
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 608 Session of
2003

INTRODUCED BY HUGHES, FERLO, LOGAN AND STOUT, APRIL 24, 2003

REFERRED TO LABOR AND INDUSTRY, APRIL 24, 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 in
13 employment, housing and public accommodation, for unlawful
14 discriminatory practices, for prohibition of certain real
15 estate practices, for powers and duties of the commission,
16 for educational program and for procedure; providing for
17 evidence of complainant's sexual conduct in sexual harassment
18 cases; and further providing for construction and
19 exclusiveness of remedy.

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

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

26 AN ACT

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

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

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

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

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

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

30 Section 3. Right to Freedom from Discrimination in

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

15 Section 2. Section 4 of the act is amended by adding clauses
16 to read:

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

19 * * *

20 (bb) The term "sexual orientation" means a person's actual
21 or perceived heterosexuality, homosexuality or bisexuality.

22 (cc) The term "gender identity or expression" means a
23 person's self-identification as male or female, distinguished
24 from the person's biological sex.

25 (dd) The term "sex" means the gender of a person, as
26 perceived, presumed or assumed by others, including those who
27 are changing or who have changed their gender identification.

28 Section 3. Section 5 of the act, amended December 20, 1991
29 (P.L.414, No.51), July 12, 1996 (P.L.684, No.117) and June 25,
30 1997 (P.L.326, No.34), is amended to read:

1 Section 5. Unlawful Discriminatory Practices.--It shall be
2 an unlawful discriminatory practice, unless based upon a bona
3 fide occupational qualification, or in the case of a fraternal
4 corporation or association, unless based upon membership in such
5 association or corporation, or except where based upon
6 applicable security regulations established by the United States
7 or the Commonwealth of Pennsylvania:

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

1 unlawful employment practice for a religious corporation or
2 association to hire or employ on the basis of sex in those
3 certain instances where sex is a bona fide occupational
4 qualification because of the religious beliefs, practices, or
5 observances of the corporation, or association.

6 (b) For any employer, employment agency or labor
7 organization, prior to the employment, contracting with an
8 independent contractor or admission to membership, to:

9 (1) Elicit any information or make or keep a record of or
10 use any form of application or application blank containing
11 questions or entries concerning the race, color, religious
12 creed, ancestry, age, sex, sexual orientation, gender identity
13 or expression, national origin, past handicap or disability or
14 the use of a guide or support animal because of the blindness,
15 deafness or physical handicap of any applicant for employment or
16 membership. Prior to an offer of employment, an employer may not
17 inquire as to whether an individual has a handicap or disability
18 or as to the severity of such handicap or disability. An
19 employer may inquire as to the individual's ability to perform
20 the essential functions of the employment.

21 (2) Print or publish or cause to be printed or published any
22 notice or advertisement relating to employment or membership
23 indicating any preference, limitation, specification or
24 discrimination based upon race, color, religious creed,
25 ancestry, age, sex, sexual orientation, gender identity or
26 expression, national origin, non-job related handicap or
27 disability or the use of a guide or support animal because of
28 the blindness, deafness or physical handicap of the user.

29 (3) Deny or limit, through a quota system, employment or
30 membership because of race, color, religious creed, ancestry,

1 age, sex, sexual orientation, gender identity or expression,
2 national origin, non-job related handicap or disability, the use
3 of a guide or support animal because of the blindness, deafness
4 or physical handicap of the user or place of birth.

5 (4) Substantially confine or limit recruitment or hiring of
6 individuals, with intent to circumvent the spirit and purpose of
7 this act, to any employment agency, employment service, labor
8 organization, training school or training center or any other
9 employe-referring source which services individuals who are
10 predominantly of the same race, color, religious creed,
11 ancestry, age, sex, sexual orientation, gender identity or
12 expression, national origin or non-job related handicap or
13 disability.

14 (5) Deny employment because of a prior handicap or
15 disability.

16 Nothing in clause (b) of this section shall bar any
17 institution or organization for handicapped or disabled persons
18 from limiting or giving preference in employment or membership
19 to handicapped or disabled persons.

20 (c) For any labor organization because of the race, color,
21 religious creed, ancestry, age, sex, sexual orientation, gender
22 identity or expression, national origin, non-job related
23 handicap or disability or the use of a guide or support animal
24 because of the blindness, deafness or physical handicap of any
25 individual to deny full and equal membership rights to any
26 individual or otherwise to discriminate against such individuals
27 with respect to hire, tenure, terms, conditions or privileges of
28 employment or any other matter, directly or indirectly, related
29 to employment.

