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No. 2080

FEDERAL EQUALITY OF OPPORTUNITY IN EMPLOYMENT ACT

REPORT

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

TO ACCOMPANY

S. 3368

A BILL TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, OR ANCESTRY

JULY 3 (legislative day JUNE 27), 1952.—Ordered to be printed

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Mr. HUMPHREY, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany S. 3368]

The Committee on Labor and Public Welfare, to whom was referred the bill (S. 3368) to prohibit discrimination in employment because of race, color, religion, national origin, or ancestry, having considered the same, report favorably thereon, and recommend that the bill do pass.

PURPOSE OF THE BILL

Experience is the foe of fear. The accumulated experience of many States and dozens of municipalities proves that discrimination in employment can be minimized by the operations of an enforceable statute.

S. 3368 is a consolidation of S. 1732 and S. 551. The hearings on those bills, which would promote equality of opportunity in employment and provide enforcement procedure in support of that policy, demonstrated that the forbidding prophecies which the prospect of fair employment practices legislation has elicited in the past,[1] have not materialized.

The quiet successes of State and local commissions, operating under enforceable legislation, in eliminating job discrimination have calmed the anxieties of former critics.

It is clear that open opposition to such measures has abated substantially. Experience with legislation fostering equality of employment opportunity shows wide acceptance by the public, management, and labor unusual in the history of remedial legislation.

[1] See for instance hearings before a subcommittee of the Committee on Labor and Public Welfare on S. 984, 80th Cong., 1st sess. and hearings before a special subcommittee of the Committee on Education and Labor, 81st Cong., 1st sess., on H. R. 4453 and companion bills.

The last few years have shown impressive progress in the protection of the rights of minorities. Since the end of World War II, 11 States and 25 muncipalities have enacted fair employment legislation. Discrimination in public accommodations, the National Guard, and other matters have been prohibited by legislation in many States and municipalities. The wearing of masks and the burning of crosses in public have been outlawed in many areas.

These developments simultaneously show that the Nation is morally opposed to discrimination, desires legislation to combat it, and that such legislation works—far better, indeed, than legislation usually does.

Equally clear is the fact that discrimination in employment persists. It is national in scope and effect.

Discrimination based on race, creed, color, national origin, or ancestry is morally indefensible. It is out of harmony with our democratic institutions to prevent individuals from earning a living or restricting them to only the least desirable jobs. Eradication and prevention of discrimination are proceeding, briskly in some places, haltingly in others.

Just as half-truth is not truth, so there is no such thing as partial morality. The denial of equality of opportunity to some is a denial of the fruits of democracy to the Nation.

We urge the early consideration and prompt passage of S. 3368. This bill combines S. 1732 and S. 551, with some minor changes necessary to harmonize the two and others designed to afford even greater local participation and procedural protection for respondents in the administration of its provisions.

S. 3368 emphasizes four factors:

(1) Due process and procedural safeguards to all parties, and respondents in particular;

(2) The fullest possible participation by State and local authorities and private citizens of the areas directly concerned in a given case;

(3) Maximum use of informal procedures of education, persuasion, conciliation, and mediation; and

(4) Application to employers of substantial size, i. e., those having 50 or more employees.[2]

All proceedings of the Commission established by this bill are subject to the provisions of the Administrative Procedure Act. In addition, the bill requires sworn charges from private individuals who allege violations; places the burden of proof upon the charging party; places the burden of proof upon Government counsel in any formal proceedings before the Commission or courts; affords court review to any aggrieved party; requires notice to private parties at all stages of any proceeding; contains a 1-year statute of limitations; and has many other protective features.

The bill provides for cession of jurisdiction to State and local agencies which can prevent the practices banned. It also provides for State, regional, and local councils of eminent local citizens to foster conciliation and understanding of the bill and local problems. The principal agents of the Commission, other than commissioners, are required to be residents of the area in which they perform their duties.

Great emphasis is placed upon conciliation, mediation, conference, and persuasion. The Commission is to provide information and technical assistance to employers, employment agencies, and unions.

[2] As of 1946, for which the most complete data is available, there were approximately 70,700 companies employing 50 or more employees, compared with a total of 3,516,000 companies in the entire United States.

In the normal case, no formal complaint proceeding is instituted until all efforts at informal settlement are exhausted.

The bill does not apply to all employers, employment agencies, or unions. Only employers with 50 or more employees who are in interstate or foreign commerce or whose operations affect such commerce are covered. In this manner, a large area of exclusive State and municipal authority is maintained and only large companies with substantial work forces are affected.

This moderate proposal is an absolute necessity if our Nation is to translate a basic tenet, "equality of opportunity," into reality.

EVIDENCE OF DISCRIMINATION IN EMPLOYMENT

No precise statistics of discrimination in employment exist. There is no official and precise total of jobs denied, discharges, or promotions withheld on the basis of race, creed, color, national origin, or ancestry.

But there are unfortunate indexes of discrimination—there are weather vanes which show that the winds of discrimination still blow; the arrows point in no one direction. The ill wind comes from many quarters.

Recent census figures (1950) show that the median annual income of white families and individuals is $3,647 and for nonwhite families and individuals, $2,021. As of February 1952 unemployment among white workers was 3.1 percent, but among nonwhites unemployment was 6.2 percent—precisely double. These are national figures. In its first year of operation (1949–50) the Oregon Fair Employment Practices Advisory Committee requested employers to submit their regular application forms. Of 260 submitted by employers, 166 contained unlawful inquiries about race, religion, ancestry, and the like. Of 16 submitted by employment agencies 14 were improper. Similar experience is reported by other State commissions.

The end of wartime FEPC marked a revival of discriminatory practices in areas which did not fill the void by local legislation. Thus, for instance, the Michigan State Employment Service experienced a sharp upturn in employer requests for applicants which contained discriminatory specifications amounting to 65 percent of all 1948 job openings in the Detroit labor market. In that year there were 23,000 unfilled requests for workers that excluded workers of specified racial, religious, and nationality groups.

Under utilization of manpower is as critical a problem as refusal to hire. To take an example, Negroes are widely employed. In the majority of cases they are relegated to menial tasks regardless of their training and experience or their potentialities. Negro women employees are concentrated in the domestic service field. Negro men are most usually found in unskilled and semiskilled industrial work, custodial positions, and the like. Our World War II experience and that of States with enforceable fair employment legislation show that minority workers, formerly excluded from jobs requiring skill and initiative, prove productive and responsible workers when given fresh opportunities to demonstrate their ability. It is equally apparent that fellow employees and supervisors readily accept such new employees.[3]

[3] See, for instance, Negroes in the Work Group, Research Bulletin No. 6, New York State School of Industrial and Labor Relations, Cornell University (1950).

In its issue of February 25, 1950, Business Week cited a number of statements by business concerns operating in FEP States. Among these were:

Bridgeport (Conn.) Brass Co.—In Connecticut, none of the "disastrous results anticipated by FEPC opponents * * * have come to pass—such as mass walk-outs of employees forced to work with minority groups, loss of patronage by mercantile establishments, etc." Instead, the law is getting "voluntary acceptance * * * by the vast majority of employers, employment agencies, and unions."

It has "eliminated entirely a large and growing Communist campaign being waged * * * among the large urban Negro groups." It has widened job opportunities for minority group members; but without interfering in the prerogatives of management "so far as we have yet noted."

The law has had no injurious effects on the company's personnel relations, has caused no grievance or disciplinary problems. It has been "ably administered"—with a determined effort to get "acceptance of the law through education rather than persecution."

Allen Manufacturing Co.—This Hartford (Conn.) metalworking company has had no difficulties, is "much impressed" with the Connecticut law.

Pitney-Bowes, Inc.—The Stamford (Conn.) postage meter company "started a Negro integration program * * * before the enactment of the Connecticut [FEPC] act. Many of the problems which we encountered would have been much less difficult had we the support of [the] legislation." Pitney-Bowes believes the Connecticut act is "functioning very successfully."

Western Electric Co.—Plants under New York and New Jersey laws "have not had any difficulty in meeting the requirements of these laws," and the laws have not "entailed any undue hardship on employers who are trying to do a conscientious job in employee relations." The laws "have been accepted generally by our employees."

New York Shipbuilding Corp.—The Camden (N. J.) firm reports no "interference with our right to select the most competent workers"—and "no added problems or difficulties."

New Jersey Telephone Co.—"No serious difficulties" have arisen under the New Jersey law, and there has been no interference with hiring on a basis of competence.

Lea Fabrics, Inc.—This Newark textile company was charged with discrimination shortly after the New Jersey law went into effect. On investigation, the company was cleared. After that first experience, the company has had "no new difficulties" in complying with the law, or in selecting the most competent workers.

St. Regis Paper Co. (Panelyte Division).—A few cases requiring State investigation have arisen at its Trenton (N. J.) plant, but the company reports "very little difficulty" with the State act. And it reports: "No problems that have not previously been with us have been raised since the inception of the law, nor has it interfered with our hiring procedure."

THE COST OF DISCRIMINATION

The cost of discriminatory employment practices cannot be estimated with any degree of accuracy. We have not attempted to reduce the figures to the nearest 100 or 1,000 dollars. Such figures are too small. Discrimination costs the Nation immense sums.

Discrimination depresses the earnings of a vast segment of the population. This denial of buying power represents a loss of sales for industry and in turn fewer jobs and hence less buying power for those who nominally are not suffering discrimination. By relegating large groups to unskilled and menial labor, wage rates are depressed because of wage competition and the substitution of cheap human hands for more scientific production. This phenomenon has the further effect of lessening the production of goods available for the population as a whole.

Great pools of talent among minority group members are wasted. The skills and ingenuity of these men and women are not harnessed for the public good or their own.

Low wages have other deleterious economic and social effects. Women members of the family are forced to work at unrewarding jobs to supplement meager incomes. Children are forced into work to the exclusion or detriment of schooling. Incentives for self-improvement, on which our Nation has thrived, are nonexistent for vast numbers of workers.

In many cases these increased costs are borne by the Government and felt by the taxpayer. On the other hand, lower incomes produce less taxes and increase the tax burdens of the rest of the population.

Discrimination is bad business.

DISCRIMINATION AND INTERNATIONAL RELATIONS

The United States, as the proclaimed and acknowledged leader of freedom and equality must practice fully the freedom and equality which we espouse. Our foreign policy is not vulnerable because of lack of money, troops, or armament. It is vulnerable because we have not yet declared by public law and public policy not only our desire for equality of opportunity but our willingness fully to practice it here and abroad. There can be no successful foreign policy in the underdeveloped and underprivileged areas of the world until we can come to the people of Africa and Asia as a living example of human brotherhood and equality of opportunity for all.

The anti-Communist press of Europe has commented upon this discrepancy between principle and practice. To cite a few examples:

> In associating ourselves with the United States in the defense of liberty, we have included in the notion of liberty a respect for all human beings, the notion of the common fraternity of all men. And it appears that in this association we, too, have much to bring. What the world awaits from us is not cannons and atomic bombs, but the permanent and vigilant affirmation of the inalienable right of all men to be judged according to their acts and not according to the color of their skin or the latitude in which they were born. Otherwise, where is the difference between our enemies and ourselves? (Somailles, a liberal Marseilles newspaper, May 18, 1951.)

> The Communist reply to accusations made about the injustices and cruelties of their dictatorship, of forced labor, of the arbitrariness of their courts and their violation of human dignity, by pointing to the insincerity of American democracy which permits racial persecution and deprives millions of human beings of their equal rights on the basis of the color of their skin.
>
> One cannot appear before the world as a fighter for freedom and right when one is unable to eliminate injustice in one's own house (an editorial, entitled "An American Tragedy," in the Arbeiter-Zeitung, February 4, 1951).

> The crime of racism is odious. And, without doubt, the world will never know true peace while there exist nations, peoples, or races that believe themselves superior to other nations, peoples, or races. It is a painful declaration to make at the moment when our American friends are presenting themselves in the United Nations as the sturdy defenders of the free world (Le Matin of Antwerp Belgium, May 1951).

Since the end of World War II, the United States has spent approximately $35 billion in foreign aid. For fiscal year 1953 Congress is in the process of appropriating some $6.9 billion and actual expenditures for this period will come to about $10 billion, taking account of sums appropriated in past years to be spent later. These expenditures have been as necessary as they are vast.

It must be recognized that some of the effect of our magnificent efforts overseas has been offset by the loss of support traceable to the existence of domestic discrimination. To that extent we haven't been getting our money's worth.

Discrimination is bad international relations.

MANPOWER FOR DEFENSE

S. 3368 is designed as permanent legislation. The impact of discrimination upon defense production is, however, a matter of great immediate importance.

The population of the United States is approximately 152 million while that of Russia is 200 million. Adding to each the population of allies, there is an approximate equality. This means that the balance of manpower is held by the underdeveloped nations of the world. As already described, we are in competition for their support.

