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Second Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Equal Opportunity Act,
Chap. 22:03

THE EQUAL OPPORTUNITY (AMENDMENT) (NO. 2)
BILL, 2011

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Equal Opportunity Act, Chap. 22:03 to prohibit discrimination on the grounds of age and a person's HIV/AIDS status, to remove the requirement of intention, motive or *mala fides* in the establishment of direct or indirect discrimination, to expand the categories of complainants and to allow the Attorney General to assist the Tribunal in certain circumstances as *amicus curiae*.

This Bill consists of twenty-six clauses.

Clauses 1 and 2 provide for preliminary matters.

Clause 3 would amend certain definitions in the Act. The definition of "family" would be amended to include relationships of the half-blood, marriage and cohabitants. The definition of "marital status" would be amended to include a cohabitant. The definition of "status" would be amended to include the grounds of age and the HIV/AIDS status of a person. The clause would also insert definitions of "employer" and "HIV/AIDS status".

Clause 4 would insert a new section 3A to impose a general duty on the Commission to encourage and support the development of a society where persons have an equal opportunity to participate in society and where there is respect for equality and human rights.

Clause 5 would repeal and substitute section 5 of the Act to set out the meaning of discrimination for the purposes of the Act. Discrimination would occur where the discriminator directly or indirectly discriminates against the aggrieved person by reason of his status or for any other reason, adversely affects the enjoyment of rights and freedoms or results in a breach of law, regulation, rule, policy, guideline or principle of natural justice. The discriminator must treat the aggrieved person less favourably than another person in circumstances that are the same or not materially different.

Clause 6 would insert a definition of "relative" in section 13.

Clause 7 would insert a new section 14A to impose a positive duty on an alleged discriminator to make such adjustments as are reasonable for disabled persons.

Clause 8 would amend section 18A of the Act to provide a defence where a failure to make reasonable adjustments would impose unjustifiable hardship in the circumstances.

Clause 9 would amend section 26 of the Act to delete the word “Vice-Chairman” and substitute the word “Deputy-Chairman” and would also make an editorial change to subsection (2).

Clause 10 would amend section 27 of the Act to include the words “offensive behaviour and victimisation”. This clause would amend subsection (1)(c) to allow the Commission to submit proposals for amendment to the Act.

Clause 11 would amend section 28 of the Act in subsection (2)(b) to insert the words “in the public service” after the word “emolument”, this clarifies that the appointment of a Commissioner shall be terminated if he is nominated, elected or appointed to any other office of emolument in the public service. This clause would also amend subsection (5) to remove the requirement for the Minister of Finance to approve the salary and other allowances of Commissioners which may be recommended by the Salaries Review Commission; bearing in mind that it is the Cabinet that approves recommendations of the Salaries Review Commission.

Clause 12 would amend section 30 of the Act to enable the Commission to accept complaints that have been lodged after six months from the date of the alleged act of discrimination, where the Commission is satisfied that it is reasonable to do so. Clause 12 would also insert a new subsection (4) to enable the Commission to accept complaints for alleged acts of discrimination during the period 31st January, 2001 and 21st April, 2008 (the date when the Act came into force to the date of the appointment of the Commission). Persons would be able to lodge complaints of alleged discrimination which occurred during that specified period, up to one year after the commencement of the Equal Opportunity (Amendment) Act, 2011. This provision would, therefore, enable aggrieved persons to seek redress for alleged discrimination that occurred during the period when the Act had not been operationalised.

Clause 13 would insert a new section 30A to extend the category of complainants to third parties who are directly concerned about alleged discrimination, victimisation or offensive behaviour to bring a complaint to the Commission. This provision would also allow complaints to be made in the public interest. This clause would also empower the Commission to initiate an inquiry in the absence of a specific complaint; a new section 30B would be inserted to impose a duty on the Commission to assist complainants.

Clause 14 would insert a new section 32A to empower the Commission to seek interim relief from the Tribunal after receiving a complaint.

Clause 15 would insert a new section 33A to allow the Commission to issue non-compliance certificates to persons where a request has not been complied with; this clause would empower the Commission to make an *ex parte* application to the Tribunal where there is non-compliance.

