

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2217 Session of
1995

INTRODUCED BY LEH, REBER, WOGAN, FARGO, NICKOL, SEMMEL,
FAIRCHILD, ARGALL, FEESE, ALLEN, E. Z. TAYLOR, SAYLOR,
MILLER, ARMSTRONG AND CLYMER, NOVEMBER 15, 1995

REFERRED TO COMMITTEE ON STATE GOVERNMENT, NOVEMBER 15, 1995

AN ACT

1 Amending the act of October 27, 1955 (P.L.744, No.222),
2 entitled, as amended, "An act prohibiting certain practices
3 of discrimination because of race, color, religious creed,
4 ancestry, age or national origin by employers, employment
5 agencies, labor organizations and others as herein defined;
6 creating the Pennsylvania Human Relations Commission in the
7 Governor's Office; defining its functions, powers and duties;
8 providing for procedure and enforcement; providing for
9 formulation of an educational program to prevent prejudice;
10 providing for judicial review and enforcement and imposing
11 penalties," defining "advertisement" and "advertiser"; and
12 providing for certain forms of advertisement.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 4 of the act of October 27, 1955
16 (P.L.744, No.222), known as the Pennsylvania Human Relations
17 Act, is amended by adding clauses to read:

18 Section 4. Definitions.--As used in this act unless a
19 different meaning clearly appears from the context:

20 * * *

21 (z) The term "advertisement" or "advertising" means any
22 advertisement and any similar written, printed, taped or

1 broadcast communication, notice, statement or the like which is
2 disseminated (whether published, printed, circulated, issued,
3 displayed, posted or mailed) for the purpose of promoting
4 housing activity, including, but not limited to, rentals, leases
5 and sales. For the purpose of determining whether section 9(a)
6 prohibits additional complaints from being filed concerning the
7 same advertisement, the term "advertisement" shall include all
8 further dissemination of the same or a substantially similar
9 advertisement or communication in other editions, publications,
10 media and the like for a period of one year following the
11 initial dissemination of the advertisement.

12 (aa) The term "advertiser" means any person who places,
13 publishes, broadcasts or similarly causes to be disseminated by
14 any other means an advertisement or advertising as defined in
15 clause (z).

16 Section 2. Section 9(a), (f) and (f.1) of the act, amended
17 December 20, 1991 (P.L.414, No.51), are amended to read:

18 Section 9. Procedure.--

19 (a) Any natural person claiming to [be aggrieved by] have
20 suffered actual damages or an actual injury because of an
21 alleged unlawful discriminatory practice may make, sign and file
22 with the Commission a verified complaint, in writing, which
23 shall state the name and address of the person, employer, labor
24 organization or employment agency alleged to have committed the
25 unlawful discriminatory practice complained of, and which shall
26 set forth the particulars thereof and contain such other
27 information as may be required by the Commission[.]: Provided,
28 however, That where the complaint involves a housing
29 advertisement and the complainant does not first follow the
30 notification procedure set forth in section 9.1(e) prior to

1 filing a complaint under this section, the advertiser respondent
2 or respondents shall not be held liable to pay any penalties or
3 damages whatsoever under subsections (f)(2) and (f.1). Once an
4 action has been filed by a natural person alleging a violation
5 of this act, no additional action may be filed by other natural
6 persons under this act against the same respondent or
7 respondents, concerning the same conduct, statement or
8 statements and/or advertisement or advertisements that form the
9 basis of the first-filed action, except that other natural
10 persons who have suffered actual damages or an actual injury
11 because of an alleged violation of this act may be permitted by
12 the Commission to join the first-filed action as additional
13 complainants. Other than permitting such joinder of additional
14 complainants, Commission representatives shall not modify the
15 substance of the complaint. The Commission upon its own
16 initiative or the Attorney General may, in like manner, make,
17 sign and file such complaint, and may additionally make, sign
18 and file a complaint seeking injunctive relief or other relief
19 specified in subsection (f)(1), whether or not any natural
20 person is alleged to have suffered actual damages or an actual
21 injury because of an alleged unlawful discriminatory practice.
22 Any employer whose employes, or some of them, hinder or threaten
23 to hinder compliance with the provisions of this act may file
24 with the Commission a verified complaint, asking for assistance
25 by conciliation or other remedial action and, during such period
26 of conciliation or other remedial action, no hearings, orders or
27 other actions shall be taken by the Commission against such
28 employer.

