

(H. B. 2185)

**(No. 250)**

(Approved August 13, 2008)

## **AN ACT**

To amend Act No. 100 of June 30, 1959, as amended, in order to adjust the penalties for violations of said Act to those established in Act No. 149 of June 18, 2004, as amended, known as the “Penal Code of the Commonwealth of Puerto Rico.”

### **STATEMENT OF MOTIVES**

Act No. 100 of June 30, 1959, as amended, was created for the purpose of protecting employees and job candidates from discrimination by their employers or labor unions, in the job as well as in learning and training opportunities because of their age, race, color, sex, social or national origin, social status, political or religious beliefs, and to impose civil and criminal liability for such discrimination.

Similar to other labor laws, Act No. 100, *id.*, imposes to the employer a criminal sanction concurrently with a civil penalty. The criminal sanction under said Act is only imposed when the employer is found guilty of the crime charged by a jury beyond any reasonable doubt.

Section 191 of Act No. 149 of June 18, 2004, as amended, known as the “Penal Code of the Commonwealth of Puerto Rico,” included illegal discrimination as a crime. The aforementioned Section states that, “any person who without any legal grounds, because of political ideas, religious beliefs, race, color of skin, sex, social status, or national or ethnic origin,” shall incur a misdemeanor if he/she performs any of the acts listed therein.

Section 16 of the Penal Code sets forth that “A misdemeanor is a crime punishable by an individualized fine of up to five thousand (5,000) dollars or imprisonment for up to ninety (90) days.” It also establishes that “misdemeanors classified in special laws maintain the classification of misdemeanor and the corresponding punishment if they entail a punishment that does not exceed six (6) months or a fine that does not exceed five thousand (5,000) dollars, or both penalties.”

Thus, nothing compels us to adjust to the Penal Code the penalties set forth in special laws. However, we should bear in mind that said Code provides judges with greater discretion at the time of imposing fines to those who incur in discrimination. We believe that granting this same discretion to judges when evaluating cases under Act No. 100, *id.*, without failing to recognize that it is a special law, would provide uniformity to the punishment established for a discrimination offense.

Furthermore, it must be recognized that in today’s society, a sum of five hundred (500) dollars would seem ridiculous to deter those who intend to incur the conduct prohibited by Act No. 100, *id.*

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.- Section 1 of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

“Section 1.- Discrimination because of age, race, color, sex, social or national origin or social condition.

Any employer who discharges, lays off or discriminates against an employee regarding his/her salary, wage, pay or remuneration, terms, rank, conditions or privileges of his/her job, or who fails or refuses to hire or rehire a person, or who limits or classifies his/her employees in any way which tends to deprive a person of employment opportunities, or that affects

his/her status as employee because of his/her age, as defined below, race, color, sex, social or national origin, social condition, political affiliation or political or religious ideology of the employee or applicant for employment:

(a) ...

(1) ...

(2) ...

(3) ...

(b) he/she shall also incur a misdemeanor, and upon conviction, shall be punished by a fine of up to five thousand (5,000) dollars or by imprisonment in jail for a term not greater than ninety (90) days, or by both penalties, at the discretion of the court.

...”

Section 2.- Section 1 of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

“Section 1.- Discrimination because of age, race, color, religion, sex, social or national origin, social condition -Publishing; Announcements.

It shall be unlawful for any employer or organization to publish or circulate, or allow the publication or circulation of announcements, notices or any other form of diffusion, denying employment opportunities, directly or indirectly, to any person indiscriminately, because of his/her race, color, sex, marital status, social or national origin, social condition, political affiliation or political or religious ideology, or without just cause, because of age, or by establishing limitations which may exclude any person because of his/her race, color, sex, marital status, social or national origin, social condition, political affiliation or political or religious ideology, or because of his/her age, without just cause.

Any employer or labor organization violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of up to five thousand (5,000) dollars or by imprisonment in jail, for a term of not more than ninety (90) days, or both penalties, in the discretion of the court.”

Section 3.- Section 2 of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

“Section 2.- Discrimination because of age, race, color, religion, sex, social or national origin, social condition - Discrimination by labor union.

Any labor organization which limits, divides or classifies its members that deprives or tends to deprive anyone who aspires or is entitled to become a member of said organization, of an employment opportunity because of age, race, color, religion, sex, marital status, social or national origin, political affiliation, political beliefs or social condition:

(a) ...

(1) ...

(2) ...

(3) ...

(b) shall also be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of up to five thousand (5,000) dollars, or by imprisonment in jail for a term of not more than ninety (90) days, or both penalties, in the discretion of the court.

...”

Section 4.- Section 2 of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

“Section 2a.- Discrimination because of age, race, color, religion, sex, social or national origin, social condition - Apprenticeship, training or retraining.

Any employer, labor organization or joint labor-management committee that controls apprenticeship, training or retraining programs, including on-the-job training programs, which discriminates against a person because of his/her race, color, sex, marital status, social origin or condition, political affiliation, political or religious ideology, or because of his/her advanced age, without just cause to be admitted to, or employed in any apprenticeship or other training program:

(a) ...

(1) ...

(2) ...

(3) ...

(c) shall also be guilty of a misdemeanor and upon conviction, be punished by a fine of up to five thousand (5,000) dollars or by imprisonment in jail for a term not more than ninety (90) days, or by both penalties, in the discretion of the court.

...”

Section 4.- Section 3a of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

“Section 3a.- Records and Reports.

Every employer and labor union shall keep and maintain for periods of time:

(a) ...

(b) ...

Any employer or labor union violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction punished by a fine of up to five thousand dollars (5,000) or imprisonment in jail for a term of not more than ninety (90) days, or both penalties, in the discretion of the Court.”

Section 5.- Section 5-A of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

“Section 5-A .-Posting of excerpt

...

Any employer or labor union violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction punished by a fine of up to five thousand dollars (5,000), or imprisonment in jail for a term not more than ninety (90) days, or both penalties, in the discretion of the court for every violation incurred.”

Section 6.- Effectiveness

This Act shall take effect thirty (30) days after its approval.

## **CERTIFICATION**

I hereby certify to the Secretary of State that the following **Act No. 250 (H. B. 2185)** of the **7<sup>th</sup> Session of the 15<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to amend Act No. 100 of June 30, 1959, as amended, in order to adjust the penalties for violations of said Act to those established in Act No. 149 of June 18, 2004, as amended, known as the “Penal Code of the Commonwealth of Puerto Rico.”

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 13<sup>th</sup> of November of 2009.

Solange I. De Lahongrais, Esq.  
Director