Clause 16 would amend section 34 of the Act to allow a complainant who is dissatisfied with a finding of the Commission that there is no evidence of discrimination, to request that the complaint be referred to the Tribunal within forty-two (42) days of that decision.

Clause 17 would amend section 35(1) of the Act to delete the word “finds” and substitute the word “considers”.

Clause 18 would amend section 36 of the Act to reflect the insertion of the new section 33A.

Clause 19 would amend section 38 of the Act to allow for the Commission to deal with breaches of agreements reached by conciliation.

Clause 20 would amend section 39 of the Act to provide for the Commission to initiate proceedings before the Tribunal twenty-eight days after conciliation has been unsuccessful.

Clause 21 would amend section 41 of the Act to enhance the jurisdiction of the Tribunal to empower it to refer complaints to the Commission for conciliation or further conciliation and to grant interim relief.

Clause 22 would amend section 43 of the Act to provide for the office of Chairman of the Tribunal to be a pensionable office for the purposes of the Pensions Act. This clause would also insert an oath of office for the Chairman as Schedule 1A.

Clause 23 would insert a new section 44A to allow the Attorney General to appear before the Tribunal *amicus curiae* in certain proceedings before the Tribunal.

Clause 24 would make an editorial amendment to section 45(2).

Clause 25 would insert a new Schedule 1A of the Act to provide an Oath of Office for the Chairman of the Equal Opportunity Tribunal.

Clause 26 would insert a new Schedule 3 to provide a new complaint form.

THE EQUAL OPPORTUNITY (AMENDMENT) (No. 2)
BILL, 2011

Arrangement of Clauses

Clause

1. Short title
2. Interpretation Chap. 22:03
3. Section 3 amended
4. Section 3A inserted
5. Section 5 amended
6. Section 13 amended
7. Section 14A inserted
8. Section 18A amended
9. Section 26 amended
10. Section 27 amended
11. Section 28 amended
12. Sections 30 amended
13. Sections 30A and 30B inserted
14. Section 32A inserted
15. Section 33A inserted
16. Section 34 amended
17. Section 35 amended
18. Section 36 amended
19. Section 38 amended
20. Section 39 amended
21. Section 41 amended
22. Section 43 amended
23. Section 44A inserted
24. Section 45 amended
25. Schedule 1A inserted
26. Schedule 3 inserted

BILL

AN ACT to amend the Equal Opportunity Act,
Chap. 22:03

[, 2011]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:

1. This Act may be cited as the Equal Opportunity Short title
(Amendment) Act, 2011.
2. In this Act, “the Act” means the Equal Opportunity Interpretation
Act. Chap. 22:03

Section 3
amended

3. Section 3 of the Act is amended—

(a) by inserting in the appropriate alphabetical sequence, the following definitions:

“ “employer” includes—

- (a) a person who employs another person under a contract of service or a contract for services;
- (b) a person, state entity, statutory body, Service Commission or public officer who has the power to appoint persons to hold or act in offices, including power to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices and to enforce standards of conduct on such officers;
- (c) a person, state entity or public officer who determines the terms and conditions of employment of another person; or
- (d) a person, state entity, statutory body or public officer who has the power to recommend persons to hold or act in offices, including power to recommend appointments, promotions and transfers, and to recommend disciplinary control over persons

holding or acting in such offices and to enforce standards of conduct on such officers;

“HIV/AIDS status” includes actual or perceived presence in a person’s body of the Human Immunodeficiency Virus (HIV) or symptoms of Acquired Immune Deficiency Syndrome (AIDS), as well as adverse assumptions based on such presence and symptoms;”;

(b) in the definition of “family”, by inserting after the word “cousins” the words “, including relationships of the half-blood, marriage and cohabitants as defined in the Cohabital Relationships Act”;

Chap. 45:55

(c) in the definition of “marital status”,—

(i) in paragraph (d), by deleting the word “or”; and

(ii) by inserting after paragraph (e) the following paragraph:

“(f) a cohabitant as defined in the Cohabital Relationships Act;” and

(d) in the definition of “status”—

(i) at the end of paragraph (f), by deleting the word “or”; and

(ii) by deleting paragraph (g) and substituting the following paragraphs:

“(g) the age;

(h) the HIV/AIDS status; or

(i) any disability,

of that person;”.