29 * * *

30 (f) (1) If, upon all the evidence at the hearing, the

1 Commission shall find that a respondent has engaged in or is
2 engaging in any unlawful discriminatory practice as defined in
3 this act, the Commission shall state its findings of fact, and
4 shall issue and cause to be served on such respondent an order
5 requiring such respondent to cease and desist from such unlawful
6 discriminatory practice and to take such affirmative action,
7 including, but not limited to, reimbursement of certifiable
8 travel expenses in matters involving the complaint, compensation
9 for loss of work in matters involving the complaint, hiring,
10 reinstatement or upgrading of employes, with or without back
11 pay, admission or restoration to membership in any respondent
12 labor organization, the making of reasonable accommodations, or
13 selling or leasing specified housing accommodations or
14 commercial property upon such equal terms and conditions and
15 with such equal facilities, services and privileges or lending
16 money, whether or not secured by mortgage or otherwise for the
17 acquisition, construction, rehabilitation, repair or maintenance
18 of housing accommodations or commercial property, upon such
19 equal terms and conditions to any person discriminated against
20 or all persons, and any other verifiable, reasonable out-of-
21 pocket expenses caused by such unlawful discriminatory practice,
22 provided that, in those cases alleging a violation of section
23 5(d), (e) or (h) or 5.3 where the underlying complaint is a
24 violation of section 5(h) or 5.3, the Commission may award
25 actual damages, including damages caused by humiliation and
26 embarrassment, as, in the judgment of the Commission, will
27 effectuate the purposes of this act, and including a requirement
28 for report of the manner of compliance.

29 (2) [Such] Except where subsection (a) renders this
30 paragraph inapplicable, such order may also assess a civil

1 penalty against the respondent in a complaint of discrimination
2 filed under sections 5(h) or 5.3:

3 (i) in an amount not exceeding ten thousand dollars
4 (\$10,000) if the respondent has not been adjudged to have
5 committed any prior discriminatory practice;

6 (ii) in an amount not exceeding twenty-five thousand dollars
7 (\$25,000) if the respondent has been adjudged to have committed
8 one other discriminatory practice during the five-year period
9 ending on the date of this order; or

10 (iii) in an amount not exceeding fifty thousand dollars
11 (\$50,000) if the respondent has been adjudged to have committed
12 more than one other discriminatory practice during the seven-
13 year period ending on the date of this order.

14 If, however, subsection (a) does not render this paragraph
15 inapplicable and the acts constituting the discriminatory
16 practice that is the object of the charge are committed by the
17 same natural person who has been previously adjudged to have
18 committed acts constituting a discriminatory practice, then the
19 civil penalties set forth in subparagraphs (ii) and (iii) may be
20 imposed without regard to the period of time within which any
21 subsequent discriminatory practice occurred.

22 (3) When the respondent is a licensee of the Commonwealth,
23 the Commission shall inform the appropriate State licensing
24 authority of the order with the request that the licensing
25 authority take such action as it deems appropriate against such
26 licensee. An appeal from the Commission's order shall act as a
27 supersedeas and stay such action by the State licensing
28 authority until a final decision on said appeal.

29 (4) If, upon all the evidence, the Commission shall find
30 that a respondent has not engaged in any such unlawful

1 discriminatory practice, the Commission shall state its findings
2 of fact, and shall issue and cause to be served on the
3 complainant an order dismissing the said complaint as to such
4 respondent.

5 (f.1) If, upon all the evidence at the hearing, in those
6 cases alleging a violation of section 5(d), (e), (h) or 5.3
7 where the underlying complaint is a violation of section 5(h) or
8 5.3, and subsection (a) does not render this subsection
9 inapplicable and the Commission finds that a respondent has
10 engaged in or is engaging in any unlawful discriminatory
11 practice as defined in this act, the Commission may award
12 attorney fees and costs to prevailing complainants.

13 * * *

14 Section 3. The act is amended by adding a section to read:

15 Section 9.1. Procedure Regarding Housing Advertisements.--

16 (a) Where the alleged violation of this act complained of
17 involves an advertisement, the following procedure specified in
18 this section shall apply.

19 (b) The Commission shall compile, publish and update as
20 required a list of words, phrases, symbols and the like which
21 are impermissible under this act when used in housing
22 advertisements and shall publish in the Pennsylvania Bulletin
23 both this list and specific examples of housing advertisements
24 which are impermissible under this act. This list shall be
25 published within sixty days of the effective date of this act
26 and shall serve thereafter as proposed rulemaking in full force
27 and effect until such time as the final-form regulations are
28 adopted.

29 (c) The Commission additionally shall designate an office at
30 which specified personnel can be reached by telephone throughout

1 the Commission's regular hours of business to provide a timely
2 response to inquiries concerning impermissible use in housing
3 advertisements of words, phrases, symbols and the like not
4 addressed in the above-described list and specific examples.

5 (d) Where an advertiser or any other person adversely
6 affected disagrees with or does not understand the Commission's
7 interpretation of which words, phrases, symbols and the like are
8 impermissible in housing advertisements, the advertiser may
9 appeal or seek clarification of the Commission's interpretation
10 by filing a petition with the Advertising Arbitration Board,
11 which is hereby established, under rules established by the
12 Commission. The Advertising Arbitration Board shall be comprised
13 of five members: one member selected by the majority leader of
14 the Senate, one member selected by the minority leader of the
15 Senate, one member selected by the majority leader of the House
16 of Representatives, one member selected by the minority leader
17 of the House of Representatives and one member selected by the
18 Governor's Office. All members of the Advertising Arbitration
19 Board shall have significant experience in either advertising or
20 real estate or both of these fields.

