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THE CIVIL RIGHTS ACT OF 1964:

Legislative History; Pro and Con Arguments; Text

PAUL M. DOWNING
Government and General Research Division

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Legislative History on Civil Rights, January - May, 1963

On January 31, 1963, several Republicans introduced comprehensive civil rights bills in the House. Representatives McCulloch, Lindsay, Moore, Cahill, Mac Gregor, Mathias, Bromwell, Shriver, and Martin (Calif.) proposed legislation to make the Civil Rights Commission permanent and to authorize it to investigate vote frauds; to establish a Commission for Equality of Opportunity in Employment with authority to enforce non-discrimination by Federal contractors, by labor unions with members employed on Federal contract work, and by employment agencies receiving any Federal financial assistance; to authorize the Attorney General to enforce school desegregation by civil actions; to provide Federal financial assistance to facilitate school desegregation; and to provide a legal presumption for the courts that any one who has completed the sixth grade is sufficiently literate and intelligent to vote.

On February 28, President Kennedy recommended civil rights measures regarding voting, education, and the Civil Rights Commission.

With respect to voting, the President proposed legislation authorizing appointment by the courts of temporary referees to determine qualifications of voters in any county where fewer than 15 percent of eligible persons of the same race allegedly discriminated against are registered while any voting case under the 1957 Civil Rights Act is pending; requiring preferential treatment for voting rights cases under the 1957 Civil Rights Act in Federal courts; requiring equal application of standards and procedures for registration; requiring that a sixth-grade education constitute a presumption of literacy.

With respect to education, the President recommended Federal technical and financial assistance to aid school districts to integrate and deletion of the phrase "separate but equal" from the Morrill Land Grant College Act.

President Kennedy recommended that the Civil Rights Commission be extended for four years and be authorized to act as a clearinghouse of information, advice, and technical assistance upon request from State and local agencies, industry, labor, and community groups.

Mr. Celler introduced legislation in the House embodying Administration recommendations regarding voting rights and the Civil Rights Commission. Senator Hart introduced legislation embodying Administration recommendations regarding voting rights and extending the Civil Rights Commission for four years.

On March 28, several Republican Senators introduced comprehensive civil rights legislation. Senators Kuchel, Javits, Beall, Fong, Scott, Case, and Keating introduced bills to establish procedures for public

school desegregation, and technical and financial assistance to facilitate desegregation; to prohibit racial discrimination in employment by employers in interstate commerce having 50 or more employees; to establish a Commission on Equal Employment Opportunity to encourage and enforce equal employment opportunity in Federal employment, on Federal contracts, and on work financed with Federal assistance; to ban literacy tests as a requirement for voter registration for persons having a sixth-grade education, to outlaw arbitrary standards, practices and procedures for voter registration, to authorize temporary voter referees under specific circumstances when a voting case is pending in court, and to require Federal courts to give precedence to voting rights cases; to prohibit racial discrimination in hotels or motels the business of which affects interstate commerce; to amend the Hospital Survey and Construction Act by outlawing racial discrimination in hospital facilities constructed under State plans.

Senators Saltonstall, Cooper, and Pearson, together with the other Senators named above, introduced a bill on the same date to make the Civil Rights Commission permanent and to broaden its duties.

The Civil Rights Act of 1964

The Administration Bill

On June 19, 1963, President Kennedy recommended to Congress legislation more comprehensive than that which he proposed on February 28. Following are major provisions of the Administration bill.

Title I -- Voting Rights. This title forbade discriminatory application of standards, practices, or procedures for voter registration, and denial of voting rights because of insignificant errors or omissions on papers required for registration. The title required that literacy tests be written and that copies be available to registrants, and that in civil actions to secure voting rights a sixth-grade education would constitute a presumption of literacy. In any voting rights case, whenever a finding of a pattern or practice of discrimination is requested and if fewer than 15 percent of members of the same race in the area as the person allegedly denied the right to vote are registered, the Federal court, pending final determination of the case, was authorized to issue orders declaring qualified to vote persons of that race who could prove that they were qualified to vote and that they had been denied the right. The courts were authorized to appoint temporary voting referees to take evidence and report findings regarding persons seeking such orders.

Title II -- Injunctive Relief Against Discrimination in Public Accommodations. This title forbade racial discrimination in hotels, motels, theaters, retail stores and other such places the business of which affects interstate commerce. Hotels and motels were covered by this title if they received transient guests, including guests traveling interstate; theaters and other places of exhibition were covered if they present films, performing groups or other kinds of exhibition which have moved in interstate commerce; retail stores, lunch counters, and other such places were covered if they serve interstate travelers to a substantial degree or if "a substantial portion of any goods held out to the public" has moved in interstate commerce. The title authorized any person aggrieved or the U. S. Attorney General to initiate a civil action for injunctive relief, but required the Attorney General to grant sufficient time for the execution of State or local accommodations laws where they exist. Where such laws do not exist, the Attorney General was obliged to refer the issue to the Community Relations Service created by Title IV. The Attorney General was required to refrain from enforcement action for at least 30 days to permit the Service to seek voluntary compliance.

Title III -- Desegregation of Public Education. This title directed the U. S. Commissioner of Education to make a report within two years on the extent of denial of equal educational

opportunity. The title authorized the Commissioner to give technical assistance to State and local authorities regarding school desegregation or overcoming racial imbalance in schools, or to provide grants for such assistance, upon application by State or local authorities. The title authorized the Commissioner to provide grants also for training of school personnel to handle problems involved in school desegregation or in overcoming racial imbalance. These authorizations for technical and financial assistance were in accordance with a recommendation by the Civil Rights Commission. 1/ The title authorized the Commissioner to provide loans to school authorities, upon application, when funds have been withheld from these authorities because of actual or prospective desegregation. This loan provision was also in accordance with a recommendation by the Civil Rights Commission. 2/ The title authorized the Attorney General to initiate or to intervene in civil actions for school desegregation if he certified that the aggrieved parties are unable to initiate or, in case of intervention, to maintain, such actions.

Title IV -- Establishment of Community Relations Service. This title established a Community Relations Service to conciliate civil rights disputes. The Service was to have no enforcement authority, and was to act only by request of local officials or interested parties.

Title V -- Commission on Civil Rights. This title provided for a four-year extension of the Civil Rights Commission, and authorized the Commission to serve, in addition, as a national clearinghouse for information regarding civil rights, and to provide advice and technical assistance to effect equal protection of the laws in such areas as voting, education, housing, employment, public facilities, transportation, and the administration of justice. Among changes in rules of procedure, the Administration bill required the Commission, in event that evidence or testimony could defame or incriminate any person, to receive such evidence or testimony in executive session or, if it decides to receive it in a public session, to permit the person to testify voluntarily and to request subpenaing of additional witnesses.

Title VI -- Nondiscrimination in Federally Assisted Programs. This title provided that no law authorizing Federal financial assistance by way of grant, contract, loan, insurance or guaranty "shall be interpreted as requiring" provision of such assistance whenever it is administered in a discriminatory manner. The Civil Rights Commission had recommended this amendment with respect to certain programs of Federal assistance.

Title VII -- Commission on Equal Employment Opportunity. This title created a Commission on Equal Employment Opportunity to prevent racial discrimination in employment by Federal

contractors and subcontractors, by contractors or subcontractors working on projects supported by Federal financial assistance, and by the Government. The title specified that "The Commission shall have such powers to effectuate the purposes of this title as may be conferred upon it by the President." Creation of a Commission for such purposes had been recommended by the Civil Rights Commission. 3/

Title VIII -- Miscellaneous. This title included a separability clause.

In his message to Congress transmitting this legislation, President Kennedy said: "Finally, I renew my support of pending Federal fair employment practices legislation, applicable to both employees and unions." A month later, on July 22, the House Committee on Education and Labor reported H.R. 405, the Equal Employment Opportunity Act of 1963, which prohibited racial discrimination in employment by employers engaged in interstate commerce with 25 or more employees, employment agencies serving such employers, labor unions engaged in an industry affecting interstate commerce, and by those controlling apprenticeship or other training programs. The bill also created an Equal Employment Opportunity Commission and Board. The Board was to have authority to issue corrective orders, and the Administrator of the Commission was authorized to petition the courts for enforcement of the Board's orders. The bill provided for judicial review on petition of anyone aggrieved by an order of the Board.