Section 3A
inserted

4. The Act is amended by inserting after section 3, the following section:

“General
duty of
Commission

3A. The Commission shall exercise its functions under this Act with a view to encouraging and supporting the development of a society in which—

- (a) a person’s ability to achieve his potential is not limited by prejudice or discrimination;
- (b) there is respect for and protection of human rights;
- (c) there is respect for the dignity and worth of each person;
- (d) each person has an equal opportunity to participate in society; and
- (e) there is mutual respect among groups based on understanding and valuing the shared respect for equality and human rights.”.

Section 5 amended

5. Section 5 of the Act is repealed and the following section is substituted:

“Discrimination

5. (1) A person (“the discriminator”) directly or indirectly discriminates against another person (“the aggrieved person”) where the discriminator treats the aggrieved person in relevant circumstances, that are the same or are not materially different, less favourably than the discriminator treats another person whether or not such treatment—

- (a) is on the basis of the status of the aggrieved person or for any other reason;
- (b) adversely affects the equal enjoyment of a person’s rights and freedoms; or

(c) results from a breach of law, regulation, rule, policy, guideline or principle of natural justice.

(2) For the purposes of this Act, it is not necessary to prove motive, intention or *mala fides* to establish direct or indirect discrimination.”.

6. Section 13 of the Act is amended by inserting after Section 13 amended subsection (2), the following subsection:

“ (3) In this section, “relative” includes a person who is—

- (a) adopted by the family;
- (b) dependent on the family; or
- (c) a member of the household of the family.”.

7. The Act is amended by inserting after section 14, Section 14A inserted the following section:

“Discrimination by reason of disability

14A. For the purposes of this Act, a discriminator discriminates against an aggrieved person on the ground of a disability where—

- (a) the discriminator does not make, or proposes not to make, reasonable adjustments for the person; and
- (b) the failure to make the reasonable adjustments has, or would have, the effect that the aggrieved person is, because of the disability, treated less favourably than a person without the disability would be treated, in circumstances that are not materially different.”.

Section 18A
amended

8. The Act is amended in section 18A by inserting after subsection (1) the following subsection:

“ (1A) Section 14A does not render it unlawful to refuse or fail to make reasonable adjustments for a person where it would impose unjustifiable hardship in the circumstances.”.

Section 26 amended

9. Section 26 of the Act is amended—

(a) in subsection (1), by deleting the word “Vice-Chairman” and substituting the word “Deputy Chairman”; and

(b) in subsection (2), by deleting the word “either” and substituting the word “any”.

Section 27 amended

10. Section 27 of the Act is amended—

(a) by inserting the words “, offensive behaviour and victimisation” after the word “discrimination”, wherever it occurs; and

(b) in paragraph (c)—

(i) by inserting after the words “the Minister, or”, the words “as the Commission”; and

(ii) by deleting the word “otherwise”.

Section 28 amended

11. Section 28 of the Act is amended—

(a) in subsection (2)(b), by inserting after the word “emolument”, the words “in the public service”; and

(b) in subsection (5), by deleting the words “and approved by the Minister to whom responsibility for finance is assigned”.

Section 30 amended

12. Section 30 of the Act is amended—

(a) in subsection (3)—

(i) by deleting the words “, in exceptional circumstances,”; and

(ii) by inserting after the word “discrimination” the words “if it is satisfied that it is reasonable to do so”; and

(b) by inserting after subsection (3), the following subsection:

“ (4) For the avoidance of doubt and notwithstanding any law to the contrary, where an alleged act of discrimination occurred during the period 31st January 2001 to 21st April 2008, the Commission may accept a complaint lodged after that period but no later than one year after the date of commencement of the Equal Opportunity (Amendment) Act, 2011.”.

13. The Act is amended by inserting after section 30, Sections 30A and 30B inserted the following sections:

“Categories of complainants 30A. (1) The following persons may lodge a complaint with the Commission:

- (a) a person against whom the alleged discrimination, victimisation or offensive behaviour was directed;
- (b) a person who is a member of a class of persons against whom alleged similar discrimination, victimisation or offensive behaviour was directed; or
- (c) an organisation against which the alleged discrimination, victimisation or offensive behaviour was directed.

