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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

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 10, 1997

AN ACT

Amending the act of October 27, 1955 (P.L.744, No.222), entitled, as amended, "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," defining "advertisement" and "advertiser"; and providing for certain forms of advertisement, for limitations and for civil penalties.

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

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

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

* * *

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

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

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

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

* * *

(h) For any person to:

* * *

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

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

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

* * *

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

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

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

* * *

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

* * *

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

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

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

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

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

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

* * *

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

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

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

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

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

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

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

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

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

~~respondent.~~

* * *

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

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

Section 9.1. Procedure Regarding Housing Advertisements.--

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

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

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

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

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

personnel concerning what constitutes appropriate housing advertisements.

It shall also be an affirmative defense precluding a finding that an advertiser has knowingly and wilfully violated this act if an advertiser has made reasonable efforts in good faith to comply with this act. Guidelines as to the type of conduct which constitutes such reasonable efforts to comply shall be developed and published by the Commission in the Pennsylvania Bulletin along with the list and specific examples of impermissible advertising described in subsection (b).

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

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

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

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

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

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

coverage.

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

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

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