

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1851 Session of
2003

INTRODUCED BY CORNELL, JOSEPHS, FRANKEL, 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 EDUCATION, OCTOBER 27, 2003

AN ACT

1 Amending the act of July 17, 1961 (P.L.776, No.341), entitled,
2 as amended, "An act declaring the policy of the Commonwealth
3 with regard to discriminatory practices in educational
4 institutions based upon race, religion, color, ancestry,
5 national origin or sex; prohibiting such discriminatory
6 practices; providing for procedure and enforcement; providing
7 for judicial review; providing for administration by the
8 Pennsylvania Human Relations Commission in the Department of
9 Labor and Industry; and defining its functions, powers and
10 duties hereunder," further providing for findings and
11 declaration of policy, for definitions, for unfair
12 educational practices, for powers and duties of the
13 Pennsylvania Human Relations Commission, for right of action
14 and for construction of act.

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

17 Section 1. The title of the act of July 17, 1961 (P.L.776,
18 No.341), known as the Pennsylvania Fair Educational
19 Opportunities Act, amended December 29, 1972 (P.L.1682, No.360),
20 is amended to read:

21 AN ACT

1 Declaring the policy of the Commonwealth with regard to
2 discriminatory practices in educational institutions based
3 upon race, religion, color, ancestry, national origin, sexual
4 orientation, gender identity or expression, or sex;
5 prohibiting such discriminatory practices; providing for
6 procedure and enforcement; providing for judicial review;
7 providing for administration by the Pennsylvania Human
8 Relations Commission in the Department of Labor and Industry;
9 and defining its functions, powers and duties hereunder.

10 Section 2. Section 2 of the act, amended December 22, 1992
11 (P.L.1688, No.187), is amended to read:

12 Section 2. Findings and Declaration of Policy.--(a) It is
13 hereby declared to be the policy of this Commonwealth that all
14 persons shall have equal opportunities for education regardless
15 of their race, religion, color, ancestry, national origin,
16 sexual orientation, gender identity or expression, sex, handicap
17 or disability.

18 (b) Equality of educational opportunities requires that
19 students, otherwise qualified, be admitted to certain
20 educational institutions without regard to race, religion,
21 color, ancestry, national origin, sexual orientation, gender
22 identity or expression, sex, handicap or disability.

23 (c) It is recognized that there is a fundamental American
24 right for members of various religious faiths to establish and
25 maintain educational institutions exclusively or primarily for
26 students of their own religious faith. In such institutions
27 students, otherwise qualified, should have equal opportunity to
28 attend therein without discrimination because of race, ancestry,
29 national origin, sexual orientation, gender identity or
30 expression, handicap or disability or, except as provided in

1 section 9, sex.

2 (d) This act shall be deemed an exercise of the police power
3 of the Commonwealth for the protection of the public welfare,
4 prosperity, health and peace of the people of the Commonwealth
5 of Pennsylvania.

6 Section 3. Section 3 of the act is amended by adding clauses
7 to read:

8 Section 3. Definitions.--As used in this act--

9 * * *

10 (9) "Sexual orientation" means actual or perceived
11 heterosexuality, homosexuality or bisexuality.

12 (10) "Gender identity or expression" means actual or
13 perceived gender identity, appearance, behavior, expression or
14 physical characteristics whether or not associated with an
15 individual's assigned sex at birth.

16 Section 4. Sections 4(a) and (a.1), 6(4), 7.1 and 9(a) and
17 (c) of the act, amended or added December 22, 1992 (P.L.1688,
18 No.187), are amended to read:

19 Section 4. Unfair Educational Practices.--(a) Except as
20 provided in section 9, it shall be an unfair educational
21 practice for an educational institution--

22 (1) To exclude or limit, or otherwise discriminate, because
23 of race, religion, color, ancestry, national origin, sexual
24 orientation, gender identity or expression, sex, handicap or
25 disability, against any student or students seeking admission as
26 students to such institutions: Provided, That it shall not be
27 unfair educational practice for any educational institution to
28 use criteria other than race, religion, color, ancestry,
29 national origin, sexual orientation, gender identity or
30 expression, sex, handicap or disability in the admission of

1 students.