21 (e) Any person who wishes to protest advertising that
22 appears likely to have an unlawful discriminatory effect under
23 this act shall notify the advertiser, the Commission and the
24 Attorney General of the specific advertisement or advertisements
25 protested and the specific reasons why the advertisement or
26 advertisements are alleged to be likely to have an unlawful
27 discriminatory effect. The Commission upon its own initiative or
28 the Attorney General may in like manner so notify the
29 advertiser. The Commission shall establish a format and
30 procedure for so notifying the advertiser in a manner designed

1 to expedite and effectuate this section. This format and
2 procedure shall provide for notification of the advertiser and
3 Commission by facsimile transmission and shall be designed to
4 encourage resolution of the expressed concerns about the
5 advertising within one month or less.

6 (f) Once so notified, an advertiser may:

7 (1) cease disseminating the advertisement and/or correct the
8 advertisement to address the concerns specified;

9 (2) seek an opinion from the Advertising Arbitration Board
10 described in subsection (d) to determine whether the advertising
11 contains impermissible language, symbols or the like under
12 procedures to be established by the Commission; or

13 (3) continue disseminating the advertisement without
14 correction.

15 If the advertiser either ceases disseminating or corrects the
16 protested advertisement within a reasonable time following
17 notification as specified in subsection (a) or within a
18 reasonable time following a ruling by the Advertising
19 Arbitration Board that the advertisement should be corrected as
20 specified in subsection (b), the advertiser shall not be liable
21 for penalties under this act unless subsection (g), (h) or (i)
22 is applicable.

23 (g) If an advertiser repeatedly prints, publishes,
24 circulates, issues, displays, posts or mails during any twelve-
25 month period advertising which appears likely to have an
26 unlawful discriminatory effect under this act, the advertiser
27 may be required to undergo or the advertiser's employes and/or
28 agents may be required to undergo appropriate training as
29 determined by the Commission. In addition, or alternatively, the
30 Commission may also require such an advertiser to publish

1 remedial advertising and/or to provide other services designed
2 to increase community awareness of what constitutes
3 impermissible housing discrimination and promote fair housing
4 practices.

5 (h) If, following both notification and arbitration, if
6 applicable, in the manner specified above, an advertiser
7 repeatedly prints, publishes, circulates, issues, displays,
8 posts or mails during the twelve-month period thereafter the
9 same or substantially similar advertising which appears likely
10 to have an unlawful discriminatory effect under this act, a
11 complaint for damages under section 9(f)(1) may be filed against
12 the advertiser as specified in section 9.

13 (i) An advertiser who knowingly and wilfully violates this
14 act may be penalized under section 9(f)(2) and (f.1). It shall
15 be an affirmative defense precluding a finding that an
16 advertiser has knowingly and wilfully violated this act if an
17 advertiser has either:

18 (1) attempted, in good faith, to comply with the list and
19 specific examples of impermissible housing advertisements
20 described in subsection (b);

21 (2) complied with an interpretation of the Commission or its
22 personnel concerning what constitutes appropriate housing
23 advertisements;

24 (3) complied with a ruling of the Advertisement Arbitration
25 Board described in subsection (d) concerning what constitutes
26 appropriate housing advertisements; or

27 (4) ceased disseminating or corrected an advertisement as
28 described in subsection (f).

29 It shall also be an affirmative defense precluding a finding
30 that an advertiser has knowingly and wilfully violated this act

1 if an advertiser has made reasonable efforts in good faith to
2 comply with this act. Guidelines as to the type of conduct which
3 constitutes such reasonable efforts to comply shall be developed
4 and published by the Commission in the Pennsylvania Bulletin
5 along with the list and specific examples of impermissible
6 advertising described in subsection (b).

7 (j) Any notification made under the procedure described in
8 subsection (e) must be made within one hundred eighty days after
9 the initial publication, circulation, display, posting or
10 similar provision to the public of the advertisement in
11 question. Any such notification pursuant to subsection (e) may
12 be withdrawn at any time by the person making the notification.

13 (k) (1) The Commission shall by regulation establish
14 guidelines and rules of practice to govern, carry out, expedite
15 and effectuate the foregoing procedure and its own and the
16 Advertising Arbitration Board's actions thereunder.

17 (2) In order to facilitate the speedy implementation of this
18 program, the Commission shall have the power and authority to
19 promulgate, adopt and use guidelines which shall be published in
20 the Pennsylvania Bulletin. The guidelines shall not be subject
21 to review pursuant to section 205 of the act of July 31, 1968
22 (P.L.769, No.240), referred to as the Commonwealth Documents
23 Law, sections 204(b) and 301(10) of the act of October 15, 1980
24 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," or
25 the act of June 25, 1982 (P.L.633, No.181), known as the
26 "Regulatory Review Act," and shall be effective for a period not
27 to exceed one year from the effective date of this act.

28 (3) After the expiration of the one-year period, all
29 guidelines shall expire and shall be replaced by regulations
30 which shall have been promulgated, adopted and published as

1 provided by law.

2 Section 4. This act shall take effect in 60 days.