development Act of 1974

120 CONG. REC. (1974)

H.R. 15361—To establish a program of community development block grants, to amend and extend laws relating to housing and urban development, and for other purposes. Mr. Patman, et al.; Committee on Banking and Currency, 19109; reported (H. Rept. 93-1114), 19351; made special order; H. Res. 1182, 19745; debated,

19876, 20213; amended and passed House, 20315; proceedings vacated; laid on the table (S. 3066 passed in lieu), 20333.

S. 3066, 93d Cong., by Mr. Sparkman, to consolidate, simplify, and improve laws relative to housing and housing assistance, to provide Federal assistance in support of community development activities, and for other purposes. Placed on the calendar, 4487; from Committee on Banking, Housing and Urban Affairs; reported (S. Rept. 93-693). 4487; debated, 5767, 5949, 5946, 6141, 6142; amended and passed Senate, 6172; referred to Committee on Banking and Currency, 6570; committee discharged; amended and passed House (in lieu of H.R. 15361), 20315; title amended, 20333; House insisted on its amendments and asked for a conference; conferees appointed, 20334; Senate disagreed to House amendments, 20861, 20880; conferees added, 24890; conference report (H. Rept. 93-1279); submitted in the House; agreed to, 27743, 28374; conference report submitted in the Senate and agreed to, 28138; examined and signed, 28882, 29053; presented to the President, 28882; approved [Public Law 93-383], 30248.

1980.—The Fair Housing Amendments of 1980 (Proposed and considered but not enacted)

126 CONG REC. (DAILY ED. 1980)

House: H.R. 5200, 96th Cong., by Mr. Edwards, to amend title VIII of the 1968 Civil Rights Act. Reported from the Committee on the Judiciary (H. Rept. 96-865). Debated in House, 4770, 4775, 4783, 4791, 4842, 4845, 4850; amended and passed House, 4850.

Senate: S. 506, 96th Cong., by Mr. Mathias et al., to amend title VIII of the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing, and for other purposes. Reported from the Committee on the Judiciary (S. Rept. 96-919); debated in Senate, 15177, 15186, 15225, 15249, 15317, 15498, 15515, 15528, 15666, 15850. Withdrawn from consideration, 15860.

#### HEARINGS

“HUD Attorneys’ Fees,” hearings before the Subcommittee on the Constitution, Senate Committee on the Judiciary, 95th Congress, 2d session (1978).

“Fair Housing Amendments Act of 1979,” hearings before the Subcommittee on the Constitution, Senate Committee on the Judiciary, 96th Congress, 1st session (1979).

“Fair Housing Amendments Act of 1979,” hearings before the Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, 96th Congress, 1st session (1979).

#### TEXT OF THE LAW

##### TITLE I—INTERFERENCE WITH FEDERALLY PROTECTED ACTIVITIES

SEC. 101. (a) [Amends chapter 13, civil rights, title 18, United States Code, by inserting at the end thereof a new section 245 (relating to federally protected civil rights activities).]

(b) Nothing contained in this section shall apply to or affect activities under title VIII of this Act.



(c) The provisions of this section shall not apply to acts or omissions on the part of law enforcement officers, members of the National Guard, as defined in section 101(9) of title 10, United States Code, members of the organized militia of any State or the District of Columbia, not covered by such section 101(9), or members of the Armed Forces of the United States, who are engaged in suppressing a riot or civil disturbance or restoring law and order during a riot or civil disturbance.

SEC. 102. [Amends the analysis of chapter 13 of title 18 of the United States Code by adding at the end thereof an item for the catchline of the section 245 added by subsection (a).]

SEC. 103. (a) [Amends section 241 of title 18, United States Code.]

(b) [Amends section 242 of title 18, United States Code.]

(c) [Amends section 12 of the Voting Rights Act of 1965.]

SEC. 104. (a) [Amends title 18 of the United States Code by inserting, immediately after chapter 101 a new chapter 102 (riots).]

(b) [Amends the table of contents to "PART I.—CRIMES" of title 18, United States Code.]

## TITLE II—RIGHTS OF INDIANS

### DEFINITIONS

SEC. 201. For purposes of this title, the term—

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and

(3) "Indian court" means any Indian tribal court or court of Indian offense.

[25 U.S.C. 1301]

### INDIAN RIGHTS

SEC. 202. No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of \$500, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

### HABEAS CORPUS

SEC. 203. The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

### TITLE III—MODEL CODE GOVERNING COURTS OF INDIAN OFFENSES

SEC. 301. The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this title, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

SEC. 302. There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this title.

### TITLE IV—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

#### ASSUMPTION BY STATE

Sec. 401. (a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

[25 U.S.C. 1321]

#### ASSUMPTION BY STATE OF CIVIL JURISDICTION

Sec. 402. (a) The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess of the State, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

[25 U.S.C. 1322]

#### RETROCESSION OF JURISDICTION BY STATE

SEC. 403. (a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of title 18 of the United States Code, section 1360 of title 28 of the United States Code, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.

(b) [Repeals section 7 of the Act of August 15, 1953 (67 Stat. 588), but leaves a partial savings clause as follows: "but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal".]

[25 U.S.C. 1323]

#### CONSENT TO AMEND STATE LAWS

SEC. 404. Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this title. The provisions of this title shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes, as the case may be.

[25 U.S.C. 1324]

#### ACTIONS NOT TO ABATE

SEC. 405. (a) No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this title shall abate by reason of that cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

(b) No cession made by the United States under this title, shall deprive any court of the United States of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession, if the offense charged in such action was cognizable under any law of the United States at the time of the commission of such offense. For the purposes of any such criminal action, such cession shall take effect on the day following the date of final determination of such action.

[25 U.S.C. 1325]

#### SPECIAL ELECTION

SEC. 406. State jurisdiction acquired pursuant to this title with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

[25 U.S.C. 1326]

### TITLE V—OFFENSES WITHIN INDIAN COUNTRY

#### AMENDMENT

SEC. 501. [Amends section 1153 of title 18 of the United States Code.]

## TITLE VI—EMPLOYMENT OF LEGAL COUNSEL

## APPROVAL

SEC. 601. Notwithstanding any other provision of law, if any application made by an Indian, Indian tribe, Indian council, or any band or group of Indians under any law requiring the approval of the Secretary of the Interior or the Commissioner of Indian Affairs of contracts or agreements relating to the employment of legal counsel (including the choice of counsel and the fixing of fees) by any such Indians, tribe, council, band, or group is neither granted nor denied within ninety days following the making of such application, such approval shall be deemed to have been granted.

[25 U.S.C. 1331]

## TITLE VII—MATERIALS RELATING TO CONSTITUTIONAL RIGHTS OF INDIANS

## SECRETARY OF INTERIOR TO PREPARE

SEC. 701. (a) In order that the constitutional rights of Indians might be fully protected, the Secretary of the Interior is authorized and directed to—

(1) have the document entitled "Indian Affairs, Laws and Treaties" (Senate Document Numbered 319, volumes 1 and 2, Fifty-eighth Congress), revised and extended to include all treaties, laws, Executive orders, and regulations relating to Indian affairs in force on September 1, 1967, and to have such revised document printed at the Government Printing Office;

(2) have revised and republished the treaties entitled "Federal Indian Law"; and

(3) have prepared, to the extent determined by the Secretary of the Interior to be feasible, an accurate compilation of the official opinions, published and unpublished, of the Solicitor of the Department of the Interior relating to Indian affairs rendered by the Solicitor prior to September 1, 1967, and to have such compilation printed as a Government publication at the Government Printing Office.

(b) With respect to the document entitled "Indian Affairs, Laws and Treaties" as revised and extended in accordance with paragraph (1) of subsection (a), and the compilation prepared in accordance with paragraph (3) of such subsection, the Secretary of the Interior shall take such action as may be necessary to keep such document and compilation current on an annual basis.

(c) There is authorized to be appropriated for carrying out the provisions of this title, with respect to the preparation but not including printing, such sum as may be necessary.

[Public Law 93-625]

[25 U.S.C. 1341]

## TITLE VIII—FAIR HOUSING

## POLICY

SEC. 801. It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

[42 U.S.C. 3601]

## DEFINITIONS

SEC. 802. As used in this title—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, or 806.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

【Public Law 95-598】

【42 U.S.C. 3602】

EFFECTIVE DATES OF CERTAIN PROHIBITIONS

SEC. 803. (a) Subject to the provisions of subsection (b) and section 807, the prohibitions against discrimination in the sale or rental of housing set forth in section 804 shall apply:

(1) Upon enactment of this title, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to the date of enactment of this title;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to the date of enactment of this title: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b).

(b) Nothing in section 804 (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 804(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) For the purposes of subsection (b), a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

[42 U.S.C. 3603]

#### DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 804. As made applicable by section 803 and except as exempted by sections 803(b) and 807, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

[Public Law 93-383]

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

[Public Law 93-383]

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

[Public Law 93-383]

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

[Public Law 93-383]

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin.

[Public Law 93-383]

[42 U.S.C. 3604]

#### DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 805. After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm, or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 803(b).

[Public Law 93-383]

[42 U.S.C. 3605]

#### DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

SEC. 806. After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate bro-

kers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, or national origin.

[Public Law 93-383]

[42 U.S.C. 3606]

#### EXEMPTION

Sec. 807. Nothing in this title shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this title prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

[42 U.S.C. 3607]

#### ADMINISTRATION

Sec. 808. (a) The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) The Department of Housing and Urban Development shall be provided an additional Assistant Secretary. [Amends the Housing and Urban Development Act (Public Law 89-174), sections 4(a) and 7.]

(c) The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5 of the United States Code. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

[Public Law 95-454]

(d) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

## EDUCATION AND CONCILIATION

SEC. 809. Immediately after the enactment of this title the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this title. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of title 5 of the United States Code. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this title. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

## ENFORCEMENT

SEC. 810. (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c), the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

(b) A complaint under subsection (a) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title, the Secretary shall notify the appropriate State or local agency of any complaint filed under this title which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c), the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this title, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought



in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 812, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 812, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

[42 U.S.C. 3610]

#### INVESTIGATION; SUBPENAS; GIVING OF EVIDENCE

SEC. 811. (a) In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: *Provided, however,* That the Secretary first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Secretary may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

(b) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

(c) Witnesses summoned by subpoena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

(d) Within five days after service of a subpoena upon any person, such person may petition the Secretary to revoke or modify the subpoena. The Secretary shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(e) In case of contumacy or refusal to obey a subpoena, the Secretary or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Secretary, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(g) The Attorney General shall conduct all litigation in which the Secretary participates as a party or as amicus pursuant to this Act.

## [42 U.S.C. 3611]

## ENFORCEMENT BY PRIVATE PERSONS

Sec. 812. (a) The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however,* That the court shall continue such civil case brought pursuant to this section or section 810(d) from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however,* That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided,* That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

## [42 U.S.C. 3612]

## ENFORCEMENT BY THE ATTORNEY GENERAL

Sec. 813. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this title.

## [42 U.S.C. 3613]

## EXPEDITION OF PROCEEDINGS

Sec. 814. Any court in which a proceeding is instituted under section 812 or 813 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

## [42 U.S.C. 3614]

## EFFECT ON STATE LAWS

Sec. 815. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees or protects the same rights as are granted by this title; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

[42 U.S.C. 3615]

## COOPERATION WITH STATE AND LOCAL AGENCIES ADMINISTERING FAIR HOUSING LAWS

SEC. 816. The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this title. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

[42 U.S.C. 3616]

## INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 817. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806. This section may be enforced by appropriate civil action.

[42 U.S.C. 3617]

## APPROPRIATIONS

SEC. 818. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title.

[42 U.S.C. 3618]

## SEPARABILITY OF PROVISIONS

SEC. 819. If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of the title and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

[42 U.S.C. 3619]

*Code of Federal Regulations*

Equal Housing Lender Poster Display, 12 CFR 528.1.

Fair Housing Poster Display, 24 CFR 110.1 et seq.

Guidelines in Lending Practices, 12 CFR 531.8.

Administrative Meetings, 24 CFR 106.1 et seq.

Furnishing of Information, 24 CFR 100.2.

Marketing Policies and Requirements, 24 CFR 200.600 to 200.640.

Procedures, 24 CFR 105.31 to 105.36.

Substantially Equivalent Laws, recognition of, 24 CFR 115.1 et seq.