Domestically, we are in a decidedly different manpower situation from that which prevailed in 1940.

Since the end of World War II the high level of the marriage and birth rate has reduced our woman power reserve. This results from a decline in the proportion of single women and married women without young children.

As of 1945 we had a potential work force of 66 million, which was 48 percent of the population. This compares today with a possible work force of 70 million or 45 percent of our population. The obvious result is that a smaller proportion of the population would be available for emergency work plus satisfaction of the requirements of a larger group of nonworking consumers.

In the event of a full-scale conflict, a larger proportion of the population would be necessary to guard against domestic attack and to assist in rehabilitation. Such tasks were not of such crucial importance in World War II as they are today.

The growing complexity of new weapons requires more intense use of highly skilled workers.

Today there is a smaller proportion of 18-year-olds, so that a smaller proportion is available for the Armed Forces, than during World War II. Consequently, if the services are to be of World War II size, some 5 million men would be taken from the work force.

It is painfully apparent that the wasteful misuse of minority workers must be ended. Their skills must be kept fresh and developed and new skills taught.

While the present manpower situation is not critical, stringent shortages are imminent.

Under the impact of necessity the full use of minority workers is more easily effected. At the same time, the passage of S. 3368 would help break down the artificial barriers that presently exist.

Discrimination is bad defense policy.

THE BILL—FACT AND FANTASY

Few proposed measures have been subject to more public discussions and more misrepresentation, much of it unwitting, than legislation of this type.

This bill represents the distilled experience of 11 States, numerous municipalities, and a series of congressional hearings.

"Compulsory FEPC" has been bandied about to the point that some believe this measure and its predecessors would force the hiring of certain minority group members. This misconception has even taken the form of a belief that it would establish a quota system. Such is not the case. Indeed, a quota system would be illegal for the

very reason that it would be based upon discrimination according to race or religion or color or national origin or ancestry.

The bill does no more and no less than encourage equal opportunity for all.

Flexibility of Legislation

A lesson of recent decades is that legislation can achieve desirable goals in many fashions. The very declaration of legislative policy can result in a change of attitude and behavior. Happily, ours is not an authoritarian society, but respect for law is a strong strand in our political fabric.

Dissemination of information and informed discussion are enormous forces within our country. Governmental stimulation of these ameliorative forces has proven excellent legislative technique.

Conciliation and persuasion are traditional in our society. Government machinery fostering these steps is of inestimable value in improving human relationships—our domestic relations courts have proven that such methods can improve family relations where legalistic devices frequently fail.

Legislation of the type under consideration has utilized another comparatively new technique—committees of distinguished, public-minded citizens of local communities have improved public understanding of the aims and means of eliminating discriminatory employment practices.

These are the main features of the proposed legislation.

Prevention has been demonstrated to be good medical and governmental technique.

All of these methods are made meaningful and more successful where the community and parties affected can be assured that the standards of conduct will be required of all similarly situated.

Conciliation is meaningless if parties refuse to get together. Persuasion and voluntary conformity are more readily achieved when some ultimate sanction is in reserve to compel compliance.

In this legislation, provision for civil enforcement by court order is no more than a reserve power to insure that parties will participate in the informal proceedings and, that failing, the bill provides a fair and orderly procedure to require compliance with the standards established.

The Record of Legislation

In practice, commissions operating under similar legislation have achieved healthy results with less recourse to formal procedures than in the case of any remedial legislation this country has ever known.

Upon the passage of similar State and municipal acts widespread changes in employment practices were undertaken by hundreds of large and small employers without a word from commission officials. Others voluntarily submitted employment applications for advice and eliminated questions which could be construed as tending to elicit information that suggested discriminatory intent or practices.

It had been feared that enforcement procedure might be exploited by unfit employees or applicants. Surprisingly few complaints have been lodged with agencies administering this type of measure. And of those filed almost all have resulted in informal settlement by voluntary means, including changes in hiring practices and advertising, or the dismissal of complaints for lack of merit. Employer and union

complaints of unfairness by officials have been practically nonexistent. Public confidence is vital to success of such measures and it has been forthcoming based on performance.

Since enactment of the Connecticut Act in 1947 only 254 complaints have been filed. This averages out to slightly more than one complaint a week for a State with a population of about 2 million people. About 99 percent of these cases were disposed of informally and the remainder were the subject of formal proceedings. In New York State only three cases were set for hearing and one of them was settled before the scheduled hearing. Other States with enforceable statutes have had the same experience. There has been almost no necessity for court litigation. In all, court enforcement or review cases can be counted on one hand.

Experience has also proven that so-called educational programs for fair employment are ineffectual if not accompanied by some enforcement machinery.

When the Cleveland City Council was considering an enforceable ordinance, the local chamber of commerce opposed its enactment and offered to undertake its own program. The council agreed to the experiment. The chamber of commerce established a full-time agency and spent substantial sums for educational material, conferences, and similar matters. Determination and energy characterized the chamber's sincere activities. After something over a year, the chamber withdrew its opposition to an enforceable ordinance and expressed the opinion that voluntary methods and no more are inadequate.

Oregon amended its Fair Employment Act to add enforcement machinery after experimenting with the voluntary method.

Regulation of Conduct—Not Attitudes

It is earnestly contended that discrimination cannot be outlawed and that individual attitudes cannot be legislated out of existence. Child labor laws, protective legislation for women, the Wagner Act, the wage and hour law, and other remedial legislation were opposed with these and other arguments. These contentions have been proved to be without merit. This bill affects conduct and not mental states. It has long been recognized that changes in conduct, which we know can be achieved, can modify attitudes. Much of the discrimination that exists today continues through inertia and the attitude that this is the "thing to do." Many who would prefer not to discriminate are hesitant to do so because of fear of customer reaction and exploitation by competitors. Both of these pressures, which are speculative and to a great extent baseless, would be removed by the enactment of this bill. As shown in the next section, employee reaction is excellent in all parts of the country.

Enforcement Procedures

The enforcement procedures of this bill are far more moderate than those provided in other remedial legislation. The antitrust laws provide for treble damage suits and the dissolution or divorcement of enterprises. The Taft-Hartley Act provides for many types of injunctions, many dozens of which have been issued in the few years since its enactment. The ICC has rate-fixing authority and is em-

powered to exercise minute and detailed control of railroad operations. The SEC can prohibit the offering of securities to the public. Compare these methods with this bills' procedure for a full hearing which may result in a cease and desist order, which is not self-enforcing. A court of appeals alone can make the order mandatory. There are no punitive provisions. Only remedy, restitution and prevention are sought and provided. It is submitted that objections to enforceability overlook the moderation of the enforcement provisions.

The Desirability of State and Federal Action

There are those who contend that the problem of discrimination should be dealt with by the States. The bill recognizes that local administration is desirable and it is encouraged by the provision that the Commission is empowered to cede jurisdiction over any class of cases to State and local commissions which have effective power to eliminate discrimination. Only nine States have such effective legislation. Many municipalities have similar ordinances. It is clear on the record that the States have not acted with sufficient vigor in eradicating discrimination in employment. Enactment of this bill would stimulate local legislation.

It should be noted that municipal authority is very limited in scope. In many instances, it cannot reach enterprises in areas immediately adjoining cities. State legislation has effected important changes in the local activities of interstate enterprises, but, of course, cannot reach beyond State boundaries. So there are instances of employment forms requiring information about color or race or the like marked "not for use in ----------," giving the names of States with enforceable laws.

The States have proven excellent laboratories for testing this type of legislation. It would be most unscientific to ignore their findings.

CONSTITUTIONALITY

At one time opponents of this type of legislation flatly declared that a measure of this sort would be unconstitutional. In recent years this asserted objection has not been repeated.

The provisions of this bill follow well-marked legislative precedents which have met the test of constitutionality in the courts.

The basic objective of eliminating racial and religious discrimination in those employment relations which are subject to Federal control has been written into a long list of congressional enactments. Since 1933 a score of different Federal statutes or appropriation acts have been adopted by the Congress forbidding racial or religious discrimination. Among these are the Selective Service Classification Act of 1940 (54 Stat. 1214), the Civilian Conservation Corps Act of 1937 (50 Stat. 320), the Lanham or Defense Housing Appropriation Act of 1941 (55 Stat. 363), the Nurses Training Act of 1933 (57 Stat. 153), and various appropriation acts (e. g., for the National Youth Administration and the Federal Security Agency). These and other statutes embody, as the Supreme Court has held, "a national policy against racial discrimination." *Bob-Lo Excursion Co.* v. *Michigan* (333 U. S. 28).

The procedures which this bill establishes to realize the foregoing objective are based upon regulatory acts which conform to modern

principles of administrative procedure, such as the National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947; the Administrative Procedure Act; and the New York and other State acts against discrimination in employment.

The proposed legislation affects (*a*) Government employment, (*b*) Government contractors, and (*c*) certain private enterprises and labor unions engaged in activities affecting interstate or foreign commerce.

There can be no possible constitutional question concerning the first two of these categories. Congressional power, under article I, section 8, of the Federal Constitution, to regulate the employment practices of Federal agencies is clear. It is the basis of all our civil-service laws and no challenge to this power has ever been successful in the courts. See *United Public Workers* v. *Mitchell* (330 U. S. 75; 67 S. Ct. 556). The Court there recognized that the Constitution forbids racial and religious discrimination in Federal employment (67 S. Ct., 569–570).

Equally clear is the congressional power to prescribe the terms on which the Federal Government may contract with private parties. This was clearly established in the case of the Walsh-Healey Act (act of June 30, 1936 (49 Stat. 2036; 41 U. S. C., sec. 35)), in which the Supreme Court declared:

> Like private individuals and businesses, the Government enjoys the unrestricted power to produce its own supplies, to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases. *Perkins* v. *Lukens Steel Co* (310 U. S. 113, 127).

In the exercise of this power, the Court held, the Congress may "for the purpose of keeping its own house in order lay down guideposts" (p. 127), and such guideposts may (p. 128)—

> impose obligations upon those favored with Government business and * * * obviate the possibility that any part of our tremendous national expenditures would go to forces tending to depress wages and purchasing power and offending fair social standards of employment.

The regulation of commerce.—The power of Congress to regulate employment relations affecting interstate or foreign commerce has been repeatedly upheld in recent years. In point of jurisdiction this bill stays within the limits marked out by such statutes as the National Labor Relations Act, the Railway Labor Act, the Fair Labor Standards Act, and the act barring convict-made goods from interstate commerce. The constitutionality of these acts has been decisively established by the Supreme Court. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.* (301 U. S. 1); *Texas & New Orleans Ry.* v. *Brotherhood* (281 U. S. 548); *United States* v. *Darby* (312 U. S. 100); *Kentucky Whip & Collar Co.* v. *Illinois Central Railroad Co.* 299 U. S. 334).

Within the acknowledged field of Federal jurisdiction the courts have plainly indicated that action by the Federal Government to prevent discrimination on grounds of race or religion is as valid as action to prevent discrimination on grounds of union affiliation. Thus in *New Negro Alliance* v. *Sanitary Grocery Co.* (303 U. S. 552), the Supreme Court, in determining that picketing in protest against racially discriminatory employment policies was protected by the Norris-LaGuardia Act of March 23, 1932 (47 Stat. 73; 29 U. S. C., sec. 113), declared:

The desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discriminations against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation.

In *James* v. *Marinship* (155 Pac. (2d) 329), the Supreme Court of California directed a local union to either cease enforcing a closed shop contract or cease discriminating against Negroes subject to that contract. The court said:

Its [the union's] asserted right to choose its own members does not merely relate to social relations; it affects the fundamental right to work for a living citing cases] * * *. The discriminatory practices involved in this case are, moreover, contrary to the public policy of the United States and this State.

The bill imposes no arbitrary restraints in violation of constitutional requirements of due process or equal protection.

In *Railway Mail Association* v. *Corsi* (326 U. S. 88), the Supreme Court considered the constitutionality of section 43 of the civil rights law of the State of New York. That section prohibits any labor organization from discriminating in the matter of membership and privileges on account of race, creed, or color. In upholding constitutionality, the Supreme Court said:

We have here a prohibition of discrimination in membership or union services on account of race, creed, or color. A judicial determination that such legislation violated the fourteenth amendment would be a distortion of the policy manifested in that amendment which was adopted to prevent State legislation designed to perpetuate discrimination on the basis of race or color. We see no constitutional basis for the contention that a State cannot protect workers from exclusion solely on the basis of race, color, or creed by an organization, functioning under the protection of the State, which holds itself out to represent the general business needs of employees.