(2) For the purposes of this Act, where the Commission is satisfied that investigation of a complaint of discrimination is justifiable in the public interest, it may investigate such complaint whether or not the complainant is directly affected by the alleged discrimination.

(3) In determining whether a complaint is justifiable in the public

interest the Commission may take into account any relevant factor, including—

- (a) the need to exclude the mere busybody;
- (b) the importance of vindicating the rule of law;
- (c) the importance of the issue raised;
- (d) the genuine interest of the complainant in the matter;
- (e) the expertise of the complainant and the ability of the complainant to adequately present the complaint;
- (f) the nature of the act against which relief is sought;
- (g) the means of the complainant;
- (h) the willingness of any other aggrieved person to lodge a complaint on the issue raised;
- (i) the nature and strength of the evidence in support of the complaint; or
- (j) the merits of the complaint.

(4) A person who wishes to make a complaint shall do so by using the form set out in Schedule 3.

Schedule 3

Duty to assist

30B. The Commission, where appropriate, shall assist any person who wishes to make a complaint under section 30A.”.

Section 32A inserted

14. The Act is amended by inserting after section 32, the following section:

“Interim relief 32A. (1) At any time after a complaint is lodged with the Commission, the Tribunal may grant an interim injunction to maintain—

- (a) the status quo, as it existed immediately before the complaint was lodged; or

(b) the rights of a complainant or respondent.

(2) An application for an injunction may be made by the Commission, a complainant or respondent.”.

15. The Act is amended by inserting after section 33, Section 33A inserted the following section:

“Non-compliance

33A.(1) Where there is non-compliance with a request made under section 33 or section 35(2), the Commission may issue a certificate of non-compliance to the relevant person or respective authority.

(2) The Commission may, after the expiration of twenty-one days of the issuance of a certificate of non-compliance, make an *ex parte* application to the Tribunal for an order directing such person or authority to comply with the Act and the Tribunal may in addition to making an order, impose such conditions as it thinks fit.”.

16. Section 34 of the Act is amended—

Section 34 amended

- (a) by inserting after the word “complainant” the words “and the proposed respondent”;
- (b) by inserting before the existing provision, the subsection designation “(1)”; and
- (c) by inserting the following subsection:

“ (2) Where a complainant is dissatisfied with the decision of the Commission that there is no evidence of discrimination, he may request, within forty-two days of the decision, that the Commission refer the complaint to the Tribunal.”.

17. Section 35(1) Act is amended by deleting the word “finds” after the word “Commission” and substituting the word “considers”. Section 35 amended

- Section 36 amended **18.** Section 36 of the Act is amended by deleting the words “a notice under sections 33 and 35(2),” after the words “any requirement of” and substituting the words “an order of the Tribunal made under section 33A(2) commits an offence and”.
- Section 38 amended **19.** Section 38 of the Act is amended by—
- (a) inserting the word “(1)” after the words “38.”;
 - (b) deleting all the words appearing after the words “written agreement”; and
 - (c) inserting the following subsection:
 - “ (2) Where a party is in breach of an agreement referred to in subsection (1), the Commission may at the request of the aggrieved party, initiate proceedings before the Tribunal.”.
- Section 39 amended **20.** Section 39(1) of the Act is amended—
- (a) in the *chapeau*, by inserting after the words “attempt,” the words “or twenty-eight days have elapsed since the conciliation process commenced, and the process has not been successful,”; and
 - (b) in paragraph (c), by inserting after the word “publish” the words “a notice of”.
- Section 41 amended **21.** Section 41 of the Act is amended—
- (a) in subsection (2), by deleting the words “Judge of status equal to that of a High Court Judge, who shall be the Chairman,” and substituting the word “Chairman”;
 - (b) in subsection (4)—
 - (i) by deleting the word “and” at the end of paragraph (b); and
 - (ii) by repealing paragraph (c) and substituting the following paragraphs:
 - “(c) to refer a complaint to the Commission for conciliation or further conciliation;

- (d) to grant interim relief pursuant to an application made under section 32A; and
- (e) to make declarations, orders and awards of compensation as it thinks fit.”.