## J. EDUCATION AMENDMENTS OF 1972: TITLE IX

(Public Law 92-318; 86 Stat. 373)

In an effort to address the issue of sex discrimination in education, Congress in 1972 enacted a legislative remedy as a part of the Education Amendments of that year. The key provision is title IX containing a broad prohibition against discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. Title IX was modeled after the parallel, albeit broader, prohibition in title VI of the 1964 Civil Rights Act which bars racial and ethnic discrimination in all federally assisted pro-

grams and activities, not just those concerned with education. Title IX, however, contains four important exceptions absent from the Civil Rights Act. These are exemptions for military schools, traditionally single sex educational institutions, single sex religious schools, and undergraduate admissions. Otherwise, the law applies to federally aided institutions at the elementary, secondary, and higher educational levels.

## LEGISLATIVE HISTORY

### *Original Act*

117 CONG. REC. (1971)

S. 659, 92d Cong., by Mr. Pell, et al., to amend the Higher Education Act of 1965, the Vocational Education Act of 1963, the General Education Provisions Act, the Elementary and Secondary Education Act of 1965, and related acts, and for other purposes. Referred to the Committee on Labor and Public Welfare, 1994, 25304, 27937, 28966, 29243; reported with amendment (S. Rept. 92-346), 28956.—Debated in Senate, 29338, 29339, 29360, 30083, 30084, 30367, 30408, 30454, 30457, 30481, 30486; amended and passed Senate, title amended, 30500; referred to Committee on Education and Labor, 30882; amended and passed House (in lieu of H.R. 7248), 30882; House insisted on its amendment and asked for a conference, 39354, 39960; conferees appointed, 39960; referred to Committee on Labor and Public Welfare, 43080.

118 CONG. REC. (1972)

H.R. 7248—To amend and extend the Higher Education Act of 1965 and other Acts dealing with higher education. Mrs. Green of Oregon, et al.; Committee on Education and Labor, 9829; reported with amendment (H. Rept. 92-554), 35891; made special order (H. Res. 661), 37447; debated, 37769, 38036, 39064, 39248, 39330; amended and passed House, 39354, 39374; laid on the table (S. 659 passed in lieu), 39374.

From Committee on Labor and Public Welfare, 2808; reported with amendment (S. Rept. 92-604), 2808; debated, 4953, 5020, 5166, 5169, 5177, 5183, 5184, 5454, 5476, 5666, 5688, 5690, 5692, 5694, 5696, 5767, 5768, 5791, 5961, 5982, 6008, 6019, 6253, 6262; House amendment with an amendment in the nature of a substitute, as amended, was concurred in, 6277; objection is heard to send to conference. House disagreed to the amendment of the Senate to the amendment of the House and asked for a conference, 7540; conferees appointed, 7563; Senate insisted on its amendments and agreed to a conference, 7961; conferees appointed, 7961; change of conferee, 8480; agreed to a motion to instruct conferees to insist on House antibusing amendments, 16838; conference report submitted in Senate and agreed to, 18162, 18434, 18441, 18450, 18831, 18833, 18839, 18842, 18851, 18852, 18862; conference report (H. Rept. 92-1085) submitted in House and agreed to, 18451, 20278; examined and signed, 20428, 20505; presented to the President, 20516; approved [Public Law 92-318], 22702.

## HEARINGS

"Education Amendments of 1971," hearings before the Subcommittee on Education, Senate Labor and Public Welfare Committee, 92d Congress, 1st session (4 parts) (1971).

"Higher Education Amendments of 1971," hearings before the Special Subcommittee on Education, House Committee on Education and Labor, 92d Congress, 1st session (3 parts) (1971).

*Amendments*

1974.—Public Law 93-568, White House Conference—Library and Information Services

119 CONG. REC. (1973)

S.J. Res. 40, 93d Cong., by Mr. Pell, to authorize and request the President to call a White House Conference on Library and Information Services in 1973. Referred to the Committee on Labor and Public Welfare, 2204; reported with amendment (S. Rept. 93-521), 37446; amended and agreed to, 37712; title amended, 37713; referred to House Committee on Education and Labor, 37900.

120 CONG. REC. (1974)

From the Committee on Education and Labor; reported with amendment (H. Rept. 93-1056), 16206; rules suspended; amended and passed House, 17521; failed of passage under suspension of rules, 17547; made special order H. Res. 1410, 33647; amended and passed House; title amended, 39359; debated 39359; Senate concurs in House amendment with an amendment, 39866; Senate insists on its amendments and asked for a conference; conferees appointed, 39866; Senate reconsidered its action of December 13, 1974, agreed to House amendment with an amendment and asked for a conference, 39992; House disagrees to Senate amendments and agrees to a conference; conferees appointed, 40179; conference report (H. Rept. 93-1619) submitted in House and agreed to, 40547, 41389, 41390; conference report (93-1409) submitted in Senate and agreed to, 40734, 41076; examined and signed, 41771, 41991; presented to the President, 41770; approved [Public Law 93-568], December 31, 1974; omitted in Record.

1976.—Public Law 94-482, the Education Amendments of 1976

121 CONG. REC. (1975)

S. 2657, 94th Cong., by Mr. Pell, to extend the Higher Education Act of 1965, to extend and revise the Vocational Education Act of 1963, and for other purposes. Referred to the Committee on Labor and Public Welfare, 36045.

122 CONG. REC. (1976)

From Committee on Labor and Public Welfare. Reported (S. Rept. 94-832), 14122; cosponsors added, 14128; debated, 27681, 27963, 27991, 27995, 28134, 28148; amended and passed Senate, 28192; passed House amended, 28463; House insisted on its amend-

ment and asked for a conference. Conferees appointed, 28464; Senate disagreed to House amendment and agreed to a conference. Conferees appointed, 30444; conference report (H. Rept. 94-1701) submitted in the House and agreed to, 32495, 33638; conference report submitted in Senate and agreed to, 32918, 32919, 32922; examined and signed, 34404, 35377; presented to the President, 34665; approved [Public Law 94-482], 35087.

1984.—The Civil Rights Act of 1984 (Proposed and considered but not enacted)

130 CONG. REC. (DAILY ED. 1984)

House: H.R. 5490—A bill to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; to the Committees on Education and Labor; the Judiciary. By Mr. Simon, 2946. Cosponsors added, 3129, 3392, 3562, 4360, 4884, 5110, 5359, 5481. Reported (H. Rept. 98-829), 5480. Reported (H. Rept. 98-829, part II), 5480. Made special order (H. Res. 528), 6082. Debated, 6798, 7018. Amendments, 6811, 7025, 7029, 7030, 7035, 7038, 7040, 7046, 7047. Amended and passed House, 7057. Removal of cosponsors, 7057. Debated, 8983. Ordered placed on calendar, 8990. Amendments, 9865.

Senate S. 2568—A bill to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; to the Committee on Labor and Human Resources. By Mr. Kennedy, 4582. Cosponsors added, 5246, 6055. Amendments, 9865.

#### HEARINGS

“Civil Rights Act of 1984,” hearings before Subcommittee on the Constitution, Senate Committee on the Judiciary, 98th Congress, 2d session (1984).

“Civil Rights Act of 1984,” hearings before Subcommittee on Education, Arts, and Humanities, Senate Committee on Labor and Human Resources, 98th Congress, 2d session (1984).

“Civil Rights Act of 1984,” hearings before Senate Committee on Labor and Human Resources, 98th Congress, 2d session (1984).

“Civil Rights Act of 1984,” hearings before Senate Committee on Agriculture, Nutrition, and Forestry, 98th Congress, 2d session (1984).

“Civil Rights Act of 1984,” hearings before House Education and Labor Committee and Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, 98th Congress, 2d session (1984).

#### TEXT OF THE LAW

##### *Sec. 901: Sex*

*Prohibition against discrimination; exceptions.* (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits

of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

*Classes of educational institutions subject to prohibition.* (1) in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

*Educational institutions commencing planned change in admissions.* (2) in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education, whichever is the later;

*Educational institutions of religious organizations with contrary religious tenets.* (3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

*Educational institutions training individuals for military services or merchant marine.* (4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

*Public educational institutions with traditional and continuing admissions policy.* (5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

*Social fraternities or sororities; voluntary youth service organizations.* (6) this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

*Boy or Girl conferences.* (7) this section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for—

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

*Father-son or mother-daughter activities at educational institutions.* (8) this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

*Institution of higher education scholarship awards in "beauty" pageants.* (9) this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

*Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance.* (b) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of

persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

*Educational institution defined.* (c) For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

[Public Law 92-318; 93-568; 94-482]

[20 U.S.C. 1681]

*Sec. 902. Federal administrative enforcement; report to congressional committees*

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

[Public Law 92-318]

[20 U.S.C. 1682]

*Sec. 903. Judicial review*

Any department or agency action taken pursuant to section 1682 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of Title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that Title.

[Public Law 92-318]

[20 U.S.C. 1683]

*Sec. 904. Blindness or visual impairment; prohibition against discrimination*

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall



be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

【Public Law 92-318】

【20 U.S.C. 1684】

*Sec. 905. Authority under other laws unaffected*

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

【Public Law 92-318】

【20 U.S.C. 1685】

*Sec. 907. Interpretation with respect to living facilities*

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

【Public Law 92-318】

【20 U.S.C. 1686】

*Code of Federal Regulations*

Nondiscrimination on the Basis of Sex in Education Programs,  
45 CFR 86.1 et seq.; 34 CFR 106.1 et seq.

**K. REHABILITATION ACT OF 1973**

(Public Law 93-112; 87 Stat. 355)

The Rehabilitation Act of 1973 included three provisions barring discrimination against the handicapped. Section 501 (b), governing the employment of handicapped individuals by the Federal Government, requires each Federal agency to submit "an affirmative action program plan for the hiring, placement, and advancement of handicapped individuals. . . ." Similarly, section 503 requires Government contractors and subcontractors to take "affirmative action" to employ and advance in employment qualified handicapped individuals. This obligation applies to all Federal contracts for personal property or nonpersonal services (including construction) in excess of \$2500. A final provision, section 504, prohibits discrimination against any "otherwise qualified" handicapped person in any program or activity receiving Federal financial assistance.

**LEGISLATIVE HISTORY**

119 CONG. REC. (1973)

S. 1875—To amend the Vocational Rehabilitation Act to extend and revise the authorization of grants to States for vocational rehabilitation services, to authorize grants for rehabilitation services to those with severe disabilities, and for other purposes. Mr. Randolph, et al.; Committee on Labor and Public Welfare, 16658, 18790, 18952; reported with amendment (S. Rept. 93-318), 24029; debated, 24550; indefinitely postponed (H.R. 8070 passed in lieu), 24590.

H.R. 8070, 93d Cong., by Mr. Brademas *et al.*, to authorize grants for vocational rehabilitation services and for other purposes. Referred to the Committee on Education and Labor, 16827; reported with amendment (H. Rept. 93-244), 17836; rules suspended, amend-

ed and passed House, 18116; referred to Committee on Labor and Public Welfare, 18324; committee discharged, amended and passed Senate, title amended (In lieu of S. 1875), 24590; House disagreed to Senate amendments and requested a conference, conferees appointed, 25541; Senate insisted on its amendments, and agreed to a conference, conferees appointed, 26087; conference report submitted in Senate and agreed to, 29615; Conference report (H. Rept. 93-500), submitted in House and agreed to, 29698, 30148; examined and signed, 30343, 30388; presented to the President, 30343; approved [Public Law 93-112], 31747.

#### HEARINGS

“Vocational Rehabilitation Act Extension,” hearings before the House Select Subcommittee on Education, House Education and Labor Committee, 92d Congress, 2d session (1972).

Hearings before the Subcommittee on the Handicapped, Senate Committee on Labor and Public Welfare, 93d Congress, 1st session (1973).

#### TEXT OF THE LAW

##### *Sec. 501. Employment of handicapped individuals*

\* \* \* \* \*

(b) *Federal agencies; affirmative action program plans.* Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after the date of enactment of this Act [enacted Sept. 26, 1973], submit to the Civil Service Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of handicapped individuals in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of handicapped employees are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission, if the Commission determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for handicapped individuals.