2 (2) To make any written or oral inquiry prior to admission
3 concerning or designed to elicit information as to the race,
4 religion, color, ancestry, national origin, sexual orientation,
5 gender identity or expression, sex, handicap or disability of a
6 student seeking admission to such institution.

7 (3) To expel, suspend, punish, deny facilities or otherwise
8 discriminate against any student because of race, religion,
9 color, ancestry, national origin, sexual orientation, gender
10 identity or expression, sex, handicap or disability.

11 (4) To penalize or discriminate against any individual
12 because he has initiated, testified, participated or assisted in
13 any proceedings under this act.

14 (5) To fail to preserve for a period of three years any
15 records, documents and data dealing with, or pertaining to, the
16 admission, rejection, expulsion or suspension of students, or to
17 refuse to make such records, documents and data available at all
18 times for the inspection of the commission.

19 (6) To construct, operate or otherwise make available
20 facilities and services which are not accessible.

21 (7) To exclude, limit or otherwise discriminate against any
22 student or applicant because of the handicap or disability of an
23 individual with whom the student or applicant is known to have a
24 relationship or association.

25 (8) To deny an individual with a handicap or disability
26 equal opportunities for education because of uninsurability or
27 increased cost of insurance.

28 (a.1) Except as provided in section 9, it shall be an unfair
29 educational practice for a religious educational institution--

30 (1) To exclude or limit, or otherwise discriminate, because

1 of race, color, ancestry, national origin, sexual orientation,
2 gender identity or expression, sex, handicap or disability,
3 against any student or students seeking admission as students to
4 such institutions: Provided, That it shall not be unfair
5 educational practice for any religious educational institution
6 to use criteria other than race, color, ancestry, national
7 origin, sexual orientation, gender identity or expression, sex,
8 handicap or disability in the admission of students.

9 (2) To make any written or oral inquiry prior to admission
10 concerning or designed to elicit information as to the race,
11 color, ancestry, national origin, sexual orientation, gender
12 identity or expression, sex, handicap or disability of a student
13 seeking admission to such institution.

14 (3) To expel, suspend, punish, deny facilities or otherwise
15 discriminate against any student because of race, color,
16 ancestry, national origin, sexual orientation, gender identity
17 or expression, sex, handicap or disability.

18 (4) To penalize or discriminate against any individual
19 because such person has initiated, testified, participated or
20 assisted in any proceedings under this act.

21 (5) To construct, operate or otherwise make available
22 facilities and services which are not accessible.

23 (6) To exclude, limit or otherwise discriminate against any
24 student or applicant because of the handicap or disability of an
25 individual with whom the student or applicant is known to have a
26 relationship or association.

27 (7) To deny an individual with a handicap or disability
28 equal opportunities for education because of uninsurability or
29 increased cost of insurance.

30 * * *

1 Section 6. Powers and Duties of the Commission.--Without in
2 anywise detracting from, or in derogation or diminution of the
3 duties of the commission as set forth in the act of October 27,
4 1955 (P.L.744), known as the "Pennsylvania Human Relations Act,"
5 said commission is hereby vested with the following powers and
6 duties--

7 * * *

8 (4) To formulate, recommend and carry out a comprehensive
9 program designed to eliminate and prevent prejudice and
10 discrimination in educational institutions, based upon race,
11 religion, color, ancestry, national origin, sexual orientation,
12 gender identity or expression, sex, handicap or disability
13 except religious discrimination in religious or denominational
14 institutions and except, as to sex, as provided in section 9.

15 * * *

16 Section 7.1. Right of Action.--(a) In cases involving a
17 claim of discrimination, if a complainant invokes the procedures
18 set forth in this act, that individual's right of action in the
19 courts of the Commonwealth shall not be foreclosed. If, within
20 one year after the filing of a complaint with the commission,
21 the commission dismisses the complaint or has not entered into a
22 conciliation agreement to which the complainant is a party, the
23 commission must so notify the complainant. On receipt of such a
24 notice, the complainant shall be able to bring an action in the
25 courts of common pleas of the Commonwealth based on the right to
26 freedom from discrimination granted by this act.

27 (b) An action under this section shall be filed within two
28 years after the date of notice from the commission closing the
29 complaint. Any complaint so filed shall be served on the
30 commission at the time the complaint is filed in court. The

1 commission shall notify the complainant of this requirement.