On June 19, 1963, Senator Mansfield, together with Senators Humphrey, Kuchel, and many other members introduced S. 1731, President Kennedy's

civil rights bill, which was referred to the Senate Judiciary Committee. On the same day, Senators Mansfield and Magnuson introduced S. 1732, a bill which comprised only Title II, prohibiting discrimination in public accommodations, of the President's bill; this was referred to the Senate Commerce Committee. On June 20, Representative Celler introduced H.R. 7152, identical to S. 1731, which was referred to the House Judiciary Committee.

The Civil Rights Bill in the House

Subcommittee Number 5 of the House Judiciary Committee began hearings on H.R. 7152 on June 26, 1963. Attorney General Robert F. Kennedy was the first witness. In arguing for Title I regarding voting rights, he cited the disfranchisement consequent on court delays in reaching final decisions on voting rights cases. Provisions for temporary voting referees and for expediting cases were designed, he said, to meet this problem. Mr. Kennedy stated that literacy tests have been used to disfranchise Negro college professors, teachers, ministers, and graduate students, while white persons with no more than a second or third grade education have been registered in the same districts.

In arguing for Title II, regarding public accommodations, the Attorney General pointed out the difficulties which Negro travelers face. He said that if Negroes do not plan where they will eat and stay overnight ahead of time, they and their families are likely to suffer repeated indignity in being refused service.

Mr. Kennedy discussed two questions of the constitutional authority of Congress to regulate privately owned places of public accommodation.

He said that some proponents of the legislation argue that Title II should be based on the 14th Amendment rather than on the Commerce Clause, since private businesses today are licensed by the States to a great degree and that, by consequence, racial discrimination by such businesses constitutes State action to effect racial discrimination in violation of the Equal Protection Clause of the 14th Amendment. Mr. Kennedy said, however, that the Supreme Court declared in the 1883 Civil Rights Cases that the 14th Amendment applies only to State action, not to private action, and that its decision has never been overruled. "In these circumstances," Mr. Kennedy said, "it seems to us to be the proper course for Title II to rely primarily upon the commerce clause."

The Attorney General then countered those who argued that Title II would violate private property rights. He asked and answered the following question:

> "Whether Congress has the authority to end discrimination in places of public accommodation. It is quite clear that Congress does. It is well established that a privately owned business is not exempt from Government regulation where it is engaged in interstate commerce. Many Federal laws regulate privately owned business -- the Sherman Act, Clayton Act, Wagner Act, Taft-Hartley Act, minimum wage law, food and drug law, among others."

Regarding Title III, dealing with school desegregation, Mr. Kennedy stated that, in the nine years since the Brown case, schools in some areas of the country have been desegregated little or not at all.

Mr. Kennedy supported Title IV, establishing a Community Relations Service, by saying that "In every troubled community there are leading citizens of both races who would like to confer with each other" but who are prevented by pressures from doing so.

Mr. Kennedy said that Title VI, regarding nondiscrimination in Federally assisted programs, would make it clear that the President is under no mandatory obligation to provide Federal assistance which is administered unfairly, but would not place him under the necessity of cutting off assistance automatically in every such case. Title VI places the question of appropriate action in the President's discretion.

The Attorney General explained that the purpose of Title VII was to place the President's Committee on Equal Employment Opportunity, created by Executive Order 10925 (1961), on a statutory and permanent basis. It would then have, he said, "the prestige of congressional authorization." 4/

On August 2, the Subcommittee concluded hearings, and, on October 2, reported to the full Judiciary Committee a bill considerably more comprehensive than that proposed by the Administration. The Subcommittee sought to give added protection to voting rights by applying the provisions of Title I to State as well as Federal elections and by granting authority to impound election ballots in an area in which voting rights cases are initiated. The Subcommittee extended the coverage of Title II and shifted its constitutional basis by applying it to every business "which operates

under state or local authorization, permission or license," on the assumption that the 14th Amendment forbids racial discrimination by State-licensed businesses inasmuch as its granting a license renders the State responsible for such discrimination. The Subcommittee also authorized the Attorney General to initiate civil actions for desegregation of public facilities, such as libraries and parks. This provision became Title III of the bill as enacted. The Subcommittee, moreover, in a new Title III, gave authority to the Attorney General to initiate court actions to enjoin denial of "any right, privilege or immunity secured to any individual by the Constitution or laws of the United States." The Subcommittee's bill included permanent, rather than four-year, extension of the Civil Rights Commission. The Subcommittee amended Title VI by requiring Federal departments and agencies to eliminate discrimination in programs for which they administer Federal assistance, by authorizing them to cut off assistance or take other measures to eliminate discrimination, and by providing for judicial review of administrative decisions to terminate Federal assistance because of discrimination. These two amendments to Title VI had been proposed by Attorney General Kennedy in testimony before the Senate Judiciary Committee on August 23. It amended Title VII by incorporating the provisions of H.R. 405, forbidding racial discrimination in employment. The Subcommittee added a provision granting the right of plaintiffs to appeal the decision of Federal Courts to remand civil rights cases to State courts.

Meanwhile, the U. S. Civil Rights Commission was to expire on November 30, 1963. On October 1, the Senate added an amendment as a

rider to a private bill to extend the Commission for one year, and passed the bill by a vote of 71-15. The House, under suspension of the rules, agreed to the Senate amendment on October 7, by a vote of 265-80.

On October 15, the Attorney General testified before the House Judiciary Committee regarding the Subcommittee's bill. He objected to the amendments to Titles I and II. He opposed the new Title III on the grounds that

> "the proposal injects Federal authority into some areas which are not its legitimate concern and vests the Attorney General with broad discretion in matters of great political and social concern."

On November 20, the House Judiciary Committee reported H.R. 7152. The full Committee eliminated the Subcommittee's extension of Title I to State elections and its authorization for impounding of ballots. It eliminated also the Administration's provision regarding temporary voting referees, and included instead authorization for the Attorney General to request convening of a three-judge Federal court to hear voting rights cases.

The Judiciary Committee eliminated its Subcommittee's amendment to Title II, which had extended coverage to all licensed businesses. As reported, Title II applied to places of accommodation affecting interstate commerce, and to places in which discrimination is supported by State action in violation of the 14th Amendment. Owner-occupied dwellings with five or fewer rooms for rent were excepted. The Committee eliminated the obligation of the Attorney General to give the Community Relations Service

30 days before taking enforcement action (it eliminated the Service itself) but stated that he "may" refer the issue to other agencies to permit them to secure voluntary compliance. The Committee bill provided the right to jury trial for contempt of court if the judge penalized the defendant in excess of $300 or 45 days in prison. This jury trial provision was the same as that in the 1957 Civil Rights Act.

The full Committee wrote a new Title III into the bill, granting the Attorney General authority to initiate injunction suits to eliminate racial discrimination in facilities owned or operated by a State. The Committee eliminated the Subcommittee's authorization of the Attorney General to initiate court actions in all cases involving alleged denial of the rights, privileges or immunities of U. S. Citizens, but authorized him to intervene in any case already begun involving alleged denial of equal protection of the laws on account of race, color, religion, or national origin.

Title IV of H. R. 7152 as reported was essentially the same as Title III of the Administration's bill, regarding school desegregation, except that the loan provisions of the original title were eliminated. Moreover, the Committee bill eliminated authorization for technical assistance or grants to help overcome racial imbalance in schools.

Title V of the Committee's bill was identical to the same title of the Administration's bill, except that the Committee eliminated authorization for the Commission to provide advice and technical assistance in regard to civil rights (although retaining the duty of the Commission to serve as a national clearinghouse for information in respect to equal

protection of the laws), gave the Commission the additional duty of investigating voting frauds, and made it permanent. Authorization to investigate voting frauds had been included in the omnibus Republican civil rights bill introduced in the House on January 31.