[Public Law 93-112]

[29 U.S.C. 791(b)]

\* \* \* \* \*

##### *Sec. 503. Employment under Federal contracts*

(a) *Amount of contracts or subcontracts; provision for employment and advancement of qualified handicapped individuals; regulations.* Any contract in excess of \$2,500 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in section 7(7) [29 USC § 706(7)]. The provisions of this section shall apply to any subcontract in excess of \$2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after the date of enactment of this section [enacted Sept. 26, 1973].

(b) *Administrative enforcement; complaints; investigations; departmental action.* If any handicapped individual believes any contractor has failed or refuses to comply with the provisions of his contract with the United States, relating to employment of handicapped individuals, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall

take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) *Waiver by President; national interest special circumstances for waiver of particular agreements.* The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which he shall prescribe, when he determines that special circumstances in the national interest so require and states in writing his reasons for such determination.

[Public Law 93-112; 95-602]

[29 U.S.C. 793]

*Sec. 504. Nondiscrimination under Federal grants and programs; promulgation of rules and regulations*

No otherwise qualified handicapped individual in the United States, as defined in section 7(7) [29 USCS § 706(7)], shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

[Public Law 93-112; 95-602]

[29 U.S.C. 794]

*Sec. 505a. Remedies and attorneys' fees*

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16 [42 USCS § 2000e-16]), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5 (f) through (k) [42 USCS § 2000e-5(f)-(k)]), shall be available, with respect to any complaint under section 501 of this Act [29 USCS § 791], to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.] shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 504 of this Act [29 USCS § 794].

(b) In any action or proceeding to enforce or charge a violation of a provision of this title [29 USCS §§ 790 et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

[Public Law 93-112; 95-602]

[29 U.S.C. 794a]

*Code of Federal Regulations*

Obligations of contractors and subcontractors, 41 CFR Part 60-1

Affirmative action obligations of contractors and subcontractors for handicapped workers, 41 CFR Part 60-741.

Nondiscrimination on the basis of handicap in programs and activities receiving or benefitting from Federal financial assistance, e.g. 22 CFR Parts 142, 217; 45 CFR Parts 84, 1151, 1170, 1232; 49 CFR Part 27.

Equal Employment Opportunity in the Federal Government, 29 CFR Part 1613.

## L. AGE DISCRIMINATION ACT OF 1975

(Public Law 94-135; 89 Stat. 728)

Structurally unrelated to the Age Discrimination in Employment Act (ADEA), *supra*, is the Age Discrimination Act of 1975, enacted as title III of the Amendments to the Older Americans Act of 1965, which bars discrimination because of age in all federally assisted programs. Not limited to employment, the 1975 act covers any type of enterprise or activity provided only that it is the recipient of Federal monies. The Age Discrimination Act of 1975 is also broader than the ADEA in that its protection extends to all age groups.

## LEGISLATIVE HISTORY

*Original Act*

121 CONG. REC. (1975)

H.R. 3922, by Mr. Brademas et al., to amend the Older Americans Act of 1965 to extend the authorizations of appropriations contained in such Act, and for other purposes. Referred to the Committee on Education and Labor, 4726; reported with amendment (H. Rept. 94-67), 6738; made special order H. Res. 341, 7416; debated, 9203; rules suspended. Amended and passed House, 9251; title amended, 9251; referred to Committee on Labor and Public Welfare, 9561; reported (S. Rept. 94-254), 20749; amended and passed Senate (in lieu of S. 1425), 21178; Senate insisted on its amendments and asked for a conference. Conferees appointed, 21182; House disagreed to Senate amendments and agreed to a conference. Conferees appointed, 21833; conference report (H. Rept. 94-670) submitted in House and agreed to, 36959, 37297; conference report submitted in Senate and agreed to, 37733; examined and signed, 37865, 37939; presented to the President, 37905; approved [Public Law 94-135], 39088.

*Amendments*

1978.—Public Law 95-478, the Comprehensive Older Americans Act Amendments of 1978

124 CONG. REC. (1978)

S. 2850—To amend the Older Americans Act to provide for improved programs for the elderly, and for other purposes. Mr Eagleton; Committee on Human Resources, 9001; cosponsors added, 10552, 13731, 17472; reported with amendment (S. Rept. 95-855), 13725; debated, 22354, 22401; indefinitely postponed (H.R. 12255 passed in lieu), 22417.

H.R. 12255, by Mr. Brademas et al., to amend the Older Americans Act of 1965 to provide for improved programs for older persons, and for other purposes. Referred to the Committee on Education and Labor, 11021; reported with amendment (H. Rept. 95-1150), 13621; debated, 13581; rules suspended. Amended and passed House, 13607; ordered held at desk, 13723; debated, 22415; amended and passed Senate (in lieu of S. 2850). Senate insisted on its amend-

ments and asked for a conference. Conferees appointed, 22417; House disagreed with Senate amendment and agreed to a conference. Conferees appointed, 23168; conference report (H. Rept. 95-1618) submitted in House, 31072; Conference report considered and agreed to in House, 33481, 33492; conference report submitted in Senate and agreed to, 34416; examined and signed, 35573, 35830; presented to the President, 36627; approved [Public Law 95-478], 38781.

#### TEXT OF THE LAW

##### *Sec. 302. Statement of purpose*

It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance, including programs or activities receiving funds under chapter 67 of Title 31.

[Public Law 94-135; 95-478]

[42 U.S.C. 6101]

##### *Sec. 303. Prohibition of discrimination*

Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6103(b) and section 6103(c) of this title, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

[Public Law 94-135]

[42 U.S.C. 6102]

##### *Sec. 304. Regulations*

(a) *Publication in the Federal Register of proposed general regulations, final general regulations, and anti-discrimination regulations; effective date.* (1) Not later than one year after the transmission of the report required by section 6106(b) of this title, or two and one-half years after November 28, 1975, whichever occurs first, the Secretary of Health and Human Services shall publish in the Federal Register proposed general regulations to carry out the provisions of section 6102 of this title.

(2)(A) The Secretary shall not publish such proposed general regulations until the expiration of a period comprised of—

(i) the forty-five day period specified in section 6106(e) of this title; and

(ii) an additional forty-five day period, immediately following the period described in clause (i), during which any committee of the Congress having jurisdiction over the subject matter involved may conduct hearings with respect to the report which the Commission is required to transmit under section 6106(d) of this title, and with respect to the comments and recommendations submitted by Federal departments and agencies under section 6106(e) of this title.

(B) The forty-five day period specified in subparagraph (A)(ii) shall include only days during which both Houses of the Congress are in session.

(3) Not later than ninety days after the Secretary publishes proposed regulations under paragraph (1), the Secretary shall publish in the Federal Register final general regulations to carry out the provisions of section 6102 of this title, after taking into consideration any comments received by the Secretary with respect to the regulations proposed under paragraph (1).

(4) Not later than ninety days after the Secretary publishes final general regulations under paragraph (a)(3), the head of each Federal department or agency which extends Federal financial assistance to any program or activity by way of grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to the Secretary and publish in the Federal Register proposed regulations to carry out the provisions of section 6102 of this title and to provide appropriate investigative, conciliation, and enforcement procedures. Such regulations shall be consistent with the final general regulations issued by the Secretary, and shall not become effective until approved by the Secretary.

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section shall be effective before July 1, 1979.

(b) *Nonviolative actions; program or activity exemption.* (1) It shall not be a violation of any provision of this chapter, or of any regulation issued under this chapter,

for any person to take any action otherwise prohibited by the provisions of section 6102 of this title if, in the program or activity involved—

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this chapter shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.

(c) *Employment practices and labor-management joint apprenticeship training program exemptions; Age Discrimination in Employment Act unaffected.* (1) Except with respect to any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (29 U.S.C. 801 et seq.), as amended, nothing in this chapter shall be construed to authorize action under this chapter by any Federal department or agency with respect to any employment practice of any employer, employment agency, or labor organization, or with respect to any labor-management joint apprenticeship training program.

(2) Nothing in this chapter shall be construed to amend or modify the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634), as amended, or to affect the rights or responsibilities of any person or party pursuant to such Act.

[Public Law 94-135; 95-478; 96-88]

[42 U.S.C. 6103]

### Sec. 305 Enforcement

(a) *Methods of achieving compliance with regulations.* The head of any Federal department or agency who prescribes regulations under section 6103 of this title may seek to achieve compliance with any such regulation—

(1) by terminating, or refusing to grant or to continue, assistance under the program or activity involved to any recipient with respect to whom there has been an express finding on the record, after reasonable notice and opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

(b) *Limitations on termination of, or on refusal to grant or to continue, assistance; disbursement of withheld funds to achiever agencies.* Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) of this section shall be limited to the particular political entity or other recipient with respect to which a finding has been made under subsection (a)(1) of this section. Any such termination or refusal shall be limited in its effect to the particular program or activity, or part of such program or activity, with respect to which such finding has been made. No such termination or refusal shall be based in whole or in part on any finding with respect to any program or activity which does not receive Federal financial assistance. Whenever the head of any Federal department or agency who prescribes regulations under section 6103 of this title withholds funds pursuant to subsection (a) of this section, he may, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency, or State or political subdivision thereof, which demonstrates the ability to achieve the goals of the Federal statute authorizing the program or activity while complying with regulations issued under section 6103 of this title.

(c) *Advice as to failure to comply with regulation; determination that compliance cannot be secured by voluntary means.* No action may be taken under subsection (a) of this section until the head of the Federal department or agency involved has advised the appropriate person of the failure to comply with the regulation involved and has determined that compliance cannot be secured by voluntary means.

(d) *Report to congressional committees.* In the case of any action taken under subsection (a) of this section, the head of the Federal department or agency involved shall transmit a written report of the circumstances and grounds of such action to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved. No such action shall take effect until thirty days after the transmission of any such report.

(e) *Injunctions; notice of violations; costs; conditions for actions.* (1) When any interested person brings an action in any United States district court for the district in which the defendant is found or transacts business to enjoin a violation of this

Act by any program or activity receiving Federal financial assistance, such interested person shall give notice by registered mail not less than 30 days prior to the commencement of that action to the Secretary of Health and Human Services, the Attorney General of the United States, and the person against whom the action is directed. Such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing plaintiff.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be requested, the court in which the action will be brought, and whether or not attorney's fees are being demanded in the event that the plaintiff prevails. No action described in paragraph (1) shall be brought (A) if at the time the action is brought the same alleged violation by the same defendant is the subject of a pending action in any court of the United States; or (B) if administrative remedies have not been exhausted.

(f) *Exhaustion of administrative remedies.* With respect to actions brought for relief based on an alleged violation of the provisions of this chapter, administrative remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first.

【Public Law 94-135; 95-478; 96-88】

【42 U.S.C. 6104】

### *Sec. 306. Judicial review*

(a) *Provisions of other laws.* Any action by any Federal department or agency under section 6104 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by any such department or agency on other grounds.

(b) *Provisions of chapter 7 of Title 5; reviewable agency discretion.* In the case of any action by any Federal department or agency under section 6104 of this title which is not otherwise subject to judicial review, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with the provisions of chapter 7 of Title 5. For purposes of this subsection, any such action shall not be considered committed to unreviewable agency discretion within the meaning of section 701(a)(2) of such title.

【Public Law 94-135】

【42 U.S.C. 6105】

### *Sec. 307. Study of discrimination based on age*

(a) *Study by Commission on Civil Rights.* The Commission on Civil Rights shall (1) undertake a study of unreasonable discrimination based on age in programs and activities receiving Federal financial assistance; and (2) identify with particularity any such federally assisted program or activity in which there is found evidence of persons who are otherwise qualified being, on the basis of age, excluded from participation in, denied the benefits of, or subjected to discrimination under such program or activity.

(b) *Public hearings.* As part of the study required by this section, the Commission shall conduct public hearings to elicit the views of interested parties, including Federal departments and agencies, on issues relating to age discrimination in programs and activities receiving Federal financial assistance, and particularly with respect to the reasonableness of distinguishing, on the basis of age, among potential participants in, or beneficiaries of, specific federally assisted programs.

(c) *Publication of results of analyses, research and studies by independent experts; services of voluntary or uncompensated personnel.* The Commission is authorized to obtain, through grant or contract, analyses, research and studies by independent experts of issues relating to age discrimination and to publish the results thereof. For purposes of the study required by this section, the Commission may accept and utilize the services of voluntary or uncompensated personnel, without regard to the provisions of section 1975d(b) of this title.