In *Steele* v. *Louisville & Nashville R. R. Co.* (323 U. S. 192), the Supreme Court held that a Negro railway fireman who was discriminated against because of color by the union chosen by the majority of his craft as bargaining representative under the Federal Railway Labor Act could properly invoke the protection of the court by injunction. The Supreme Court said:

* * * we think that Congress, in enacting the Railway Labor Act and authorizing a labor union, chosen by a majority of a craft, to represent the craft, did not intend to confer plenary power upon the union to sacrifice, for the benefit of its members, rights of the minority of the craft, without imposing on it any duty to protect the minority.

* * * the discriminations based on race alone are obviously irrelevant and invidious. Congress plainly did not undertake to authorize the bargaining representative to make such discriminations.

To the same effect is *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen* (323 U. S. 210 (1944)). Only recently did the Supreme Court reaffirm the position taken in these earlier cases (*Brotherhood of Railroad Trainmen* v. *Howard* (— U. S. —; June 9, 1952)). See also Yale Law Journal (April 1947, p. 731, vol. 56, No. 4), Discrimination by Labor Union Bargaining Representatives Against Racial Minorities; California Law Journal (September 1945, p. 388, vol. 33, No. 3), The Right to Equal Opportunity in Employment.

Regulation of the hire or discharge of employees to prevent known abuses is not an unconstitutional abridgement of the right to contract.

Freedom of contract is not absolute. Like all other rights of person and property, it is subject to reasonable regulations and prohibitions in the interest of the general welfare and of a sound and consistent democracy. As said by the Supreme Court of the United States in *Nebbia* v. *People of the State of New York* (291 U. S. 502, 527):

> The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases.

And in *West Coast Hotel Co.* v. *Parrish* (300 U. S. 379) the same Court, through Chief Justice Hughes, said (pp. 391–392):

> What is this freedom [of contract]? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation, the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process. This essential limitation of liberty in general governs freedom of contract in particular.

Hence, the courts have steadily upheld legislative authority to regulate labor conditions and relations, and to prevent the right to hire and discharge from being used to impair "the countervailing right" of employees. *Phelps Dodge Corp.* v. *NLRB* (313 U. S. 177); *NLRB* v. *Jones & Laughlin* (301 U. S. 1); *U. S.* v. *Darby* (312 U. S. 100). The phrase "affected with a public interest" is no longer accepted judicially as the determining characteristic of businesses which can be subjected to "the economic and social programs of the States." *Olsen* v. *Nebraska* (313 U. S. 236, 246).

Nothing in the bill would permit anyone to demand employment by a given employer. Like the National Labor Relations Act, the bill permits any employer to hire or discharge "for any cause that seems to it proper" save for the cause which is specifically condemned. *Associated Press* v. *NLRB* (301 U. S. 103, 132). See also *Virginian Railway Co.* v. *System Federation, No. 40* (300 U. S. 515, 559).

The *Jones & Laughlin* and *Phelps-Dodge* decisions cited above also established that the tested device of back-pay orders to remedy the effects of discrimination do not unconstitutionally impair the right to trial by jury. Back-pay orders would be remedial under this bill just as they are under the National Labor Relations Act. *Republic Steel Corp.* v. *NLRB* (311 U. S. 7, 10).

This committee is unaware of any decision in recent years which casts doubt on the constitutionality of legislation of the type under consideration.

INDUSTRY EXPERIENCE

Testimony and documentary evidence establish that employers do not find legislation of this sort disruptive or burdensome. Representatives of the business communities of several States and municipalities operating under laws similar to that proposed have stated unequivocally that it is workable, that compliance represents no special burdens, and that these laws have been fairly administered.

It has been contended that equal employment without regard to race, creed, color, and the like may work in some areas but would be disastrous elsewhere. This is hypothetical.

Let us compare the hypothesis with experience.

Mr. Ivan Willis, vice president of International Harvester Co., testified that his company has had an affirmative policy of nondiscrimination for many years. That company operates large plants and other installations in many States, including Illinois, California, Kentucky, and Tennessee. At each place it has hired Negroes and other so-called minority group members on the basis of equality. In each place it has announced its policy to the community through advertisements and conferences with business and community leaders. Training programs, promotions, and positions of authority are equally available regardless of race and color. Mr. Willis stated that his company had encountered no problems of consequence in the administration of this program. Nor was there any difference because of location.

Similar testimony was given by Frank M. Folsom, president of Radio Corp. of America. RCA and its numerous affiliates throughout the country have gone forward with a nondiscriminatory personnel program which takes in positions requiring great skill, initiative, and judgment.

Employee acceptance of the program was clearly demonstrated by the absence of incidents or any other overt manifestation of discontent.

These are but instances drawn from a mass of experience.

SUMMARY

We urge the Senate to give this legislation the serious consideration that it deserves. Unfortunately in the past it has not been possible to bring similar legislation to a vote after debate designed to inform and grapple with the underlying problem which necessitates the passage of this bill.

The House of Representatives has done this in the past and passed similar legislation. Unfortunately it lies within the power of a few to prevent real consideration of this matter in the Senate. We urge free and complete debate, but we deplore the provisions of rule 22 which permits enfeeblement of this great deliberative body. As so ably stated in the report of Senator Benton, which is set forth in the hearings on S. 551 and S. 1732, there is no warrant in the Constitution or our principles of government for the arbitrary restrictions on the imposition of cloture. The Constitution provides for specific instances in which more than a majority is required for Senate action. To further limit the ability of the Senate to transact business is to change the constitutional fabric.

A witness summed up this deplorable situation with a fitting quotation of Senator Henry Cabot Lodge, Sr.:

> To vote without debate is unwise; but to debate without voting, that is lunatic

The committee has earnestly considered the asserted objections of critics and inserted provisions to insure fair and equitable procedures and prevent abuse of the administrative machinery proposed. A detailed description of these safeguards is set forth in the analysis of the bill, which follows.

At this critical moment of history when the survival of freedom and the basic values of democracy is threatened we must fulfill and

redeem the guaranties and principles of our philosophy of government. We must fortify our reputation among the nations of the world and encourage their devotion to democratic ideals by our living and expanding democracy. We must strengthen our economic structure and expand production and consumption. We must ameliorate our manpower problems.

The passage of this bill will serve these great purposes.

Principle demands it.

Self-interest commends it.

MINORITY STATEMENT

We do not concur in the views of the majority and reserve the right to file individual views at a later date.

ROBERT A. TAFT.
RICHARD M. NIXON.

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ANALYSIS OF BILL

Section 1.—Short title: "Federal Equality of Opportunity in Employment Act."

Section 2.—Findings and declaration of policy.

Section 3.—Definitions:

(a) "Person"—a comprehensive definition similar to that used in other legislation, except that it also includes any agency of the United States, the District of Columbia, and any Territory or possession.

(b) "Employer"—any "person" engaged in commerce or in operations affecting commerce employing 50 or more individuals. The effect of this definition is to limit application of this act to employers whose normal work complement is 50 or more employees. This leaves to the States and localities jurisdiction over smaller enterprises. Excluded from coverage are States and municipalities, and religious, charitable, and similar nonprofit corporations.

(c) "Employment agency"—this definition derives from the Connecticut act. The effect is to make this act applicable to any person procuring, registering, referring, and otherwise arranging for employment with an employer, as defined in this act. Charitable, religious, and similar corporations are excluded as under the definition of "employer."

(d) "Labor organization" is limited to a union or other employee organization having an aggregate of 50 or more members employed by one or a group of "employers."

(e) and (f) "Commerce" and "affecting commerce" are defined in essentially the same fashion as in the National Labor Relations Act.

Section 4.—Specifically exempts employers in relation to employment of aliens overseas.

Section 5.—Defines unlawful employment practices. All subsections pertain to discrimination based upon race, religion, color, national origin, or ancestry. The last term had not been used in S. 1732 but was used in S. 551. "Ancestry" was included in those portions of this and other sections which detail the types of employment discrimination prohibited.

A change of earlier years, from "creed" to "religion" was carried over to meet the objection that "creed" was comprehensive enough to cover political beliefs, including communism. This change was made to preclude beyond doubt such potential allegations.

(a) Employer unfair practices:

(1) Prohibits discrimination in hiring, firing, and terms and conditions of employment. In all other respects employers remain free to select employees in whatever fashion they choose. Nothing in this section or elsewhere in the act imposes a quota system as sometimes alleged.

(2) Prohibits use of employment agencies or other sources of employees which discriminate.

(b) Prohibits discrimination by employment agencies. This provision was included in this bill so as to relieve employers of some of the burden of ascertaining whether employment agencies, whose facilities might be used, operate in a discriminatory fashion.

Some similar State acts specifically prohibit employers and employment agencies from printing or circulating statements, advertisements, and employment forms which indicate discriminatory limitations. The inclusion of such a provision was not deemed necessary. Section 5 (a) and (b) are considered and intended to be sufficiently comprehensive to achieve the same results.

(c) Labor organization unlawful employment practices:

(1) Prohibits discrimination against any employer or individual because of race, religion, and the like. This language is essentially the same as that of several State acts, e. g. New York and Connecticut. This was substituted for the language of S. 1732 and S. 551, which was more complex and difficult to understand. The language of those bills specified particular prohibited conduct if it adversely affected employment. It was felt that such a formulation would lead to uncertainty and litigation, which would be undesirable in a measure which emphasizes voluntary compliance. This simpler formulation, which has been the subject of State administration, seemed better adapted to the purposes to be achieved. Of course, the section only applies to practices reasonably related to terms and conditions of employment.

(2) Prohibits a union from causing or attempting to force an employer to discriminate in violation of the act. This is parallel to section 8 (b) (2) of the National Labor Relations Act. The terms "attempting to force" was used instead of "attempt to cause" so as to indicate that some type of union pressure would be necessary before a violation of this section could be found. This is accomplished in the NLRA by another means outside the section not adaptable to this bill. This provision was not in S. 1732 or S. 551. Its addition closes a gap in the bill's coverage and is some protection for an employer against irresponsible union action which would not clearly be covered by 5 (c) (1).

(d) Prohibits employers, employment agencies, and unions from discriminating against an individual because he opposes discrimination or seeks to use or participates in a proceeding under the act.

Section 6.—Creation and organization of the Commission:

(a) Creates seven-member Commission—initial group staggered so that there will be a one-member turn-over or reappointment each year. Members to be appointed with advice and consent of the Senate. One member to be Chairman. Removal by President, upon notice and hearing, for neglect or malfeasance only.

(b) Three members constitute a quorum.

(c) Official seal to be judicially noticed.

(d) Commission to report on activities to President and Congress.

(e) Commissioners to receive $15,000 a year; same compensation as that of members of NLRB.

(f) Commission to have principal office in District of Columbia, but may perform duties and establish regional offices anywhere in the United States. Hearings and other proceedings to be conducted by Commissioners or designated agents. Latter must be resident of

judicial circuit in which the unlawful practice is alleged to occur. This important provision insures that investigations, hearings, and other proceedings will be conducted by agents acquainted with the customs and problems of the localities in which they perform their duties.

(g) Commission empowered—

(1) To appoint employees in conformity with Civil Service Act and Classification Act of 1949; attorneys, at direction of Commission, may represent it in court;

(2) To cooperate with and utilize regional, State, local, and other agencies. This will further assure understanding of regional situations:

(3) and (4) Provide technical and other assistance to those subject to the act;

(5) To make technical studies;

(6) To appoint local, State, and regional councils composed of residents of the area. These councils will make studies, formulate educational and other programs, assist in conciliation, and make recommendations to the Commission. Council members will serve without compensation. These factors combine to insure that eminent local citizens will assist in securing popular understanding of the act, on the one hand, and, on the other, Commission understanding of special problems and situations peculiar to a locality. In order to attract citizens of ability and administrative experience provision is made for exempting council members from certain conflict of interest statutes. This provision was adapted from the Defense Production Act. Without such exemption it would be difficult to procure the part-time uncompensated services of those who participate in cases before other unrelated Federal agencies.

Section 7.—Prevention of unlawful employment practices:

(a) The Commission is given exclusive authority to prevent unlawful employment practices, with two limited exceptions. Such exclusive power was vested in the Commission so as to insure uniformity in the administration of the act and to insure use of the procedures preliminary to formal action. The first proviso is designed to permit the enforcement of collective bargaining agreements which cover discrimination in employment. Many such agreements have been executed in the past. Some provide for arbitration. It was deemed inadvisable to preclude the effective enforcement of such provisions in the manner agreed to by the parties. However, contractual provisions of this type would not be permitted to oust the Commission of jurisdiction. The NLRB, with judicial approval, has gone behind arbitration awards when, in its discretion, it has been deemed advisable. The explanation of such procedure has been held not a condition precedent to Board action. A similar result is intended by the first proviso to section 7 (a).

