

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 337 Session of
1997

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PHILLIPS, SCHRODER, SEMMEL AND SEYFERT, FEBRUARY 10, 1997

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 14, 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 restriction THE FAIR HOUSING ACT (PUBLIC LAW 90-284, <—
11 42 U.S.C. § 3601 ET SEQ.) AND REASONABLE STATE OR LOCAL
12 RESTRICTIONS on the maximum number of occupants permitted to
13 occupy a dwelling or a REASONABLE restriction relating to health <—
14 or safety standards or business necessity. OWNERS AND MANAGERS <—
15 OF DWELLINGS MAY DEVELOP AND IMPLEMENT REASONABLE OCCUPANCY AND
16 SAFETY STANDARDS BASED ON FACTORS SUCH AS THE NUMBER AND SIZE OF
17 SLEEPING AREAS OR BEDROOMS AND THE OVERALL SIZE OF A DWELLING
18 UNIT SO LONG AS THE STANDARDS DO NOT VIOLATE THE FAIR HOUSING
19 ACT OR STATE OR LOCAL RESTRICTIONS.

20 * * *

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

24 Section 9. Procedure.--(a) Any person claiming to be
25 aggrieved by an alleged unlawful discriminatory practice may
26 make, sign and file with the Commission a verified complaint, in
27 writing, which shall state the name and address of the person,
28 employer, labor organization or employment agency alleged to
29 have committed the unlawful discriminatory practice complained
30 of, and which shall set forth the particulars thereof and

1 contain such other information as may be required by the
2 Commission. Commission representatives shall not modify the
3 substance of the complaint. Whenever a person invokes the
4 procedures set forth in this act, the Commission shall refuse to
5 accept for filing a complaint it determines to be untimely with
6 no grounds for equitable tolling, outside its jurisdiction or
7 frivolous on its face. The Commission upon its own initiative or
8 the Attorney General may, in like manner, make, sign and file
9 such complaint. Any employer whose employees, or some of them,
10 hinder or threaten to hinder compliance with the provisions of
11 this act may file with the Commission a verified complaint,
12 asking for assistance by conciliation or other remedial action
13 and, during such period of conciliation or other remedial
14 action, no hearings, orders or other actions shall be taken by
15 the Commission against such employer.

16 * * *

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

21 * * *

22 (d.1) When notice of hearing is given as set forth in
23 subsection (d) and an election procedure is required by the Fair
24 Housing Act, either party may elect to have the claim asserted
25 in the complaint decided in a civil action brought under the
26 original jurisdiction of Commonwealth Court. The written notice
27 of the Commission shall be sent to all parties and will inform
28 them of their right to take civil action. An election must be
29 made within twenty days after receipt of the notice of hearing.
30 A party making this election shall notify the Commission and all

1 other parties. If an election for civil action is made by either
2 party, the Commission shall, within thirty days from the date of
3 election, commence and maintain a civil action on behalf of the
4 complainant provided, however, that, whenever the Attorney
5 General signs and files the complaint pursuant to subsection
6 (a), the Attorney General shall, within thirty days from the
7 date of election, commence and maintain a civil action on behalf
8 of the complainant. In those cases commenced by the Attorney
9 General, the Commission shall have the right to intervene. In
10 any action brought under this subsection:

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

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

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

26 (4) If, after a trial, the Commonwealth Court finds that a
27 respondent has not engaged in any unlawful discriminatory
28 practice as defined in this act, the court may award attorney
29 fees and costs to the prevailing respondent if the court
30 determines that the complaint is frivolous and that the

1 Commission dealt with the party complained against in a wilful,
2 wanton and oppressive manner, in which case, the Commission
3 shall be ordered to pay such costs and attorney fees.

4 * * *

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

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

10 Section 9.1. Procedure Regarding Housing Advertisements.--

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

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

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

29 (1) attempted, in good faith, to comply with the list and
30 specific examples of impermissible housing advertisements

1 described in subsection (b); or

2 (2) complied with an interpretation of the Commission or its
3 personnel concerning what constitutes appropriate housing
4 advertisements.

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

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

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

30 Section 9.3. Civil Penalties.--The Commission shall have the

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

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

20 Section 13. Separability.--(a) If any clause, sentence,
21 paragraph or part of this act, or the application thereof, to
22 any person or circumstance, shall, for any reason, be adjudged
23 by a court of competent jurisdiction to be invalid, such
24 judgment shall not affect, impair or invalidate the remainder of
25 this act nor the application of such clause, sentence, paragraph
26 or part to other persons or circumstances, but shall be confined
27 in its operation to the clause, sentence, paragraph or part
28 thereof and to the persons or circumstances directly involved in
29 the controversy in which such judgment shall have been rendered.

30 It is hereby declared to be the legislative intent that this act

1 would have been adopted had such provisions not been included or
2 such persons or circumstances been expressly excluded from their
3 coverage.

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

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

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