

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1850 Session of
2003

INTRODUCED BY CORNELL, FRANKEL, JOSEPHS, MANN, WEBER, KELLER,
YOUNGBLOOD, BUXTON, LEACH, MANDERINO, TIGUE, McCALL, GOOD,
ROONEY, DeWEESE, J. TAYLOR, BROWNE, DALEY, WASHINGTON, BEBKO-
JONES, ROSS, NICKOL, JAMES, WHEATLEY, COHEN, FREEMAN,
ROEBUCK, STETLER, BISHOP, MELIO, STURLA, CURRY, MUNDY, VEON,
OLIVER, D. EVANS, THOMAS, WILLIAMS, WATERS, McGEEHAN,
DONATUCCI, LEDERER, MYERS, LAUGHLIN, RIEGER, HORSEY, COSTA,
DIVEN, PISTELLA AND WALKO, OCTOBER 27, 2003

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 27, 2003

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," further providing for findings and declaration of
12 policy, for right to freedom from discrimination, housing and
13 public accommodation; defining "sexual orientation" and
14 "gender identity or expression"; and further providing for
15 unlawful discriminatory practices, for powers and duties of
16 commission, for education program, for procedure and for
17 construction and exclusiveness of remedy and for damages.

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

20 Section 1. The title and sections 2 and 3 of the act of
21 October 27, 1955 (P.L.744, No.222), known as the Pennsylvania
22 Human Relations Act, amended December 20, 1991 (P.L.414, No.51),

1 are amended to read:

2 AN ACT

3 Prohibiting certain practices of discrimination because of race,
4 color, religious creed, ancestry, sexual orientation or
5 gender identity or expression, age or national origin, by
6 employers, employment agencies, labor organizations and
7 others as herein defined; creating the Pennsylvania Human
8 Relations Commission in the Governor's Office; defining its
9 functions, powers and duties; providing for procedure and
10 enforcement; providing for formulation of an educational
11 program to prevent prejudice; providing for judicial review
12 and enforcement and imposing penalties.

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

14 (a) The practice or policy of discrimination against
15 individuals or groups by reason of their race, color, familial
16 status, religious creed, ancestry, sexual orientation or gender
17 identity or expression, age, sex, national origin, handicap or
18 disability, use of guide or support animals because of the
19 blindness, deafness or physical handicap of the user or because
20 the user is a handler or trainer of support or guide animals is
21 a matter of concern of the Commonwealth. Such discrimination
22 foments domestic strife and unrest, threatens the rights and
23 privileges of the inhabitants of the Commonwealth, and
24 undermines the foundations of a free democratic state. The
25 denial of equal employment, housing and public accommodation
26 opportunities because of such discrimination, and the consequent
27 failure to utilize the productive capacities of individuals to
28 their fullest extent, deprives large segments of the population
29 of the Commonwealth of earnings necessary to maintain decent

1 standards of living, necessitates their resort to public relief
2 and intensifies group conflicts, thereby resulting in grave
3 injury to the public health and welfare, compels many
4 individuals to live in dwellings which are substandard,
5 unhealthful and overcrowded, resulting in racial segregation in
6 public schools and other community facilities, juvenile
7 delinquency and other evils, thereby threatening the peace,
8 health, safety and general welfare of the Commonwealth and its
9 inhabitants.

10 (b) It is hereby declared to be the public policy of this
11 Commonwealth to foster the employment of all individuals in
12 accordance with their fullest capacities regardless of their
13 race, color, religious creed, ancestry, sexual orientation or
14 gender identity or expression, age, sex, national origin,
15 handicap or disability, use of guide or support animals because
16 of the blindness, deafness or physical handicap of the user or
17 because the user is a handler or trainer of support or guide
18 animals, and to safeguard their right to obtain and hold
19 employment without such discrimination, to assure equal
20 opportunities to all individuals and to safeguard their rights
21 to public accommodation and to secure housing accommodation and
22 commercial property regardless of race, color, familial status,
23 religious creed, ancestry, sexual orientation or gender identity
24 or expression, age, sex, national origin, handicap or
25 disability, use of guide or support animals because of blindness
26 or deafness of the user or because the user is a handler or
27 trainer of guide or support animals.

28 (c) This act shall be deemed an exercise of the police power
29 of the Commonwealth for the protection of the public welfare,
30 prosperity, health and peace of the people of the Commonwealth

1 of Pennsylvania.