(d) *Report to President and Congress; copies to affected Federal departments and agencies; information and technical assistance.* Not later than two years after November 28, 1975, the Commission shall transmit a report of its findings and its recommendations for statutory changes (if any) and administrative action, including suggested general regulations, to the Congress and to the President and shall pro-

vide a copy of its report to the head of each Federal department and agency with respect to which the Commission makes findings or recommendations. The Commission is authorized to provide, upon request, information and technical assistance regarding its findings and recommendations to Congress, to the President, and to the heads of Federal departments and agencies for a ninety-day period following the transmittal of its report.

(e) *Comments and recommendations of Federal departments and agencies; submission to President and congressional committees.* Not later than forty-five working days after receiving a copy of the report required by subsection (d) of this section, each Federal department or agency with respect to which the Commission makes findings or recommendations shall submit its comments and recommendations regarding such report to the President and to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.

(f) *Cooperation of Federal departments and agencies with Commission.* The head of each Federal department or agency shall cooperate in all respects with the Commission with respect to the study required by subsection (a) of this section, and shall provide to the Commission such data, reports, and documents in connection with the subject matter of such study as the Commission may request.

(g) *Authorization of appropriations.* There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

[Public Law 94-135; 95-65]

[42 U.S.C. 6106]

### *Sec. 308. Reports to the Secretary and Congress*

(a) Not later than December 31 of each year (beginning in 1979), the head of each Federal department or agency shall submit to the Secretary of Health and Human Services a report (1) describing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 6102 of this title; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 6102 of this title.

(b) Not later than March 31 of each year (beginning in 1980), the Secretary of Health and Human Services shall compile the reports made pursuant to subsection (a) of this section and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of sections 6102 of this title.

[Public Law 94-135; 95-478; 96-88]

[42 U.S.C. 6106a]

### *Definitions*

For purposes of this chapter—

- (1) the term "Commission" means the Commission on Civil Rights;
  - (2) the term "Secretary" means the Secretary of Health and Human Services;
- and
- (3) the term "Federal department or agency" means any agency as defined in section 551 of Title 5 and includes the United States Postal Service and the Postal Rate Commission.

[Public Law 94-135; 95-478; 96-88]

[42 U.S.C. 6107]

### *Code of Federal Regulations*

45 CFR Part 90.

## **M. CIVIL RIGHTS ATTORNEY'S FEES AWARDS ACT OF 1976**

(Public Law 94-559; 90 Stat. 2641)

In the Civil Rights Attorney's Fees Awards Act of 1976, Congress provided that a Federal district court in its discretion may award reasonable attorney's fees to parties prevailing in actions to enforce various provisions of the civil rights laws designated in the statute.



The United States is liable for fee awards to the same extent as any other party.

#### LEGISLATIVE HISTORY

121 CONG. REC. (1975)

S. 2278, 94th Cong., by Mr. Tunney. Referred to the Committee on the Judiciary, 26777.

122 CONG. REC. (1976)

Committee on the Judiciary. Reported (S. Rept. 94-1011), 21317; Senate debated motion to consider, 31271; debated, 31470, 31471, 31477, 31829, 31846, 31849, 31852, 31853, 31868, 32172, 32173, 32175, 32183, 32296, 32298, 32383, 32388, 32394, 32396, 32405, 32926, 32929, 32932, 33310, 33312; amended and passed Senate, 33315; made special order (H. Res. 1591), 34322; debated, 35121, 35125; passed House, 35130; examined and signed, 35079, 35378; presented to the President, 35080; approved [Public Law 94-559], 35087.

#### HEARINGS

"Civil Rights Attorney's Fees Awards Act of 1976: Source Book," Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 94th Congress, 2d session (1976) (Committee Print)

"Attorney's Fees," hearings before the Subcommittee on the Constitution, Senate Committee on the Judiciary, 98th Congress, 2d session (1984).

"Awarding of Attorney's Fees," hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House Committee on the Judiciary, 94th Congress, 1st session (1975).

#### TEXT OF THE LAW

*Sec. 1988 (title 42). Proceedings in vindication of Civil Rights; Attorney's Fees*

. . . In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

#### N. CRIMINAL CIVIL RIGHTS PROVISIONS

In addition to the foregoing civil provisions, additional protections for minorities are found in Federal laws criminalizing certain civil rights offenses. Two Federal statutes with perhaps the greatest impact in the area are 18 U.S.C. 241 and 242. These statutes, passed during the Reconstruction and designed to implement the requirements of the fourteenth amendment, make it unlawful to conspire against, or while acting under "color of law," to deprive an individual of rights guaranteed or protected by the Constitution or Federal laws. Section 241 prohibits conspiracies to deprive citizens of civil rights, and is a felony offense. Section 242 prohibits the substantive offense of acting under color of law to deprive an inhabitant of civil rights, and is a misdemeanor, unless death re-

sults in which case it is a felony. In addition, title I of the 1968 Civil Rights Act, 18 U.S.C. 245, prohibits acts committed "by force or threat of force" to "injure, intimidate, or interfere" with any individual engaged in any of a broad array of federally protected activities specified in that statute. As the investigative arm of the Department of Justice, the Federal Bureau of Investigation investigates alleged violation of these criminal civil rights statutes.

#### LEGISLATIVE HISTORY

18 U.S.C section 241: Act of May 31, 1870, chap. 114 § 6, 16 Stat. 141.

CONG. GLOBE, 41ST CONG., 2D SESS. (1870)

H.R. 1293, introduced by Mr. Bingham to enforce the right of citizens of the United States to vote against denial on account of race, color, or previous condition of servitude, and for other purposes. Referred to the Committee on the Judiciary, 1459; reported, 1812, 3503; passed House, 3504; votes, 3521; passed Senate with amendments, 3725; conference, 3726, 3734; conference report, 3853; debated, 3853, 3871, 3872, 3877, 3882; agreed to by House, 3884; by Senate, 3792; enrolled, 3885; approved, 3959.

In Senate: Received from House, 3514; debated, 3558, 3607, 3613, 3654, 3660; passed with amendments, 3690; journal corrected, 3700; conference, 3705; conference report, 3752; debated, 3752, 3800; concurred in by Senate, 3809; by House, 3915; enrolled, 3915.

18 U.S.C. section 242: Act of April 9, 1866, chap. 31, § 2, 14 Stat. 27. For legislative history, see the Civil Rights Act of 1866 (*supra*).

18 U.S.C. section 245: Act of April 11, 1968, Public Law 90-284, title I, § 101(a), 82 Stat. 73. For legislative history, see the Civil Rights Act of 1968 (*supra*).

#### TEXT OF THE LAW

##### *Sec. 241 (title 18). Conspiracy against rights of citizens*

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

##### *Sec. 242. Deprivation of rights under color of law*

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

\* \* \* \* \*

*Sec. 245. Federally protected activities*

(a) (1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or the Deputy Attorney General that in his judgement a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been—

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs 1(A) through 1(E) or subparagraphs 2(A) through 2(F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs 1(A) through 1(E) or subparagraphs 2(A) through 2(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2) (F) or (4) (A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term "law enforcement officer" means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State.

## O. MISCELLANEOUS CIVIL RIGHTS PROVISIONS

1. Food Stamp Act, 7 U.S.C. 2019: bars discrimination on the basis of race, religion, creed, national origin, or political beliefs in the certification of applicant households.

2. Immigration and Nationality Act, 8 U.S.C. 1152, 1422: bars discrimination in the issuance of immigrant visas, or the grant of citizenship, on the basis of race, sex, nationality, etc.

3. The Small Business Administration Act, 15 U.S.C. 633(b), 637 (a) and (d): bars discrimination on the basis of sex or marital status in SBA programs.

4. The Federal Energy Administration Act of 1974, 15 U.S.C. 775: bars sex discrimination in any program or activity funded by FEA.

5. The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq.: bars discrimination by creditors on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of any right under the Consumer Credit Protection Act.

6. Higher Education Program, 20 U.S.C. 1145b: bars institution of higher education receiving Federal financial assistance from undertaking any projects that discriminate on the basis of race, religion, sex, or national origin.

7. Equal Educational Opportunities Act of 1974, 20 U.S.C. 1701 et seq.: bars denial of equal educational opportunity by the States on

the basis of race, color, sex, or national origin, and defines equal educational opportunity to preclude forced busing of students beyond the school closest or next closest the home.

8. Foreign Military Assistance Act, 22 U.S.C. 2314(g): provides that assistance not be provided any country which prevents U.S. persons from participating in the provision of defense articles or services because of race, religion, national origin, or sex; further provides that no agency performing functions under this act shall, in its personnel decisions, take into account any exclusionary policies of a foreign country where those policies are based on race, religion, sex, or national origin, and that such agency shall be so bound in the contracts governing their performance of function under this act.

9. Foreign Economic Assistance Act, 22 U.S.C. 2426(a): provides that in assigning U.S. personnel to carry out economic development assistance programs, the President not take into account the race, religion, national origin, or sex of the person but only ability and relevant experience.

10. Section 105 (f) of Public Law 97-424, the Surface Transportation Assistance Act of 1982, 96 Stat. 2100: establishes a ten percent-set-aside of funding under the Act for contracts with "socially and economically disadvantaged individuals."

11. The Comprehensive Employment and Training Act Amendments of 1978, 29 U.S.C. 823(a)(1), 834(b)-(d): bars discrimination based on race, color, religion, sex, national origin, age, handicap, or political affiliation or belief in CETA-financed programs or activities.

12. Section 122 of the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1242: bars discrimination on the basis of race, color, age, handicap, religion, national origin, or sex in any program or unit of government receiving shared revenues.

13. The Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 note: bars sex discrimination in any program or activity funded by the act.

14. The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 476: bars discrimination because of sex in programs and activities funded by the act.

15. The Public Health Service Act, 42 U.S.C. 295h-9, 298b-2: requires assurances of nondiscrimination because of sex in health professions training assistance grants.

16. Headstart-Follow Through Act, 42 U.S.C. 2930c: bars Secretary of Health and Human Services from funding any program absent guarantees of nondiscrimination because of race, creed, color, national origin, sex, political affiliation or beliefs.

17. The Economic Opportunity Act of 1964, 42 U.S.C. 2971c, 2985(b): prohibits discrimination because of race, color, creed, national origin, sex, political affiliation or beliefs in programs funded by the act.

18. The Justice System Improvement Act of 1979, 42 U.S.C. 3789: bars discrimination because of race, color, religion, national origin, or sex in programs or activities funded by LEAA.

19. The Domestic Volunteer Service Act of 1973, 42 U.S.C. 5057(b): prohibits Director of the ACTION Agency from funding any program absent a provision for nondiscrimination because of

race, creed, belief, color, national origin, sex, age, or political affiliation.

20. The Disaster Relief Act of 1974, 42 U.S.C. 5151(b): requires the President to issue regulations to assure that Federal disaster relief is provided without discrimination on the basis of race, color, religion, nationality, sex, age or economic status.

21. The Housing and Community Development Act of 1974, 42 U.S.C. 5309: prohibits discrimination on the basis of race, color, national origin, or sex in programs and activities receiving Federal community development funds.

22. The Energy Reorganization Act of 1974, 42 U.S.C. 5891: prohibits sex discrimination in programs and activities funded by ERDA.

23. Section 103(f)(2) of the Public Works Employment Act of 1977, 42 U.S.C. 6705(f)(2): establishes a 10-percent set-aside of funding under the act for "minority business enterprises" defined to include enterprises owned by "citizens of the United States who are Negroes, Spanish-speaking, orientals, Indians, Eskimos, and Aleuts." [Provisions now expired.]

24. The Local Public Works Capital Development and Investment Act of 1976, 42 U.S.C. 6709: bars sex discrimination in programs and activities receiving Federal funds under the local public works title of the act.

25. The Public Works Employment Act of 1976, 42 U.S.C. 6727: prohibits discrimination on the basis of race, religion, national origin, or sex in programs and activities funded by title II of the act.

26. The Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C. 6870(b): bars discrimination on the basis of race, color, national origin, sex or "on the ground of any other factor specified in any Federal law" prohibiting discrimination in programs funded under the Weatherization Assistance for Low Income Persons program.

27. The Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1651: requires the Secretary of the Interior to take "affirmative action" to assure nondiscrimination on grounds of race, creed, color, national origin, or sex in any activity conducted under any permit, right-of-way, public land order, or other Federal authorization under the act.