The second proviso permits the Commission to cede jurisdiction to State and local agencies over cases and classes of cases if the Commission is satisfied that such agencies have effective power to prohibit and eliminate discrimination in such cases. S. 1732 had a similar provision which required the State or local legislation to be consistent in terms and interpretation with the Federal act. It was in essentially the same terms as section 10 (a) of the LMRA,

1947, which has proven inflexible. S. 551 had no such provision, but its proponents desired a method of fostering local administration. This proviso will encourage local administration and at the same time insure that local administration is effective to effectuate the purposes of the Federal Act.

In all other instances, the Commission will have sole authority to enforce the provisions of this act.

(b)-(i) Prescribes the procedure for cases of alleged unlawful practices. A case may be initiated by an individual's sworn charge or a written charge of a Commission member.

The first step is investigation.

If probable cause for crediting the charge is shown, the Commission "shall endeavor to eliminate any unlawful employment practice by informal methods of conference, conciliation, and persuasion." This emphasizes voluntary adjustment which has been widely and successfully used in the administration by State and municipal commissions.

If such adjustment is not achieved, or if the Commission deems it necessary, complaint and notice of hearing will be served upon the parties. No complaint shall issue based upon a charge filed and served upon the party charged more than one year after the alleged unlawful practice occurred. This provision is similar to the 6-month statute of limitation contained in section 10(b) of the Taft-Hartley Act. The 6-month limitation has proven too short in practice. Certain clarifying language pertaining to those prevented from filing charges because of service in the Armed Forces has been added. Under Taft-Hartley the 6-month period runs from the date of discharge. This bill would exclude the period of military service from the computation of the 1-year period.

A hearing would be in conformity with the Administrative Procedure Act and afford full opportunity to testify, present witnesses and evidence, and cross-examine. If the hearing is conducted by someone other than a Commission member, he must be a resident of the judicial circuit in which the case arose (sec. 6(f)).

A case may be ended by an appropriate settlement.

(j)-(1) The Commission may dismiss the complaint, or any part of it, or issue a cease and desist order based upon the preponderance of the evidence. Orders would be similar to those issued by the NLRB and could provide for back pay lost by an individual who suffered loss by discrimination. The Act adopts the NLRB rule that actual earnings or those that could have been earned with reasonable dilligence must be deducted from a back-pay award.

Such orders would not be self-enforceable.

Section 8.—Judicial review: This section provides for enforcement by an appropriate court of appeals upon petition of the Commission. Similarly any party aggrieved could procure court review and seek modification or cancellation of the order. The Commission may institute such proceedings only where the respondent resides or transacts business or where the alleged unlawful practice takes place. An aggrieved party may do the same, but in addition has the option of seeking review in the Court of Appeals for the District of Columbia.

In all essential details, review is governed by the same rules and procedures prevailing under the National Labor Relations Act.

This section assures that Commission findings must be buttressed by substantial evidence on the record as a whole and specifically makes the Administrative Procedure Act applicable.

Section 9.—Investigatory powers: The Commission is given (1) subpena power, (2) authority to administer oaths, and (3) authority to serve papers personally, by registered mail or telegraph.

Those provisions derive from statutes creating other administrative agencies.

Section 10.—Government agencies and contractors:

(a) The President is empowered to take action to conform Government employment practices to the policies of the act and to provide that Government employees shall exhaust administrative remedies before recourse to the Commission. Section 8 (judicial review) is made inapplicable to cases involving Government employees so that enforcement orders in case involving Government employment will not be issued by the courts. The Commission may request the President to take action to obtain compliance.

(b) The President is empowered to issue rules and regulations to prevent and eliminate the proscribed employment practices among Government contractors. This provision is limited to contracts requiring the employment of 50 or more individuals. This conforms to treatment of "employers," "employment agencies," and "labor organizations."

Provision is made for enforcement by the Commission.

Section 11.—Notices: This section requires that employers, employment agencies, and labor organizations must post extracts of the act and other relevant information prescribed by the Commission where notices are customarily posted. This conforms to procedure under workmen's compensation acts and similar laws.

A "willful violation" is punishable by fine of $100 to $500 for each offense.

Section 12.—Veterans preference: This section insures that veterans preference laws will be unaffected by this act.

Section 13.—Rules and regulations: The Commission is empowered to issue, amend, and rescind suitable regulations in conformity with the Administrative Procedure Act, subject to congressional veto by concurrent resolution.

Section 14.—The provision of section 111, title 18, USC, which provides sanctions for assaults and forcible interference with certain Government agents, is made applicable to Commission officers, employees, and agents in the performance of their duties.

Section 15.—Separability clause: This section contains a standard separability clause.

Section 16.—Effective date: The act is to become effective 60 days after enactment except that the sections providing for formal hearings, cease and desist orders, and court enforcement are not to take effect until 6 months after enactment.

QUESTIONS AND ANSWERS

Legislation of this type is so frequently misunderstood that some of the major questions and misconceptions concerning it are set forth here. The answers provided by this bill are also set out for ready reference.

Question. Would the bill regulate the employment practices of all employers throughout the country?

Answer. No. Firstly it would affect only a small part of the employment relationship. Secondly, it would apply only to employers having 50 or more employees whose operations are in or affect interstate commerce.

Question. Wouldn't an employer be forced to hire minority workers even if he didn't need them?

Answer. No. An employer need not hire anyone he doesn't require. When he requires additional employees he must hire on a nondiscriminatory basis. He can fire minority workers for the same reasons that he fires anyone else—just so long as the reason isn't race, creed, color, and the like.

Question. Would the bill force employers to dismiss white employees and replace them with Negroes?

Answer. No. The bill would only insure equal opportunity for employment and equal treatment when employed. When an employer needs workmen he would have to advertise on a nondiscriminatory basis and treat all comers even-handedly. Fitness for the job would be the criteria to be used.

Question. What percentages of each minority would an employer have to employ?

Answer. No quota system would be permitted under this bill. Percentages of minorities employed must result from chance; quotas would violate the law.

Question. What is the maximum jail sentence an employer could receive for committing an unlawful employment practice?

Answer. This is based upon one of the most common and eagerly repeated objections to legislation of this sort. No jail sentence is provided. An employer who contends he has not broken the law or who simply resists it has the opportunity for a hearing and trial before the Commission and review by Federal courts of appeals. If he fails to obey the court decree of enforcement he is subject to the penalties for contempt of court as for any such contempt.

Provisions of the United States Code prohibiting forcible assaults upon certain Government employees is made applicable to Commission agents.

Question. It is often said that an employer accused of an unlawful employment practice has to prove that he didn't commit one. Is that so?

Answer. No. First, a sworn charge is required to discourage baseless charges. During investigation the burden of proof lies with

the complainant. If a formal hearing results, the burden of proof lies with the Government attorney. On review, a Federal court of appeals must be satisfied that this burden has been sustained by the Government by "substantial evidence on the record considered as a whole."

Question. Isn't it a fact that the Commission administering this bill will be made up only of Washington bureaucrats?

Answer. No. Commission members are nominated by the President subject to Senate confirmation. Any commission agent who conducts a formal hearing "shall be a resident of the judicial circuit * * * within which the alleged unlawful employment practice occurred." In addition, the bill provides for local councils of residents which are to foster education and conciliation. Members of the councils would not be compensated for their services. Legislation of this type would probably require the establishment of field offices.

Question. What happens to the State and municipal commissions now dealing with discrimination in employment? Must they be abolished?

Answer. No. The Commission is empowered to cede jurisdiction to State and local agencies if the latter have effective power to remedy unlawful employment practices. In addition, these agencies would continue to have exclusive jurisdiction over employers with fewer than 50 employees and unions with fewer than 50 members among such employers.

APPENDIX

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington 25, D. C.

Subject: State fair employment practice laws in effect January 1, 1952, showing—

A. States having Fair Employment Practice Acts with enforcement provisions provided by statute;

B. States having Fair Employment Practice Acts without enforcement provisions;

C. States wherein the legislature has directed that a study of unfair employment practices be made.

A. STATES HAVING FAIR EMPLOYMENT PRACTICE ACTS WITH ENFORCEMENT PROVISIONS PROVIDED BY STATUTE

1. Colorado

An Act Concerning Discrimination in Fair Employment Practices, Laws 1951, chapter 217 (S. B. 228), known and cited as "The Colorado Antidiscrimination Act of 1951," approved March 28, 1951.

Administrative agency.—Antidiscrimination Division of the Industrial Commission of Colorado being within the Division of Industrial Relations under the jurisdiction and direction of the Industrial Commission of Colorado. A Director of Fair Employment Practices, the immediate supervisory head of the Antidiscrimination Division, is appointed by the Governor for a term of 2 years. [The three members of the Industrial Commission are appointed for 6-year terms by the Governor with the advice and consent of the Senate. Stat. Ann. (1935), ch. 97, sec. 5.] The Governor's Human Relations Commission, composed of seven members appointed by the Governor and serving without compensation at the will of the Governor is directed to prepare and plan an educational program for presentation to the Industrial Commission through the Director of the Antidiscrimination Division, to carry out the purposes of the 1951 FEPC law.

Summary of the law—Laws 1951, chapter 217.—Creates within the Division of Industrial Relations under the jurisdiction and direction of the Industrial Commission an Antidiscrimination Division headed by a Director of Fair Employment Practices. Covers private employers employing six or more employees; and public employers, except school districts and other political subdivisions regularly employing less than six persons in addition to elective officials. Excludes from definition of "employee" domestic servants, persons employed by their families, corporate directors, and nonsalaried officials.

Designates as unlawful any of the following practices when based on race, creed, color, national origin, or ancestry: (1) for an employer, either public or private, to refuse to hire, to discharge, promote, or demote, or otherwise discriminate in matters of pay against any person; (2) for an employment agency to refuse to list or to refer an individual for employment in a job for which he is qualified; (3) for a labor organization to exclude from membership rights or to expel from membership, or otherwise discriminate against any person in the full enjoyment of work opportunities; (4) for any group of employees to prevent the employment or continuance in employment, or to cause the discharge of or discriminate in any manner, against an individual or employee.

Specifies that nothing in this section shall authorize the Commission to prohibit any employer or employment agency or labor organization to question the individual about his nationality, ancestry, family associations, employment, and organizations to which he belongs or has belonged. Specifies that refusal to answer such questions truthfully shall constitute cause for denial of employment.

Authorizes the Commission, through the Antidiscrimination Division, to cooperate with other agencies of government in the establishment of an educational program designed to eliminate national and religious prejudices.

Creates a Governor's Human Relations Commission composed of seven members appointed by the Governor to serve without compensation. Directs this Commission to prepare and plan an educational program, to recommend policies to the Director and the Governor, and to submit to the next General Assembly any changes deemed necessary for the successful accomplishments for the purpose of the act.

Provides for enforcement by the Industrial Commission, specifically providing that the Commission shall appoint investigators and other employees necessary under the act; adopt, amend, and rescind regulations; investigate and study the existence, causes and extent of discrimination in employment by both public and private employers, and make plans to eliminate it by education or other practicable means. Also directs the Commission to investigate and pass upon complaints alleging discrimination in employment or the existence of an unfair employment practice by a public employer; to hold hearings upon any complaints against a public employer. Sets up procedure to be followed by any person claiming to be aggrieved by an unfair employment practice of any public employer. Provides that if such cases are not settled by conference and conciliation, or after hearing, the Commission shall instruct the Attorney General to file complaint in the courts. If the court finds that the public employer has engaged in the unfair employment practice, it shall issue a cease and desist order against the public employer and grant other relief as may be necessary.

Specifies that it is discriminatory of the rights of the private employer to require him to employ one whom he feels would not fit into his business or make a desirable employee for him. States that the elimination of racial and religious prejudices on the part of the private employer and of the general public is a matter of education. Provides that the Commission may receive complaints charging unfair employment practices on the part of a private employer, employment agency, or labor organization. Requires the Director to investigate the complaint, keeping such information confidential unless the employer, agency, or union does not answer the charge within a specified time, after which the Commission may give full publicity to the complaint. If he does answer the complaint and if the Director finds that such an act has been committed, the Director shall try by conciliation to insure future compliance with the spirit of the act or the present adjustment and elimination of the practice.

2. Connecticut

Interracial Commission, Laws 1943, chapter 381, effective June 29, 1943. Fair Employment Practices Act, Laws 1947, chapter 171, approved and effective May 14, 1947. An act concerning discrimination on account of race, creed, or color, Laws 1949, chapter 291; amended Supplement 1951, section 1307b.

Administrative agency.—Interracial Commission, 10 members appointed by the Governor for term of 5 years. Members of the Commission annually select from their number a chairman and deputy chairman.