2 Section 3. Right to Freedom from Discrimination in
3 Employment, Housing and Public Accommodation.--The opportunity
4 for an individual to obtain employment for which he is
5 qualified, and to obtain all the accommodations, advantages,
6 facilities and privileges of any public accommodation and of any
7 housing accommodation and commercial property without
8 discrimination because of race, color, familial status,
9 religious creed, ancestry, sexual orientation or gender identity
10 or expression, handicap or disability, age, sex, national
11 origin, the use of a guide or support animal because of the
12 blindness, deafness or physical handicap of the user or because
13 the user is a handler or trainer of support or guide animals is
14 hereby recognized as and declared to be a civil right which
15 shall be enforceable as set forth in this act.

16 Section 2. Section 4(b) of the act, amended December 20,
17 1991 (P.L.414, No.51), is amended and the section is amended by
18 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 (b) The term "employer" includes the Commonwealth or any
23 political subdivision or board, department, commission or school
24 district thereof and any person employing four or more persons
25 within the Commonwealth, but except as hereinafter provided,
26 does not include religious, fraternal, charitable or sectarian
27 corporations or associations, except such corporations or
28 associations supported, in whole or in part, by governmental
29 appropriations. The term "employer" with respect to
30 discriminatory practices based on race, color, age, sex,

1 national origin, sexual orientation or gender identity or
2 expression or non-job related handicap or disability, includes
3 religious, fraternal, charitable and sectarian corporations and
4 associations employing four or more persons within the
5 Commonwealth.

6 * * *

7 (bb) The term "sexual orientation" means actual or perceived
8 heterosexuality, homosexuality or bisexuality.

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

13 Section 3. Sections 5(a), (b), (c), (f), (g), (h) and (i) of
14 the act, amended or added December 20, 1991 (P.L.414, No.51),
15 July 12, 1996 (P.L.684, No.117) and June 25, 1997 (P.L.326,
16 No.34), are amended to read:

17 Section 5. Unlawful Discriminatory Practices.--It shall be
18 an unlawful discriminatory practice, unless based upon a bona
19 fide occupational qualification, or in the case of a fraternal
20 corporation or association, unless based upon membership in such
21 association or corporation, or except where based upon
22 applicable security regulations established by the United States
23 or the Commonwealth of Pennsylvania:

24 (a) For any employer because of the race, color, religious
25 creed, ancestry, sexual orientation or gender identity or
26 expression, age, sex, national origin or non-job related
27 handicap or disability or the use of a guide or support animal
28 because of the blindness, deafness or physical handicap of any
29 individual or independent contractor, to refuse to hire or
30 employ or contract with, or to bar or to discharge from

1 employment such individual or independent contractor, or to
2 otherwise discriminate against such individual or independent
3 contractor with respect to compensation, hire, tenure, terms,
4 conditions or privileges of employment or contract, if the
5 individual or independent contractor is the best able and most
6 competent to perform the services required. The provision of
7 this paragraph shall not apply, to (1) operation of the terms or
8 conditions of any bona fide retirement or pension plan which
9 have the effect of a minimum service requirement, (2) operation
10 of the terms or conditions of any bona fide group or employe
11 insurance plan, (3) age limitations placed upon entry into bona
12 fide apprenticeship programs of two years or more approved by
13 the State Apprenticeship and Training Council of the Department
14 of Labor and Industry, established by the act of July 14, 1961
15 (P.L.604, No.304), known as "The Apprenticeship and Training
16 Act." Notwithstanding any provision of this clause, it shall not
17 be an unlawful employment practice for a religious corporation
18 or association to hire or employ on the basis of sex in those
19 certain instances where sex is a bona fide occupational
20 qualification because of the religious beliefs, practices, or
21 observances of the corporation, or association.

22 (b) For any employer, employment agency or labor
23 organization, prior to the employment, contracting with an
24 independent contractor or admission to membership, to:

25 (1) Elicit any information or make or keep a record of or
26 use any form of application or application blank containing
27 questions or entries concerning the race, color, religious
28 creed, ancestry, sexual orientation or gender identity or
29 expression, age, sex, national origin, past handicap or
30 disability or the use of a guide or support animal because of

1 the blindness, deafness or physical handicap of any applicant
2 for employment or membership. Prior to an offer of employment,
3 an employer may not inquire as to whether an individual has a
4 handicap or disability or as to the severity of such handicap or
5 disability. An employer may inquire as to the individual's
6 ability to perform the essential functions of the employment.