Title VI as reported included the Subcommittee's amendments requiring elimination of discrimination in federally assisted programs and providing for judicial review, but applied the nondiscrimination requirement only to programs supported by grant, contract, or loan, not to those for which the Federal Government provides insurance or guaranty.

Title VII of the Committee's bill included the essential provisions of H.R. 405, which the Subcommittee had incorporated in the omnibus bill, except that the Equal Employment Opportunity Commission was denied authority to issue its own cease and desist orders, and was authorized instead to initiate civil actions to secure injunctions against unfair employment practices. Both H.R. 405 and Title VII of H.R. 7152 as reported to the House required the Equal Employment Opportunity Commission, wherever State or local fair employment practices laws exist, to seek agreements with the State or local agencies having authority to enforce nondiscrimination whereby the Federal Commission would agree to refrain from enforcement actions in classes of cases subject to State or local jurisdiction. In both bills, the Federal Commission was authorized to determine whether any State or local agency is acting effectively, and to take action itself if it determines that the State or local agency is not effective.

Title VIII as reported was a Subcommittee amendment to the bill directing the Secretary of Commerce, immediately and in the 1970 census, to obtain registration and voting statistics by race and national origin in geographic areas selected by the Civil Rights Commission.

Title IX of the Committee's bill included the Subcommittee amendment permitting appeal of Federal court orders remanding civil rights cases to State courts.

Title X of the bill as reported included a separability provision.

The Committee bill eliminated the Administration's provision for establishment of a Community Relations Service.

The House Rules Committee held hearings on H.R. 7152 from January 9 to January 30, 1964. It heard arguments for and against the bill by 40 Members of Congress.

On January 31, the House agreed to House Resolution 616 whereby the Committee of the Whole House could take up H.R. 7152 with 10 hours general debate followed by a title-by-title reading of the bill, when any Member could propose any amendment to the title under consideration, upon which supporters would have five minutes to argue for the amendment and opponents would have the same time to argue against it.

General debate ended and Title I was read on February 1. Debate and voting on amendments began on February 3 and continued through February 10. Following are major amendments adopted by the House.

Title I. The House adopted an amendment providing that, besides the Attorney General, any defendant in a voting rights case could request that a three-judge court be convened.

Title II. The Committee's version of this title had declared that State action supports discrimination by privately owned places of public accomodation whenever discrimination is maintained by "custom or usage," or whenever it is "fostered or encouraged by action of a State or a political subdivision thereof." The House amended the title so that a State could be found to act only if such custom or usage is "required or enforced" by State or local officials. The House version, moreover, omitted "fostered or encouraged" as criteria for determining State action. The Committee bill had forbidden any person to "incite or aid or abet" anyone else to deny to another any right secured by Title II. The House bill omitted this prohibition on the ground that it might conflict with the First Amendment.

Title III. The House did not significantly amend this title as the Committee reported it.

Title IV. The House amended the Committee bill by making it explicit that school desegregation "shall not mean the assignment of students to public schools in order to overcome racial imbalance.

Title V. The House amended the Committee bill by extending the Civil Rights Commission for four years, until January 31, 1968, and by prohibiting the Commission to investigate "membership practices or internal operations" of religious or fraternal organizations, private clubs, and fraternities.

Title VI. The House made it explicit that the nondiscrimination requirement of this title does not apply to programs aided by contracts of insurance or guaranty with the Federal Government. The House amended

the Committee bill by making it require presidential approval of regulations issued by Federal departments and agencies to effectuate the title, by making it require a hearing before application of any penalty for noncompliance, and by making it provide that no termination or other sanction imposed for noncompliance shall be effective for thirty days after the department or agency has submitted a report of the matter to the Senate and House Committees having jurisdiction of the program involved.

Title VII. Under H.R. 405 and H.R. 7152 as reported by the House Judiciary Committee, the prohibition and enforcement provisions would apply only to employers of 100 or more employees and to labor unions with 100 or more members during the first year after the title became effective, to those with 50 or more employees or members during the second year, and to those with 25 or more during the third year. The House amended these sections by making these provisions applicable to those with 75 or more employees or members during the second year, to those with 50 or more during the third year, and to those with 25 or more only during the fourth year and thereafter. Under H.R. 405, the prohibition and enforcement provisions would not become effective until one year after enactment. Under H.R. 7152 as reported and as passed by the House, the title as a whole would not go into effect until a year after enactment. The House amended Title VII by prohibiting discrimination by employers, employment agencies and labor unions because of sex as well as race, color, religion, or national origin. To the prohibition of discrimination by those who control "apprenticeship or other training programs," the House added this

prohibition explicitly with respect to "retraining, including on-the-job training programs." The House exempted from the protection of the law atheists, members of the American Communist party, and members of Communist groups under final order to register with the Attorney General pursuant to the Subversive Activities Control Act of 1950. The Committee bill had required the Equal Employment Opportunity Commission to seek voluntary compliance by conciliation before initiating any civil action for injunctive relief, but had authorized the Commission to go to court "in advance" of such attempt at conciliation "if circumstances warrant." The House eliminated the latter provision, and made the law require the Commission to attempt conciliation in any case before instituting a civil action. The House amended Title VII by requiring the Commission to hold public hearings before issuing orders to employers, employment agencies, and labor organizations regarding records and reports of personnel, referral, and membership actions.

Title X. The House Judiciary Committee had eliminated the Administration's provision (Title IV) for creation of a Community Relations Service. The House added to the Committee's bill a new Title X similar to the Administration's Title IV. Unlike the latter, the House bill established the Community Relations Service within the Department of Commerce, required the advice and consent of the Senate to the President's appointment of the Director, limited the Director's term to four years, and limited to six the number of personnel which the Director could appoint. The House bill eliminated a provision in the Administration bill authorizing the Service to enlist the cooperation of any "nonpublic agency" which

might be helpful, and authorized the Service only to "seek and utilize the cooperation of the appropriate State or local agencies." The House eliminated from the Administration bill a requirement that the activities of the Service "be conducted in confidence and without publicity," but retained the requirement that information which the Service obtains on condition that it be kept confidential be kept so.

Title XI. The House added to this title (Miscellaneous), which had been Title X in the Committee version, a statement that it is not the intent of Congress to preempt any field in which State law operates by any provision in the Act.

On February 10, 1964, the House passed H.R. 7152 by a roll call vote of 290 to 130.

The Civil Rights Bill in the Senate

On June 19, Senators Mansfield, Humphrey, Kuchel, Keating and others introduced S. 1731, the Administration's omnibus civil rights bill, which was referred to the Judiciary Committee. At the same time, Title II, regarding public accommodations, was introduced as a separate bill, S. 1732, by Senators Mansfield, Magnuson, Kuchel, Humphrey, and others, and was referred to the Commerce Committee. Senators Mansfield, Dirksen, and others introduced a third bill, S. 1750, on the same day, which included all of the Administration's bill except Title II. The last bill was referred to the Judiciary Committee.

The Senate Judiciary Committee held hearings from July 16 to September 11 on S. 1731. Attorney General Kennedy testified during a

period of six weeks to defend the constitutionality of the bill. In particular, he maintained the authority of Congress under the Interstate Commerce Clause to forbid discrimination in privately owned places of accommodation, and cited the National Labor Relations Act, the Fair Labor Standards Act, and the Agricultural Adjustment Act as precedents to such Federal regulation. On August 23, Mr. Kennedy proposed the amendments to Title VI mentioned above, which were that Federal departments and agencies be required to take action to eliminate racial discrimination in programs for which they administer Federal assistance, and that State and local agencies and other aggrieved persons should have the right to judicial review of executive sanctions imposed. The Committee did not report either S. 1731 or S. 1750.

