

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1794 Session of
1992

INTRODUCED BY MUSTO, MELLOW, LEMMOND AND RHOADES, JUNE 5, 1992

AS AMENDED ON THIRD CONSIDERATION, JUNE 29, 1992

AN ACT

1 Amending the act of July 17, 1961 (P.L.776, No.341), entitled,
2 as amended, "An act declaring the policy of the Commonwealth
3 with regard to discriminatory practices in educational
4 institutions based upon race, religion, color, ancestry,
5 national origin or sex; prohibiting such discriminatory
6 practices; providing for procedure and enforcement; providing
7 for judicial review; providing for administration by the
8 Pennsylvania Human Relations Commission in the Department of
9 Labor and Industry; and defining its functions, powers and
10 duties hereunder," prohibiting discrimination against persons
11 with handicaps or disabilities.

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

14 Section 1. Section 2 of the act of July 17, 1961 (P.L.776,
15 No.341), known as the Pennsylvania Fair Educational
16 Opportunities Act, amended December 29, 1972 (P.L.1682, No.360),
17 is amended to read:

18 Section 2. Findings and Declaration of Policy.--(a) It is
19 hereby declared to be the policy of this Commonwealth that all
20 persons shall have equal opportunities for education regardless
21 of their race, religion, color, ancestry, national origin [or],
22 sex[.], handicap or disability.

1 (b) Equality of educational opportunities requires that
2 students, otherwise qualified, be admitted to certain
3 educational institutions without regard to race, religion,
4 color, ancestry, national origin [or], sex[, handicap or
5 disability.

6 (c) It is recognized that there is a fundamental American
7 right for members of various religious faiths to establish and
8 maintain educational institutions exclusively or primarily for
9 students of their own religious faith. In such institutions
10 students, otherwise qualified, should have equal opportunity to
11 attend therein without discrimination because of race, color,
12 ancestry, national origin [or], except as provided in section 9,
13 sex[, handicap or disability.

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

18 Section 2. Sections 4(a) and (aa), 6(4) and 7 of the act,
19 amended December 29, 1972 (P.L.1682, No.360), are amended to
20 read:

21 Section 4. Unfair Educational Practices.--(a) Except as
22 provided in section 9, it shall be an unfair educational
23 practice for an educational institution--

24 (1) To exclude or limit, or otherwise discriminate, because
25 of race, religion, color, ancestry, national origin [or], sex,
26 handicap or disability, against any student or students seeking
27 admission as students to such institutions: Provided, That it
28 shall not be unfair educational practice for any educational
29 institution to use criteria other than race, religion, color,
30 ancestry, national origin [or], sex, handicap or disability in

1 the admission of students.

2 (2) To make any written or oral inquiry prior to admission
3 concerning or designed to elicit information as to the race,
4 religion, color, ancestry, national origin [or], sex, handicap
5 or disability of a student seeking admission to such
6 institution.

7 (3) To expel, suspend, punish, deny facilities or otherwise
8 discriminate against any student because of race, religion,
9 color, ancestry, national origin [or], sex[, handicap or
10 disability.

11 (4) To penalize or discriminate against any individual
12 because he has initiated, testified, participated or assisted in
13 any proceedings under this act.

14 (5) To fail to preserve for a period of three years any
15 records, documents and data dealing with, or pertaining to, the
16 admission, rejection, expulsion or suspension of students, or to
17 refuse to make such records, documents and data available at all
18 times for the inspection of the commission.

19 (aa) Except as provided in section 9, it shall be an unfair
20 educational practice for a religious educational institution--

21 (1) To exclude or limit, or otherwise discriminate, because
22 of race, color, ancestry, national origin [or], sex, handicap or
23 disability, against any student or students seeking admission as
24 students to such institutions: Provided, That it shall not be
25 unfair educational practice for any religious educational
26 institution to use criteria other than race, color, ancestry,
27 national origin [or], sex, handicap or disability in the
28 admission of students.

29 (2) To make any written or oral inquiry prior to admission
30 concerning or designed to elicit information as to the race,

1 color, ancestry, national origin [or], sex, handicap or
2 disability of a student seeking admission to such institution.

3 (3) To expel, suspend, punish, deny facilities or otherwise
4 discriminate against any student because of race, color,
5 ancestry, national origin [or], sex[,], handicap or disability.

6 (4) To penalize or discriminate against any individual
7 because such person has initiated, testified, participated or
8 assisted in any proceedings under this act.

