
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 707 Session of
2003

INTRODUCED BY CONTI, KUKOVICH, MELLOW, A. WILLIAMS, FERLO,
KITCHEN, C. WILLIAMS, LAVALLE, SCHWARTZ, HUGHES, FUMO,
WOZNIAK, BOSCOLA, MUSTO, COSTA, STOUT, WAGNER AND
TARTAGLIONE, JUNE 17, 2003

REFERRED TO EDUCATION, JUNE 17, 2003

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," further providing for findings and
11 declaration of policy, for definitions, for unfair
12 educational practices, for powers and duties of the
13 Pennsylvania Human Relations Commission, for right of action
14 and for construction of act.

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

17 Section 1. The title of the act of July 17, 1961 (P.L.776,
18 No.341), known as the Pennsylvania Fair Educational
19 Opportunities Act, amended December 29, 1972 (P.L.1682, No.360),
20 is amended to read:

21 AN ACT

22 Declaring the policy of the Commonwealth with regard to
23 discriminatory practices in educational institutions based

1 upon race, religion, color, ancestry, national origin, sexual
2 orientation, gender identity or expression, or sex;
3 prohibiting such discriminatory practices; providing for
4 procedure and enforcement; providing for judicial review;
5 providing for administration by the Pennsylvania Human
6 Relations Commission in the Department of Labor and Industry;
7 and defining its functions, powers and duties hereunder.

8 Section 2. Section 2 of the act, amended December 22, 1992
9 (P.L.1688, No.187), is amended to read:

10 Section 2. Findings and Declaration of Policy.--(a) It is
11 hereby declared to be the policy of this Commonwealth that all
12 persons shall have equal opportunities for education regardless
13 of their race, religion, color, ancestry, national origin,
14 sexual orientation, gender identity or expression, sex, handicap
15 or disability.

16 (b) Equality of educational opportunities requires that
17 students, otherwise qualified, be admitted to certain
18 educational institutions without regard to race, religion,
19 color, ancestry, national origin, sexual orientation, gender
20 identity or expression, sex, handicap or disability.

21 (c) It is recognized that there is a fundamental American
22 right for members of various religious faiths to establish and
23 maintain educational institutions exclusively or primarily for
24 students of their own religious faith. In such institutions
25 students, otherwise qualified, should have equal opportunity to
26 attend therein without discrimination because of race, ancestry,
27 national origin, sexual orientation, gender identity or
28 expression, handicap or disability or, except as provided in
29 section 9, sex.

30 (d) This act shall be deemed an exercise of the police power

1 of the Commonwealth for the protection of the public welfare,
2 prosperity, health and peace of the people of the Commonwealth
3 of Pennsylvania.

4 Section 3. Section 3 of the act is amended by adding clauses
5 to read:

6 Section 3. Definitions.--As used in this act--

7 * * *

8 (9) "Sexual orientation" means actual or perceived
9 heterosexuality, homosexuality or bisexuality.

10 (10) "Gender identity or expression" means actual or
11 perceived gender identity, appearance, behavior, expression or
12 physical characteristics whether or not associated with an
13 individual's assigned sex at birth.

14 Section 4. Sections 4(a) and (a.1), 6(4), 7.1 and 9(a) and
15 (c) of the act, amended or added December 22, 1992 (P.L.1688,
16 No.187), are amended to read:

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

20 (1) To exclude or limit, or otherwise discriminate, because
21 of race, religion, color, ancestry, national origin, sexual
22 orientation, gender identity or expression, 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 educational institution to
26 use criteria other than race, religion, color, ancestry,
27 national origin, sexual orientation, gender identity or
28 expression, sex, handicap or disability in the admission of
29 students.

30 (2) To make any written or oral inquiry prior to admission

1 concerning or designed to elicit information as to the race,
2 religion, color, ancestry, national origin, sexual orientation,
3 gender identity or expression, sex, handicap or disability of a
4 student seeking admission to such institution.