The Senate Commerce Committee held hearings on S. 1732, The Interstate Public Accommodations Act of 1963, from July 1 to August 2. The Committee heard the testimony of 40 witnesses. Among these were the Governors of South Carolina, Georgia, Florida, Alabama, and Mississippi, and several high officials of the Federal Administration: Attorney General Kennedy, Secretary of State Rusk, Secretary of Labor Wirtz, and others. The Committee also received statements from professors of law, such as Paul A. Freund of Harvard and Herbert Wechsler of Columbia.

The Committee reported S. 1732 with amendments on February 10, 1964. The Committee exempted from coverage of the law owner-occupied places of lodging for transient guests with five or fewer rooms for rent. The Committee changed one of the tests to be used in determining whether retail stores, lunch counters, and other such places affect interstate

commerce by specifying that a substantial portion of the total goods for sale, rather than a substantial portion of any one kind of goods, must have moved in interstate commerce. The Committee added a new section forbidding racial discrimination in labor unions dealing in industries affecting interstate commerce, and racial discrimination in professional, business, or trade associations in which membership is to a degree a condition of engaging in interstate commerce. The Committee amended the enforcement procedures of the bill by requiring that any person denied right of access to a place of public accommodation refrain from initiating a civil action in Federal court for injunctive relief for 30 days in order to permit any State or local agency having authority in such a case to resolve the issue; where no State or local laws exist, the aggrieved person must give the U. S. Attorney General 30 days notice before instituting an action. Finally, the Committee amended the bill to provide the right to jury trial for all cases of criminal contempt of court orders for enforcement of the Act.

It was decided that the Senate should take up H.R. 7152 for consideration after House passage rather than await action on S. 1731 by the Senate Judiciary Committee. Accordingly, on February 27, 1964, Senator Mansfield moved to table an appeal by Senator Russell from a ruling by the Chair that H.R. 7152 need not go to committee before being placed on the calendar. Senator Mansfield's motion was agreed to by a vote of 54-37, with the effect of placing the bill on the calendar so that it could be made the pending business of the Senate.

On March 9, Senator Mansfield moved to make H.R. 7152 the pending business. On March 26, the Senate agreed to the motion by a vote of 67-17, and debate on the bill began on March 30.

On May 26, Senator Dirksen, for himself and on behalf of Senators Mansfield, Humphrey, and Kuchel, introduced extensive amendments modifying every title in the bill, but especially Titles II and VII. 5/ The amendments, representing a compromise, were introduced as a substitute for the House-passes bill, so that the amendments themselves could be amended further from the floor. Senator Dirksen described in the following words the process of achieving the compromise substitute bill.

> "The work has gone on, and we have been beating out the iron upon the anvil of discussion. In that discussion at least five conferences were held, consecutively, in my office, attended by Senators who represent all shades of opinion with respect to this measure. Included were Members on both sides, as well as staffs from both sides. Included also were the Attorney General, the Deputy Attorney General, and the Director of the Division of Civil Rights in the Department of Justice.
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> "...
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> "As a result of the various conferences, and by the process of give and take, we have at long last fashioned what we think is a workable measure..." 6/

Senator Dirksen thus described the purpose of the compromise legislation.

> "I believed that the Senate would have to work its will upon this measure in order to develop what I thought was a measure at once practical, workable, equitable, and fair, and one which had a proper regard for what the States had done in a number of fields, notably in the accommodations field and in the field of equal employment opportunities." 7/

Senator Dirksen said further:

> "We had the fixed purpose and the fixed goal of arriving at a workable measure in every one of its titles, while giving proper regard to what the States already have done in this field. I yield to no one in my regard for the State legislatures, the State commissions, and the State criminal statutes in connection with public accommodations, because I have said over and over again that the primary and the exclusive jurisdiction, where those verities were involved, should begin at the State level; and it has been wholly our purpose to make this measure a fair and workable one." 8/

And Senator Humphrey pointed out the essential advantages of the substitute bill.

> "Therefore," he said, "one of the improvements I see in the amendment in the nature of a substitute, which has been submitted by the Senator from Illinois [Mr. Dirksen], is the inclusion within the words and text of the amendment

of provision for the responsibility of local and State authorities to seek compliance with the law, wherever possible, through voluntary methods; and, if voluntary methods fail, to seek compliance with the law through local enforcement. If voluntary methods and local enforcement should both fail, we then have the authority to seek compliance with the law through action by the Federal Government in the courts of law. This is a commonsense and just balance of Federal and State responsibility."

Senator Dirksen stated, moreover, that the compromise legislation should evoke the support of enough Members to ensure that the bill would eventually be brought to a vote. He said:

" I trust it will commend itself to the Senate and that, in due course, if that course is necessary, it will command sufficient votes ultimately to bring debate to an end, in the sense that the cloture rule provides." 9/

On June 9, the Senate adopted by a vote of 51-48 a jury trial amendment introduced by Senator Morton as a perfecting amendment to a jury trial amendment introduced by Senator Talmadge. Senator Talmadge's amendment would have provided for trial by jury for criminal (in contradistinction to civil) contempt under all acts of Congress. Senator Morton's amendment limited the right to jury trial to Titles II, III, IV, V, VI, and VII of the bill. Senator Morton explained that it did not cover Title I (under which a Federal judge could impose a penalty of up to 45 days in jail and $300 fine for criminal contempt without a jury) because

there can be no relief from denial of the right to vote after an election is over. 10/

On May 27, Senator Mansfield moved to limit debate by unanimous consent so that the Senate could begin voting on amendments, but the motion was blocked by Senator Russell's objection.

On June 8, Senator Mansfield filed a cloture petition signed by 38 Members (16 are required for a cloture motion), 27 Democrats and 11 Republicans, and, on June 10, the Senate voted cloture by a vote of 71 to 29. There were four more votes for cloture than would have been required under Rule XXII, which provides for cloture by a vote of two-thirds of the Senators present and voting. The Senate then continued consideration of the compromise substitute bill introduced by Senator Dirksen under a rule which limited each Senator to one hour of speaking on the bill and amendments.

On June 11, the Senate agreed to an amendment by Senator Ervin providing that no person shall be placed twice in jeopardy by being tried both for a specific crime under Federal law and for criminal contempt with respect to the same act under the Civil Rights Act of 1964.

Following are major amendments adopted by the Senate. For an inclusive list of Senate amendments to H.R. 7152 as passed by the House, see The Congressional Record (daily edition), July 6, 1964, pages 15453 to 15458.

Title I. The Senate bill eliminated freedom of option on the part of registrants to choose oral instead of written literacy tests, except for the blind or otherwise physically handicapped. The Senate limited

authorization for the Attorney General or any defendant to request a three-judge court in voting rights cases to cases in which the Attorney General requests a finding of a pattern or practice of discrimination.

Title II. The Senate bill limited the authority of the Attorney General to institute civil actions for injunctive relief against discrimination in privately owned places of public accommodation to cases in which he has reasonable cause to believe that there is a pattern or practice of such discrimination. In civil actions initiated by an aggrieved party, the Senate bill provided for intervention by the Attorney General with permission of the courts if the case is of general public importance. The Senate bill authorized the courts in their discretion to provide counsel free of cost for an aggrieved party. The Senate bill required an aggrieved party, in any State or locality where a public accommodations law exists, to give the appropriate State or local agency 30 days to act before taking his case to Federal court, and authorized the courts to stay proceedings in order to grant the State or local agency additional time to act. Wherever no State or local accommodations law exists, the Senate bill authorized the courts to grant the Federal Community Relations Service up to 120 days to seek voluntary compliance with the law. The Senate eliminated provisions in the House-passed bill requiring the Attorney General, wherever State or local accommodations laws exist, to grant reasonable time to State or local officials to act before bringing a civil action, and, wherever such laws do not exist, permitting him to utilize the conciliation services of any Federal, State, or local agency before bringing a civil action.

The Senate bill authorized the Attorney General, whenever he initiates a civil action, to request convening of a three-judge court.

Title III. The Senate bill transferred authorization for the Attorney General to intervene in civil actions regarding alleged denials of equal protection of the laws on account of race or religion to Title IX, providing for procedure after removal in civil rights cases.