7 (2) Print or publish or cause to be printed or published any
8 notice or advertisement relating to employment or membership
9 indicating any preference, limitation, specification or
10 discrimination based upon race, color, religious creed,
11 ancestry, sexual orientation or gender identity or expression,
12 age, sex, national origin, non-job related handicap or
13 disability or the use of a guide or support animal because of
14 the blindness, deafness or physical handicap of the user.

15 (3) Deny or limit, through a quota system, employment or
16 membership because of race, color, religious creed, ancestry,
17 sexual orientation or gender identity or expression, age, sex,
18 national origin, non-job related handicap or disability, the use
19 of a guide or support animal because of the blindness, deafness
20 or physical handicap of the user or place of birth.

21 (4) Substantially confine or limit recruitment or hiring of
22 individuals, with intent to circumvent the spirit and purpose of
23 this act, to any employment agency, employment service, labor
24 organization, training school or training center or any other
25 employe-referring source which services individuals who are
26 predominantly of the same race, color, religious creed,
27 ancestry, sexual orientation or gender identity or expression,
28 age, sex, national origin or non-job related handicap or
29 disability.

30 (5) Deny employment because of a prior handicap or

1 disability.

2 Nothing in clause (b) of this section shall bar any
3 institution or organization for handicapped or disabled persons
4 from limiting or giving preference in employment or membership
5 to handicapped or disabled persons.

6 (c) For any labor organization because of the race, color,
7 religious creed, ancestry, sexual orientation or gender identity
8 or expression, age, sex, national origin, non-job related
9 handicap or disability or the use of a guide or support animal
10 because of the blindness, deafness or physical handicap of any
11 individual to deny full and equal membership rights to any
12 individual or otherwise to discriminate against such individuals
13 with respect to hire, tenure, terms, conditions or privileges of
14 employment or any other matter, directly or indirectly, related
15 to employment.

16 * * *

17 (f) For any employment agency to fail or refuse to classify
18 properly, refer for employment or otherwise to discriminate
19 against any individual because of his race, color, religious
20 creed, ancestry, sexual orientation or gender identity or
21 expression, age, sex, national origin, non-job related handicap
22 or disability or the use of a guide or support animal because of
23 the blindness, deafness or physical handicap of the user.

24 (g) For any individual seeking employment to publish or
25 cause to be published any advertisement which in any manner
26 expresses a limitation or preference as to the race, color,
27 religious creed, ancestry, sexual orientation or gender identity
28 or expression, age, sex, national origin, non-job related
29 handicap or disability or the use of a guide or support animal
30 because of the blindness, deafness or physical handicap of any

1 prospective employer.

2 (h) For any person to:

3 (1) Refuse to sell, lease, finance or otherwise to deny or
4 withhold any housing accommodation or commercial property from
5 any person because of the race, color, familial status, age,
6 religious creed, ancestry, sexual orientation or gender identity
7 or expressions, sex, national origin or handicap or disability
8 of any person, prospective owner, occupant or user of such
9 housing accommodation or commercial property, or to refuse to
10 lease any housing accommodation or commercial property to any
11 person due to use of a guide animal because of the blindness or
12 deafness of the user, use of a support animal because of a
13 physical handicap of the user or because the user is a handler
14 or trainer of support or guide animals or because of the
15 handicap or disability of an individual with whom the person is
16 known to have a relationship or association.

17 (1.1) Evict or attempt to evict an occupant of any housing
18 accommodation before the end of the term of a lease because of
19 pregnancy or the birth of a child.

20 (2) Refuse to lend money, whether or not secured by mortgage
21 or otherwise for the acquisition, construction, rehabilitation,
22 repair or maintenance of any housing accommodation or commercial
23 property or otherwise withhold financing of any housing
24 accommodation or commercial property from any person because of
25 the race, color, familial status, age, religious creed,
26 ancestry, sexual orientation or gender identity or expression,
27 sex, national origin, handicap or disability of any person, the
28 use of a guide or support animal because of the blindness,
29 deafness or physical handicap of the user or because the user is
30 a handler or trainer of support or guide animals or because of

1 the handicap or disability of an individual with whom the person
2 is known to have a relationship or association.