28. The Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5672: bars discrimination on the basis of race, color, creed, sex, or national origin in programs and activities funded by the act.

29. The Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. 803: bars discrimination on the basis of race, color, national origin or sex in programs funded by the act.

30. The Surface Transportation Assistance Act of 1978, 49 U.S.C. 1615: bars discrimination based on race, color, creed, national origin, sex, or age in federally funded urban mass transportation projects.

31. The Cable Communications Policy Act of 1984, Public Law 98-549, section 634: requires FCC certification of equal employment policies of cable employers.

32. The Voting Accessibility for the Elderly and Handicapped Act, Public Law 98-435: requires that registration and polling facilities for Federal elections be made accessible to handicapped and elderly voters.

In addition, numerous "antibusing" provisions have been attached to annual appropriations measures. See, *e.g.*, Public Laws 94-206; 94-439; 95-205; 95-480.

### III. EXECUTIVE ORDERS/CIVIL RIGHTS

#### A. EXECUTIVE ORDER 11063, 3 CFR 652 (1958-63 COMPILATION) AS AMENDED BY EXECUTIVE ORDER 12259, 3 CFR 307 (1980 COMPILATION)

The first Federal fair housing initiative was issued by President Kennedy, on November 20, 1962. Executive Order 11063, bars discrimination in all federally assisted housing. It prohibits discrimination based upon race, color, creed, or national origin with respect to the sale, leasing, rental, or other disposition of residential property or related facilities that are (1) owned or operated by the Federal Government; (2) provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government; (3) provided, in whole or in part, by loans insured, guaranteed, or otherwise secured by the Federal Government, or (4) provided by the development or redevelopment of real property purchased, leased, or otherwise obtained from a State or local agency receiving Federal assistance with respect to such property. The Executive order also prohibits discrimination by lending institutions in relation to loans insured or guaranteed by the Federal Government. The Executive order was amended in 1980 to prohibit discrimination based upon "religion (creed)" or sex.

#### TEXT

##### EQUAL OPPORTUNITY IN HOUSING

Whereas the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and

Whereas the Congress in the Housing Act of 1949 has declared that the general welfare and security of the Nation and the health and living standards of its people require the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family; and

Whereas discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

Whereas such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

Whereas the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, religion (creed), sex or national origin:

Now, therefore, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:



## PART I—PREVENTION OF DISCRIMINATION

SECTION 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin—

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are—

- (i) owned or operated by the Federal Government, or
- (ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or
- (iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government, or
- (iv) provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under a loan or grant contract hereafter entered into; and

(b) in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans hereafter insured or guaranteed by the Federal Government.

SEC. 102. I hereby direct the Housing and Home Finance Agency and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities heretofore provided with Federal financial assistance of the types referred to in Section 101(a) (ii), (iii), and (iv).

## PART II—IMPLEMENTATION BY DEPARTMENTS AND AGENCIES

SEC. 201. Each executive department and agency subject to this order is directed to submit to the President's Committee on Equal Opportunity in Housing established pursuant to Part IV of this order (hereinafter sometimes referred to as the Committee), within thirty days from the date of this order, a report outlining all current programs administered by it which are affected by this order.

SEC. 202. Each such department and agency shall be primarily responsible for obtaining compliance with the purposes of this order as the order applies to programs administered by it; and is directed to cooperate with the Committee, to furnish it, in accordance with law, such information and assistance as it may request in the performance of its functions, and to report to it at such intervals as the Committee may require.

SEC. 203. Each such department and agency shall, within thirty days from the date of this order, issue such rules and regulations, adopt such procedures and policies, and make such exemptions and exceptions as may be consistent with law and necessary or appropriate to effectuate the purposes of this order. Each such department and agency shall consult with the Committee in order to achieve such consistency and uniformity as may be feasible.

## PART III—ENFORCEMENT

SEC. 301. The Committee, any subcommittee thereof, and any officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

SEC. 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such action

as may be appropriate under its governing laws, including, but not limited to, the following:

It may—

- (a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;
- (b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;
- (c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

SEC. 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

SEC. 304. Any executive department or agency affected by this order may also invoke the sanctions provided in Section 302 where any person or firm, including a lender, has violated the rules, regulations, or procedures issued or adopted pursuant to this order, or the non-discrimination provisions included in any agreement or contract, with respect to any program affected by this order administered by any other executive department or agency.

#### PART IV—ESTABLISHMENT OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

SEC. 401. [Revoked.]  
SEC. 402. [Revoked.]

#### PART V—POWERS AND DUTIES OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

SEC. 501. [Revoked.]

SEC. 502. (a) The Committee shall take such steps as it deems necessary and appropriate to promote the coordination of the activities of departments and agencies under this order. In so doing, the Committee shall consider the overall objectives of Federal legislation relating to housing and the right of every individual to participate without discrimination because of race, color, religion (creed), sex, or national origin in the ultimate benefits of the Federal programs subject to this order.

(b) The Committee may confer with representatives of any department or agency, State or local agency, civic, industry, or labor group, or any other group directly or indirectly affected by this order; examine the relevant rules, regulations, procedures, policies, and practices of any department or agency subject to this order and make such recommendations as may be necessary or desirable to achieve the purposes of this order.

(c) The Committee shall encourage educational programs by civic, educational, religious, industry, labor, and other nongovernmental groups to eliminate the basic causes of discrimination in housing and related facilities provided with Federal assistance.

SEC. 503. [Revoked.]

#### PART VI—MISCELLANEOUS

SEC. 601. As used in this order, the term "departments and agencies" includes any wholly-owned or mixed-ownership Government corporation, and the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

SEC. 602. This order shall become effective immediately.

JOHN FITZGERALD KENNEDY,  
THE WHITE HOUSE, November 20, 1962.

*Code of Federal Regulations*

Nondiscrimination, Federal Home Loan Bank System, 12 CFR Parts 528-31 (1982).

Nondiscrimination and Equal Opportunity in Housing, 24 CFR Parts 100, 107 (1982).

**B. EXECUTIVE ORDER 11246, AS AMENDED BY EXECUTIVE ORDER 11375, 3 CFR 339 (1964-65 COMPILATION), 3 CFR 684 (1966-70 COMPILATION), 42 U.S.C. 2000e**

Executive Order 11246, as amended, is the latest in a long series of Executive orders dating back to 1941 to impose requirements of nondiscrimination and, more recently, "affirmative action" with respect to the employment practices of contractors and subcontractors of the Federal Government. The current contract compliance program, as established by the Executive order signed by President Johnson in 1965 and amended two years later, obligates Government contractors and subcontractors to refrain from employment discrimination on the basis of race, color, religion, sex, or national origin and to take "affirmative action" to assure that employees and applicants for employment are treated without regard to these factors. Widespread controversy has surrounded such "affirmative action" programs focusing upon whether such programs have effectively established racial and ethnic quotas. The Executive order is administered by the Office of Federal Contract Compliance Programs within the Department of Labor and provides for strict sanctions in the event of noncompliance by the contractor: cancellation of the contract and debarment, resulting in ineligibility for future Federal Government contracts. The 1967 amendments added "sex" to the other categories of discrimination prohibited by the Executive order program. Certain administrative functions were consolidated by Executive Order 12086, 3 CFR 230 (1978 Comp.).

**TEXT**

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

**PART I—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT**

ED. NOTE: Secs. 101-105, barring discrimination in Federal employment on account of race, color, religion, sex, or national origin, were superseded by Executive Order 11478 (*infra*). These provisions called for affirmative-action programs for equal opportunity at the agency level under general supervision of the Civil Service Commission; establishment of complaint procedures at each agency with appeal to the Commission; and promulgation of regulations by CSC.

**PART II—NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS**

ED. NOTE: Executive Order 12086, signed by President Carter consolidated Federal contract compliance authority for equal employment opportunity and affirmative action in the Labor Department's Office of Federal Contract Compliance Programs. The order, effective October 8, 1978, eliminated the compliance functions of the following 11 agencies: Departments of the Treasury; Defense; Interior; Commerce; Health, Education, and Welfare; Housing and Urban Development; Transportation; Energy; Environmental Protection Agency; General Services Administration, and Small Business Administration.

## SUBPART A—DUTIES OF THE SECRETARY OF LABOR

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

## SUBPART B—CONTRACTORS' AGREEMENTS

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

Sec. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies,

programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

#### SUBPART C—POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

SEC. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate title VI or title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

#### SUBPART D—SANCTIONS AND PENALTIES

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted

under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a)(5) of this Section.

Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

#### SUBPART E—CERTIFICATES OF MERIT

Sec. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

Sec. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

Sec. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

#### PART III—NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

Sec. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertakings pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

Sec. 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

Sec. 303. (a) The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing.

Sec. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of non-discrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

#### PART IV—MISCELLANEOUS

Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

Sec. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

Sec. 403. (a) Executive Orders Nos. 10590 (January 18, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

Sec. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

Sec. 405. This Order shall become effective 30 days after the date of this Order.



## HEARINGS

"Affirmative Action and Equal Protection," hearings before the Subcommittee on the Constitution, Senate Committee on the Judiciary, 97th Congress, 1st session (1981).

*Code of Federal Regulations*

Office of Federal Contract Compliance Programs, Rules and Regulations, 41 CFR 60.1 (1982).

C. EXECUTIVE ORDER 11478, 3 CFR 803 (1966-70  
COMPILATION), 42 U.S.C. 2000e

The most complete statement of policy with respect to equal employment opportunity for Federal employees is contained in Executive Order 11478, issued by President Nixon on August 8, 1969 to supercede and strengthen previous Presidential orders on the subject. The order, as amended, reaffirms basic governmental policy to assure equal opportunity in Federal employment to all persons regardless of race, color, religion, sex, national origin, handicap, or age and "to promote the full realization of equal employment opportunity through a continuing affirmative program to combat discrimination in each department and agency." Principal responsibility for enforcing the order was lodged with the former Civil Service Commission (now the Office of Personnel Management) which was directed to review and evaluate agency performance and report to the President, and to assure fair and impartial agency review of discrimination complaints. Certain of these functions were transferred to the Equal Employment Opportunity Commission by Executive Order 12106, 3 CFR 263 (1978 Comp.).

## TEXT

## EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

It has long been the policy of the United States Government to provide equal opportunity in Federal employment on the basis of merit and fitness and without discrimination because of race, color, religion, sex, national origin, handicap, or age. All recent Presidents have fully supported this policy, and have directed department and agency heads to adopt measures to make it a reality.

As a result, much has been accomplished through positive agency programs to assure equality of opportunity. Additional steps, however, are called for in order to strengthen and assure fully equal employment opportunity in the Federal Government.

Now, therefore, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

SEC. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment

activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

SEC. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

SEC. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

SEC. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

SEC. 6. This Order applies (a) to military departments as defined in Section 102 of Title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in Section 105 of Title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SEC. 7. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

SEC. 8. This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970.

#### HEARINGS

"P.A.C.E. Consent Decree: Equal Protection Issues," hearings before the Subcommittee on the Constitution, Senate Committee on the Judiciary, 97th Congress, 1st session (1981).

#### *Code of Federal Regulations*

Office of Personnel Management, Federal Equal Opportunity Recruitment Program Regulations, 5 CFR Part 720 (1982).

Merit Systems Protection Board: Procedures for Cases Involving Allegations of Discrimination, 5 CFR Parts 1200 and 1201 (1982).

## IV. SUMMARY OF SUPREME COURT CASES

### A. SCHOOL DESEGREGATION

*Brown v. Board of Education I*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954)

In *Brown I*, a unanimous Supreme Court (J. Warren) held that State-imposed segregation in the public schools violated the Equal Protection Clause of the fourteenth amendment. In striking down State statutes which required or permitted (by local option) separate schools for black and white children, the Court declared that the "separate but equal" doctrine had no place in public education.

*Bolling v. Sharpe*, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954)

In *Bolling*, a companion case to *Brown I*, the Court (J. Warren) unanimously held that racial segregation perpetrated by Federal officials in the District of Columbia public schools violated the due process clause of the fifth amendment. Although not a "State" subject to the fourteenth amendment, the Court ruled that racial discrimination by the Federal Government may be so extreme as to also offend due process.