Title IV. The Senate amended the House bill by providing that the Attorney General, before instituting a civil action for school desegregation, must notify the school board involved and give it reasonable time to adjust allegedly discriminatory conditions. The Senate further clarified the Title by forbidding any Federal official or court to overcome racial imbalance in schools by ordering transportation of students from one school or school district to another.

Title V. The bill as passed by the House directed the Civil Rights Commission to "serve as a national clearinghouse for information in respect to equal protection of the laws." The Senate changed this provision to "in respect to denials of equal protection of the laws." The Senate added additional safeguards to the rights of witnesses, including advance notice of hearings; the right of counsel who accompanies a witness to examine his client, to make objections on the record; the right of a witness whom testimony may tend to defame, degrade, or incriminate to be heard in executive session and to have additional witnesses before such testimony or evidence is used.

Title VI. The Senate amended the bill to limit the termination of, or refusal to grant, Federal financial assistance to the particular

political jurisdiction and particular program in which discrimination has been found. The Senate excluded employers, employment agencies, and labor organizations from coverage of the title.

Title VII: Coverage and Exceptions. The Senate amended the definition of "employer" by providing that only employers who have 25 or more employees for each day in each of 20 or more weeks in the current or preceding year will be subject to the law. It amended the definition of "labor organization" by including any labor organization which operates a hiring hall to supply employees for an employer. The Senate excepted hiring by religious educational institutions from the ban on religious discrimination, as well as religious discrimination by labor organizations and employment agencies with respect to work in which religion is an occupational qualification. The Senate eliminated the provision excluding atheists from protection by the law. The Senate also specified that the following would not be unlawful employment practices: for an employer, labor organization, or employment agency to reject a person for lack of security clearance if it is required; to provide different terms of employment based on a seniority or merit system or on difference in location; to act on the results of ability tests; to provide different pay because of sex pursuant to the Fair Labor Standards Act; to give preferential treatment to Indians in enterprises on or near reservations; for employers, employment agencies, and labor unions not to give preferential treatment to overcome racial imbalance.

Title VII: Enforcement. The Senate provided that the Equal Employment Opportunity Commission may cooperate with State or local public or private

agencies only upon request, and that it may assist labor organizations as well as employers when employees resist effectuation of this title. It provided that no one except a commissioner could file a charge with the Commission on behalf of another. It required that the Commission obtain consent of parties before making public any statements or actions which occurred in the course of it conciliation efforts. The Senate amended the House bill by requiring that an aggrieved party, wherever a State or local law forbids the unfair employment practice, refrain from filing a charge with the Commission for 60 days after action has begun under the State or local law, or for 120 days during the first year of operation of the State or local law. If a charge is filed by a Commissioner, the Commission must refrain from action for the same time periods. The Senate shortened the time limit within which a charge must be filed with the Commission. The Senate amended the House bill by eliminating authorization for the Commission itself to initiate civil actions, and granted only to the aggrieved party the right to go to court. The Senate bill provided that no civil action can be initiated until the Commission has attempted conciliation for 30 days. The Senate authorized the Attorney General to initiate a civil action whenever he has reasonable cause to believe that a case of discrimination is pursuant to a pattern or practice, and he may request convening of a three-judge court. Moreover, the Senate bill authorized the courts to permit the Attorney General to intervene in actions brought by aggrieved parties which are of public importance. The court itself may stay proceedings for up to 60 days to give additional time for State or local enforcement or for conciliation

efforts by the Federal Commission. The Senate bill authorized the Commission to initiate proceedings for compliance whenever an employer, employment agency, or labor union fails to obey a court order enjoining an unfair practice. The Senate bill required the court to find that the defendant intentionally violated a right under this title before issuing an injunction. The Senate bill also authorized court orders to protect individuals from discrimination not on account of race but because they assisted others in making charges of such discrimination. The Senate bill provided that records need not be kept by those subject to this title when they are required to keep such records by a State or local fair employment practices law, except to cover differences between Federal and State or local laws.

Title VIII. The Senate added to the House bill a provision forbidding the Bureau of the Census, in compiling registration and voting statistics, to compel anyone to disclose his race, political party affiliation, or how he voted, and requiring the Bureau to advise every one of his right not to disclose such information.

Title IX. The Senate placed in this title the authorization in Title III of the House bill of the Attorney General to intervene in any case already begun involving alleged denial of equal protection of the laws on account of race or religion. The Senate amended the House provision by adding as conditions his timely application to intervene and his certification that the case is of public importance.

Title X. The Senate amended this title by removing limitation on number of personnel in the Service, by authorizing the Service to seek

the cooperation of private as well as public State and local agencies (the House had eliminated this provision from Title IV of the Administration's bill), and by requiring that all conciliation services be conducted confidentially (the House had eliminated this provision also from the Administration's bill).

Title XI. The Senate added to this title the Morton amendment providing for jury trials and the Ervin amendment barring double jeopardy.

On June 19, the Senate passed H.R. 7152 by a roll-call vote of 73-27.

On July 2, 1964, the House adopted H. Res 789 by a roll-call vote of 289-126, by which it agreed to the Senate amendments to H.R. 7152. The President signed the Act on the evening of the same day.

Arguments For and Against the Civil Rights Bill.

Following are major arguments for and against H.R. 7152 in the Senate and House.

Title I [Voting Rights]. For:

Self-government through majority rule is realized by exercise of voting rights. There is much evidence of denial of voting rights because of race.

Article I, Section 4, of the Constitution gives Congress authority "at any time by law" to "make or alter" State regulations respecting "The Times, places and Manner of holding Elections" for senators and representatives (except places of senatorial elections).

Article I, Section 8, Clause 18, gives Congress authority "To make all laws which shall be necessary and proper for carrying into Execution" its enumerated powers, and there is implied in this clause the right to protect Federal elections from corruption.

To deny a citizen the right to vote because of his race violates both the Equal Protection clause of the 14th Amendment and the 15th Amendment. Section 5 of the 14th Amendment and Section 2 of the 15th Amendment give Congress authority to enforce the provisions of the respective amendments by appropriate legislation.

The provisions of Title I are aimed at specific practices by which Negroes are prevented from registering, but they do not violate Article I, Section 2, of the Constitution, Article II, Section 1, or the 17th Amendment, which leave to the States the right to determine the qualifications of electors for representatives, for the President, and for senators, because Title I does not establish substantive standards for qualifying voter registrants, but only ensures equal application of whatever standards the States determine.

Legislation to expedite voting rights cases in the courts is necessary because of legal delay, which may mean forfeiture of the right in a particular election.

Title I. Against:

The legislation attempts to regulate presidential elections by authority of Article I, Section 4, of the Constitution. But this Section refers only to election of senators and representatives, not to election of the President. On the contrary, Article II, Section 1, authorizes State legislatures to decide how presidential electors shall be appointed.

Article I, Section 2, of the Constitution leaves to the States the right to determine qualifications of electors of representatives, as does the 17th Amendment regarding electors of senators. Article I, Section 4, refers only to "The Times, places and Manner" of elections, not to establishing qualifications for voters.

Authorization for the Attorney General to call for a three-judge court in voting rights cases gives him power to override any Federal district judge expected to decide against him.

The legislation will facilitate control by the Attorney General over State elections. Since primaries are included in the definition of "Federal election," Title I will make it possible for the Attorney General to control even party conventions which may be alternatives to primaries.

Literacy cannot validly be presumed merely on the basis of a sixth-grade education.

Title II [Injunctive Relief Against Discrimination in Places of Public Accomodation]. For:

Racial discrimination in places of public accommodation is a violation of human dignity. It prevents Negroes from participating fully as citizens in American life.

Such discrimination is an obstruction to interstate commerce because the inconvenience which it occasions hinders interstate travel, because it narrows the market for goods in interstate flow of commerce, and because it inhibits industry from seeking new manpower in places where the available labor force is rent by racial strife.