3 (3) Discriminate against any person in the terms or
4 conditions of selling or leasing any housing accommodation or
5 commercial property or in furnishing facilities, services or
6 privileges in connection with the ownership, occupancy or use of
7 any housing accommodation or commercial property because of the
8 race, color, familial status, age, religious creed, ancestry,
9 sexual orientation or gender identity or expression, sex,
10 national origin, handicap or disability of any person, the use
11 of a guide or support animal because of the blindness, deafness
12 or physical handicap of the user or because the user is a
13 handler or trainer of support or guide animals or because of the
14 handicap or disability of an individual with whom the person is
15 known to have a relationship or association.

16 (3.1) Refuse to permit, at the expense of a person with a
17 handicap, reasonable modifications of existing premises occupied
18 or to be occupied by such person if such modifications may be
19 necessary to afford such person full enjoyment of the premises,
20 except that, in the case of a rental, the landlord may, where it
21 is reasonable to do so, grant permission for a modification if
22 the renter agrees to restore the interior of the premises to the
23 condition that existed before the modification, with reasonable
24 wear and tear excepted.

25 (3.2) Refuse to make reasonable accommodations in rules,
26 policies, practices or services when such accommodations may be
27 necessary to afford such person equal opportunity to use and
28 enjoy a housing accommodation.

29 (4) Discriminate against any person in the terms or
30 conditions of any loan of money, whether or not secured by

1 mortgage or otherwise for the acquisition, construction,
2 rehabilitation, repair or maintenance of housing accommodation
3 or commercial property because of the race, color, familial
4 status, age, religious creed, ancestry, sexual orientation or
5 gender identity or expression, sex, national origin or handicap
6 or disability of any person, the use of a guide or support
7 animal because of the blindness, deafness or physical handicap
8 of the user or because the user is a handler or trainer of guide
9 or support animals or because of the handicap or disability of
10 an individual with whom the person is known to have a
11 relationship or association.

12 (5) Print, publish or circulate any statement or
13 advertisement: (i) relating to the sale, lease or acquisition of
14 any housing accommodation or commercial property or the loan of
15 money, whether or not secured by mortgage, or otherwise for the
16 acquisition, construction, rehabilitation, repair or maintenance
17 of any housing accommodation or commercial property which
18 indicates any preference, limitation, specification, or
19 discrimination based upon race, color, familial status, age,
20 religious creed, ancestry, sexual orientation or gender identity
21 or expression, sex, national origin, handicap or disability or
22 because of the handicap or disability of an individual with whom
23 the person is known to have a relationship or association, or
24 (ii) relating to the sale, lease or acquisition of any housing
25 accommodation or commercial property which indicates any
26 preference, limitation, specification or discrimination based
27 upon use of a guide or support animal because of the blindness,
28 deafness or physical handicap of the user or because the user is
29 a handler or trainer of support or guide animals.

30 (6) Make any inquiry, elicit any information, make or keep

1 any record or use any form of application, containing questions
2 or entries concerning race, color, familial status, age,
3 religious creed, ancestry, sexual orientation or gender identity
4 or expression, sex, national origin, handicap or disability or
5 because of the handicap or disability of an individual with whom
6 the person is known to have a relationship or association in
7 connection with the sale or lease of any housing accommodation
8 or commercial property or loan of any money, whether or not
9 secured by mortgage or otherwise for the acquisition,
10 construction, rehabilitation, repair or maintenance of any
11 housing accommodation or commercial property, or to make any
12 inquiry, elicit any information, make or keep any record or use
13 any form of application, containing questions or entries
14 concerning the use of a guide or support animal because of the
15 blindness, deafness or physical handicap of the user or because
16 the user is a handler or trainer of support or guide animals, in
17 connection with the lease of any housing accommodation or
18 commercial property.

19 (7) Construct, operate, offer for sale, lease or rent or
20 otherwise make available housing or commercial property which is
21 not accessible.

22 (8) Discriminate in real estate-related transactions, as
23 described by and subject to the following:

24 (i) It shall be unlawful for any person or other entity
25 whose business includes engaging in real estate-related
26 transactions to discriminate against any person in making
27 available such a transaction or in the terms or conditions of
28 such a transaction because of race, color, religious creed,
29 ancestry, sexual orientation or gender identity or expression,
30 national origin, sex, age, handicap or disability, use of a

1 guide or support animal because of a physical handicap or
2 because the user is a handler or trainer of guide or support
3 animals or familial status.