Summary of laws—Laws 1943, chapter 381, being General Statutes, 1949, section 7400.—The commission on civil rights shall consist of 10 members appointed by the Governor. The commission shall investigate the possibilities of affording equal opportunity of profitable employment to all persons with particular reference to job training and placement. The commission shall compile facts concerning discrimination in employment, violations of civil liberties and other related matters. The commission shall report biennially to the Governor.

Laws 1947, chapter 171, being General Statutes 1949, section 7401.—This act broadens the powers of the commission on civil rights, which previously could only investigate and compile facts, to authorize the commission to investigate and to attempt to eliminate unfair employment practices through persuation and conciliation, to hold hearings, and to issue cease and desist orders enforceable by the courts.

Covers employers of five or more, labor organizations, employment agencies, and the State and its political subdivisions, but does not apply to domestic employment. Designates as unfair any of the following practices when based on race, color, religious creed, national origin, or ancestry: For an employer, except in the case of a bona fide occupational qualification or need, to discriminate with respect to hire, discharge, or conditions of employment; for an employment agency, except in cases of a bona fide occupational qualification or need, to refuse to refer for employment or otherwise discriminate; for a labor organization, to exclude from full membership rights or to expel; for anyone to discriminate against an individual opposing unfair practices or because he has made a complaint or testified; or for anyone to aid or coerce the doing of any unfair practice.

General Statutes 1949, sections 8374–8376; and Laws 1949, chapter 291, being 1949 Supplement to General Statutes, sections 691a–619b.—Any person who shall subject or cause to be subjected, any other person to the deprivation of any rights, privileges, or immunities, secured or protected by the constitution of laws of this States or of the United States on account of alienage, color, or race shall be fined or imprisoned. Denial of full and equal accommodations in a place of public accommodation, resort or amusement by reason of race, creed, or color of the applicant is prohibited and violators are subject to fine or imprisonment. Any person claiming to be aggrieved may by himself or through his attorney make, make, sign, and file with the interrracial commission a complaint under oath. The Commission may proceed as in unfair employment practices.

General Statutes, Supplement 1951, section 1307b.—This act changed the name of the "interracial commission" to "commission on civil rights."

3. Massachusetts

Fair Employment Practices Act, Laws 1946, chapter 368, approved May 23, 1946, effective August 22, 1946; amended Laws 1947, chapter 424.

Administrative agency.—Fair Employment Practice Commission, three members appointed by the Governor by and with consent of the Governor's council, one of whom is designated chairman by the Governor, for term of 3 years.

Summary of the laws—Laws 1946, chapter 368.—Creates a fair employment practice commission composed of three full-time members appointed by the Governor for 5-year staggered terms. Requires commission to report to the Governor and the General Court (the legislature).

Asserts the right to work without discrimination because of race, color, religious creed, national origin, or ancestry. Applies to employers of six or more employees. Exempts domestic employers, social clubs, and fraternal, charitable, educational, and religious nonprofit organizations.

Lists the following unlawful employment practices: For an employer, because of race, color, religious creed, national origin, or ancestry, to refuse to hire, to discharge or discriminate against any person in compensation, terms or privileges of employment unless based on a bona fide occupational qualification; for a labor organization, because of race, etc., to exclude or expel from membership or to discriminate against its members or any employer unless based on a bona fide occupational qualification; for an employer or employment agency to print or circulate any statement or advertisement, to inquire, or to use any form of application which expresses any limitation or discrimination unless based on a bona fide occupational qualification; for any person, employer, labor organization, or employment agency to discriminate against any person for opposing practices forbidden by or filling a complaint or testifying under this act.

Authorizes the commission to create local or State advisory agencies and conciliation councils to study the problems of discrimination and to make recommendations on policies and educational programs. Empowers the commission to issue publications and research reports to promote good will and eliminate discrimination.

Requires every employer, employment agency, and labor union subject to the act to post on his premises a digest of the act prepared by the commission.

Empowers the commission to issue, receive investigate, hold hearings, and pass on complaints for unlawful employment practices, to attempt to eliminate such complaints by conciliation, and to issue orders requiring the violator to cease and desist from such practices and take such other affirmative action as it may require.

Provides for court review and enforcement of commission's orders, and provides penalties for willful violation.

Laws 1947, chapter 424.—This act amends the FEPC law to provide that it shall not be an unlawful employment practice for any person, employer, labor organization, or employment agency to inquire of an applicant for employment or membership as to whether he is a veteran or a citizen.

Laws 1948, chapter 411.—This act makes employees of the commission, except an executive secretary, field representatives, the heads of the divisions, and attorneys subject to chapter 31, General Laws, being the State civil-service law.

Laws 1950, chapter 479.—This act changes the name of the "State Fair Employment Practice Commission" to the "Commission Against Discrimination," and broadens the powers of said commission to make it responsible for hearing and deciding not only unfair employment practice cases as formerly but also violations of the prohibitions against discrimination in public places, in advertisements, and in public housing developments.

Prohibits discrimination in public places because of religion as well as because of race or color. Also prohibits segregation in public places because of religion, race, or color.

Provides that all persons shall have the right to full and equal accommodations, advantages, facilities and privileges of places of public accommodation, resorts or places of amusement, subject only to limitations of law applicable alike to all persons. (Amends ch. 51 of the acts of 1948, chs. 617 and 368 of the acts of 1946, as amended, and ch. 138 of the acts of 1934.)

Laws 1950, chapter 697.—This act amends the Fair Employment Practice Act so as to prohibit discrimination on account of age on the same basis as discrimination on account of race, color, religious creed, national origin, or ancestry. Defines "age" as used in this act to mean any age between 45 and 65. (Amends ch. 368 of the acts of 1946.)

4. New Jersey

Law against discrimination (FEPC Act), Laws 1945, chapter 169, approved and effective April 16, 1945; Laws 1949, chapter 11; Revised Statutes and Cumulative Supplements 18:25–1 et seq.

New Jersey amended its Fair Employment Practice Act in 1949, combining its provisions with those of the State civil rights law, and placing the administration of both under a single administrative agency called the commission on civil rights.

Administrative agency.—Commission on civil rights, division against discrimination, State department of education, which division consists of the commissioner of education and a seven-member council appointed by the Governor with the advice and concent of the senate for a term of 5 years. The first chairman was designated by the Governor, subsequent chairmen to be elected by the members from their memberships annually. The Fair Employment Practice Act of 1949 was combined with the State civil rights law and the administration of both have been placed under a single administrative agency called the commission on civil rights.

Summary of the law—Laws 1945, chapter 169.—Establishes in the State department of education a division against discrimination composed of the commissioner of education and a seven-man council appointed by the Governor for 5-year staggered terms, with compensation for expenses only. Directs the council to report to the Governor and the legislature. Declares that the opportunity to obtain employment without discrimination because of race, creed, color, national origin, or ancestry is a civil right. Applies to employers of six or more employees. Exempts domestic employers and nonprofit organizations.

Lists the following unlawful employment practices: For an employer to refuse to hire, to discharge, or to discriminate against any person in terms or privileges of employment because of race, creed, color, national origin, or ancestry; or a labor organization to exclude from membership or to discriminate against any member, employer, or employee of any employer for these reasons; for any employer or employment agency to print or circulate any advertisement, to use any employment application form, or to make any inquiry expressing any such limitation or discrimination, directly or indirectly; and for any employer, labor organization, or employment agency to discriminate against any person for opposing practices forbidden by or filing a complaint or testifying under the act.

Directs the council to create advisory agencies and conciliation council to study the problems of discrimination and to make recommendations for educational programs.

Directs the commissioner, with the advice of the council, to make rules to carry out the provisions of the act, to receive and investigate complaints, to attempt by conciliation to eliminate the unlawful practice, and, if necessary, to hold hearings, issue cease and desist orders, and require the party complained of to take affirmative action. Also directs the commissioner to issue research reports which will tend to promote good will and eliminate discrimination.

Empowers the courts to review and enforce the orders of the commissioner. Provides penalties for willful violation.

Laws 1947, chapter 155.—This act authorizes the commissioner rather than the Governor to appoint the assistant commissioner.

Laws 1949, chapter 11.—Combines the substantive provisions of the former civil-rights law and the law against discrimination in employment. Consolidates and unifies procedure and places administration under a single administrative agency. Renames the State council of the division against discrimination in

the State department of education as the commission on civil rights, and separates the division into two sections, one charged with the administration of the law against discrimination in employment and the other with the administration of the law against other unlawful discrimination in the field of civil rights.

Specifies that act shall become effective immediately. (Amends ch. 169, Acts of 1945.)

Laws 1951, chapter 64.—This act amends the law prohibiting discrimination in employment and otherwise because of race, color, creed, ancestry, or national origin by adding to those causes for which discrimination is forbidden, "liability for service in the armed forces of the United States." (Amends ch. 169, Act of 1945 and ch. 11, Act of 1949.)

5. New Mexico

Fair Employment Practices Act, Laws 1949, chapter 161, approved and effective March 17, 1949.

Administrative agency.—New Mexico Fair Employment Practice Commission (State commission against discrimination), consisting of five members known as commissioners including the attorney general, ex officio, the labor commissioner ex officio, and three members appointed by the Governor by and with the advice and consent of the Senate. Term of office of appointive members is 3 years, provided that of the commissioners first appointed one shall be appointed for 1 year, one for 2 years, and one for 3 years. The commission designates as director the labor commissioner of the State who is a member ex officio.

Summary of the law—Laws 1949, chapter 161.—Declares it to be the public policy of the State to foster the employment of all persons to their fullest capacity, regardless of their race, color, national origin, religion, or ancestry, and to safeguard their rights to obtain and hold employment without discrimination. Further declares that the opportunity to obtain employment discrimination on these grounds is a civil right. Coverage includes the State or any of its political subdivisions and any person employing four or more persons in the same kind of employment, but does not include a religious corporation or association or a nonprofit social, religious or fraternal club or corporation. Also exempts persons employed by parent, spouse, or child, or those in the domestic service of any person.

Creates a fair employment practice commission and authorizes the commission to appoint advisory agencies and conciliation councils and in cooperation with other departments of the State government to engage in an educational program for the purpose of eliminating discrimination in employment.

Empowers the commission to prevent any person from engaging in unfair employment practices. Authorizes the director after a complaint has been filed, as provided in the act, to designate one of the commissioners to make an investigation and to attempt to eliminate discrimination by conference, conciliation, and persuasion. Provides that if the unfair employment practice is not eliminated by this means, a hearing shall be held by the commission or a qualified examiner. Authorizes the commission to issue cease and desist orders enforceable by the courts requiring the elimination of discrimination.

Designates as unlawful any of the following practices when based on race, color, religion, national origin, or ancestry: For an employer to refuse to employ or to discharge from employment or otherwise discriminate against an individual in compensation, or in terms, conditions, or privileges of employment unless based upon a bona fide occupational qualification; for a labor organization to exclude from membership or deny to any of its members equal treatment with all other members in any designation of members to an employer for employment, promotion, or dismissal; for an employer or employment agency to print or cause to be printed any advertisement or publication or to make any inquiry which expresses any limitation or discrimination unless based upon a bona fide occupational qualification; for any person, employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against an individual because he has opposed practices forbidden by this act or has filed a complaint or testified under the act: and for any person to aid or coerce the doing of any of the practices forbidden by this act.

Provides for judicial review and enforcement but contains no penalty provisions.

6. New York

Fair Employment Practices Act, Laws 1945, chapter 118; Executive Law (McKinney's Consol. 1951), sections 290–301, recodified Laws 1951, chapter 800.

Administrative agency.—State commission against discrimination, consisting of five members appointed by the Governor by and with the advice and consent of the Senate for a term of 5 years. The chairman is designated by the Governor.

Summary of the law—Laws 1945, chapter 118.—Establishes in the executive department a commission against discrimination composed of five full-time members appointed by the Governor for 5-year staggered terms. Commission reports to the Governor and the legislature.

Asserts the right of opportunity for employment without discrimination because of race, creed, color, or national origin. Applies to employers of six or more employees. Exempts domestic employers, social and fraternal clubs, and charitable, educational, religious, and nonprofit organizations.

Lists the following unlawful employment practices: For an employer, because of race, creed, color, or national origin, to refuse to hire, to discharge, or discriminate against any person in compensation, terms, or privileges of employment; for a labor organization, because of race, etc., to exclude or expel from membership or to discriminate against its members or any employer; for an employer or employment agency to print or circulate any statement or advertisement, to inquire, or to use any form of application which expresses any limitation or discrimination unless based on a bona fide occupational qualification; for any employer, labor organization, or employment agency to discriminate against any person for opposing practices forbidden by or filing a complaint or testifying under the act.

Authorizes the commission to create local or State advisory agencies and conciliation councils to study the problems of discrimination and to make recommendations on policies and educational programs. Empowers the commission to issue publications and research reports to promote good will and eliminate discrimination.

