

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 238 Session of 2023

INTRODUCED BY SCHWANK, TARTAGLIONE, HAYWOOD, FONTANA, COLLETT,
HUGHES, BREWSTER, DILLON, KANE, CAPPELLETTI, SANTARSIERO,
COMITTA, COSTA, KEARNEY AND SAVAL, JANUARY 31, 2023

REFERRED TO LABOR AND INDUSTRY, JANUARY 31, 2023

AN ACT

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

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

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

20 Section 2. Findings and Declaration of Policy.--

21 (a) The practice or policy of discrimination against
22 individuals or groups by reason of their race, color, familial
23 status, marital status, religious creed, ancestry, age, sex,

1 national origin, handicap or disability, use of guide or support
2 animals because of the blindness, deafness or physical handicap
3 of the user or because the user is a handler or trainer of
4 support or guide animals is a matter of concern of the
5 Commonwealth. Such discrimination foments domestic strife and
6 unrest, threatens the rights and privileges of the inhabitants
7 of the Commonwealth, and undermines the foundations of a free
8 democratic state. The denial of equal employment, housing and
9 public accommodation opportunities because of such
10 discrimination, and the consequent failure to utilize the
11 productive capacities of individuals to their fullest extent,
12 deprives large segments of the population of the Commonwealth of
13 earnings necessary to maintain decent standards of living,
14 necessitates their resort to public relief and intensifies group
15 conflicts, thereby resulting in grave injury to the public
16 health and welfare, compels many individuals to live in
17 dwellings which are substandard, unhealthful and overcrowded,
18 resulting in racial segregation in public schools and other
19 community facilities, juvenile delinquency and other evils,
20 thereby threatening the peace, health, safety and general
21 welfare of the Commonwealth and its inhabitants.

22 (b) It is hereby declared to be the public policy of this
23 Commonwealth to foster the employment of all individuals in
24 accordance with their fullest capacities regardless of their
25 race, color, familial status, marital status, religious creed,
26 ancestry, age, sex, national origin, handicap or disability, use
27 of guide or support animals because of the blindness, deafness
28 or physical handicap of the user or because the user is a
29 handler or trainer of support or guide animals, and to safeguard
30 their right to obtain and hold employment without such

1 discrimination, to assure equal opportunities to all individuals
2 and to safeguard their rights to public accommodation and to
3 secure housing accommodation and commercial property regardless
4 of race, color, familial status, marital status, religious
5 creed, ancestry, age, sex, national origin, handicap or
6 disability, use of guide or support animals because of blindness
7 or deafness of the user or because the user is a handler or
8 trainer of guide or support animals.

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

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

26 Section 2. Section 4(t) of the act is amended and the
27 section is amended by adding a clause to read:

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

30 * * *

(t) The term "familial status" means one or more individuals who have not attained the age of eighteen years being domiciled with:

(1) a parent or other person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The term includes an individual who is a provider of care, or is perceived to be a provider of care, for a family member, whether in the past, present or future. For purposes of this definition, the term "family member" shall include the employee's spouse, domestic partner, children, including through adoption or other legal custodial relationship, household members, parents and all other persons related to the employee and the employee's spouse and children by marriage, blood or consanguinity.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

* * *

(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 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

1 applicable security regulations established by the United States
2 or the Commonwealth of Pennsylvania:

3 (a) For any employer because of the race, color, familial
4 status, marital status, religious creed, ancestry, age, sex,
5 national origin or non-job related handicap or disability or the
6 use of a guide or support animal because of the blindness,
7 deafness or physical handicap of any individual or independent
8 contractor, to refuse to hire or employ or contract with, or to
9 bar or to discharge from employment such individual or
10 independent contractor, or to otherwise discriminate against
11 such individual or independent contractor with respect to
12 compensation, hire, tenure, terms, conditions or privileges of
13 employment or contract, if the individual or independent
14 contractor is the best able and most competent to perform the
15 services required. The provision of this paragraph shall not
16 apply, to (1) operation of the terms or conditions of any bona
17 fide retirement or pension plan which have the effect of a
18 minimum service requirement, (2) operation of the terms or
19 conditions of any bona fide group or employee insurance plan, (3)
20 age limitations placed upon entry into bona fide apprenticeship
21 programs of two years or more approved by the State
22 Apprenticeship and Training Council of the Department of Labor
23 and Industry, established by the act of July 14, 1961 (P.L.604,
24 No.304), known as "The Apprenticeship and Training Act."
25 Notwithstanding any provision of this clause, it shall not be an
26 unlawful employment practice for a religious corporation or
27 association to hire or employ on the basis of sex in those
28 certain instances where sex is a bona fide occupational
29 qualification because of the religious beliefs, practices, or
30 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, familial status, marital status, religious creed, ancestry, 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, familial status, marital status, religious creed, ancestry, age, 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, familial status, marital status, religious creed, ancestry, age, 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

1 individuals, with intent to circumvent the spirit and purpose of
2 this act, to any employment agency, employment service, labor
3 organization, training school or training center or any other
4 employe-referring source which services individuals who are
5 predominantly of the same race, color, familial status, marital
6 status, religious creed, ancestry, age, sex, national origin or
7 non-job related handicap or disability.

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

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

14 (c) For any labor organization because of the race, color,
15 familial status, marital status, religious creed, ancestry, age,
16 sex, national origin, non-job related handicap or disability or
17 the use of a guide or support animal because of the blindness,
18 deafness or physical handicap of any individual to deny full and
19 equal membership rights to any individual or otherwise to
20 discriminate against such individuals with respect to hire,
21 tenure, terms, conditions or privileges of employment or any
22 other matter, directly or indirectly, related to employment.

23 * * *

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

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

8 * * *

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