4 (ii) Nothing in this act prohibits a person engaged in the
5 business of furnishing appraisals of real property to take into
6 consideration factors other than race, color, religious creed,
7 ancestry, sexual orientation or gender identity or expression,
8 national origin, sex, age, handicap or disability, use of a
9 guide or support animal because of a physical handicap or
10 because the user is a handler or trainer of guide or support
11 animals or familial status.

12 (9) Nothing in this clause, regarding age or familial
13 status, shall apply with respect to housing for older persons. A
14 person shall not be held personally liable for monetary damages
15 for a violation of this act if the person reasonably relied, in
16 good faith, on the application of the exemption of this
17 subclause. A person may only prove good faith reliance on the
18 application of the exemption of this subclause by proving that
19 at the time of the act complained of all of the following
20 applied:

21 (i) The person had no actual knowledge that the housing was
22 not eligible for exemption under this subclause.

23 (ii) The owner or manager of the housing had stated
24 formally, in writing, that the housing complied with the
25 requirements for exemption under this subclause.

26 (10) Nothing in this clause shall bar any religious or
27 denominational institution or organization or any charitable or
28 educational organization which is operated, supervised or
29 controlled by or in connection with a religious organization or
30 any bona fide private or fraternal organization from giving

1 preference to persons of the same religion or denomination or to
2 members of such private or fraternal organization or from making
3 such selection as is calculated by such organization to promote
4 the religious principles or the aims, purposes or fraternal
5 principles for which it is established or maintained. Nor shall
6 it apply to the rental of rooms in a landlord-occupied rooming
7 house with a common entrance, nor with respect to discrimination
8 based on sex, the advertising, rental or leasing of housing
9 accommodations in a single-sex dormitory or rooms in one's
10 personal residence in which common living areas are shared.

11 (11) Nothing in this act limits the applicability of the
12 Fair Housing Act and reasonable State or local restrictions on
13 the maximum number of occupants permitted to occupy a dwelling
14 or a reasonable restriction relating to health or safety
15 standards or business necessity. Owners and managers of
16 dwellings may develop and implement reasonable occupancy and
17 safety standards based on factors such as the number and size of
18 sleeping areas or bedrooms and the overall size of a dwelling
19 unit so long as the standards do not violate the Fair Housing
20 Act or State or local restrictions.

21 (i) For any person being the owner, lessee, proprietor,
22 manager, superintendent, agent or employe of any public
23 accommodation, resort or amusement to:

24 (1) Refuse, withhold from, or deny to any person because of
25 his race, color, sex, religious creed, ancestry, sexual
26 orientation or gender identity or expression, national origin,
27 or handicap or disability, or to any person due to use of a
28 guide or support animal because of the blindness, deafness or
29 physical handicap of the user or because the user is a handler
30 or trainer of support or guide animals, either directly or

1 indirectly, any of the accommodations, advantages, facilities or
2 privileges of such public accommodation, resort or amusement.

3 (2) Publish, circulate, issue, display, post or mail, either
4 directly or indirectly, any written or printed communication,
5 notice or advertisement to the effect that any of the
6 accommodations, advantages, facilities and privileges of any
7 such place shall be refused, withheld from or denied to any
8 person on account of race, color, religious creed, sex,
9 ancestry, sexual orientation or gender identity or expression,
10 national origin or handicap or disability, or to any person due
11 to use of a guide or support animal because of the blindness,
12 deafness or physical handicap of the user, or because the user
13 is a handler or trainer of support or guide animals, or that the
14 patronage or custom thereof of any person, belonging to or
15 purporting to be of any particular race, color, religious creed,
16 sex, ancestry, sexual orientation or gender identity or
17 expression, national origin or handicap or disability, or to any
18 person due to use of a guide or support animal because of the
19 blindness, deafness or physical handicap of the user or because
20 the user is a handler or trainer of support or guide animals, is
21 unwelcome, objectionable or not acceptable, desired or
22 solicited.

23 (3) Exclude or otherwise deny equal goods, services,
24 facilities, privileges, advantages, accommodations or other
25 opportunities to a person because of the handicap or disability
26 of an individual with whom the person is known to have a
27 relationship or association.

28 (4) Construct, operate or otherwise make available such
29 place of public accommodation, resort or amusement which is not
30 accessible.