Empowers the commission to receive, investigate, hold hearings, and pass upon complaints of unlawful employment practices, to attempt to eliminate such complaints by conciliation, and to issue orders requiring the violator to cease and desist from such practices and take such other affirmative action as it may require.

Provides for court review and enforcement of commission's orders, and provides penalties for willful violation.

Laws 1950, chapter 336; General Business Law (McKinney's Consolidated 1951), sections 173–174.—This act provides that the name under which an employment agency is to be conducted shall be included in an application for a license to conduct such business.

Prohibits the granting of a license to conduct an employment agency to any person when the name of the agency "directly or indirectly expresses or connotes" any discrimination because of race, color, creed, or national origin. Specifies that any employment agency at present licensed bearing a name which connotes discrimination may continue to be licensed and use such name but must display under the name, wherever such name appears, a statement that its services are rendered without discrimination. (Amends secs. 173 and 174 of the General Business Law.)

7. Oregon

An act relating to and providing for the elimination of certain practices of discrimination because of race, color, religion, or national origin; providing penalties for willful violation; and repealing chapter 508, Oregon Laws 1947, Laws 1949, chapter 221; approved March 25, 1949, Laws 1951, chapter 349.

Administrative agency.—Bureau of labor, commissioner of labor. The Governor shall appoint a seven-member advisory committee to advise the commissioner. On the committee there shall be two representatives of labor organizations, one to be chosen from each of the two major labor organizations in the State; two representatives of business and industrial management; and three representatives of the public at large. Two shall serve for 1 year, two for 2 years, two for 3 years, and one for 4 years, terms to be decided by lot at the first meeting. Subsequently, the term is fixed at 4 years.

Summary of the law.—Laws 1949, chapter 221, repealed Laws 1947, chapter 508 which was applicable only to public employees.

The new law declares that practices of discrimination against the inhabitants of the State because of race, creed, color, or national origin are a matter of State concern and threaten the rights of the people. Covers employers with six or more employees but does not apply to a social club or a fraternal, charitable, educational, or religious association not organized for private profit. Exempts any individual employed by his parents, spouse, or child, or in the domestic service of any person.

Authorizes the Bureau of Labor to eliminate and prevent discrimination in employment because of race, creed, color, or national origin and to have general jurisdiction and power to enforce the act. Authorizes the Commissioner of Labor to investigate discrimination in employment and to endeavor to eliminate the unlawful practice by conference, conciliation, and persuasion. Provides that if he is unable to eliminate such practice by this means he may hold hearings and issue cease and desist orders enforceable by the courts.

Designates as unlawful any of the following practices when based on race, creed, color, or national origin: For an employer to refuse to employ or to discharge from employment or to otherwise discriminate against an individual in compensation or in terms, conditions, or privileges of employment; for a labor organization to exclude or to expel from membership or to discriminate in any way against any of its members; or any employer or employment agency to publish or cause to be published any statement or advertisement or to use any form of application which expresses any limitation or discrimination unless based upon a bona fide occupational qualification; and for an employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any person because he has opposed any practices forbidden under this act or has filed a complaint or testified.

Repeals former act that declared discrimination in employment because of ancestry, race, religion, color, sex, or union membership, by representatives of the State or its political subdivisions, to be against the policy of the State.

Laws 1951, chapter 349.—This act makes it unlawful for any vocational, professional or trade school to refuse admission to or to discriminate in admission against or to discriminate in giving instruction to any person otherwise qualified, on the ground of such person's race, color, religion, or national origin. An order of suspension or revocation of the licensing or approval of such school may be had, but there first must be a complaint and hearing substantially as provided in section 7, chapter 221, Oregon Laws 1949.

8. Rhode Island

Fair Employment Practices Act, Laws 1949, ch. 2181 (H. B. 539), approved April 1, 1949, and effective July 1, 1949.

Administrative agency.—State commission for fair employment practices consisting of five members appointed by the Governor with the advice and consent of the Senate.

Summary of the law.—Declares that it is the public policy of the State to foster the employment of all individuals in accordance with their fullest capacities regardless of their race or color, religion, or country of ancestral origin. Covers employers with four or more employees. Exempts religious, educational, and similar associations not organized for a private profit, other than labor and nonsectarian organizations engaged in social service work. Also exempts an individual employed by his parents, spouse, or child, or an individual in the domestic service of any person.

Sets up a State commission for fair employment practices to consist of five members to be appointed by the Governor with the advice and consent of the Senate. Provides that each member of the commission shall receive a salary of $2,500 a year and actual expenses. Empowers the commission to adopt rules and regulations to carry out the provisions of this act, to investigate and pass upon charges of unlawful employment practices, to hold hearings, subpena witnesses, and take testimony of any person under oath.

Also authorizes the Commission to create such advisory agencies and conciliation councils, local or State-wide, as will aid in carrying out the provisions of the act. Provides that the commission may itself, or may empower these agencies and councils, to study the problem of discrimination and to foster good will. Provides that such agencies and councils may make recommendations to the commission for the development of policies and procedure.

Designates as unlawful any of the following practices based on race or color, religion, or ancestry: For an employer to refuse to hire an applicant, or to discharge an employee or discriminate against him in regard to compensation, conditions, or privileges of employment, or to utilize any employment agency or placement center which the employer knows practices such discrimination; for an employment agency to fail to classify properly or refer for employment any individual or to comply with an employer's request for the referral of public applicants if such request indicates that such employer will not give equal employment opportunities to all individuals; for a labor organization to deny membership rights to any applicant, to expel a person from membership or otherwise dis-

criminate against him with respect to his hire, terms, conditions, or privileges of employment or to fail to classify him properly or refer him for employment.

Also declares it to be an unlawful employment practice for an employer, employment agency, labor organization, placement service, or any other employee-referring source, to elicit information directly or indirectly pertaining to a person's race or color, religion, or ancestry; to make a record of his color, religion, or ancestry; to print or publish any notice or advertisement relating to employment or membership indicating any preference or limitation based upon race or color, religion, or ancestry; or to discriminate in any manner against any individual because he has opposed any practice forbidden by this act, or because he has made a charge, testified, or assisted in any manner in any investigation or hearing under this act.

In addition, makes it an unlawful employment practice for any person to aid or compel the doing of any act declared to be an unlawful employment practice or to obstruct any person from complying with this act.

Empowers the commission and the State department of education jointly to prepare a comprehensive educational program designed for the students of public schools of the State and all other residents, emphasizing the origin of prejudices against minority groups, its harmful effects, and its incompatibility with American principles.

Authorizes the commission, upon recieving a complaint in regard to any unlawful employment practice, to initiate a preliminary investigation and to endeavor to eliminate such unlawful practices by conference, conciliation, and persuasion. If the commissioner fails to eliminate the practice by voluntary compliance the commission is authorized to hold a hearing on the complaint and to issue cease and desist orders enforceable by the courts. Act provides for jurisdictional review and enforcement.

Provides that act may be cited as the State Fair Employment Practices Act. Makes an appropriation of $40,000 for the first fiscal year.

Laws 1951, chapter 2735.—This act amends subdivision (D) of section 4 of State Fair Employment Practices Act of 1949 as to remove the prohibition in the original act against eliciting information or keeping records pertaining to race, color, religion, or country or ancestral origin of an employee or member subsequent to employment. Formerly such inquiries were prohibited both prior and subsequent to employment or membership in a labor organization. (Amends ch. 2181 of the Acts of 1949.)

9. Washington

Law against discrimination in employment (Laws 1949, ch. 183, approved and effective March 1949).

Administrative agency.—Washington State Board Against Discrimination in Employment, composed of five members appointed by the Governor, one of whom is designated chairman. One of the original members is appointed for a term of 1 year, one for 2 years, one for 3 years, one for 4 years, one for 5 years. Successors are appointed for 5-year terms.

Summary of the law—Laws 1949, chapter 183.—Declares that discrimination in employment because of race, creed, color, national origin, or ancestry is a matter of State concern and threatens the rights of its inhabitants. Covers employers of eight or more persons but excludes nonprofit organizations. Exempts domestic employers and any individual employed by his parents, spouse, or child.

Establishes the State board against discrimination in employment to investigate and attempt to eliminate unlawful employment practices through conciliation and persuasion and to appoint advisory agencies and conciliation councils to study discrimination and to eliminate it.

Authorizes the board where the elimination of discrimination by conciliation has failed, to appoint a hearing tribunal composed of three members which is authorized to conduct a hearing and to issue findings of fact and an order requiring the person accused of practicing discrimination to cease and desist from such unfair employment practices. Further authorizes the board to request the proper court to enforce any order issued by the tribunal.

Designates as unlawful any of the following practices when based on race, creed, color, national origin, or ancestry: For an employer to refuse to hire any person unless based upon a bona fide occupational qualification or to discharge or bar any person from employment or to discriminate against any person in compensation or in other terms or conditions of employment; for a labor organization to deny full membership or to discriminate against any member, employee, or employer; for an employment agency, except in the case of a bona fide occupational qualification, to refuse to classify properly or refer for employment or

otherwise discriminate against any person. Also makes it an unfair employment practice for an employer, employment agency, or labor union to discharge, expel, or otherwise discriminate against any person because he has opposed any practices forbidden by the act or because he has filed a charge, or testified in any proceeding under the act.

Provides for an appropriation of $25,000.

Designates name of act as Law Against Discrimination in Employment.

B. STATES HAVING FAIR EMPLOYMENT PRACTICE COMMISSIONS WITHOUT ENFORCEMENT OR PENALTY PROVISIONS PROVIDED BY STATUTE

1. Indiana

An act conferring certain powers and duties on the division of labor and the commissioner of labor, concerning discrimination because of race, color, creed, national origin, or ancestry, and providing for an advisory board (Laws 1945, ch. 325).

Administrative agency.—Division of labor of the Department of Labor of Indiana and the commissioner of labor. There is created a nine-member advisory board, eight of whom shall be appointed by the Governor. Four of the members appointed by the Governor shall at the time of their appointment be members of the State senate and four shall be members of the State house of representatives. The Lieutenant Governor is the ninth member. This board advises and assists the division of labor and the commissioner in administering and carrying out the provisions of the act.

Summary of the law—Laws 1945, chapter 325.—Asserts the right of opportunity to obtain employment without discrimination because of race, color, creed, national origin, or ancestry.

Empowers the commissioner of labor to make studies of discrimination and of methods of eliminating it; formulate plans in cooperation with other agencies to eliminate discrimination; publish reports and information regarding means of eliminating discrimination; furnish technical assistance to employers, unions, and other agencies in formulating and executing programs to eliminate discrimination; receive complaints and hold hearings on cases of discrimination; and make recommendations to the interested parties.

Authorizes the commissioner to study and investigate discrimination in State agencies and to recommend to the general assembly plans and legislation for its elimination. Authorizes the commissioner to receive and investigate complaints of discrimination in fields other than employment, to publicize his findings, and to make recommendations to the legislature.

Establishes a nine-man advisory board composed of the Lieutenant Governor, four members of the senate, and four members of the house of representatives appointed by the Governor.

Exempts from coverage domestic employers and nonprofit organizations.

Appropriates $30,000 for administration for a 2-year period.

2. Wisconsin

Fair employment law (Laws 1945, ch. 490, approved July 17, 1945, and effective July 26, 1945).

Administrative agency.—Fair employment division of the Wisconsin Industrial Commission. An advisory committee appointed by the Governor consists of seven members: two representatives of labor organizations, one chosen from each of the two major labor organizations of the State; two representatives of business and industrial management; and three representatives of the public at large. The members elect their own chairman.

Summary of the law.—Directs the industrial commission to investigate the existence, causes, and extent of discrimination because of race, creed, color, national origin, or ancestry by employers and labor organizations in the fields of employment, housing, recreation, education, health, and social welfare; to study and formulate plans for the elimination of such discriminations; to publish reports; to provide technical assistance to private and public agencies for the elimination of discrimination; to make recommendations to the interested parties of methods of eliminating discrimination; and to recommend legislation.

Also empowers the commission to receive and investigate complaints of such discrimination, to hold hearings and make investigations, and to publicize its findings.

Establishes a seven-man advisory committee, appointed by the Governor, with two members representing respectively the two major labor organizations in the State, two representing business and industrial management, and three represent-

ing the public at large, for 3-year staggered terms, with compensation for expenses only. Directs the committee to study and advise the industrial commission on any matters referred to it by the commission, to study the practical operation of the act, and authorizes it to advise the proper legislative committee on pending legislation in this field.

Exempts from the act any nonprofit social club, fraternal or religious association. (Amends various sections of the fair employment practices law.)

C. STATES WHEREIN THE LEGISLATURE HAS DIRECTED THAT A STUDY OF UNFAIR EMPLOYMENT PRACTICES BE MADE

1. Colorado

Section 4 of an act concerning discrimination in fair employment practices establishes the Governor's Human Relations Commission (Laws 1951, ch. 217, sec. 4, approved March 29, 1951).

