

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 337 Session of
1997

INTRODUCED BY LEH, CLYMER, FARGO, E. Z. TAYLOR, WOGAN, KENNEY,
OLASZ, FLICK, NICKOL, DEMPSEY, FEESE, MICOZZIE, GEIST,
RAYMOND, ROHRER, HERSHEY, MILLER, BROWN, HUTCHINSON,
PHILLIPS, SCHRODER, SEMMEL AND SEYFERT, FEBRUARY 10, 1997

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 10, 1997

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, for limitations
13 and for civil penalties.

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

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

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

21 * * *

22 (z) The term "advertisement" or "advertising" means any

1 advertisement and any similar written, printed, taped or
2 broadcast communication, notice, statement or the like which is
3 disseminated (whether published, printed, circulated, issued,
4 displayed, posted or mailed) for the purpose of promoting
5 housing activity, including, but not limited to, rentals, leases
6 and sales.

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

11 Section 2. Section 5(h)(10) of the act, amended December 20,
12 1991 (P.L.414, No.51), is amended and the subsection is amended
13 by adding a paragraph to read:

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

21 * * *

22 (h) For any person to:

23 * * *

24 (10) Nothing in this clause shall bar any religious or
25 denominational institution or organization or any charitable or
26 educational organization which is operated, supervised or
27 controlled by or in connection with a religious organization or
28 any bona fide private or fraternal organization from giving
29 preference to persons of the same religion or denomination or to
30 members of such private or fraternal organization or from making

1 such selection as is calculated by such organization to promote
2 the religious principles or the aims, purposes or fraternal
3 principles for which it is established or maintained. Nor shall
4 it apply to the rental of rooms in a landlord-occupied rooming
5 house with a common entrance, nor with respect to discrimination
6 based on sex, the advertising, rental or leasing of housing
7 accommodations in a single-sex dormitory or rooms in one's
8 personal residence in which common living areas are shared.

9 (11) Nothing in this act limits the applicability of a
10 reasonable State or local restriction on the maximum number of
11 occupants permitted to occupy a dwelling or a restriction
12 relating to health or safety standards or business necessity.

13 * * *

14 Section 3. Section 9(a), (d.1) and (f) of the act, amended
15 December 20, 1991 (P.L.414, No.51), are amended and the section
16 is amended by adding subsections to read:

17 Section 9. Procedure.--(a) Any person claiming to be
18 aggrieved by an alleged unlawful discriminatory practice may
19 make, sign and file with the Commission a verified complaint, in
20 writing, which shall state the name and address of the person,
21 employer, labor organization or employment agency alleged to
22 have committed the unlawful discriminatory practice complained
23 of, and which shall set forth the particulars thereof and
24 contain such other information as may be required by the
25 Commission. Commission representatives shall not modify the
26 substance of the complaint. Whenever a person invokes the
27 procedures set forth in this act, the Commission shall refuse to
28 accept for filing a complaint it determines to be untimely with
29 no grounds for equitable tolling, outside its jurisdiction or
30 frivolous on its face. The Commission upon its own initiative or

1 the Attorney General may, in like manner, make, sign and file
2 such complaint. Any employer whose employees, or some of them,
3 hinder or threaten to hinder compliance with the provisions of
4 this act may file with the Commission a verified complaint,
5 asking for assistance by conciliation or other remedial action
6 and, during such period of conciliation or other remedial
7 action, no hearings, orders or other actions shall be taken by
8 the Commission against such employer.

9 * * *

10 (c.1) The Commission shall dismiss a case with prejudice,
11 before or after a finding of probable cause, where, in its
12 opinion, appropriate remedy has been offered by the respondent
13 and refused by the complainant.