1 * * *

2 Section 4. Sections 5.3 and 7(i), (j) and (k) of the act,
3 amended December 20, 1991 (P.L.414, No.51), are amended to read:

4 Section 5.3. Prohibition of Certain Real Estate Practices.--

5 It shall be an unlawful discriminatory practice for any person
6 to:

7 (a) Induce, solicit or attempt to induce or solicit for
8 commercial profit any listing, sale or transaction involving any
9 housing accommodation or commercial property by representing
10 that such housing accommodation or commercial property is within
11 any neighborhood, community or area adjacent to any other area
12 in which there reside, or do not reside, persons of a particular
13 race, color, familial status, age, religious creed, ancestry,
14 sexual orientation or gender identity or expression, sex,
15 national origin, handicap or disability, or who are guide or
16 support animal dependent.

17 (b) Discourage, or attempt to discourage, for commercial
18 profit, the purchase or lease of any housing accommodation or
19 commercial property by representing that such housing
20 accommodation or commercial property is within any neighborhood,
21 community or area adjacent to any other area in which there
22 reside, or may in the future reside in increased or decreased
23 numbers, persons of a particular race, color, familial status,
24 age, religious creed, ancestry, sexual orientation or gender
25 identity or expression, sex, national origin, handicap or
26 disability, or who are guide or support animal dependent.

27 (c) Misrepresent, create or distort a circumstance,
28 condition or incident for the purpose of fostering the
29 impression or belief, on the part of any owner, occupant or
30 prospective owner or occupant of any housing accommodation or

1 commercial property, that such housing accommodation or
2 commercial property is within any neighborhood, community or
3 area adjacent to any other area which would be adversely
4 impacted by the residence, or future increased or decreased
5 residence, of persons of a particular race, color, familial
6 status, age, religious creed, ancestry, sexual orientation or
7 gender identity or expression, sex, national origin, handicap or
8 disability, or who are guide or support animal dependent within
9 such neighborhood, community or area.

10 (d) In any way misrepresent or otherwise misadvertise within
11 a neighborhood or community, whether or not in writing, that any
12 housing accommodation or commercial property within such
13 neighborhood or community is available for inspection, sale,
14 lease, sublease or other transfer, in any context where such
15 misrepresentation or misadvertising would have the effect of
16 fostering an impression or belief that there has been or will be
17 an increase in real estate activity within such neighborhood or
18 community due to the residence, or anticipated increased or
19 decreased residence, of persons of a particular race, color,
20 familial status, age, religious creed, ancestry, sexual
21 orientation or gender identity or expression, sex, national
22 origin, handicap or disability, or the use of a guide or support
23 animal because of the blindness, deafness or physical handicap
24 of the user.

25 Section 7. Powers and Duties of the Commission.--The
26 Commission shall have the following powers and duties:

27 * * *

28 (i) To create such advisory agencies and conciliation
29 councils, local or state-wide, as will aid in effectuating the
30 purposes of this act. The Commission may itself or it may

1 empower these agencies and councils to (1) study the problems of
2 discrimination in all or specific fields of human relationships
3 when based on race, color, familial status, religious creed,
4 ancestry, sexual orientation or gender identity or expression,
5 age, sex, national origin or handicap or disability, and (2)
6 foster, through community effort or otherwise, good will among
7 the groups and elements of the population of the State. Such
8 agencies and councils may make recommendations to the Commission
9 for the development of policies and procedure in general.

10 Advisory agencies and conciliation councils created by the
11 Commission shall be composed of representative citizens, serving
12 without pay, but the Commission may make provision for technical
13 and clerical assistance to such agencies and councils, and for
14 the payment of the expenses of such assistance.

15 (j) To issue such publications and such results of
16 investigations and research as, in its judgment, will tend to
17 promote good will and minimize or eliminate discrimination
18 because of race, color, familial status, religious creed,
19 ancestry, sexual orientation or gender identity or expression,
20 age, sex, national origin or handicap or disability.

21 (k) To submit an annual report for each fiscal year by the
22 following March 31 to the General Assembly, the Labor and
23 Industry Committee of the Senate and the State Government
24 Committee of the House of Representatives and the Governor
25 describing in detail the types of complaints received, the
26 investigations, status of cases, Commission action which has
27 been taken, how many were found to have probable cause, how many
28 were resolved by public hearing and the length of time from the
29 initial complaint to final Commission resolution. It shall also
30 contain recommendations for such further legislation concerning

1 abuses and discrimination because of race, color, familial
2 status, religious creed, ancestry, sexual orientation or gender
3 identity or expressions, national origin, age, sex, handicap or
4 disability or the use of a guide or support animal because of
5 the blindness, deafness or physical handicap of the user or
6 because the user is a handler or trainer of support or guide
7 animals, as may be desirable.