There are many precedents for legislation based on the Interstate Commerce Clause intended to realize moral ends and eliminate social evils.

Title II. Against:

This legislation is intended to regulate commerce which is intrastate; it cannot properly be based on the authority of Congress to regulate interstate commerce.

Title II violates property rights guaranteed against Federal power by the 5th Amendment. Since property right is essential to freedom, this legislation threatens freedom itself.

This legislation violates freedom of association.

It equates "State action" with "custom or usage," and consequently extends to an area of private action beyond the scope of the 14th Amendment, which forbids discriminatory treatment by the States, not by private persons.

Congress, by this title, assumes exercise of police powers reserved to the States.

Title III [Desegregation of Public Facilities]. For:

Exercise of Federal authority to eliminate discrimination in facilities owned or operated by States is justified by the Equal Protection Clause of the 14th Amendment.

It is advantageous to authorize the Attorney General to initiate actions at law to enforce this title, because it may be difficult for private litigants to initiate and maintain suits, and because there is a public interest in protecting human and constitutional rights.

Title III. Against:

This legislation is really an attempt to increase Federal power over the States.

It could give the Attorney General power, moreover, to interfere in the management of private businesses licensed by the States.

Title IV [Desegregation of Public Education]. For:

This legislation to speed desegregation of public education is justified by the Supreme Court's mandate in Brown v. Board of Education (1954) and by the resistance of the States to effectuation of this requirement of the Equal Protection Clause of the 14th Amendment.

Title IV. Against:

This legislation establishes special privilege for a particular class of persons in the courts.

It increases Federal control of educational systems and of children exercised by the Department of Health, Education, and Welfare and by the Attorney General.

In the South, Negro and white neighborhoods are interspersed, so that school integration by neighborhoods means integration of Southern schools. In the North, Negro and white neighborhoods are widely separated, so that school integration by neighborhoods will not affect present de facto segregation. Moreover, explicit exclusion of provisions for overcoming racial imbalance in schools means preservation of de facto segregation in Northern schools. This legislation means sectional discrimination.

Title V [Commission on Civil Rights]. For:

The Civil Rights Commission should be continued because it has disclosed facts constituting denials of equal protection of the laws and it has thereby rendered effective legislation possible.

The Commission can also provide such facts to public and private agencies to facilitate resolution of issues on the community level.

Title V. Against:

The Civil Rights Commission investigates violations of Federal laws and therefore duplicates unnecessarily the work of the FBI.

It has power to subpoena witnesses and gather unverified information regarding individuals, but it assures inadequate protection to individuals.

The reports of the Commission are racially prejudiced and disregard constitutional rights.

Title VI [Nondiscrimination in Federally Assisted Programs]. For:

The Due Process Clause of the 5th Amendment and the Equal Protection Clause of the 14th Amendment oblige the Federal Government to eliminate racial discrimination in all programs which it assists.

The statutes authorizing certain programs of Federal assistance now provide for "separate but equal" facilities. The Hill-Burton Act of 1946, 42 U.S.C.291e (f), provides for "separate but equal" facilities, but the Fourth Circuit Court of Appeals held this provision to be unconstitutional in Simkins v. Moses H. Cone Memorial Hospital (323 F. 2d 959 (C.A.4, 1963), certiorari denied, March 2, 1964). Congress, therefore, should eliminate statutory provisions for segregation.

Congress should remove doubt regarding the authority of Federal departments and agencies to eliminate discrimination in Federally assisted programs.

Some Federal agencies have heretofore refrained from acting to eliminate discrimination in programs which they administer. Title VI will require them to act.

Discrimination in programs should be prohibited by statute in a general, uniform way rather than by separate provisions in each act which establishes a program of assistance.

Title VI. Against:

This legislation delegates inordinate power to the President, the power, namely, to cut off aid funds which Congress has authorized.

Absence of definitive criteria and direction would result in too great executive discretion. Regulations would vary from agency to agency. Moreover, the supposed expertness of Federal administrators renders them immune in many cases from judicial review. By consequence, this legislation would impose a government of men instead of a government of laws.

This legislation authorizes the Executive to cut off funds prior to judicial determination. Cutting off of funds should be authorized only after judicial determination.

Title VII [Equal Employment Opportunity]. For:

Rights of access to places of public accommodation and to equal educational opportunity are rendered less meaningful by racial discrimination in employment. If a Negro has insufficient income to pay the bill, his right of access to a hotel or other such place remains merely abstract.

If a Negro youth is without hope of obtaining a type of work commensurate with innate ability and with education and training which he can acquire, his motivation to remain in school is likely to be reduced. Discrimination in employment encourages dropping out of school, which, in turn, leads to juvenile delinquency and crime.

The unemployment rate among nonwhite workers is twice as high as among white workers.

Nonwhite workers tend to be channelled into unskilled kinds of work. Professionally or technically trained nonwhites have less chance to exercise their qualifications.

Employment discrimination perpetuates poverty.

Automation is eliminating semiskilled and unskilled jobs, and is raising qualifications necessary for skilled jobs. Negroes are excluded to a great extent from new kinds of technical work (1) because discrimination prevents or has prevented them from acquiring technical qualifications and (2) because of discrimination in hiring and upgrading.

Both justice to persons and technological innovation make it necessary to eliminate discrimination by force of law.

Moreover, discrimination in employment means wasted personal abilities and consequent loss to the national product.

Title VII, Against:

This legislation gives undue power to the Federal Government to prosecute businessmen in order to enjoin actions which they may take in managing their businesses. It deprives employers of the right to exercise their own judgment with respect to hiring and other employment decisions.

This legislation means deprivation of property rights. A violation of property rights threatens all rights.

This legislation would nullify seniority rights in unions.

Title VIII [Registration and Voting Statistics]. For:

Compilation of registration and voting statistics by race is needed to determine remaining discriminatory denial of the right to vote. It is needed to judge the necessity of further legislation to vindicate the 15th Amendment. It is needed to facilitate remedial action by the Justice Department.

Title VIII. Against:

By authorizing the Civil Rights Commission to designate areas where the voting census is to be taken, this legislation gives power to the Federal Government to intimidate or coerce particular areas of the country.

Voting statistics which suggest discrimination may actually result from other factors.

Title IX [Intervention and Procedure After Removal in Civil Rights Cases]. For:

On the basis of precedent, Federal judges take civil rights cases removed from State courts only if State constitutions or laws are alleged to be in violation of the U. S. Constitution. But the present problem is discriminatory application of State constitutions and laws. Federal judges tend now to return these cases to State courts. This title will now give the Federal appellate courts a chance to review such remands.

It is in order to protect the individual who would have difficulty in continuing private litigation to secure relief from denial of equal

protection of the laws by State officials on account of race or religion that the Attorney General is authorized to intervene in such cases.

Title IX. Against:

The provision that a Federal court order remanding a civil rights case to the State court from which it was removed may be appealled to a higher Federal court could cause indefinite delay in exercise of jurisdiction by the State court. Local police and courts could not control lawless agitators and protect the rights of others. This provision would also place civil rights litigants at an unfair advantage over other litigants.

Authorization for the Attorney General to intervene in any action to secure relief from denial of equal protection of the laws under the 14th Amendment is an attempt to concentrate power in the Federal Government. Moreover, it would encourage litigation by private, troublemaking groups, and would make taxpayers bear the cost of such litigation.

Title X [Establishment of Community Relations Service]. For:

The Community Relations Service can establish communication between white and Negro leaders in order to bring about voluntary adjustment.

The Service can facilitate compliance with Title II and obviate enforcement through judicial process by bringing about mutual assurance among owners of places of public accommodations that every proprietor will serve Negroes, that none will seek an assumed competitive advantage by refusing to do so.

Title X. Against:

The Federal Government has no constitutional right to interfere in local, community relations.

Title XI [Miscellaneous].