14 * * *

15 (d.1) When notice of hearing is given as set forth in
16 subsection (d) and an election procedure is required by the Fair
17 Housing Act, either party may elect to have the claim asserted
18 in the complaint decided in a civil action brought under the
19 original jurisdiction of Commonwealth Court. The written notice
20 of the Commission shall be sent to all parties and will inform
21 them of their right to take civil action. An election must be
22 made within twenty days after receipt of the notice of hearing.
23 A party making this election shall notify the Commission and all
24 other parties. If an election for civil action is made by either
25 party, the Commission shall, within thirty days from the date of
26 election, commence and maintain a civil action on behalf of the
27 complainant provided, however, that, whenever the Attorney
28 General signs and files the complaint pursuant to subsection
29 (a), the Attorney General shall, within thirty days from the
30 date of election, commence and maintain a civil action on behalf

1 of the complainant. In those cases commenced by the Attorney
2 General, the Commission shall have the right to intervene. In
3 any action brought under this subsection:

4 (1) All filing fees shall be waived for the Commission and
5 all parties, including the action brought under Commonwealth
6 Court's original jurisdiction and any appeal arising out of such
7 action.

8 (2) If, after a trial, Commonwealth Court finds that a
9 respondent engaged in or is engaging in any unlawful
10 discriminatory practice as defined in this act, the court may
11 award attorney fees and costs to the complainant on whose behalf
12 the action was commenced.

13 (3) If, after a trial, Commonwealth Court finds that a
14 respondent has not engaged in or is not engaging in any unlawful
15 discriminatory practice as defined in this act, the court may
16 award attorney fees and costs to the prevailing respondent if
17 the respondent proves that the complaint upon which the civil
18 action was based was brought in bad faith.

19 (4) If, after a trial, the Commonwealth Court finds that a
20 respondent has not engaged in any unlawful discriminatory
21 practice as defined in this act, the court may award attorney
22 fees and costs to the prevailing respondent if the court
23 determines that the complaint is frivolous and that the
24 Commission dealt with the party complained against in a wilful,
25 wanton and oppressive manner, in which case, the Commission
26 shall be ordered to pay such costs and attorney fees.

27 * * *

28 (f) (1) If, upon all the evidence at the hearing, the
29 Commission shall find that a respondent has engaged in or is
30 engaging in any unlawful discriminatory practice as defined in

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

28 (2) Such order may also assess a civil penalty against the
29 respondent in a complaint of discrimination filed under sections
30 5(h) or 5.3:

1 (i) in an amount not exceeding ten thousand dollars
2 (\$10,000) if the respondent has not been adjudged to have
3 committed any prior discriminatory practice;

4 (ii) in an amount not exceeding twenty-five thousand dollars
5 (\$25,000) if the respondent has been adjudged to have committed
6 one other discriminatory practice during the five-year period
7 ending on the date of this order; or

8 (iii) in an amount not exceeding fifty thousand dollars
9 (\$50,000) if the respondent has been adjudged to have committed
10 more than one other discriminatory practice during the seven-
11 year period ending on the date of this order.

12 If, however, the acts constituting the discriminatory practice
13 that is the object of the charge are committed by the same
14 natural person who has been previously adjudged to have
15 committed acts constituting a discriminatory practice, then the
16 civil penalties set forth in subparagraphs (ii) and (iii) may be
17 imposed without regard to the period of time within which any
18 subsequent discriminatory practice occurred.

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

26 (4) If, upon all the evidence, the Commission shall find
27 that a respondent has not engaged in any such unlawful
28 discriminatory practice, the Commission shall state its findings
29 of fact, and shall issue and cause to be served on the
30 complainant an order dismissing the said complaint as to such

1 respondent.

2 * * *

3 (j) At any time after the filing of a complaint, the
4 Commission shall dismiss with prejudice a complaint which, in
5 its opinion is untimely with no grounds for equitable tolling,
6 outside its jurisdiction or frivolous on its face.

7 Section 4. The act is amended by adding sections to read:

8 Section 9.1. Procedure Regarding Housing Advertisements.--

9 (a) Where the alleged violation of this act complained of
10 involves an advertisement, the following procedure specified in
11 this section shall apply.

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

22 (c) An advertiser who knowingly and wilfully violates this
23 act may be penalized under section 9(f)(2) and (f.1). It shall
24 be an affirmative defense precluding a finding that an
25 advertiser has knowingly and wilfully violated this act if an
26 advertiser has either:

27 (1) attempted, in good faith, to comply with the list and
28 specific examples of impermissible housing advertisements
29 described in subsection (b); or

30 (2) complied with an interpretation of the Commission or its

1 personnel concerning what constitutes appropriate housing
2 advertisements.
3 It shall also be an affirmative defense precluding a finding
4 that an advertiser has knowingly and wilfully violated this act
5 if an advertiser has made reasonable efforts in good faith to
6 comply with this act. Guidelines as to the type of conduct which
7 constitutes such reasonable efforts to comply shall be developed
8 and published by the Commission in the Pennsylvania Bulletin
9 along with the list and specific examples of impermissible
10 advertising described in subsection (b).