Investigative agency.—Colorado Governor's Human Relations Commission consisting of seven members appointed by the Governor.

Summary of the law.—The commission is specifically charged with the duty of preparing and planning an educational program to carry out the provisions of the State's FEPC law. The commission is directed to submit its plan to the Industrial Commission of Colorado through the director of the Antidiscrimination Division. The commission is also directed to submit from time to time additional amendments or revisions of the original plan submitted as it may deem necessary. The commission has full access to any and all files, proceedings, and complaints and other records of the Antidiscrimination Division and may recommend policies to the Director of Fair Employment Practices and to the Governor. The commission is directed to submit to the Thirty-ninth General Assembly of Colorado in 1952 any and all changes deemed necessary for the accomplishment of the State's FEPC law.

2. Kansas

Creating a temporary commission to study and make a report on acts of employment discrimination and making appropriations therefor (H. J. Res. No. 1 (Laws 1949, ch. 289), adopted April 5, 1949, effective April 12, 1949).

Investigative agency.—Kansas Commission Against Employment Discrimination consisting of five members appointed by the Governor.

Summary of the resolution.—It is the public policy of the State that all citizens are entitled to work without restrictions or limitations based on race, creed, color, religion, or national origin. Creates a temporary commission to be known as the Kansas Commission Against Employment Discrimination to study and make a report on such discrimination in employment. Provides that the commission shall be composed of five members to be appointed by the Governor.

Specifies that the commission shall submit its report to the Governor and to the members of the Kansas Legislative Council on or before October 15, 1950. Provides that the members of the commission shall receive $15 a day and their actual expenses for time spent in carrying out this resolution, but that no member may receive more than $500 as per diem allowance. Makes an appropriation of $4,000 up to June 30, 1950.

3. Massachusetts

Resolve increasing the scope of the investigation and study of the special commission established to examine the structure of the State government, and extending the time within which the General Court will receive the report of said commission (Laws 1951, Resolution ch. 56, amending Laws 1949, Resolution ch. 75).

Investigative agency.—Special Commission to Examine the Structure of the State Government consisting of four members of the senate designated by the president of the senate, four members of the house of representatives designated by the speaker, and four persons appointed by the Governor, two of whom are employed in the executive branch of the State's government and two members of the general public. Appointments are divided equally between the Democratic and Republican Parties.

Summary of the resolution.—The commission is established for the purpose of examining the structure of the State government with a view to the elimination of duplication and overlapping of functions, improvement of operational efficiency, reexamination of all agencies to determine whether or not they are essential (Laws 1949, Resolution ch. 75). On August 1, 1951, the commission was granted an extension of time, until April 1, 1952, in which to report to the house of representatives and was specifically directed to study Massachusetts House Document

No. 959 (1951) relative to clarifying the functions, powers, and duties of the Massachusetts Commission Against Discrimination (Laws 1951, Resolution ch. 56).

4. Nebraska

Resolution directing the Nebraska Legislative Council to study unfair employment practices in Nebraska (Resolution No. 25, approved May 5, 1949, and effective August 27, 1949).

Investigative agency.—The Nebraska Legislative Council (the council has an executive board known as the executive board of the legislative council, consisting of a chairman chosen by the legislature, the speaker of the legislature, and the chairman of the committee on committees of the legislature. The legislative council has offices in the State Capitol and has power and authority to appoint committees of the legislative council and assign subjects to them for study and reports (Laws 1949, ch. 168))

Summary of the resolution.—Provides that the Nebraska Legislative Council be directed to study the unfair employment practices in Nebraska and suggest changes that are necessary to prevent discrimination in employment. Provides that the council report its findings and recommendations to the Nebraska State Legislature in January 1951.

(NOTE.—The Council reported in September 1950. Nebraska Legislative Council Committee Rept. No. 31.)

5. Utah

A resolution appointing a senate committee to investigate discrimination on account of race, color, or creed in the State of Utah and to recommend legislation thereon (S. Res. No. 2, passed March 8, 1945; Laws 1945, pp. 324–5).

Investigative agency.—Senate committee to investigate discrimination on account of race, color, or creed, a committee of three senators appointed by the president of the Utah senate.

Summary of the resolution.—Directs the president of the senate to appoint a committee of three senators to investigate discriminations on account of race, color, or creed and to study need for legislation on the subject and the form which such legislation should take to accomplish the true purpose of such legislation. The committee is authorized to inquire into the offices and departments of the State, any of its political subdivisions and cities and towns. It has authority to require from any and all persons sworn statements and reports. The committee may subpena witnesses.

(NOTE.—This committee reported January 16, 1947. Utah, Senate Journal, 1947, pp. 67–68.)

SAMUEL H. STILL, *American Law Section.*

APRIL 16, 1952.

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Calendar No. 2004

82D CONGRESS 2d Session } SENATE } REPT. 2080 Part 2

FEDERAL EQUALITY OF OPPORTUNITY IN EMPLOYMENT ACT

JULY 3 (legislative day, JUNE 27), 1952.—Ordered to be printed

Mr. HILL, from the Committee on Labor and Public Welfare, submitted the following

MINORITY VIEWS

[To accompany S. 3368]

The bill to establish a national Fair Employment Practice Commission, which was reported by this committee in 1948 (S. 984), and in 1950 (S. 1728), and which, with minor changes is again reported in 1952 (S. 3368) is captioned under the seductive title of a "Federal Equality of Opportunity in Employment Act."

The bill does not in fact provide for "equality of opportunity," but seeks to establish a preference in employment and a special "right to employment," based on "race, religion, color, national origin or ancestry." It seeks to force all employers to give favored consideration and treatment to any person of a racial or religious minority in order to avoid prosecution and punishment on a charge of "discriminating" against such a person.

The proposed bill asserts (sec. 2 (b)):

> The right to employment without discrimination because of race, religion, color, national origin or ancestry is hereby recognized as and declared to be a civil right of all the people of the United States.

That meaningless declaration is simply an attempt to have the Congress usurp an authority which it does not have and cannot possibly exercise. In the first place, Congress could not possibly make a "right to employment" a civil right unless that right could be enforced by making it the duty of someone to provide employment for "all the people." Therefore, unless the Government takes over all industry and trade, by public ownership or by dictatorial control, the Government cannot enforce this declared right. The promise to do so is pure pretense.

If we assume that those sincerely supporting this bill really want to declare that "the right to be considered for employment without dis-

crimination" shall be "a civil right of all the people," the Congress is powerless under the Constitution to do so.

The Declaration of Independence asserts:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty, and the pursuit of happiness.

By declaring these rights to be God-given rights, natural and unalienable, the Declaration of Independence asserted that no government of men had bestowed them and no government could enlarge upon them, diminish them, alter them, or take them away.

The first 10 amendments to the Constitution—the Bill of Rights—enumerate certain natural rights which Congress shall not abridge, including in the first amendment freedom of religion, freedom of speech freedom of the press, and freedom of assembly.

The ninth amendment makes clear that other rights than these enumerated do exist and are retained by the people. The tenth amendment expressly limits the powers of the Federal Government to those delegated to it by the Constitution, and reserves all other powers to the States or to the people.

In the face of these clear and explicit provisions of the Constitution, S. 3368 proposes that Congress assume a power it does not possess and in fact is expressly denied.

And while S. 3368 purports to establish a new civil right, the bill would recklessly destroy the natural rights guaranteed in the Constitution.

The bill violates the first amendment by abridging freedom of speech, freedom of religion, and freedom of association. It violates the fifth amendment by denying an essential liberty of a free people through arbitrary restraints on freedom of association in business, in schools, and in labor organizations; by denying liberty of contract in attempting to compel employers to hire undesired persons and to deny employment to desired persons; by denying to a minority of those operating private enterprises the same liberty of contract and the same freedom of association which are preserved for the majority, thus violating the constitutional guaranty of "equal protection of the laws" which is implicit in the fifth amendment. It violates the sixth amendment by denying trial by jury. It violates the ninth amendment by proposing that Congress usurp rights retained by the people. It violates the tenth amendment because Congress would assume a power reserved to the States. And it violates the thirteenth amendment by imposing a form of involuntary servitude upon certain groups of employers.

If such a Federal law can be enacted and held constitutional, there is no constitutional protection against laws which first deprive employers of their rights, as is attempted in this bill, then deprive employees of their rights, as is partially attempted in this bill, and finally deprive all persons of their rights—heretofore regarded as permanently preserved and safeguarded by the guaranties of individual liberty set forth in the Constitution of the United States.

The Supreme Court of the United States, the final arbiter of the constitutionality of laws enacted by Congress, through the years has held the line between the Federal powers delegated to Congress and those powers retained by the States and the people.

The Court has ruled uniformly that any power to create a civil right, unless specifically delegated to the United States by the Constitution, has been reserved to the separate States. The Court has been steadfast in its defense of freedom of religion, freedom of opinion, freedom of association, and that greatest of all rights, the right that the late Justice Brandeis called "the right to be let alone."

It is not necessary to dig into the past to find decisions of the Supreme Court which mark out the limitations upon the power of Congress and hold such laws as S. 3368 to be unconstitutional. Recent decisions of the Supreme Court are consistent with earlier decisions. No change of time or condition or circumstance has altered the Court's fundamental concept of the rights of the individual or of the demarcation between Federal and State powers.

The Court has drawn upon the language of earlier judgments to reaffirm its reasoning. In *Hodges* v. *The United States* (203 U. S. 1), the Court quoted and gave new vigor to the following language from Justice Miller's decision in the famous Slaughterhouse cases of 1873:

> With these decisions, and many others that might be cited, before us, it is vain to content that the Federal Constitution secures to a citizen of the United States the right to work at a given occupation or particular calling free from injury, oppression, or interference by individual citizens.
>
> Even though such right be a natural or inalienable right, the duty of protecting the citizen in the enjoyment of such right, free from individual interference, rests alone with the State.

In the case of *United States* v. *Wheeler* (254 U. S. 281), the Court demonstrated the continuity of its judgment and the steadfastness of its position by turning again to the Slaughterhouse decision and quoting:

> It would be the vainest show of learning to attempt to prove by citations of authority that, up to the adoption of the recent amendments, no claim or pretense was set up that those rights depended on the Federal Government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the States—such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligation of contracts. But, with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal Government.

And in the recent case of *West Virginia Board of Education* v. *Barnette* (319 U. S. 638), the Court declared:

> The very purpose of a bill of rights was to withdraw certain subjects from the vicissitudes of public controversy, to place them beyond the reach of majorities and officially to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech a free press, freedom of worship and assembly, and other fundamental rights, may not be submitted to vote; they depend on the outcome of no elections.

In *Douglass* v. *City of Jeanette* (319 U. S. 157), the Court speaking through Justice Jackson declared:

> In my view the first amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well.

In another recent opinion the Supreme Court has declared:

> But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe

what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

There are many opinions of the Supreme Court which might be cited, clearly demonstrating that the proposed act flings itself into the very teeth of the Constitution. A comprehensive and able analysis of S. 984, the fair employment practice bill introduced in the Eightieth Congress, submitted by Mr. Donald R. Richberg and available from the committee, reveals the unconstitutionality and legislative defects of the present bill.[1] It is enough to quote here one final beautiful passage from an opinion by one of the great liberals of our time, Justice Brandeis. He declared:

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure, and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government—the right to be let alone, the most comprehensive of rights and the right most valued by civilized men.

It will be argued, of course, that the power of the Federal Government to regulate interstate and foreign commerce provides a constitutional basis for the proposed law. But civil rights are rights "assured to every member of a well-regulated community." And the word "civil" is defined as "pertaining to the whole body of citizens."

In this light, the bill reveals its inadequacies so quickly as to be guilty almost of indecent exposure.

Section 2 (b) undertakes to create a civil right for "all the people of the United States." And section 3 (b) promptly limits the application of the act to persons "engaged in commerce or in objectives affecting commerce," and to employers employing more than 50 individuals.

Indeed the fact that S. 3368 is made applicable only to employers of over 50 persons, who are engaged in interstate commerce or in operations affecting commerce, and excludes States, municipalities, and religious and other nonprofit organizations proves that there is no intention to create "a civil right of all the people," even if Congress had the power. The majority report itself points out that there are only about 70,700 companies employing 50 or more employees out of a total of 3,516,000 companies in the United States. So, most of the people of the United States are not expected to enjoy this bogus "civil right" declared for "all the people."

Here again it is made evident that the effect of the bill is to destroy the freedom of private management in the major business enterprises of the Nation. When private enterprise in the great essential industries of the Nation is ruined, then all little business and agriculture will become entirely dependent on Government-controlled big business and state socialism will be an accomplished fact.