2 (c) If the court finds that the respondent has engaged in or
3 is engaging in an unlawful discriminatory practice charged in
4 the complaint, the court shall enjoin the respondent from
5 engaging in such unlawful discriminatory practice and order
6 affirmative action which may include, but not be limited to,
7 reinstatement, admitting students, reimbursement of tuition or
8 fees, or any other legal or equitable relief, including damages
9 caused by humiliation and embarrassment and punitive damages, as
10 the court deems appropriate.

11 (d) The court shall serve upon the commission any final
12 order issued in any action brought under this section.

13 (e) If, after a trial held pursuant to subsection (a), the
14 court of common pleas finds that a defendant engaged in or is
15 engaging in any unlawful discriminatory practice as defined in
16 this act, the court [may] shall award attorney fees and costs to
17 the prevailing plaintiff.

18 (f) If, after a trial held pursuant to subsection (a), the
19 court of common pleas finds that a defendant has not engaged in
20 or is not engaging in any unlawful discriminatory practice as
21 defined in this act, the court may award attorney fees and costs
22 to the prevailing defendant if the defendant proves that the
23 complaint was brought in bad faith.

24 (g) The time limits for filing any complaint or other
25 pleading under this act shall be subject to waiver, estoppel and
26 equitable tolling.

27 (h) Nothing in this act shall be construed as superseding
28 any provision of the act of October 15, 1980 (P.L.950, No.164),
29 known as the "Commonwealth Attorneys Act." All court actions
30 commenced by or against the commission shall be subject to the

1 provisions of that act.

2 (i) In any action under this section, a complainant may
3 demand a trial by jury.

4 Section 9. Construction.--(a) The provisions of this act
5 shall be construed liberally for the accomplishment of the
6 purposes thereof and any law inconsistent with any provisions
7 hereof shall not apply. Nothing contained in this act shall be
8 deemed to repeal any of the provisions of any law of this
9 Commonwealth relating to discrimination because of race,
10 religion, color, ancestry, national origin, sexual orientation,
11 gender identity or expression, sex, handicap or disability. This
12 act shall not be construed to prohibit any educational
13 institution which is neither State-owned nor State-related, nor
14 State-aided, from drawing its enrollment entirely from members
15 of one sex or from the sexes in any proportion, nor shall
16 anything herein contained prevent any educational institution
17 which is State-owned, State-related or State-aided from
18 requiring each applicant for admission to state in the
19 application for admission such applicant's sex to supplement and
20 implement the institution's facts for planning purposes but only
21 for such planning purposes and not for any discriminatory
22 purposes. For the purpose of this section the term "State-owned"
23 institution means the institutions comprising the State System
24 of Higher Education; the term "State-related" institutions means
25 the University of Pittsburgh, Temple University, Lincoln
26 University and the Pennsylvania State University; the term
27 "State-aided" institution means the Delaware Valley College of
28 Science and Agriculture, Drexel University, Hahnemann
29 University, Thomas Jefferson University, the Medical College of
30 Pennsylvania, University of Pennsylvania, Pennsylvania College

1 of Podiatric Medicine, Pennsylvania College of Optometry,
2 Philadelphia College of Osteopathic Medicine, Philadelphia
3 College of Textiles and Science, and University of the Arts.

4 * * *

5 (c) Except as provided in section 7.1, nothing contained in
6 this act shall be deemed to repeal or supersede any of the
7 provisions of any existing or hereafter adopted municipal
8 ordinance, municipal charter or of any law of this Commonwealth
9 relating to discrimination because of race, color, ancestry,
10 age, sexual orientation, gender identity or expression, sex,
11 religion, national origin or handicap or disability. As to acts
12 declared unlawful by section 4, the procedure provided in
13 section 7.1 shall, when invoked, be exclusive. Any final
14 determination under section 7.1 shall exclude any other action,
15 civil or criminal, based on the same grievance without resorting
16 to the procedure provided in this act, and such complainant may
17 not subsequently resort to the procedure in this act. In the
18 event of a conflict between the interpretation of a provision of
19 this act and the interpretation of a similar provision contained
20 in any municipal ordinance, the interpretation of the provision
21 in this act shall apply to the municipal ordinance.

22 Section 5. This act shall take effect in 60 days.