5 (3) To expel, suspend, punish, deny facilities or otherwise
6 discriminate against any student because of race, religion,
7 color, ancestry, national origin, sexual orientation, gender
8 identity or expression, sex, handicap or disability.

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

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

17 (6) To construct, operate or otherwise make available
18 facilities and services which are not accessible.

19 (7) To exclude, limit or otherwise discriminate against any
20 student or applicant because of the handicap or disability of an
21 individual with whom the student or applicant is known to have a
22 relationship or association.

23 (8) To deny an individual with a handicap or disability
24 equal opportunities for education because of uninsurability or
25 increased cost of insurance.

26 (a.1) Except as provided in section 9, it shall be an unfair
27 educational practice for a religious educational institution--

28 (1) To exclude or limit, or otherwise discriminate, because
29 of race, color, ancestry, national origin, sexual orientation,
30 gender identity or expression, sex, handicap or disability,

1 against any student or students seeking admission as students to
2 such institutions: Provided, That it shall not be unfair
3 educational practice for any religious educational institution
4 to use criteria other than race, color, ancestry, national
5 origin, sexual orientation, gender identity or expression, sex,
6 handicap or disability in the admission of students.

7 (2) To make any written or oral inquiry prior to admission
8 concerning or designed to elicit information as to the race,
9 color, ancestry, national origin, sexual orientation, gender
10 identity or expression, sex, handicap or disability of a student
11 seeking admission to such institution.

12 (3) To expel, suspend, punish, deny facilities or otherwise
13 discriminate against any student because of race, color,
14 ancestry, national origin, sexual orientation, gender identity
15 or expression, sex, handicap or disability.

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

19 (5) To construct, operate or otherwise make available
20 facilities and services which are not accessible.

21 (6) To exclude, limit or otherwise discriminate against any
22 student or applicant because of the handicap or disability of an
23 individual with whom the student or applicant is known to have a
24 relationship or association.

25 (7) To deny an individual with a handicap or disability
26 equal opportunities for education because of uninsurability or
27 increased cost of insurance.

28 * * *

29 Section 6. Powers and Duties of the Commission.--Without in
30 anywise detracting from, or in derogation or diminution of the

1 duties of the commission as set forth in the act of October 27,
2 1955 (P.L.744), known as the "Pennsylvania Human Relations Act,"
3 said commission is hereby vested with the following powers and
4 duties--

5 * * *

6 (4) To formulate, recommend and carry out a comprehensive
7 program designed to eliminate and prevent prejudice and
8 discrimination in educational institutions, based upon race,
9 religion, color, ancestry, national origin, sexual orientation,
10 gender identity or expression, sex, handicap or disability
11 except religious discrimination in religious or denominational
12 institutions and except, as to sex, as provided in section 9.

13 * * *

14 Section 7.1. Right of Action.--(a) In cases involving a
15 claim of discrimination, if a complainant invokes the procedures
16 set forth in this act, that individual's right of action in the
17 courts of the Commonwealth shall not be foreclosed. If, within
18 one year after the filing of a complaint with the commission,
19 the commission dismisses the complaint or has not entered into a
20 conciliation agreement to which the complainant is a party, the
21 commission must so notify the complainant. On receipt of such a
22 notice, the complainant shall be able to bring an action in the
23 courts of common pleas of the Commonwealth based on the right to
24 freedom from discrimination granted by this act.

25 (b) An action under this section shall be filed within two
26 years after the date of notice from the commission closing the
27 complaint. Any complaint so filed shall be served on the
28 commission at the time the complaint is filed in court. The
29 commission shall notify the complainant of this requirement.

30 (c) If the court finds that the respondent has engaged in or

1 is engaging in an unlawful discriminatory practice charged in
2 the complaint, the court shall enjoin the respondent from
3 engaging in such unlawful discriminatory practice and order
4 affirmative action which may include, but not be limited to,
5 reinstatement, admitting students, reimbursement of tuition or
6 fees, or any other legal or equitable relief, including damages
7 caused by humiliation and embarrassment and punitive damages, as
8 the court deems appropriate.

