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THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

## No. 352 Session of 2005

INTRODUCED BY DALLY, BELFANTI, BROWNE, CALTAGIRONE, CRAHALLA, DeWEESE, FABRIZIO, FRANKEL, FREEMAN, GEIST, GEORGE, GERGELY, GRUCELA, LEACH, LEDERER, MANN, McGEEHAN, PHILLIPS, REED, REICHLEY, ROEBUCK, ROSS, RUBLEY, SANTONI, SCAVELLO, SEMMEL, R. STEVENSON, STURLA, TANGRETTI, E. Z. TAYLOR, THOMAS, TIGUE, WATSON, WILT, YOUNGBLOOD AND STETLER, FEBRUARY 8, 2005

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 8, 2005

AN ACT

Amending the act of October 27, 1955 (P.L.744, No.222), entitled, as amended, "An act prohibiting certain practices of discrimination because of race, color, religious creed, ancestry, age or national origin by employers, employment agencies, labor organizations and others as herein defined; creating the Pennsylvania Human Relations Commission in the Governor's Office; defining its functions, powers and duties; providing for procedure and enforcement; providing for formulation of an educational program to prevent prejudice; providing for judicial review and enforcement and imposing penalties," further providing for findings and declaration of policy, for right to freedom from discrimination, housing and public accommodation; defining "marital status"; and further providing for unlawful discriminatory practices.

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

Section 1. Sections 2 and 3 of the act of October 27, 1955 (P.L.744, No.222), known as the Pennsylvania Human Relations Act, amended December 20, 1991 (P.L.414, No.51), are amended to read:

Section 2. Findings and Declaration of Policy.--

(a) The practice or policy of discrimination against

individuals or groups by reason of their race, color, familial status, marital status, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals is a matter of concern of the Commonwealth. Such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth, and undermines the foundations of a free democratic state. The denial of equal employment, housing and public accommodation opportunities because of such discrimination, and the consequent failure to utilize the productive capacities of individuals to their fullest extent, deprives large segments of the population of the Commonwealth of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensifies group conflicts, thereby resulting in grave injury to the public health and welfare, compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded, resulting in racial segregation in public schools and other community facilities, juvenile delinquency and other evils, thereby threatening the peace, health, safety and general welfare of the Commonwealth and its inhabitants.

(b) It is hereby declared to be the public policy of this Commonwealth to foster the employment of all individuals in accordance with their fullest capacities regardless of their race, color, religious creed, familial status, marital status, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a

handler or trainer of support or guide animals, and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights to public accommodation and to secure housing accommodation and commercial property regardless of race, color, familial status, <u>marital status,</u> religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of blindness or deafness of the user or because the user is a handler or trainer of guide or support animals.

(c) This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, prosperity, health and peace of the people of the Commonwealth of Pennsylvania.

Section 3. Right to Freedom from Discrimination in Employment, Housing and Public Accommodation.--The opportunity for an individual to obtain employment for which he is qualified, and to obtain all the accommodations, advantages, facilities and privileges of any public accommodation and of any housing accommodation and commercial property without discrimination because of race, color, familial status, <u>marital status,</u> religious creed, ancestry, handicap or disability, age, sex, national origin, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals is hereby recognized as and declared to be a civil right which shall be enforceable as set forth in this act.

Section 2. Section 4 of the act is amended by adding a definition to read:

Section 4. Definitions.--As used in this act unless a

different meaning clearly appears from the context:

* * *

(bb) The term "marital status" means whether a person is single, married, divorced, separated or widowed.

Section 3. Section 5(a), (b), (c), (f) and (g) of the act, amended December 20, 1991 (P.L.414, No.51), are amended to read:

Section 5. Unlawful Discriminatory Practices.--It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or in the case of a fraternal corporation or association, unless based upon membership in such association or corporation, or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania:

(a) For any employer because of the race, color, religious creed, ancestry, familial status, marital status, age, sex, national origin or non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any individual or independent contractor, to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is the best able and most competent to perform the services required. The provision of this paragraph shall not apply, to (1) operation of the terms or conditions of any bona fide retirement or pension plan which have the effect of a minimum service requirement, (2) operation of the terms or conditions of any bona fide group or employe insurance plan, (3)

age limitations placed upon entry into bona fide apprenticeship programs of two years or more approved by the State Apprenticeship and Training Council of the Department of Labor and Industry, established by the act of July 14, 1961 (P.L.604, No.304), known as "The Apprenticeship and Training Act." Notwithstanding any provision of this clause, it shall not be an unlawful employment practice for a religious corporation or association to hire or employ on the basis of sex in those certain instances where sex is a bona fide occupational qualification because of the religious beliefs, practices, or observances of the corporation, or association.

(b) For any employer, employment agency or labor organization, prior to the employment, contracting with an independent contractor or admission to membership, to:

(1) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, color, religious creed, ancestry, <u>familial status, marital status,</u> age, sex, national origin, past handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any applicant for employment or membership. Prior to an offer of employment, an employer may not inquire as to whether an individual has a handicap or disability or as to the severity of such handicap or disability. An employer may inquire as to the individual's ability to perform the essential functions of the employment.

(2) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, color, religious creed,

ancestry, age, <u>familial status, marital status,</u> sex, national origin, non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user.

(3) Deny or limit, through a quota system, employment or membership because of race, color, religious creed, ancestry, age, <u>familial status, marital status,</u> sex, national origin, non-job related handicap or disability, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or place of birth.

(4) Substantially confine or limit recruitment or hiring of individuals, with intent to circumvent the spirit and purpose of this act, to any employment agency, employment service, labor organization, training school or training center or any other employe-referring source which services individuals who are predominantly of the same race, color, religious creed, ancestry, age, <u>familial status, marital status,</u> sex, national origin or non-job related handicap or disability.

(5) Deny employment because of a prior handicap or disability.

Nothing in clause (b) of this section shall bar any institution or organization for handicapped or disabled persons from limiting or giving preference in employment or membership to handicapped or disabled persons.

(c) For any labor organization because of the race, color, religious creed, ancestry, age, <u>familial status, marital status,</u> sex, national origin, non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any individual to deny full and equal membership rights to any individual or otherwise to

discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment.

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(f) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, color, religious creed, ancestry, age, sex, <u>familial status, marital status,</u> national origin, non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user.

(g) For any individual seeking employment to publish or cause to be published any advertisement which in any manner expresses a limitation or preference as to the race, color, religious creed, ancestry, age, sex, <u>familial status, marital status,</u> national origin, non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any prospective employer.

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