8 * * *

9 Section 5. Section 8 of the act, amended July 12, 1996
10 (P.L.684, No.117), is amended to read:

11 Section 8. Educational Program.--The Commission, in
12 cooperation with the Department of Education, is authorized to
13 recommend a multicultural educational program, designed for the
14 students of the schools in this Commonwealth and for all other
15 residents thereof, with emphasis on foreign cultural and
16 language studies, as well as on the basic shared precepts and
17 principles of United States culture, in order to promote
18 cultural understanding and appreciation and to further good will
19 among all persons, without regard to race, color, familial
20 status, religious creed, ancestry, sexual orientation or gender
21 identity or expression, age, sex, national origin, handicap or
22 disability.

23 Section 6. Sections 9(f), (f.1) and (f.2) and 12 of the act,
24 amended December 20, 1991 (P.L.414, No.51), are amended to read:

25 Section 9. Procedure.--* * *

26 (f) (1) If, upon all the evidence at the hearing, the
27 Commission shall find that a respondent has engaged in or is
28 engaging in any unlawful discriminatory practice as defined in
29 this act, the Commission shall state its findings of fact, and
30 shall issue and cause to be served on such respondent an order

1 requiring such respondent to cease and desist from such unlawful
2 discriminatory practice and to take such affirmative action,
3 including, but not limited to, reimbursement of certifiable
4 travel expenses in matters involving the complaint, compensation
5 for loss of work in matters involving the complaint, hiring,
6 reinstatement or upgrading of employes, with or without back
7 pay, admission or restoration to membership in any respondent
8 labor organization, the making of reasonable accommodations, or
9 selling or leasing specified housing accommodations or
10 commercial property upon such equal terms and conditions and
11 with such equal facilities, services and privileges or lending
12 money, whether or not secured by mortgage or otherwise for the
13 acquisition, construction, rehabilitation, repair or maintenance
14 of housing accommodations or commercial property, upon such
15 equal terms and conditions to any person discriminated against
16 or all persons, and any other verifiable, reasonable out-of-
17 pocket expenses caused by such unlawful discriminatory practice,
18 [provided that, in those cases alleging a violation of section
19 5(d), (e) or (h) or 5.3 where the underlying complaint is a
20 violation of section 5(h) or 5.3, the Commission may] shall
21 award actual damages, including damages caused by humiliation
22 and embarrassment, and punitive damages as, in the judgment of
23 the Commission, will effectuate the purposes of this act, and
24 including a requirement for report of the manner of compliance.

25 (2) Such order may also assess a civil penalty against the
26 respondent in a complaint of discrimination filed under sections
27 5(h) or 5.3:

28 (i) in an amount not exceeding ten thousand dollars
29 (\$10,000) if the respondent has not been adjudged to have
30 committed any prior discriminatory practice;

1 (ii) in an amount not exceeding twenty-five thousand dollars
2 (\$25,000) if the respondent has been adjudged to have committed
3 one other discriminatory practice during the five-year period
4 ending on the date of this order; or

5 (iii) in an amount not exceeding fifty thousand dollars
6 (\$50,000) if the respondent has been adjudged to have committed
7 more than one other discriminatory practice during the seven-
8 year period ending on the date of this order.

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

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

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

29 (f.1) If, upon all the evidence at the hearing, [in those
30 cases alleging a violation of section 5(d), (e), (h) or 5.3

1 where the underlying complaint is a violation of section 5(h) or
2 5.3,] the Commission finds that a respondent has engaged in or
3 is engaging in any unlawful discriminatory practice as defined
4 in this act, the Commission may award attorney fees and costs to
5 prevailing complainants.

6 (f.2) If, upon all the evidence at the hearing, [in those
7 cases alleging a violation of section 5(d), (e), (h) or 5.3
8 where the underlying complaint is a violation of section 5(h) or
9 5.3,] the Commission finds that a respondent has not engaged in
10 or is not engaging in any unlawful discriminatory practice as
11 defined in this act, the Commission may award attorney fees and
12 costs to a prevailing respondent if the respondent proves that
13 the complaint was brought in bad faith.