30 (d) For any person, employer, employment agency or labor

1 organization to discriminate in any manner against any
2 individual because such individual has opposed any practice
3 forbidden by this act, or because such individual has made a
4 charge, testified or assisted, in any manner, in any
5 investigation, proceeding or hearing under this act.

6 (e) For any person, employer, employment agency, labor
7 organization or employe, to aid, abet, incite, compel or coerce
8 the doing of any act declared by this section to be an unlawful
9 discriminatory practice, or to obstruct or prevent any person
10 from complying with the provisions of this act or any order
11 issued thereunder, or to attempt, directly or indirectly, to
12 commit any act declared by this section to be an unlawful
13 discriminatory practice.

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

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

29 (h) For any person to:

30 (1) Refuse to sell, lease, finance or otherwise to deny or

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

14 (1.1) Evict or attempt to evict an occupant of any housing
15 accommodation before the end of the term of a lease because of
16 pregnancy or the birth of a child.

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

30 (3) Discriminate against any person in the terms or

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

13 (3.1) Refuse to permit, at the expense of a person with a
14 handicap, reasonable modifications of existing premises occupied
15 or to be occupied by such person if such modifications may be
16 necessary to afford such person full enjoyment of the premises,
17 except that, in the case of a rental, the landlord may, where it
18 is reasonable to do so, grant permission for a modification if
19 the renter agrees to restore the interior of the premises to the
20 condition that existed before the modification, with reasonable
21 wear and tear excepted.

22 (3.2) Refuse to make reasonable accommodations in rules,
23 policies, practices or services when such accommodations may be
24 necessary to afford such person equal opportunity to use and
25 enjoy a housing accommodation.

26 (4) Discriminate against any person in the terms or
27 conditions of any loan of money, whether or not secured by
28 mortgage or otherwise for the acquisition, construction,
29 rehabilitation, repair or maintenance of housing accommodation
30 or commercial property because of the race, color, familial

1 status, age, religious creed, ancestry, sex, sexual orientation,
2 gender identity or expression, national origin or handicap or
3 disability of any person, the use of a guide or support animal
4 because of the blindness, deafness or physical handicap of the
5 user or because the user is a handler or trainer of guide or
6 support animals or because of the handicap or disability of an
7 individual with whom the person is known to have a relationship
8 or association.

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

27 (6) Make any inquiry, elicit any information, make or keep
28 any record or use any form of application, containing questions
29 or entries concerning race, color, familial status, age,
30 religious creed, ancestry, sex, sexual orientation, gender

1 identity or expression, national origin, handicap or disability
2 or because of the handicap or disability of an individual with
3 whom the person is known to have a relationship or association
4 in connection with the sale or lease of any housing
5 accommodation or commercial property or loan of any money,
6 whether or not secured by mortgage or otherwise for the
7 acquisition, construction, rehabilitation, repair or maintenance
8 of any housing accommodation or commercial property, or to make
9 any inquiry, elicit any information, make or keep any record or
10 use any form of application, containing questions or entries
11 concerning 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, in
14 connection with the lease of any housing accommodation or
15 commercial property.

16 (7) Construct, operate, offer for sale, lease or rent or
17 otherwise make available housing or commercial property which is
18 not accessible.

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

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

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

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

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

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

23 (10) Nothing in this clause shall bar any religious or
24 denominational institution or organization or any charitable or
25 educational organization which is operated, supervised or
26 controlled by or in connection with a religious organization or
27 any bona fide private or fraternal organization from giving
28 preference to persons of the same religion or denomination or to
29 members of such private or fraternal organization or from making
30 such selection as is calculated by such organization to promote

1 the religious principles or the aims, purposes or fraternal
2 principles for which it is established or maintained. Nor shall
3 it apply to the rental of rooms in a landlord-occupied rooming
4 house with a common entrance, nor with respect to discrimination
5 based on sex, the advertising, rental or leasing of housing
6 accommodations in a single-sex dormitory or rooms in one's
7 personal residence in which common living areas are shared.

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

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

21 (1) Refuse, withhold from, or deny to any person because of
22 his race, color, sex, sexual orientation, gender identity or
23 expression, religious creed, ancestry, national origin or
24 handicap or disability, or to any person due to use of a guide
25 or support animal because of the blindness, deafness or physical
26 handicap of the user or because the user is a handler or trainer
27 of support or guide animals, either directly or indirectly, any
28 of the accommodations, advantages, facilities or privileges of
29 such public accommodation, resort or amusement.

30 (2) Publish, circulate, issue, display, post or mail, either

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

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

24 (4) Construct, operate or otherwise make available such
25 place of public accommodation, resort or amusement which is not
26 accessible.