For jury trial in all cases:

It is proper that civil contempt and direct criminal contempt committed in the presence of the court should be punished summarily by the judge. But in cases of alleged criminal contempt which are indirect, i.e., which are not committed in the presence of the court, the tradition of due process of law requires trial by jury. Otherwise, the judge himself at once accuses, prosecutes, tries, convicts, and sentences. This is equivalent to the procedure of the Star Chamber.

Against jury trial within certain penalty limits:

Summary punishment for willful disregard of a court's order issued after proceedings have been conducted according to due process is necessary both as a punishment and as a deterrent. Such a deterrent is needed because denial of certain civil rights is in some degree irremediable.

Footnotes

1/ U. S. Commission on Civil Rights. Report, 1961: Book 2: Education, Recommendation 4, p. 182.

2/ Ibid., Recommendation 5, p. 182.

3/ Ibid., Book 3: Employment, Recommendation 1 (a), p. 161-2.

4/ Attorney General Robert F. Kennedy's testimony is in U. S. Congress. House. Committee on the Judiciary. Subcommittee No. 5. Civil Rights. Hearings. 88th Congress, 1st Session, p. 1372-1446.

5/ The text and an explanation of the amendments are given in the Congressional Record (daily ed.), June 5, 1964: 12371-12385.

6/ Congressional Record (daily ed.), May 26, 1964: 11546.

7/ Ibid.

8/ Ibid., p. 11547.

9/ Ibid., p. 11546.

10/ Ibid., June 8, 1964: 12515.

Public Law 88-352

AN ACT

July 2, 1964
[H. R. 7152]

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

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

Civil Rights Act of 1964.

TITLE I—VOTING RIGHTS

Operation and enforcement.

SEC. 101. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and as further amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), is further amended as follows:

(a) Insert "1" after "(a)" in subsection (a) and add at the end of subsection (a) the following new paragraphs:

"(2) No person acting under color of law shall—

Voting qualifications.

"(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

Registration, etc.

"(B) deny the right of any individual to vote in any Federal election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

Literacy tests. Records.

"(C) employ any literacy test as a qualification for voting in any Federal election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 (42 U.S.C. 1974–74e; 74 Stat. 88): *Provided, however*, That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

Attorney General. Agreements with State and local authorities.

"(3) For purposes of this subsection—

"Vote."

"(A) the term 'vote' shall have the same meaning as in subsection (e) of this section;

"Literacy test."

"(B) the phrase 'literacy test' includes any test of the ability to read, write, understand, or interpret any matter."

(b) Insert immediately following the period at the end of the first sentence of subsection (c) the following new sentence: "If in any such proceeding literacy is a relevant fact there shall be a rebuttable

presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any Federal election."

(c) Add the following subsection "(f)" and designate the present subsection "(f)" as subsection "(g)":

"Federal election."

"(f) When used in subsection (a) or (c) of this section, the words 'Federal election' shall mean any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives."

(d) Add the following subsection "(h)":

Suits by Attorney General.

"(h) In any proceeding instituted by the United States in any district court of the United States under this section in which the Attorney General requests a finding of a pattern or practice of discrimination pursuant to subsection (e) of this section the Attorney General, at the time he files the complaint, or any defendant in the proceeding, within twenty days after service upon him of the complaint, may file with the clerk of such court a request that a court of three judges be convened to hear and determine the entire case. A copy of the request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

Appeals.

Designation of judges.

"In any proceeding brought under subsection (c) of this section to enforce subsection (b) of this section, or in the event neither the Attorney General nor any defendant files a request for a three-judge court in any proceeding authorized by this subsection, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or, in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

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

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

Equal access.

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

Establishments affecting interstate commerce.

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

Lodgings.

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

Restaurants, etc.

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

Theaters, stadiums, etc.

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

Other covered establishments.

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

Operations affecting commerce criteria.

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

"Commerce."

Support by State action.

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

Private establishments.

(e) The provisions of this title shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available

to the customers or patrons of an establishment within the scope of subsection (b).

Entitlement.

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

Interference.

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

Restraining orders, etc.

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

Attorneys' fees.

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

Notification of State.

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

Community Relations Service.

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

Hearings and investigations.

SEC. 205. The Service is authorized to make a full investigation of any complaint referred to it by the court under section 204(d) and may hold such hearings with respect thereto as may be necessary.

The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

Suits by Attorney General.

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

(b) In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending.

Designation of judges.

Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

Appeals.

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

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

District courts, jurisdiction.

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

Enforcement.

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

TITLE III—DESEGREGATION OF PUBLIC FACILITIES

Suits by Attorney General.

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

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

Costs, fees.

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

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

62 Stat. 749.

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

TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

DEFINITIONS

SEC. 401. As used in this title—

"Commissioner."

(a) "Commissioner" means the Commissioner of Education.

"Desegregation."

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

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

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

SURVEY AND REPORT OF EDUCATIONAL OPPORTUNITIES

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

TECHNICAL ASSISTANCE

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

TRAINING INSTITUTES

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

GRANTS

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

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

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

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available Conditions.

for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

PAYMENTS

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

SUITS BY THE ATTORNEY GENERAL

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

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

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

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

Persons unable to initiate suits.

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

"Parent." "Complaint."

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

62 Stat. 749.

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

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

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

TITLE V—COMMISSION ON CIVIL RIGHTS

SEC. 501. Section 102 of the Civil Rights Act of 1957 (42 U.S.C. 1976a; 71 Stat. 634) is amended to read as follows:

"RULES OF PROCEDURE OF THE COMMISSION HEARINGS

Publication in Federal Register.

"SEC. 102. (a) At least thirty days prior to the commencement of any hearing, the Commission shall cause to be published in the Federal Register notice of the date on which such hearing is to commence, the place at which it is to be held and the subject of the hearing. The Chairman, or one designated by him to act as Chairman at a hearing of the Commission, shall announce in an opening statement the subject of the hearing.

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

Right of counsel.

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

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

Executive sessions.

"(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony. In the event the Commission determines to release or use such evidence or testimony in such manner as to reveal publicly the identity of the person defamed, degraded, or incriminated, such evidence or testimony, prior to such public release or use, shall be given at a public session, and the Commission shall afford such person an opportunity to appear as a voluntary witness or to file a sworn statement in his behalf and to submit brief and pertinent sworn statements of others. The Commission shall receive and dispose of requests from such person to subpena additional witnesses.

"(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

Testimony, release restrictions.

"(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public

sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

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

Transcript copies.

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

Witness fees.

"(j) A witness attending any session of the Commission shall receive $6 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 10 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $10 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

Subpena of witnesses.

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

Organization statement, etc. Publication in Federal Register.

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

SEC. 502. Section 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a); 71 Stat. 634) is amended to read as follows:

Payments to members.

"SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $75 per day for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b-2; 60 Stat. 808)."

75 Stat. 339, 340.

SEC. 503. Section 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(b); 71 Stat. 634) is amended to read as follows:

"(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with the provisions of the Travel Expenses Act of 1949, as amended (5 U.S.C. 835–42; 63 Stat. 166)." 75 Stat. 339, 340.

SEC. 504. (a) Section 104(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975c(a); 71 Stat. 635), as amended, is further amended to read as follows:

"DUTIES OF THE COMMISSION

"SEC. 104. (a) The Commission shall—

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

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

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

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

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

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

(b) Section 104(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975c(b); 71 Stat. 635), as amended, is further amended by striking out the present subsection "(b)" and by substituting therefor: 77 Stat. 271.

"(b) The Commission shall submit interim reports to the President and to the Congress at such times as the Commission, the Congress or the President shall deem desirable, and shall submit to the President and to the Congress a final report of its activities, findings, and recommendations not later than January 31, 1968." Reports to the President and Congress.

SEC. 505. Section 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(a); 71 Stat. 636) is amended by striking out in the last sentence thereof "$50 per diem" and inserting in lieu thereof "$75 per diem."

Powers.

SEC. 506. Section 105(f) and section 105(g) of the Civil Rights Act of 1957 (42 U.S.C. 1975d (f) and (g); 71 Stat. 636) are amended to read as follows:

"(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 102 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman. The holding of hearings by the Commission, or the appointment of a subcommittee to hold hearings pursuant to this subparagraph, must be approved by a majority of the Commission, or by a majority of the members present at a meeting at which at least a quorum of four members is present.