22. Section 43 of the Act is amended—

Section 43
amended

- (a) by repealing subsection (2);
- (b) in subsection (4), by deleting the words “and approved by the Minister to whom responsibility for finance is assigned”;
- (c) in subsection (6) by—
 - (i) deleting the word “offices” and substituting the word “office”; and
 - (ii) deleting the words “and lay-assessor of the Tribunal are pensionable offices” and substituting the words “of the Tribunal is a pensionable office”; and
- (d) by inserting after subsection (6), the following subsection:
 - “ (6A) The Chairman shall, before entering upon the duties of his office, take the oath or make the affirmation set out in Schedule 1A.”.

23. The Act is amended by inserting after section 44, the following section:

Section 44A
inserted

“*Amicus curiae* function of Attorney General

44A. The Attorney General shall have the function of assisting the Tribunal as *amicus curiae* in the following proceedings:

- (a) proceedings in which the Attorney General considers that the relief claimed may affect to a significant extent rights of persons who are not parties to the proceedings; or

(b) proceedings that involve matters in the public interest.”.

Section 45 amended **24.** Section 45(2) of the Act is amended by deleting the words “subsection (2)” and substituting the words “subsection (1)”.

Schedule 1A inserted **25.** The Act is amended by inserting after Schedule 1, the following Schedule:

SCHEDULE 1A

“[Section 43(7)]

OATH (OR AFFIRMATION) OF OFFICE FOR CHAIRMAN OF THE TRIBUNAL

I, A. B., having been appointed as Chairman of the Equal Opportunity Tribunal do swear by (solemnly affirm) that I will bear true faith and allegiance to Trinidad and Tobago and will uphold the Constitution and the law, and I will conscientiously, impartially and to the best of my knowledge, judgement and ability discharge the functions of my office and do right to all manner of people after the laws and usages of Trinidad and Tobago without fear or favour, affection or ill-will.”.

Schedule 3 inserted **26.** The Act is amended by inserting after Schedule 2, the following Schedule:

“SCHEDULE 3

(Section 30A)

COMPLAINT FORM

To be filled out by complainant or his delegate.

Part A—About you (The Complainant)

Name: oMr. oMrs. oMiss. oMs. oDr. oProf.

.....

Address:

.....
.....

Contact Numbers: Home: Mobile:

Fax: Other:

e-mail:

<p>Fill out this box only if you are complaining on behalf of someone else</p> <p>Name of that person:</p> <p>What is your relationship to that person?</p>
<p>Fill out this box only if someone is assisting you with the complaint — for example, an Attorney-at-law or a union representative</p> <hr/> <p>Name of representative:</p> <p>Organisation:</p> <p>Postal address:</p> <p>Contact numbers: Home: Mobile: Fax:</p> <p>Office: e-mail:</p>

If you require assistance in completing this form please contact: 625-5815

Part B — Your complaint

Who are you complaining about? (The Respondent)

1. Name/Organisation:

Address:

.....

Contact numbers: Home:

Mobile:

Fax: Office:

e-mail:

What is this person's/organisation's relationship to you?

.....

.....

2. Name/organisation:

Address:

.....

Contact numbers: Home: Mobile:

Fax: Office:

e-mail:

What is this person's/organisation's relationship to you?

.....
.....

(a) My complaint relates to:

(i) Discrimination/Victimisation in:

- Employment
- Education
- Provision of goods and services
- Provision of accommodation
- Some other reason (please state)

.....

(ii) I have been discriminated/victimised because of:

- Sex
- Race
- Ethnicity
- Origin (this includes geographical origin)
- Religion
- Marital status
- Age
- HIV/AIDS status
- Disability
- Some other reason (please state)

.....

(b) Offensive behaviour

(c) Other (please state)

.....

When did this happen? (day/month/year)

Part C — Further information

Supporting evidence

Please attach copies of any documents that may assist in investigating the complaint. If you are unable to provide this information, please indicate where such information may be obtained.

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Please indicate the remedy you are seeking?

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Please indicate whether you have made a complaint on these facts to another agency?

(For example—a workers trade union, the Ombudsman or the Industrial Court).

If so, you must provide details of the complaint, the agency it was made to and any outcome. You should also attach copies of any letters you have received from the agency.

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18

Passed in the Senate this day of ,
2011.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 30 of 2011

SECOND SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Equal Opportunity
Act, Chap. 22:03

Received and read the

First time

Second time

Third time