The attempted validation of the proposed law as a regulation of commerce is based on two fantastic assumptions. The first is that commerce is "obstructed" by discriminatory practices. For this there is no evidence. It is simply an assertion with no foundation.

[1] Commentary of Donald R. Richberg on S. 984, submitted to the Senate Committee on Labor and Public Welfare, October 10, 1947, at the request of the committee.

The second assumption is that there will be "more buying power" and "less waste of manpower" when there is no "discrimination" in hiring employees. But what difference is there in total "buying power" or "manpower" when A is employed instead of B? If 10 white applicants are rejected in favor of 10 Negroes there are still only 10 men employed.

It would be absurd to argue that employers refuse to increase their working forces because they are unwilling to employ persons of a particular race or color. The huge growth of Negro employees in Chicago and Detroit in recent years proves that employers do not reduce or suppress employments because of discrimination. If they cannot get the workers they regard as best they will take the next best; and if the "best" happens to be of one race or color they will employ that race or color. Yet that exercise of trained judgment is denounced as discrimination.

The truth is that antidiscrimination laws are a burden on commerce and are unjust alike to employers and employees in setting up an arbitrary interference with what would otherwise be the informed and normally the just judgment of an employer as to how to build and maintain the most competent, harmonious working force possible. On this judgment depends a manager's success and the good will of the owners and customers of his enterprise. To hamper the free exercise of such judgment is obviously to burden and to obstruct commerce.

The effort to use the commerce power as the authority for legislation to establish a civil right deserves the condemnation and abrupt dismissal expressed in a dissenting opinion of the late Justice Holmes when he said: "I should regard calling such a law a regulation of commerce as a mere pretense."

In the same opinion Justice Holmes made this comment on legislation which attempted "to reconstruct society":

> I am not concerned with the wisdom of such an attempt, but I believe that Congress was not entrusted by the Constitution with the power to make it and I am deeply persuaded that it has not tried.

It is significant that the States themselves, even though they hold the power to set up in their respective jurisdictions fair employment practice commissions such as that proposed in S. 3368, have been wary of exercising their power. Last year 17 States rejected FEPC bills in their legislatures or saw the bills die because legislative committees refused to take action. All of these 17 States lie outside the South and include Illinois, Arizona, Montana, Minnesota, Nebraska, Utah, Indiana, California, Delaware, Michigan, Pennsylvania, Kansas, Ohio, Wisconsin, Iowa, Missouri, and West Virginia.

Let us consider briefly the ways in which this bill would do violence to our American way of life.

Freedom to choose one's associates is a fundamental right reserved to the individual. And an integral part of that right is freedom from compulsion to associate, for forced association is not free.

Congress has never been delegated any power to interfere with freedom of association except where abuse of this freedom results in a violation of the laws which Congress has the power to enact and enforce. Yet under section 5 (a) it is made unlawful for an employer—

> to refuse to hire, to discharge, 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, national origin or ancestry.

This means that an employer cannot freely express by speech or by advertisement the views that other citizens are free to express as to the desirability of hiring or promoting an individual, if he indicates a preference for persons of a particular race, color, religion, or national origin; or if he indicates a preference against persons of a particular race, color, religion, or national origin. Yet if there is any one subject upon which freemen and women have the right to express their opinions, it is upon matters involving race, color, religion, or national origin.

The people of the United States have fought a terrible war with the Japanese, which was begun in treachery and carried on with horrible brutality. It may be that lofty idealism would require that all Americans immediately embrace the Japanese as brothers as soon as they laid down their arms and ceased to torture our friends and relatives. But men and women have feelings and free men and women can express those feelings. To proclaim by Federal law that no employer can express himself anywhere in speech or print in dislike of association with Japanese without making himself liable to the charge that he has refused to employ Japanese is an outrageous invasion of personal right to which other citizens are not subjected.

The survivors of Dachau and Buchenwald are not expected to maintain equanimity and objectivity regarding their Nazi oppressors. No one regards it as unwarranted for Jews to dislike association with nazified Germans or with other racial or religious groups that have persecuted them.

The people of the United States and of the other freedom-loving nations who fight with us in Korea will not find it easy to forget the hordes of North Koreans and Chinese Communists and their Russian backers who have inflicted such a toll of suffering, death, and destruction.

But, here we have a law proposed which would attempt to deny to millions of employers and employees any freedom to speak or act on the basis of their religious convictions or deep-rooted preferences for associating or not associating with certain classifications of people. No one will contend that a dislike to associate with people who are unclean or dishonest or mean or cruel is a wrong which should be prohibited by law. But, where was the Congress ever given the power to declare it to be a wrong for a person of one religion to dislike to associate with persons of a different religion? Where was the Congress ever given the power to declare it to be a wrong for an American to dislike to associate with persons of nations or races which have recently made war on America and treacherously killed or cruelly tortured the sons or fathers of living Americans?

It may be a high type of morality to forgive immediately a vicious enemy and to clasp in friendship a hand stained with the blood of one's kith and kin; but where was the Congress ever given the power to establish such a moral duty as a legal obligation?

It may be immoral for a man to have a prejudice against persons of a particular race, color, or religion just because he has found it particularly difficult to associate without discordant mutual misunderstandings with many persons of that particular race, color, or religion; but what is left of individual liberty if a man or woman cannot choose associates in work or play on the basis of either reason or prejudice,

which are often indistinguishable? Where was the Congress ever given the power to establish a state morality to be enforced in the private selection of private associates for work or play?

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Under our Constitution it has never been seriously questioned that a man has the right to set himself up in business, to select his own employees on the basis of such qualifications as he might within his own free and uncontrolled discretion consider advantageous to the undertaking, and to do all this without hindrance or interference. This personal freedom of contract is basic to the free-enterprise system and to the whole American concept of individual freedom.

Yet S. 3368 violates the liberty of contract guaranteed in the Constitution by compelling the making of contracts.

The far-reaching character of this provision of S. 3368 is given its true perspective when we consider that laws have been enacted governing the form or substance of contracts voluntarily entered into; that laws make illegal certain types of contracts; that the labor laws require collective bargaining as a method of arriving at contracts and affect the scope of contracts. But the right of contract is left free to be exercised between voluntary parties.

Our history of encouragement to the men and women who give employment has been one of the compelling reasons for our unparalleled industrial success which again and again has served our Nation so well in time of need.

It is most unfair for proponents of this bill to argue that it does not "force the hiring of certain minority group members." The whole purpose, design, and effect of the bill is just that—to "force the hiring" of persons whom an employer would not voluntarily hire.

If an employer, in a department store, for example, advertised for and hired only white sales people he would certainly be found guilty of violating this law on complaint by a Negro applicant whom he did not hire. He would then be compelled by an order enforceable by a court, to hire this rejected applicant, with, probably, the additional expense of paying "back pay" for the period during which he "unlawfully" employed and paid wages to an employee of his own choice (sec. 7 (j), sec. 8). Any claim that such a law would not "force the hiring" of unwanted employees is simply without foundation.

It must also be pointed out that the bill not only authorizes Federal officials to dictate to an employer whom he shall or shall not hire, but it also authorizes a continuing supervision over his detailed management of his working force. All "compensation, terms, conditions, or privileges of employment" must be free from any "discrimination." Every promotion, every assignment of duties, every privilege granted an employee, although decided on the basis of merit according to the employer's judgment, may be subject to review by the Federal Commission on complaint that there was unlawful discrimination against some other employee. It is difficult to imagine a law more certain to insure the eventual destruction of private enterprise, by removing from private management all effective control of a working force.

The employer is subject to a Commission having wide powers of rule making, investigation, and the issuance of cease-and-desist orders. But the right of trial by jury is denied and judicial review is provided

with a clearly recognized inferential power to punish with contempt-of-court orders.

The inquiries and investigations directed by the act would vex and harass business to the point where orderly plant management and efficient production would be impossible. The small-business man, already overburdened, would encounter new regulations, investigations, hearings, and litigation far beyond his time, his energy, or his finances.

Labor organizations would be subject to interference and supervision of their internal affairs. And the law which tells the employer who his workers shall be today, can be reversed and the worker told who his employer shall be tomorrow—and where and at what wages.

Justice Brandeis has warned:

> Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. * * * The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

If S. 3368 becomes law, employment and promotion based on merit would be superseded by governmental decree and the worker would be moved to look with distrust and suspicion on his fellow workers. The worker could not feel secure in his job.

Suppose a plant employs 50 men. Ten of them can be identified with a minority group. If the employer has to lay off 8 men would he be likely to discharge any of the 10 men who could claim discrimination—whether it existed or not—who could take the case to the Commission and into the courts, causing the employer expense and possible punishment? We know that the natural thing for the employer to do would be to avoid trouble and lay off eight of the average Americans who could not claim discrimination, even if they were better workmen than the employees who belonged to a minority group. We can picture the resulting damage to the efficiency of management and to the morale and productivity of the workers in that plant.

If a law prohibited employers from "discriminating" against men and women with red hair the inevitable effect would be to give red-haired persons a preferred status and to assure them of an unequally good opportunity to be employed and promoted, because, by favoring them, their employer would avoid any charge of discriminating against them. In like manner this "antidiscrimination" bill actually would compel discrimination against majority groups in favor of minority groups. A white employer would be safe from prosecution because he employed a Negro instead of a white applicant. (That would show he had no "racial prejudice"!). But, if he employed a white instead of a Negro he might expose himself to an expensive litigation and find himself compelled in the end to hire a hostile employee.

We can be positive that as soon as a "fair employment" commission begins to push its way into the domain of private judgment and authority in hiring, promoting, and developing the efficiency of employees, it will in a short time disintegrate the power of private management to fulfill its responsibilities to investors and to customers.

This fundamental evil in this proposed legislation lifts criticism of its details out of mere fault finding into a demonstration of why it profoundly violates both the letter and spirit of the Constitution which

was adopted for the purpose of preventing zealous legislators from experimenting too recklessly with measures of moralistic reform. The Constitution, as we have seen, not only limits the lawmaking powers of the Congress to those expressly granted but also explicitly provides in the tenth amendment that "the powers not delegated to the United States * * * are reserved to the States respectively, or to the people." Furthermore, in the Bill of Rights, the Congress is absolutely forbidden to make any law denying to individuals their fundamental liberties of speech, of religion and association.

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Section 13 of the proposed act provides for rule making. We know that the issuance of rules and regulations by a commission is lawmaking by the executive branch under the authority delegated by Congress. But where Congress so obviously has no power to take the actions proposed in S. 3368, Congress has no power which it can delegate to a rule-making commission.

And what kind of rules could we expect this commission to prescribe?

If we look at the history of the New York statute we can judge what such a commission would do. Following the precedent in New York it would rule that you cannot mention color or religion in advertising for employees, that you cannot ask for the photograph of an applicant, you cannot ask his birthplace, you cannot ask his original name and you cannot ask what holidays he celebrates. We would see a host of restrictions upon the rights of free speech and free opinion, all under the guise of rule and regulation.

Another aspect of the proposed legislation which has received far too little attention is the fact that, if enacted, S. 3368 would be a constant invitation to sabotage. The bill applies to the Federal Government and its instrumentalities as well as to private business. The bill would make it unlawful to discriminate in Federal employment against any job applicant because of his national origin or ancestry. The Atomic Energy Commission, for example, would be precluded by law from asking an applicant any question as to where he was born, whether he is a naturalized or native-born citizen, what his race is or even what his original name was. It would be unlawful under S. 3368 to request an applicant to produce his naturalization or first papers. Inquiry could not be made as to the racial or religious organizations to which he belongs.

The same situation would prevail in the case of private industry engaged in production for national defense. A company manufacturing the most secret equipment for the armed services would be precluded from securing the very information most likely to throw light upon a job applicant's probable loyalties.

It has long been considered that involuntary servitude is something that can be suffered only by an employee. But involuntary servitude may be of many varieties. A man who accepts obligations to another man is putting himself in the servitude of that man. The law which says that one man can be compelled, on penalty of paying back pay, on penalty of contempt of court, to hire another man whom he does not wish to hire, means that the first man is compelled by law to make a contract to pay the second man wages, to furnish him with tools,

to accept obligations under law that the employer accepts voluntarily toward other employees. The employer is forced into a servitude to the employee from a minority group.

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S. 3368 carries within it so many seeds of dissension that it is foredoomed to failure. Its enactment would impair and undermine the very foundation of our economic strength—that strength upon which rests our security and our happiness. Its enactment would inevitably undermine established social patterns based on law and custom. Its enactment would disrupt the progress being made by the States in the area of human relations and would do immeasurable harm to the cause of improved race relations. The attempted administration of the proposed bill would be an incalculable mischief.

In the end the bill would be nullified by concerted violation, repealed by an indignant Congress, or stricken down as unconstitutional by the Supreme Court.

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