Ante, p. 250.

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

SEC. 507. Section 105 of the Civil Rights Act of 1957 (42 U.S.C. 1975d; 71 Stat. 636), as amended by section 401 of the Civil Rights Act of 1960 (42 U.S.C. 1975d(h); 74 Stat. 89), is further amended by adding a new subsection at the end to read as follows:

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

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

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

Rules governing grants, loans, and contracts.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.

Approval by President.

No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express find-

ing on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Termination.

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

Judicial review.

60 Stat. 243; 5 USC 1009.

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

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

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

"Person."

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hun-

"Employer."

68A Stat. 163; 74 Stat. 534. 26 USC 501.

dred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers: *Provided further*, That it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex or national origin and the President shall utilize his existing authority to effectuate this policy.

"Employment agency."

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

"Labor organization."

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

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 716, (B) seventy-five or more during the second year after such date or fifty or more during the third year, or (C) twenty-five or more thereafter, and such labor organization—

61 Stat. 136.
29 USC 167.
44 Stat. 577;
49 Stat. 1189.
45 USC 151.

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

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

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

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

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an

industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

"Employee." (f) The term "employee" means an individual employed by an employer.

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

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

73 Stat. 519. 29 USC 401 note.

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

67 Stat. 462. 43 USC 1331 note.

EXEMPTION

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

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

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

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

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

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

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

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

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any

way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

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

Training programs.

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

Exceptions.

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

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

64 Stat. 987. 50 USC 781 note.

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

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

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

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)). 77 Stat. 56. 29 USC 206.

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

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

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on reli-

gion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Establishment.

SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

Term of office.

Post, p. 406.
5 USC 1071 note.

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

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

Reports to the President and Congress.

(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(e) The Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2201–2209), is further amended—

70 Stat. 736.
5 USC 2201 note.

(1) by adding to section 105 thereof (5 U.S.C. 2204) the following clause:

"(32) Chairman, Equal Employment Opportunity Commission"; and

70 Stat. 737.
5 USC 2205.

(2) by adding to clause (45) of section 106(a) thereof (5 U.S.C. 2205(a)) the following: "Equal Employment Opportunity Commission (4)."

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

Powers.

(g) The Commission shall have power—

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

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

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

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

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

(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to advise, consult, and assist the Attorney General on such matters.

(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court.

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

(j) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 9 of the Act of August 2, 1939, as amended (the Hatch Act), notwithstanding any exemption contained in such section. 53 Stat. 1148; 64 Stat. 475; 5 USC 1181.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expira- Legal proceedings.

tion of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

Time requirements.

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

(d) A charge under subsection (a) shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or the efforts of the Commission to obtain voluntary compliance.

Courts. Jurisdiction.

(f) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall

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

62 Stat. 937. 74 Stat. 912; 76A Stat. 599.

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex or national origin or in violation of section 704(a).

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

47 Stat. 70.

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

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

62 Stat. 929. 65 Stat. 726; 72 Stat. 348.

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

1770. Costs, fees.

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

Suits by Attorney General.

person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

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

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

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

EFFECT ON STATE LAWS

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

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

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

Agreements, State and local agencies.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, utilize the services of such agencies and their employees and, notwithstand-

ing any other provision of law, may reimburse such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements and under which no person may bring a civil action under section 706 in any cases or class of cases so specified, or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

Records.

(c) Except as provided in subsection (d), every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may (1) apply to the Commission for an exemption from the application of such regulation or order, or (2) bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.

Exceptions.

(d) The provisions of subsection (c) shall not apply to any employer, employment agency, labor organization, or joint labor-management committee with respect to matters occurring in any State or political subdivision thereof which has a fair employment practice law during any period in which such employer, employment agency, labor organization, or joint labor-management committee is subject to such law, except that the Commission may require such notations on records which such employer, employment agency, labor organization, or joint labor-management committee keeps or is required to keep as are necessary because of differences in coverage or methods of enforcement between the State or local law and the provisions of this title. Where an employer is required by Executive Order 10925, issued March 6, 1961, or by any other Executive order prescribing fair employment practices for Government contractors and subcontractors, or by rules or regulations issued thereunder, to file reports relating to his employment practices with any Federal agency or committee, and he is substantially in compliance with such requirements, the Commission shall not require him to file additional reports pursuant to subsection (c) of this section.

3 CFR, 1961 Supp., p. 86.
5 USC 631 note.

Prohibited disclosures.

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

INVESTIGATORY POWERS

SEC. 710. (a) For the purposes of any investigation of a charge filed under the authority contained in section 706, the Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation.

(b) If the respondent named in a charge filed under section 706 fails or refuses to comply with a demand of the Commission for permission to examine or to copy evidence in conformity with the provisions of section 709(a), or if any person required to comply with the provisions of section 709 (c) or (d) fails or refuses to do so, or if any person fails or refuses to comply with a demand by the Commission to give testimony under oath, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply with the provisions of section 709 (c) or (d) or to comply with the demand of the Commission, but the attendance of a witness may not be required outside the State where he is found, resides, or transacts business and the production of evidence may not be required outside the State where such evidence is kept.

Petitions.

(c) Within twenty days after the service upon any person charged under section 706 of a demand by the Commission for the production of documentary evidence or for permission to examine or to copy evidence in conformity with the provisions of section 709(a), such person may file in the district court of the United States for the judicial district in which he resides, is found, or transacts business, and serve upon the Commission a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this title or with the limitations generally applicable to compulsory process or upon any constitutional or other legal right or privilege of such person. No objection which is not raised by such a petition may be urged in the defense to a proceeding initiated by the Commission under subsection (b) for enforcement of such a demand unless such proceeding is commenced by the Commission prior to the expiration of the twenty-day period, or unless the court determines that the defendant could not reasonably have been aware of the availability of such ground of objection.

(d) In any proceeding brought by the Commission under subsection (b), except as provided in subsection (c) of this section, the defendant may petition the court for an order modifying or setting aside the demand of the Commission.

NOTICES TO BE POSTED

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

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

VETERANS' PREFERENCE

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

RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act. 60 Stat. 237. 5 USC 1001 note.

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

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of section 111, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. 62 Stat. 688.

SPECIAL STUDY BY SECRETARY OF LABOR

SEC. 715. The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1965, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable. Report to Congress.

EFFECTIVE DATE

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

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

Presidential conferences.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

Membership.

TITLE VIII—REGISTRATION AND VOTING STATISTICS

Survey.

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

68 Stat. 1013, 1022; 76 Stat. 922. 13 USC 9, 211-241.

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

63 Stat. 102.

SEC. 901. Title 28 of the United States Code, section 1447(d), is amended to read as follows:

"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

62 Stat. 938.

SEC. 902. Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on ac-

count of race, color, religion, or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

TITLE X—ESTABLISHMENT OF COMMUNITY RELATIONS SERVICE

SEC. 1001. (a) There is hereby established in and as a part of the Department of Commerce a Community Relations Service (hereinafter referred to as the "Service"), which shall be headed by a Director who shall be appointed by the President with the advice and consent of the Senate for a term of four years. The Director is authorized to appoint, subject to the civil service laws and regulations, such other personnel as may be necessary to enable the Service to carry out its functions and duties, and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Director is further authorized to procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55(a)), but at rates for individuals not in excess of $75 per diem.

Post, p. 400.
5 USC 1071 note.

(b) Section 106(a) of the Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2205(a)), is further amended by adding the following clause thereto:

70 Stat. 737.

"(52) Director, Community Relations Service."

Functions.

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

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

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

Report to Congress.

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

TITLE XI—MISCELLANEOUS

Trial by jury.

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

Exceptions.

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

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

Double jeopardy.

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

Attorney General, etc., authority.

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

States' authority.

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

Appropriation.

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

Separability clause.

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

Approved July 2, 1964.