*Brown v. Board of Education II*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955)

The Court (J. Warren) in *Brown II* considered the proper scope of relief for black students denied equal protection due to segregation in the public schools. Because of the complexities inherent in the nationwide transition to desegregated schools, the Court required school authorities to make "a prompt and reasonable start toward full compliance" so that segregated school systems would be dismantled with "all deliberate speed."

*Green v. County School Board*, 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968)

In a unanimous decision, the Court (J. Brennan) rejected a "freedom-of-choice" plan to desegregate the schools in New Kent County, Virginia because it failed to eliminate racially identifiable schools that had resulted from the past assignment of pupils by race. The *Green* Court held school officials to an "affirmative" constitutional duty to eliminate all "vestiges" of a dual school system including the effects of past discrimination. This entailed not merely dismantling segregative policies relating to public schools, but the effective integration of such schools.

*Swann v. Board of Education*, 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971)

In *Swann*, a unanimous Court (J. Burger) reaffirmed *Green* and adopted an evidentiary presumption that present segregation within a school system formerly segregated by statute was an "effect" of past violations. The *Swann* Court also approved the use of racial proportions in each school in a school district as a "useful starting point in shaping a remedy" and for the first time expressly endorsed the use of student busing to desegregate schools.

*Keyes v. School District No. 1*, 413 U.S. 189, 93 S. Ct. 2686, 37 L. Ed. 2d 548 (1973).

The Court (J. Brennan) for the first time ruled segregated schools illegal in a State (Colorado) which had never required racial separation of students by statute. By a 6 to 3 vote, it reaffirmed the *Swann* presumption against predominantly single-race schools and held that proof of segregative intent with respect to one portion of a school district raised a presumption that school board actions elsewhere in the system were also racially motivated. In this manner, the Court found that the Denver schools were segregated on a system-wide basis and affirmed a busing plan to desegregate the district as a whole.

*Milliken v. Bradley*, 418 U.S. 717, 94 S. Ct. 3112, 41 L. Ed. 2d 1069 (1974)

In *Milliken*, a divided 5 to 4 Court (J. Burger) rejected an inter-district plan to desegregate the Detroit schools because it included suburban school districts which had not been implicated in the constitutional violation found to exist in that case. The Court ruled that school district lines could not be disregarded in formulating a remedy. Since the proven violation and its effects in this case were confined to the city schools, the scope of the remedy could not exceed the violation and encompass the suburban schools. Justices Douglas, Marshall, White and Brennan filed dissents.

*Dayton Board of Education v. Brinkman*, 443 U.S. 526, 99 S. Ct. 2971, 61 L. Ed. 2d 720, (1979); *Columbus Board of Education v. Penick*, 443 U.S. 449, 99 S. Ct. 2941, 61 L. Ed. 2d 666 (1979)

In the *Dayton* and *Columbus* cases, the Court (J. White), by votes of 7 to 2 and 5 to 4, respectively, upheld systemwide student busing plans for Dayton and Columbus, Ohio. In so doing, the majority affirmed findings that both districts were unlawfully segregated at the time of *Brown* and that school board actions thereafter had exacerbated these conditions. *Keyes* and its evidentiary presumptions were reaffirmed making it easier for Northern school plaintiffs to obtain district-wide desegregation decrees.

*Washington v. Seattle School District No. 1*, 458 U.S. 457, 102 S. Ct. 3187, 73 L. Ed. 2d 896 (1982)

The Court (J. Blackmun) in a 5 to 4 decision, struck down a Washington statute adopted by voter initiative which mandated neighborhood school assignments and prohibited student busing for integration purposes. The statute, adopted in response to a volun-

tary Seattle integration plan, was infirm because it imposed "substantial and unique burdens on racial minorities" in violation of the equal protection guarantee. Justice Powell, joined by Justices Burger, Rehnquist and O'Connor dissented.

*Crawford v. Los Angeles Board of Education*, 458 U.S. 527, 102 S. Ct. 3211, 73 L. Ed. 2d 948 (1982)

The Court (J. Powell) upheld a California constitutional amendment barring State courts from ordering busing except where a Federal court would be empowered to employ such a remedy. The majority opinion by Justice Powell reasoned that the State was not precluded from amending or repealing a State law simply because it had been interpreted by the State's highest court to impose desegregation requirements that exceeded federally-established standards. Justice Marshall dissented.

### B. AFFIRMATIVE ACTION

*Griggs v. Duke Power Co.*, 401 U.S. 424, 91 S. Ct. 849; 28 L. Ed. 2d 158 (1971)

In a unanimous decision, the Court (J. Burger) held that the Civil Rights Act of 1964 was violated by the use of an employment test by an employer which, in the view of the Court, was "not related to job skills," and which tended to disqualify more black job applicants than white applicants. *Griggs* represented the first major expression by the Court of what has come to be identified as the "effects" standard of defining discrimination in which the focus is upon the existence of a disparate racial impact of an allegedly discriminatory action rather than upon evidence of a racially discriminatory intent or purpose. Justice Brennan did not participate.

*DeFunis v. Odegard*, 416 U.S. 312, 94 S. Ct. 1704, 40 L. Ed. 2d 164 (1974)

By 5-4 margin (per curiam), a challenge by a student to an "affirmative action" law school admissions program, according preference to minority applicants, was ruled moot. This represented the first instance in which the Court was presented with the issue of "affirmative action" admissions policies. Arguing in dissent that the Court ought to have considered the case on its merits were Justices Douglas, Brennan, White, and Marshall.

*Washington v. Davis*, 426 U.S. 229, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976)

In an opinion issued by a 7-2 vote, the Court (J. White) held that the equal protection clause of the fourteenth amendment required demonstration of a racially discriminatory purpose as a predicate to a constitutional civil rights violation, and that evidence of a disproportionate impact of an action upon a minority group did not in and of itself give rise to a violation. *Washington* involved the use by a public employer of a job test for police positions which resulted in the disqualification of a greater proportion of minority applicants than nonminority applicants. Justices Brennan and Marshall dissented.

*Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977)

By a 5-3 vote, the Court (J. Powell) held that the equal protection clause of the fourteenth amendment required demonstration of a discriminatory motive or purpose as a precondition to the finding of a constitutional civil rights violation. The Court emphasized that the totality of circumstances could be considered in determining the existence of such a motive. *Arlington Heights* involved the refusal by a community to rezone local properties to permit the building of a low-income housing project. Justice Stevens did not participate in this decision, while Justice Brennan, Marshall, and White issued dissents.

*Regents of University of California v. Bakke*, 438 U.S. 265, 98 S. Ct. 2733, 57 L. Ed. 2d 750 (1978)

In the first major decision handed down by the Court on "affirmative action," the Court (J. Powell) held by a 5-4 vote that a special admissions program in a State medical school which established a set number of places for minority group applicants—in effect establishing a minimum "quota" for such individuals—was in violation of title VI of the Civil Rights Act of 1964. Justices Brennan, Marshall, White, and Blackmun filed dissenting opinions to this holding. The Court also held, however, by the same vote that public university admissions programs which considered race as a factor in the selection process were not in and of themselves unconstitutional. Justices Stevens, Burger, Rehnquist, and Stewart filed dissenting opinions to this latter holding.

*United Steelworkers of America v. Weber*, 439 U.S. 1045, 99 S. Ct. 720, 58 L. Ed. 2d 704 (1979)

In *Weber*, the Court (J. Brennan) held that title VII of the Civil Rights Act of 1964 did not prohibit private employers from adopting race conscious "affirmative action" programs by which preference was accorded minority group members in job training and apprenticeship programs. Justices Stevens and Powell did not participate in this 5-2 decision, while Justices Burger and Rehnquist issued dissents.

*Fullilove v. Klutznick*, 448 U.S. 448, 100 S. Ct. 2758, 65 L. Ed. 2d 902 (1980)

In a 6-3 decision, the Court (J. Burger) ruled that a Federal statute establishing a 10% "set-aside" in a public works statute for minority operated businesses (i.e. 10% of all Federal funds must be used by States and localities to procure supplies and services from minority-operated businesses) was not in violation of the equal protection clause of the fourteenth amendment. Justices Stewart, Rehnquist, and Stevens issued dissents.

*Connecticut v. Teal*, 457 U.S. 440, 102 S. Ct. 2525, 73 L. Ed. 2d 130 (1982)

In a 5-4 decision, the Court (J. Brennan) held that title VII was violated by a written promotion examination used by an employer which disproportionately excluded minorities, and was not demon-

strated to be "job-related", even though the employer subsequently undertook discretionary decisions that assured that minorities were not "under-represented" among the class of promoted employees. The Court held that such a "bottom line" result did not serve to immunize the written examination from the standards articulated in *Griggs*. Justices Powell, Burger, Rehnquist, and O'Connor dissented.

*Guardians Association v. Civil Service Commission*, 460 U.S. —, 103 S. Ct. 3221, 77 L. Ed. 2d 866 (1983)

In a highly ambiguous decision, the Court (J. White) appeared to hold, by a 7-2 vote, that proof of a violation under title VI of the 1964 Civil Rights Act requires demonstration of a discriminatory purpose. By a 5-4 vote, however, the Court also appeared to hold that regulations promulgated under the authority of title VI could be violated through a mere showing of the discriminatory effects of an allegedly wrongful action. In the absence of a showing of an intentional violation, however, only injunctive, non-compensatory relief could be issued for violations of such regulations. Justices White and Marshall dissented on the question of the standard of discrimination under title VI; Justices Burger, Rehnquist, Powell, and O'Connor dissented on the question of the standard of discrimination under the title VI regulations; and Justices Marshall, Stevens, Brennan, and Blackmun dissented on the question of the remedies for violations of the regulations.

*Firefighters Local No. 1784 v. Stotts*, —U.S.—, 104 S. Ct. 2576, 81 L. Ed. 2d 483 (1984)

In a 6-3 decision, the Court (J. White) held that title VII barred a consent decree providing for municipal layoff plan for firefighters in which white firefighters, with greater seniority, were required to be laid off before black firefighters, with lesser seniority. Title VII affords relief only to those individuals who have been "actual victims" of illegal discrimination.

### C. WOMEN'S RIGHTS

*Reed v. Reed*, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971)

In a 7-0 decision, the Court (J. Burger) for the first time invalidated a State law establishing sex classifications on the basis of violating the equal protection clause of the fourteenth amendment. *Reed* involved an Idaho statute preferring male parents over female parents as executors of a child's estate.

*Frontiero v. Richardson*, 411 U.S. 677, 93 S. Ct. 1764, 36 L. Ed. 2d 583 (1973)

In an 8-1 decision, the Court (J. Brennan) overturned as being in violation of the equal protection clause of the fourteenth amendment military dependency policies establishing sex-based classifications (Justice Rehnquist dissenting). More significant, however, about *Frontiero* was the refusal of the Court, by a 5-4 margin, to elevate the standard for reviewing sex-based classifications to the same level as applied by the Court in reviewing race-based classifications. The Court rejected the establishment of a "strict scrutiny"

standard in the evaluation of sex classifications. Dissenting with respect to this latter holding were Justices Brennan, Marshall, White, and Stevens.

*Craig v. Boren*, 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976)

By a 7-2 margin, the Court (J. Brennan) articulated an "intermediate" standard for reviewing sex-based classifications that rendered such classifications invalid unless "substantially related to the achievement of an important governmental objective." *Craig* involved an Oklahoma statute establishing different drinking ages for males and females. At the outset of 1984, *Craig* best approximated the state of constitutional law with respect to review of sex-based laws challenged as being in violation of the equal protection clause of the fourteenth amendment. Dissenting to this decision were Justices Burger and Rehnquist.

*Massachusetts, Personnel Administrator v. Feeney*, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979)

By a 7-2 vote, the Court (J. Stewart) held that a Massachusetts statute according an advantage in competitive civil service examinations to military veterans, a disproportionate number of whom were males, did not violate the equal protection clause of the fourteenth amendment. Such a "veteran's preference" statute did not constitute an illegal instance of gender discrimination in the absence of proof of a discriminatory purpose or motive in enacting the law. Justices Brennan and Marshall issued dissents.

*County of Washington (Ore.) v. Gunther*, 452 U.S. 161, 101 S. Ct. 2242, 68 L. Ed. 751 (1981)

In *Gunther*, the Court (J. Brennan) by a 5-4 vote stated that the prohibition in title VII upon discrimination on the basis of sex in the employment process was not limited to violations based upon the standards of the Equal Pay Act relating to "equal pay for equal work." The significance of this decision is that it may have opened up title VII to cognizance of the "comparable worth" doctrine under which it is a violation of law to deny men and women equal pay for work of "comparable worth." Dissenting in this decision were Justices Rehnquist, Burger, Stewart, and Powell.