9 * * *

10 Section 6. Powers and Duties of the Commission.--Without in
11 anywise detracting from, or in derogation or diminution of the
12 duties of the commission as set forth in the act of October 27,
13 1955 (P.L.744), known as the "Pennsylvania Human Relations Act,"
14 said commission is hereby vested with the following powers and
15 duties--

16 * * *

17 (4) To formulate, recommend and carry out a comprehensive
18 program designed to eliminate and prevent prejudice and
19 discrimination in educational institutions, based upon race,
20 religion, color, ancestry, national origin [or], sex, handicap
21 or disability except religious discrimination in religious or
22 denominational institutions and except, as to sex, as provided
23 in section 9.

24 * * *

25 Section 7. Procedure.--Any aggrieved person or anyone
26 representing the aggrieved person may make, sign and file with
27 the commission a verified complaint within six months after an
28 unfair educational practice is alleged to have been committed,
29 which shall set forth the particulars thereof and contain such
30 other information as may be required by the commission. The

1 commission upon its own initiative or the Attorney General may
2 in like manner make, sign and file such complaint.

3 The procedure for the processing of any complaint shall be in
4 accordance with the provisions of the act of April 9, 1929
5 (P.L.177), known as "The Administrative Code of 1929," with the
6 rules and regulations promulgated by the commission.

7 Until the commission shall determine that a cease and desist
8 order shall be issued, it shall not disclose what takes place
9 during informal efforts at persuasion, conciliation or
10 mediation, nor shall it offer in evidence in any proceedings the
11 facts adduced in such informal efforts, nor shall publicity be
12 given to any proceedings before the commission and the identity
13 of the educational institution shall not be disclosed, except in
14 cases of public hearings: Provided, That the commission may
15 publish the terms of conciliation when a complaint has been
16 adjusted, and the results of surveys or studies conducted by the
17 commission which pertain to matters of race, religion, color,
18 ancestry, national origin [or], sex[.], handicap or disability.

19 Section 3. Section 9 of the act, amended August 5, 1977
20 (P.L.174, No.43), is amended to read:

21 Section 9. Construction.--The provisions of this act shall
22 be construed liberally for the accomplishment of the purposes
23 thereof and any law inconsistent with any provisions hereof
24 shall not apply. Nothing contained in this act shall be deemed
25 to repeal any of the provisions of any law of this Commonwealth
26 relating to discrimination because of race, religion, color,
27 ancestry, national origin [or], sex[.], handicap or disability.

28 This act shall not be construed to prohibit any educational
29 institution which is neither State-owned nor State-related, nor
30 State-aided, from drawing its enrollment entirely from members

1 of one sex or from the sexes in any proportion, nor shall
2 anything herein contained prevent any educational institution
3 which is State-owned, State-related or State-aided from
4 requiring each applicant for admission to state in the
5 application for admission such applicant's sex to supplement and
6 implement the institution's facts for planning purposes but only
7 for such planning purposes and not for any discriminatory
8 purposes. For the purpose of this section the term "State-owned"
9 institution means the [thirteen State colleges and Indiana <—
10 University of Pennsylvania] INSTITUTIONS COMPRISING THE STATE <—
11 SYSTEM OF HIGHER EDUCATION; the term "State-related"
12 institutions means the University of Pittsburgh, Temple
13 University, LINCOLN UNIVERSITY and the Pennsylvania State <—
14 University; the term "State-aided" institution means the
15 Delaware Valley College of Science and Agriculture, [Dickinson <—
16 Law School, Drexel Institute of Technology, Hahnemann Medical
17 College] DREXEL UNIVERSITY, HAHNEMANN UNIVERSITY, Thomas <—
18 Jefferson University, [College of Lincoln University,] the <—
19 Medical College of Pennsylvania, University of Pennsylvania,
20 Pennsylvania College of Podiatric Medicine, Pennsylvania College
21 of Optometry, [Philadelphia College of Art,] Philadelphia <—
22 College of Osteopathic Medicine, Philadelphia College of
23 Textiles and Science, and [Philadelphia Musical Academy] <—
24 UNIVERSITY OF THE ARTS. <—

25 When considering any matter brought before it with respect to
26 any alleged unfair educational practice based on sex, the
27 commission shall take into consideration the educational
28 programs offered by the institution and the number of admissions
29 necessary to maintain programs and departments at educationally
30 and economically feasible levels.

1 [This section shall not apply until July 1, 1978 in the case <—
2 of a school of medicine which has begun the process of changing
3 from being an institution which admits only female students to
4 being an institution which admits students of both sexes but
5 only if it is carrying out a plan for such a change which
6 complies with applicable Federal law.] <—

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