INTRODUCED BY MADDEN, SCHLOSSBERG, SOLOMON, MURT, O'BRIEN, A. DAVIS, DEAN, STURLA, DERMOUDY, KINSEY, D. MILLER, HANNA, CONKLIN, SAMUELSON, CALTAGIRONE, ROEBUCK, DALEY, BULLOCK, FRANKEL, DeLUCA, PASHINSKI, HILL-EVANS AND SCHWEYER, APRIL 19, 2018

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 19, 2018

AN ACT

Amending the act of October 27, 1955 (P.L.744, No.222), entitled "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 definitions and for unlawful discriminatory practices.

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

Section 1. Section 4(b), (c) and (x) of the act of October 27, 1955 (P.L.744, No.222), known as the Pennsylvania Human Relations Act, are amended and the section is amended by adding a subsection to read:

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

* * *
(b) The term "employer" includes the Commonwealth or any political subdivision or board, department, commission or school district thereof and any person employing [four] one or more persons within the Commonwealth, but except as hereinafter provided, does not include religious, fraternal, charitable or sectarian corporations or associations, except such corporations or associations supported, in whole or in part, by governmental appropriations. The term "employer" with respect to discriminatory practices based on race, color, age, sex, national origin or non-job related handicap or disability, includes religious, fraternal, charitable and sectarian corporations and associations employing [four] one or more persons within the Commonwealth.

c) The term "employe" does not include (1) any individual employed in agriculture or in the domestic service of any person, (2) any individuals, except domestic workers, who, as a part of their employment, reside in the personal residence of the employer[, or (3)] any individual employed by said individual's parents, spouse or child.

* * *

(x) The term "independent contractor" includes:

(1) any person who is subject to the provisions governing any of the professions and occupations regulated by State licensing laws enforced by the Bureau of Professional and Occupational Affairs in the Department of State, or is included in the Fair Housing Act (Public Law 90-284, 42 U.S.C. § 3601 et seq.)[.]; or

(2) a person, other than an employe, who performs a service for remuneration under a contract, written or oral, express or implied, for an employer.
* * *

(bb) The term "domestic worker":

(1) means an individual employed in a home or personal
residence of an employer for the purpose of:

(i) caring for an individual under 18 years of age;
(ii) serving as a companion for a sick or convalescing
individual or an individual over sixty-two years of age; or
(iii) housekeeping or any other domestic service.

(2) The term does not include any of the following:

(i) An individual who is working on a casual basis.
(ii) An individual engaged in providing companionship
services, as defined in section 213(a)(15) of the Fair Labor
Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 13(a)(15)) and
is employed by an employer other than the family or household
using his or her services.

(iii) An individual who is a relative through blood,
marrage or adoption of either (A) the employer or (B) the
individual for whom the domestic worker delivers services under
a program funded or administered by Federal, State or local
government.

Section 2. Section 5(a) of the act is 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, 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 provisions 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. Notwithstanding any provision of this clause, it shall not be an unlawful discriminatory practice for an employer to express a preference in the hiring or firing of an individual as a domestic worker or in a personal or confidential capacity.
Section 3. This act shall take effect in 90 days.