14 * * *

15 Section 12. Construction and Exclusiveness of Remedy.--

16 (a) The provisions of this act shall be construed liberally
17 for the accomplishment of the purposes thereof, and any law
18 inconsistent with any provisions hereof shall not apply.

19 (b) Except as provided in subsection (c), nothing contained
20 in this act shall be deemed to repeal or supersede any of the
21 provisions of any existing or hereafter adopted municipal
22 ordinance, municipal charter or of any law of this Commonwealth
23 relating to discrimination because of race, color, familial
24 status, religious creed, ancestry, sexual orientation or gender
25 identity or expression, age, sex, national origin or handicap or
26 disability, but as to acts declared unlawful by section five of
27 this act the procedure herein provided shall, when invoked, be
28 exclusive and the final determination therein shall exclude any
29 other action, civil or criminal, based on the same grievance of
30 the complainant concerned. If the complainant institutes any

1 action based on such grievance without resorting to the
2 procedure provided in this act, such complainant may not
3 subsequently resort to the procedure herein. In the event of a
4 conflict between the interpretation of a provision of this act
5 and the interpretation of a similar provision contained in any
6 municipal ordinance, the interpretation of the provision in this
7 act shall apply to such municipal ordinance.

8 (c) (1) In cases involving a claim of discrimination, if a
9 complainant invokes the procedures set forth in this act, that
10 individual's right of action in the courts of the Commonwealth
11 shall not be foreclosed. If within one (1) year after the filing
12 of a complaint with the Commission, the Commission dismisses the
13 complaint or has not entered into a conciliation agreement to
14 which the complainant is a party, the Commission must so notify
15 the complainant. On receipt of such a notice the complainant
16 shall be able to bring an action in the courts of common pleas
17 of the Commonwealth based on the right to freedom from
18 discrimination granted by this act. The complainant has the
19 right to a jury trial in an action brought in the courts of
20 common pleas of the Commonwealth in an action under this
21 subsection.

22 (2) An action under this subsection shall be filed within
23 two years after the date of notice from the Commission closing
24 the complaint. Any complaint so filed shall be served on the
25 Commission at the time the complaint is filed in court. The
26 Commission shall notify the complainant of this requirement.

27 (3) If the court finds that the respondent has engaged in or
28 is engaging in an unlawful discriminatory practice charged in
29 the complaint, the court shall enjoin the respondent from
30 engaging in such unlawful discriminatory practice and order

1 affirmative action which may include, but is not limited to,
2 reinstatement or hiring of employes, granting of back pay, or
3 any other legal or equitable relief, including damages caused by
4 humiliation and embarrassment, and punitive damages, as the
5 court deems appropriate. Back pay liability shall not accrue
6 from a date more than three years prior to the filing of a
7 complaint charging violations of this act.

8 (4) The court shall serve upon the Commission any final
9 order issued in any action brought under this subsection.

10 (c.1) Notwithstanding subsections (a) and (c) or any other
11 provision of this act, nothing in this act shall be deemed to
12 authorize imposition by the Commission of remedial quota relief
13 in cases involving hiring or promoting of employes of the
14 Commonwealth, its agencies or instrumentalities or employes of
15 local governments and school districts in this Commonwealth.
16 This subsection shall not, however, prohibit the voluntary
17 adoption of an affirmative action plan designed to assure that
18 all persons are accorded equality of opportunity in employment.

19 (c.2) If, after a trial held pursuant to subsection (c), the
20 court of common pleas finds that a defendant engaged in or is
21 engaging in any unlawful discriminatory practice as defined in
22 this act, the court [may] shall award attorney fees and costs to
23 the prevailing plaintiff.

24 (c.3) If, after a trial held pursuant to subsection (c), the
25 court of common pleas finds that a defendant has not engaged in
26 or is not engaging in any unlawful discriminatory practice as
27 defined in this act, the court may award attorney fees and costs
28 to the prevailing defendant if the defendant proves that the
29 complaint was brought in bad faith.

30 (d) Nothing in this act shall be construed to require any

1 employer to hire any person with a job-related handicap or
2 disability.

3 (e) The time limits for filing under any complaint or other
4 pleading under this act shall be subject to waiver, estoppel and
5 equitable tolling.

6 (f) Nothing in this act shall be constructed as superseding
7 any provision of the act of October 15, 1980 (P.L.950, No.164),
8 known as the "Commonwealth Attorneys Act." All court actions
9 commenced by or against the Commission shall be subject to the
10 provisions of that act.

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