9 (d) The court shall serve upon the commission any final
10 order issued in any action brought under this section.

11 (e) If, after a trial held pursuant to subsection (a), the
12 court of common pleas finds that a defendant engaged in or is
13 engaging in any unlawful discriminatory practice as defined in
14 this act, the court [may] shall award attorney fees and costs to
15 the prevailing plaintiff.

16 (f) If, after a trial held pursuant to subsection (a), the
17 court of common pleas finds that a defendant has not engaged in
18 or is not engaging in any unlawful discriminatory practice as
19 defined in this act, the court may award attorney fees and costs
20 to the prevailing defendant if the defendant proves that the
21 complaint was brought in bad faith.

22 (g) The time limits for filing any complaint or other
23 pleading under this act shall be subject to waiver, estoppel and
24 equitable tolling.

25 (h) Nothing in this act shall be construed as superseding
26 any provision of the act of October 15, 1980 (P.L.950, No.164),
27 known as the "Commonwealth Attorneys Act." All court actions
28 commenced by or against the commission shall be subject to the
29 provisions of that act.

30 (i) In any action under this section, a complainant may

1 demand a trial by jury.

2 Section 9. Construction.--(a) The provisions of this act
3 shall be construed liberally for the accomplishment of the
4 purposes thereof and any law inconsistent with any provisions
5 hereof shall not apply. Nothing contained in this act shall be
6 deemed to repeal any of the provisions of any law of this
7 Commonwealth relating to discrimination because of race,
8 religion, color, ancestry, national origin, sexual orientation,
9 gender identity or expression, sex, handicap or disability. This
10 act shall not be construed to prohibit any educational
11 institution which is neither State-owned nor State-related, nor
12 State-aided, from drawing its enrollment entirely from members
13 of one sex or from the sexes in any proportion, nor shall
14 anything herein contained prevent any educational institution
15 which is State-owned, State-related or State-aided from
16 requiring each applicant for admission to state in the
17 application for admission such applicant's sex to supplement and
18 implement the institution's facts for planning purposes but only
19 for such planning purposes and not for any discriminatory
20 purposes. For the purpose of this section the term "State-owned"
21 institution means the institutions comprising the State System
22 of Higher Education; the term "State-related" institutions means
23 the University of Pittsburgh, Temple University, Lincoln
24 University and the Pennsylvania State University; the term
25 "State-aided" institution means the Delaware Valley College of
26 Science and Agriculture, Drexel University, Hahnemann
27 University, Thomas Jefferson University, the Medical College of
28 Pennsylvania, University of Pennsylvania, Pennsylvania College
29 of Podiatric Medicine, Pennsylvania College of Optometry,
30 Philadelphia College of Osteopathic Medicine, Philadelphia

1 College of Textiles and Science, and University of the Arts.

2 * * *

3 (c) Except as provided in section 7.1, nothing contained in
4 this act shall be deemed to repeal or supersede any of the
5 provisions of any existing or hereafter adopted municipal
6 ordinance, municipal charter or of any law of this Commonwealth
7 relating to discrimination because of race, color, ancestry,
8 age, sexual orientation, gender identity or expression, sex,
9 religion, national origin or handicap or disability. As to acts
10 declared unlawful by section 4, the procedure provided in
11 section 7.1 shall, when invoked, be exclusive. Any final
12 determination under section 7.1 shall exclude any other action,
13 civil or criminal, based on the same grievance without resorting
14 to the procedure provided in this act, and such complainant may
15 not subsequently resort to the procedure in this act. In the
16 event of a conflict between the interpretation of a provision of
17 this act and the interpretation of a similar provision contained
18 in any municipal ordinance, the interpretation of the provision
19 in this act shall apply to the municipal ordinance.

20 Section 5. This act shall take effect in 60 days.