*Rostker v. Goldberg*, 453 U.S. 57, 101 S. Ct. 2646, 69 L. Ed. 2d 478 (1981)

In a 6-3 decision, the Court (J. Rehnquist) held that a male-only system of draft registration did not violate the equal protection component of the fifth amendment with respect to discrimination on the basis of sex. Justices White, Marshall, and Brennan dissented.

*Mississippi v. Hogan*, 458 U.S. 718, 102 S. Ct. 3331, 73 L. Ed. 2d 1090 (1982)

By a 5-4 margin, the Court (J. O'Connor) held that the policy of a State university system in limiting enrollment in a public nursing school to women violated the equal protection clause of the fourteenth amendment. Justices Burger, Blackmun, Powell, and Rehnquist issued dissents. A State must demonstrate an "extreme-



ly persuasive justification" for enacting a sex-based classification in order to satisfy the *Craig v. Boren* standard.

*Newport News Shipbuilding and Dry Dock Co. v. EEOC*, 459 U.S. —, 103 S. Ct. 2622, 77 L. Ed. 2d 89 (1983)

In a 7-2 decision, the Court (J. Stevens) held that title VII, as a result of the amendments to it enacted by the Pregnancy Discrimination Act of 1978, prohibited differential treatment of pregnancy (as contrasted with other medical conditions) in employer medical policies and that such differential treatment constituted discrimination on the basis of sex. Justices Rehnquist and Powell dissented.

*Grove City College v. Secretary of Education Bell*,—U.S.—,104 S. Ct. 1211, 79 L. Ed. 2d 516 1984.

In a 7-2 decision, the Court (J. White) interpreted title IX to be "program-specific," rather than institutional, in the scope of its coverage of institutions of higher education. In addition, the Court found that Federal scholarship assistance provided to an individual student at an institution constituted Federal assistance to the institution itself. Justices Brennan and Marshall dissented from the former holding.

#### D. RECONSTRUCTION AMENDMENTS AND CONGRESSIONAL AUTHORITY

*Heart of Atlanta Motel v. United States*, 379 U.S. 241, 85 S. Ct. 348, 13 L. Ed. 2d 258 (1964); *Katzenbach v. McClung*, 379 U.S. 294, 85 S. Ct. 377, 13 L. Ed. 2d 290 (1964)

In unanimous decisions, the Court (J. Clark) upheld the constitutionality under the commerce clause of the public accommodations provisions of title II of the Civil Rights Act of 1964, as well as its application to "Ollie's Barbecue," a family-owned restaurant in Birmingham, Alabama located over a mile away from an interstate highway. Because the restaurant served substantial quantities of food that travelled in interstate commerce, there was an ample nexus to interstate commerce, in the view of the Court, that justified the application of Federal jurisdiction. ~

*South Carolina v. Katzenbach*, 383 U.S. 301, 86 S. Ct. 803, 15 L. Ed. 2d 769 (1966)

The Court (J. Warren) by an 8-1 vote upheld the exercise of legislative authority by Congress under the fifteenth amendment in enacting the Voting Rights Act of 1965. Citing the "exceptional" circumstances then obtaining in the South, the Court concluded that the preclearance provisions of the act (requiring certain "covered" jurisdictions, principally in the South, to submit changes in voting law to the Federal Government) represented a legitimate legislative exercise. Justice Black issued a dissent.

*United States v. Guest*, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966)

The Court upheld the application of the criminal conspiracy provision of § 242 (title 18) to private individuals who attempted to deprive black persons of the right to enjoy public facilities connected

with interstate commerce. The Court (J. Stewart) held by an 8-1 margin that the right to interstate travel was a fundamental interest that Congress was free to protect to its fullest extent and that Congress could prohibit the private interference with any rights protected by the fourteenth amendment. Justice Harlan dissented.

*Katzenbach v. Morgan*, 384 U.S. 641, 86 S. Ct. 1717, 16 L. Ed. 2d 828 (1966)

The Court (J. Brennan), by a 5-4 margin, upheld a provision of the Voting Rights Act of 1965 that barred a State's use of English literacy tests to determine eligibility to vote in U.S. elections by Puerto Ricans educated in "American Flag" schools. Such a provision was determined to be a legitimate exercise of authority under the fourteenth amendment. In an earlier decision, the Court had concluded that such literacy tests were not by themselves in violation of the equal protection clause of the fourteenth amendment. Most significant about *Katzenbach* was its expansive interpretation of Congress' authority under section 5 (enforcement clause) of the fourteenth amendment. In addition to authorizing Congress to enforce the judicially-determined guarantees of the Amendment against the States, *Katzenbach* allowed Congress in the first instance to define such guarantees and impose them upon the States. Dissenting were Justices Harlan and Stewart.

*Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 88 S. Ct. 2186, 20 L. Ed. 2d 1189 (1968)

The Court (J. Stewart) held 8-1 that § 1982 (title 42) was a valid exercise of Congressional authority to enforce the anti-slavery provisions of the thirteenth amendment as applied to the refusal of a private real estate developer to sell housing or land to blacks. Such private discrimination was viewed as a "badge" or incident of slavery within Congress' power to remedy under the thirteenth amendment. Justice Harlan dissented.

*Allen v. State Board of Education*, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1 (1969)

The Court (J. Warren), by a 7-2 margin, held that the preclearance provisions of the Voting Rights Act of 1965 were applicable not only to new laws which might tend to deny blacks their right to register and vote, but to "any state enactment which altered the election law of a covered state in even a minor way." *Allen* resulted in a sharply enhanced scope for the Voting Rights Act applying it not only to controversies relating to access to the ballot box, but to all controversies affecting the electoral process in any way. Dissenting on this interpretation were Justices Harlan, and Black.

*White v. Regester*, 412 U.S. 755, 93 S. Ct. 2332, 37 L. Ed. 2d 314 (1973)

In a unanimous decision, the Court (J. White) overturned the use by two Texas jurisdictions of multimember legislative districts on the grounds that, in the context of an existing discriminatory environment toward Mexican-Americans, such an electoral structure constituted "invidious" discrimination under the equal protection clause of the fourteenth amendment.

*Runyon v. McCrary*, 427 U.S. 160, 96 S. Ct. 2586, 49 L. Ed. 2d 415, (1976)

By a 7-2 vote (J. Stewart), the prohibition in § 1981 (title 42) against refusal to enter into contracts because of a person's race was held violated by two private, commercially-operated schools which had systematically denied admission to black applicants. Justices White and Rehnquist dissented.

*City of Mobile v. Bolden*, 446 U.S. 55, 100 S. Ct. 1490, 64 L. Ed. 2d (1980)

In *Mobile*, the Court (J. Stewart) interpreted the fifteenth amendment (as well as its legislative codification, § 2 of the Voting Rights Act) to require the demonstration of a discriminatory intent or purpose as a precondition to a violation. The mere proof of a "discriminatory effect" was insufficient to establish a violation under either the Constitution or the Act. Dissenting were Justices Marshall, Brennan, and White

*City of Rome v. United States*, 446 U.S. 156, 100 S. Ct. 1548, 64 L. Ed. 2d 119 (1980)

The Court (J. Marshall), interpreted the scope of congressional power under § 2 of the fifteenth amendment to provide that, even if discriminatory intent is a prerequisite to finding a violation of § 1 by the courts, Congress had the authority under § 5 of the Voting Rights Act to go beyond that and proscribe electoral devices that had a "discriminatory effect." Justices Powell and Rehnquist dissented.

*City of Memphis v. Greene*, 451 U.S. 100, 101 S. Ct. 1584, 67 L. Ed. 2d 769 (1981)

A 6-3 majority of the Court (J. Stevens) upheld against challenge under § 1982 (title 42) and the thirteenth amendment a city's action in closing a street that passed through a white residential area to serve a predominantly black community. Because there was no showing of discriminatory motive on the part of the city, any incidental inconvenience caused black residents by the street closure was not in violation of the Constitution. Justices Marshall, Brennan, and Blackmun dissented.

## E. MISCELLANEOUS

### TITLE VII

*McDonnell-Douglas v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)

In *McDonnell-Douglas*, the Court in a decision (J. Powell) set forth a four-part test for establishing a *prima facie* case of individual discrimination in employment that required proof that (1) the plaintiff belonged to a racial minority; (2) the plaintiff had applied for an existing vacancy that the employer was seeking to fill; (3) despite qualifications, the plaintiff was rejected; and (4) after plaintiff's rejection, the position remained open and the employer searched for other candidates. When a *prima facie* case has been made, the burden shifts to the employer to articulate some "legiti-

mate nondiscriminatory reason" for rejecting the plaintiff-applicant.

*Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 95 S. Ct. 1716, 44 L. Ed. 2d 295 (1975)

In *Johnson*, a 9-0 Court (J. Blackmun) held that, "§ 1981 (title 42) afforded a Federal remedy against discrimination in private employment on the basis of race," and that the time for commencing such an action is not tolled by the filing of a related title VII charge with the EEOC. Justices Marshall, Douglas, and Brennan dissented on the issue of tolling.

*Franks v. Bowman Transportation Co.*, 424 U.S. 747, 96 S. Ct. 1251, 47 L. Ed. 2d 444 (1976)

In an 8-0 decision, the Court (J. Brennan) held that the existence of a bona fide seniority or merit system within a firm did not impede the grant of retroactive seniority to minority-group members who had been denied employment positions in violation of title VII of the Civil Rights Act of 1964. Such a grant did not violate the rights of other employees already employed by the firm. Justice Stevens did not participate in the opinion.

*Teamsters v. United States, et al.*, 431 U.S. 324, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977)

Even though a seniority system maintained by the union and a trucking company perpetuated the effects of pre-Civil Rights Act (1964) discrimination in job assignments and promotions, it was not illegal under title VII, since it was a good faith seniority system lacking discriminatory intent. Based on the legislative history of the Act, the Court (J. Stewart) concluded in a 7-2 decision that Congress intended to immunize "bona fide" seniority systems, i.e. those that do not have their "genesis" in intentional racial discrimination, and not to "water down" existing seniority rights of employees because their employer had engaged in pre-act discrimination. Justices Marshall and Brennan dissented in part.

#### BILINGUALISM

*Lau v. Nichols*, 414 U.S. 563, 94 S. Ct. 786, 39 L. Ed. 2d 1 (1974)

In *Lau*, the court (J. Douglas) ruled 9-0 that the failure of San Francisco school administrators to provide adequate supplemental bilingual instruction in English to Chinese children in the school system violated title VI of the 1964 Civil Rights Act. The Court, however, left the matter of appropriate relief to local school officials.

#### AGE DISCRIMINATION

*Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976)

In the first forced retirement case to reach the Supreme Court, the Court (per curiam) ruled 7 to 1 that a Massachusetts statute mandating retirement of uniformed police officers at age 50 did not violate the equal protection clause of the fourteenth amendment

since it rationally furthered the State's interest in "protecting the public by assuring physical preparedness of its uniformed police." In so doing, the court applied a relatively lenient standard of judicial review thereby signalling that, at least in terms of constitutional analysis, it intended to treat classifications based on race and age differently. Justice Marshall dissented while Justice Stevens did not participate in the decision.

#### SECTION 1983

*Monell v. Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)

In a 7-2 decision, the Court (J. Brennan) held that municipalities and their officials were not immune from civil actions for damages under section 1983 (title 42). They could properly be sued under this provision for official actions taken in violation of the constitutional rights of individuals. Justices Rehnquist and Burger dissented.

*Maine v. Thiboutot*, 448 U.S. 1, 100 S. Ct. 2502, 65 L. Ed. 2d 555 (1980)

In a 6-3 vote, the Court (J. Brennan) held that section 1983 (title 42) afforded a cause of action to individuals for violations of Federal statutory law as well as constitutional violations. This decision expanded the parameters of section 1983 well beyond its traditional civil rights confines. Justices Powell, Burger, and Rehnquist dissented.

#### HANDICAP DISCRIMINATION

*Southeastern Community College v. Davis*, 442 U.S. 397, 99 S. Ct. 2361, 60 L. Ed. 2d 980 (1978)

In a 9-0 decision, the court (J. Powell) found that denial of a deaf applicant's admission as a student to a State nurse training program did not violate § 504 of the Rehabilitation Act of 1973. The college had no obligation under the Federal law to lower or effect substantial modifications in its standards in order to accommodate a handicapped person.