11 (d) (1) In order to facilitate the speedy implementation of
12 this program, the Commission shall have the power and authority
13 to promulgate, adopt and use guidelines which shall be published
14 in the Pennsylvania Bulletin. The guidelines shall not be
15 subject to review pursuant to section 205 of the act of July 31,
16 1968 (P.L.769, No.240), referred to as the Commonwealth
17 Documents Law, sections 204(b) and 301(10) of the act of October
18 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys
19 Act," or the act of June 25, 1982 (P.L.633, No.181), known as
20 the "Regulatory Review Act," and shall be effective for a period
21 not to exceed two (2) years from the effective date of this
22 section.

23 (2) After the expiration of the two (2) year period, all
24 guidelines shall expire and shall be replaced by regulations
25 which shall have been promulgated, adopted and published as
26 provided by law within two (2) years from the effective date of
27 this section.

28 Section 9.3. Civil Penalties.--The Commission shall have the
29 power to adopt a schedule of civil penalties for violation of
30 section 5(h)(5) by the advertiser and the publisher in instances

1 where the complainant does not take action to secure housing
2 accommodations or financing and is not denied housing
3 accommodations or financing based on the alleged discriminatory
4 language in the advertisement. The schedule of penalties,
5 guidelines for their imposition and procedures for appeal shall
6 be published in the Pennsylvania Bulletin, provided that the
7 Commission shall, within two (2) years of such publication,
8 promulgate a regulation setting forth the schedule of penalties,
9 guidelines and procedures. Any such penalty shall not exceed the
10 sum of five hundred dollars (\$500.00). Duly authorized agents of
11 the Commission shall have the power and authority to issue
12 citations and impose penalties for any such violations. Any such
13 penalty imposed may be appealed to the Commission pursuant to
14 regulations promulgated under this act. All proceedings shall be
15 conducted in accordance with the provisions of 2 Pa.C.S.
16 (relating to administrative law and procedure).

17 Section 5. Section 13 of the act is amended to read:

18 Section 13. Separability.--(a) If any clause, sentence,
19 paragraph or part of this act, or the application thereof, to
20 any person or circumstance, shall, for any reason, be adjudged
21 by a court of competent jurisdiction to be invalid, such
22 judgment shall not affect, impair or invalidate the remainder of
23 this act nor the application of such clause, sentence, paragraph
24 or part to other persons or circumstances, but shall be confined
25 in its operation to the clause, sentence, paragraph or part
26 thereof and to the persons or circumstances directly involved in
27 the controversy in which such judgment shall have been rendered.
28 It is hereby declared to be the legislative intent that this act
29 would have been adopted had such provisions not been included or
30 such persons or circumstances been expressly excluded from their

1 coverage.

2 (b) Notwithstanding the provisions of subsection (a), if any
3 clause, sentence, paragraph or part of this act, or the
4 application thereof to any person or circumstance, shall be
5 adjudged by a court of competent jurisdiction or finally
6 determined by the Department of Housing and Urban Development
7 not to be in substantial equivalence with the Fair Housing Act
8 (Public Law 90-284, 42 U.S.C. § 3601 et seq.), and if such
9 judgment or final determination threatens the loss or reduction
10 of Federal funds to the Commission, all provisions of this
11 amendatory act except the provisions adding subsections (c.1)
12 and (j) to section 9 shall be null and void. The Commission
13 shall, in such event, apply the provisions of 16 Pa. Code §§
14 45.8(a) (relating to advertisements) and 45.13(f) (relating to
15 exemptions) which were in effect on March 1, 1997, such
16 provisions having been revived by operation of law.

17 Section 6. The provisions of 16 Pa. Code §§ 45.8(a)
18 (relating to advertisements) and 45.13(f) (relating to
19 exemptions) are nullified.

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