#### IRS—TAX EXEMPTIONS

*Bob Jones University v. United States*, 460 U.S. —, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983)

In an 8-1 decision, the Court (J. Burger) upheld the authority of the IRS to deny tax exemptions to private educational institutions with policies of disparate treatment for white and black students even though such treatment was predicated on the religious tenets of the institution. The Court concluded that such institutions, in order to be entitled to an exemption, could be required to "serve a public purpose and not [act] contrary to established public policy." Justice Rehnquist dissented.

## V. STATE STATUTES

The following listing is not intended to be a comprehensive summary of State laws relating to civil rights, but merely an introductory reference to representative provisions of State civil rights law, with an emphasis upon employment discrimination:

### ALABAMA

Alabama Code, title 21, ch. 7, secs. 21-7-1; 21-7-8.

### ALASKA

Alaska Statutes, title 18, ch. 80, secs. 18.80.010-18.80.300; title 22, ch. 10, sec. 22.10.020; title 23, ch. 10, sec. 23.10.192.

### ARIZONA

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The following States have been determined by the Department of Housing and Urban Development to have fair housing laws that provide rights and remedies "substantially equivalent" to those provided by title VIII of the Civil Rights Act of 1968. Such a desig-

nation entitles such States to have referred to their fair housing agencies certain housing discrimination complaints.

STATES

Alaska  
California  
Colorado  
Connecticut  
Delaware  
Illinois  
Indiana  
Iowa  
Kansas  
Kentucky

Maine  
Maryland  
Massachusetts  
Michigan  
Minnesota  
Montana  
Nebraska  
Nevada  
New Hampshire  
New Jersey

New Mexico  
New York  
Oregon  
Pennsylvania  
Rhode Island  
South Dakota  
Virginia  
Washington  
West Virginia  
Wisconsin

[Federal Register, July 15, 1983]

## VI. SUMMARY OF FEDERAL CIVIL RIGHTS LAWS

Law	Coverage		Prohibited practices	Sanctions	Enforcement agency	Statute of limitations
	Law applies to—	"Protected" classes				
42 U.S.C. 1981 .....	Right to "make and enforce contracts; to sue, be parties, give evidence, and to the full and equal benefit of all laws and [legal] proceedings".	Blacks..... None .....	Discrimination in public and private contracts, and interference with other specified rights.	Civil damages and/or injunctive relief.....	Private suit.....	Applicable state law.
42 U.S.C. 1982 .....	Right to "inherit, purchase, lease, sell, hold, and convey real and personal property".	.....do .....	Discrimination in real and personal property transactions by private individuals or governmental action.	.....do .....	.....do .....	Do.
42 U.S.C. 1983 .....	All state or local governmental officials or others acting with or on behalf of such governmental actors.	All persons.....do .....	Deprivation "under color of law" of any rights, privileges or immunities "secured by the Constitution and laws . . ." of the United States.	.....do .....	.....do .....	Do.
42 U.S.C. 1985 .....	Private conspiracies .....	.....do .....	Conspiracies to prevent or deter "by force, intimidation, or threat" (1) the acceptance of a federal office or discharge of the duties thereof, or (2) participation as party, witness, or juror in judicial proceedings. Also, (3) conspiracies to deprive another of "the equal protection of the laws, or equal privileges and immunities under the laws" if motivated by a "class based invidiously discriminatory animus".	.....do .....	.....do .....	Do.
Civil Rights Act of 1960 (42 U.S.C. 1974-1974e).	Any "officer of election" or custodian.	NA .....	Willful theft, destruction, concealment, mutilation, or alteration of election documents.	Up to \$1,000 fine and/or 1 year imprisonment.	Dept. of Justice.....	

Equal Pay Act (29 U.S.C. 206(d) (1)).	All employers subject to the Fair Labor Standards Act.	All employees defined by their sex.	Incorporates general exemption provisions of FLSA (29 U.S.C. 213).	Discrimination on the basis of sex in wages for equal work on jobs "the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." Differentials in pay are permitted where they are based on (1) a seniority system, (2) a merit system, (3) a system which measures earnings by quantity or quality of production, and (4) any factor other than sex.	Backpay and/or liquidated damages; fine up to \$10,000 and/or imprisonment up to 6 months for repeated willful violations.	Equal Employment Opportunity Commission.	2 years; or 3 years for willful violations.
Civil Rights Act of 1964:							
Title II (42 U.S.C. 2000a et seq.).	All establishments or places of public accommodation, hotels, motels, restaurants, theatres, etc. whose operations "affect commerce" as defined by the Act.	"Race, color, religion or national origin".	Private clubs or other establishments "not in fact open to the public".	Discrimination against protected class in providing "goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation".	Private suit for injunctive relief or suit by the Attorney General in "pattern or practice cases".	Dept. of Justice.....	
Title III (42 U.S.C. 2000b).	"Any public facility, which is owned, operated or managed by or on behalf of any State or subdivision thereof. . . ."	.....do.....	Public schools or colleges as defined in Title IV of the Act.	Denial of "equal utilization of any public facility" to any protected class member.	Suit by private individual or Attorney General where he finds complainant is unable to maintain action.	.....do.....	
Title IV (42 U.S.C. 2000c et seq.).	All public schools and colleges operated by the state or a subdivision thereof, or supported "wholly or predominantly" with government funds.	"Race, color, religion, sex, or national origin".	None.....	Denial of admission or attendance to protected class or other deprivation of equal protection of the laws.	Suit by Attorney General where he finds complainant is unable to maintain appropriate legal action.	.....do.....	
Title VI (42 U.S.C. 2000d et seq.).	Any "program or activity" that receives federal financial assistance.	"Race, color, or national origin".	Programs or activities aided by way of a federal contract of insurance or guaranty; employment practices of federal aid recipients unless a "primary objective" of the grant-in-aid program is to provide employment.	Exclusion from participation, or discriminatory denial of benefits to protected class.	Administrative process may lead, after hearing, to termination or refusal to grant federal assistance, referral to the Attorney General for court enforcement, or other authorized sanctions.	All grant-making agencies of the federal government.	180 days (45 CFR 80.7(b)).

## VI. SUMMARY OF FEDERAL CIVIL RIGHTS LAWS—Continued

Law	Coverage		Prohibited practices	Sanctions	Enforcement agency	Statute of limitations	
	Law applies to—	"Protected" classes					Exemptions
Title VII (42 U.S.C. 2000e et seq.).	Employers with 15 or more employees; labor organizations with 15 or more members; employment agencies.	"Race, color, religion, sex, or national origin".	Bona fide private membership clubs; elected officials and their personal staffs; aliens working for U.S. companies outside the states; religious associations, corporations, or societies employing individuals of a particular religion; Indian tribes.	Discrimination in hiring, discharge, promotion, layoff and recall, compensation and fringe benefits, classification, training, apprenticeship, referral for employment, union membership and all other "terms, conditions, and privileges of employment". No requirement of "preferential treatment" to individuals or groups on account of numerical "imbalance" of group in workforce.	Court ordered injunctive relief and "such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without backpay . . . or any other equitable relief as the court deems appropriate".	Equal Employment Opportunity Commission.	Complaint must be filed with EEOC within 180 days of the alleged unlawful employment practice.
Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).	States and their political subdivisions.	"Race or color" and language minorities.	None .....	Use of any "voting qualification or prerequisite to voting, or standard, practice, or procedure which results in a denial or abridgement" of voting rights. "Language minorities" entitled to bilingual ballots.	Court ordered injunctive relief in actions by private parties or the Attorney General.	Department of Justice....	
Age Discrimination in Employment Act (29 U.S.C. 621 et seq.).	Employers, employment agencies, and labor organizations that have 20 or more employees or members.	Persons between the ages of 40 and 70.	Bona fide occupational qualification; bona fide seniority system or employee benefit plan, i.e. retirement, pension, or insurance plan; action based on reasonable factors other than age.	Discrimination against protected class members in regard to hiring, discharge, classification, labor organization membership, and advertising.	Court ordered backpay, liquidated damages, and/or affirmative injunctive relief; \$500 fine and/or 1 year imprisonment for forcible interference with the Act's enforcement.	Equal Employment Opportunity Commission.	2 years for non-willful and 3 years for willful violations.
The Fair Housing Act (42 U.S.C. 3601 et seq.).	Sale, lease or financing of residential real property.	"Race, color, religion, sex, or national origin".	Private clubs "not in fact open to the public"; religious organizations and affiliates can limit housing to members of religious group; sale of single family home by occupant-owner without the aid of a broker; owner-occupied dwelling containing no more than three other units for families living independently.	Discrimination in the sale, rental, or financing of residential dwellings, and the provision of brokerage services.	Suits by private individuals for injunctive relief and/or damages or by the Attorney General in pattern or practice cases.	Department of Housing and Urban Development.	Within 180 days of discriminatory housing practice.

Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).	All federally assisted education programs and activities.	"Sex".....	Educational institutions or religious organizations with contrary religious tenets; educational institutions training-individuals for military service or merchant marine; admissions to public undergraduate institutions "traditionally and continually" one-sex since their founding; sororities, fraternities, etc.; separate living facilities for the different sexes.	Discrimination in admissions to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education; any other form of sex discrimination in the provision of education-related programs or services.	Termination of funds or refusal to grant further assistance; referral to the Department of Justice for court enforcement; or "any other means authorized by law".	Department of Education. 180 days (45 CFR 80.7(b)).
Rehabilitation Act of 1973:						
§ 503 (29 U.S.C. 793).	All contractors or subcontractors with the federal government with contracts in excess of \$2,500.	"Handicapped persons".	President may waive requirements with respect to a particular contract or subcontract when "special circumstances in the national interest so require".	Employment discrimination (covered contractors must "take affirmative action to employ and advance in employment qualified handicapped individuals" and include clause to that effect in their contract).	Administrative or judicial enforcement of affirmative action clause in contract.	Department of Labor..... 180 days (41 CFR 60-1.21).
§ 504 (29 U.S.C. 794).	All federally assisted programs or activities.	"Handicapped" individuals.	None .....	Exclusion from participation in, denial of benefits to, or discrimination against members of protected class.	Administrative process may lead after hearing to termination or refusal to grant federal assistance, referral to the Attorney General for court enforcement, or other authorized sanctions.	All grant-making agencies of the federal government. 180 days (45 CFR 80.7(b)).
Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).	.....do .....	Individuals "on the basis of age".	Age-based actions necessary to achieve the statutory objectives of the federal program; discrimination based on reasonable factors other than age; employment practices of federal fund recipients.	.....do .....	Administrative process may lead after hearing to termination of or refusal to grant federal assistance, or enforcement by any other authorized means; private suit for injunctive relief.	.....do ..... 180 days (45 CFR 91.42(a)).
Executive Order 11063 (3 CFR 652 (1959-63 Comp.)).	Sale, leasing, or rental of all federal or federally assisted housing or housing financed by federally guaranteed loans.	"Race, color, religion (creed), sex or national origin".	None .....	Discrimination against protected class members in the sale, leasing, or rental of federally assisted housing or in the financing thereof.	Cancellation or termination of federal financial assistance; revocation of approval of lending institutions.	Any federal department or agency granting housing assistance.

## VI. SUMMARY OF FEDERAL CIVIL RIGHTS LAWS—Continued

Law	Coverage		Prohibited practices	Sanctions	Enforcement agency	Statute of limitations
	Law applies to—	"Protected" classes				
Executive Order 11246 as amended (42 U.S.C. 2000e note).	All contractors and subcontractors with the federal government.	"Race, color, religion, sex, or national origin".	Secretary of Labor may exempt specific contracts and subcontracts when "special circumstances in the national interest so require"; contracts or subcontracts (1) for work performed outside the U.S. (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or number of workers; (4) subcontracts below a specified tier; and facilities of a contractor "separate and distinct" from those related to performance of a contract.	Contractor may not discriminate in employment against protected class members and must agree to take affirmative action with respect to protected class members as to employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.	Cancellation, termination, or suspension of contracts and debarment from future contracts; court enforcement of contractual nondiscrimination requirement by the Department of Justice.	Department of Labor..... 180 days (41 CFR 60-1.22).

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