27 (j) For any person subject to the act to fail to post and
28 exhibit prominently in [his] the person's place of business any
29 fair practices notice prepared and distributed by the
30 Pennsylvania Human Relations Commission. The notice shall

1 include a section that specifically defines sexual harassment
2 and lists it among the prohibited and unfair practices.

3 (k) For any employer to discriminate against an employe or a
4 prospective employe because the employe only has a diploma based
5 on passing a general educational development test as compared to
6 a high school diploma. However, should vocational technical
7 training or other special training be required with regard to a
8 specific position, then such training or special training may be
9 considered by the employer.

10 (l) To exclude or otherwise deny equal jobs or benefits to a
11 person because of the handicap or disability of an individual
12 with whom the person is known to have a relationship or
13 association.

14 This section of the act shall not be construed to prohibit
15 the refusal to hire or the dismissal of a person who is not able
16 to function properly in the job applied for or engaged in.

17 Section 4. Sections 5.3 and 7 of the act, amended December
18 20, 1991 (P.L.414, No.51), are amended to read:

19 Section 5.3. Prohibition of Certain Real Estate Practices.--
20 It shall be an unlawful discriminatory practice for any person
21 to:

22 (a) Induce, solicit or attempt to induce or solicit for
23 commercial profit any listing, sale or transaction involving any
24 housing accommodation or commercial property by representing
25 that such housing accommodation or commercial property is within
26 any neighborhood, community or area adjacent to any other area
27 in which there reside, or do not reside, persons of a particular
28 race, color, familial status, age, religious creed, ancestry,
29 sex, sexual orientation, gender identity or expression, national
30 origin, handicap or disability, or who are guide or support

1 animal dependent.

2 (b) Discourage, or attempt to discourage, for commercial
3 profit, the purchase or lease of any housing accommodation or
4 commercial property by representing that such housing
5 accommodation or commercial property is within any neighborhood,
6 community or area adjacent to any other area in which there
7 reside, or may in the future reside in increased or decreased
8 numbers, persons of a particular race, color, familial status,
9 age, religious creed, ancestry, sex, sexual orientation, gender
10 identity or expression, national origin, handicap or disability,
11 or who are guide or support animal dependent.

12 (c) Misrepresent, create or distort a circumstance,
13 condition or incident for the purpose of fostering the
14 impression or belief, on the part of any owner, occupant or
15 prospective owner or occupant of any housing accommodation or
16 commercial property, that such housing accommodation or
17 commercial property is within any neighborhood, community or
18 area adjacent to any other area which would be adversely
19 impacted by the residence, or future increased or decreased
20 residence, of persons of a particular race, color, familial
21 status, age, religious creed, ancestry, sex, sexual orientation,
22 gender identity or expression, national origin, handicap or
23 disability, or who are guide or support animal dependent within
24 such neighborhood, community or area.

25 (d) In any way misrepresent or otherwise misadvertise within
26 a neighborhood or community, whether or not in writing, that any
27 housing accommodation or commercial property within such
28 neighborhood or community is available for inspection, sale,
29 lease, sublease or other transfer, in any context where such
30 misrepresentation or misadvertising would have the effect of

1 fostering an impression or belief that there has been or will be
2 an increase in real estate activity within such neighborhood or
3 community due to the residence, or anticipated increased or
4 decreased residence, of persons of a particular race, color,
5 familial status, age, religious creed, ancestry, sex, sexual
6 orientation, gender identity or expression, national origin,
7 handicap or disability, or the use of a guide or support animal
8 because of the blindness, deafness or physical handicap of the
9 user.

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

12 (a) To establish and maintain a central office in the City
13 of Harrisburg.

14 (b) To meet and function at any place within the
15 Commonwealth.

16 (c) To appoint such attorneys and permanent hearing
17 examiners and other employes and agents as it may deem
18 necessary, fix their compensation within the limitations
19 provided by law, and prescribe their duties. Permanent hearing
20 examiners shall perform no duties inconsistent with their duties
21 and responsibilities as permanent hearing examiners.

22 (c.1) To conduct mandatory training seminars on the
23 Pennsylvania Human Relations Act and other applicable Federal
24 and State law, procedures and rules for all investigative
25 personnel.

26 (c.2) To afford complainants and respondents the opportunity
27 for comments after the final disposition of a complaint. These
28 comments shall be provided to the Commission members.

29 (c.3) To appoint attorneys to perform the following
30 functions: (1) render legal advice to Commission members on

1 matters appearing before it; or (2) give legal assistance to
2 complainants appearing before the Commission or hearing
3 examiners. These responsibilities shall require a separate staff
4 of attorneys to perform each function.

5 (d) To adopt, promulgate, amend and rescind rules and
6 regulations to effectuate the policies and provisions of this
7 act.

8 (e) To formulate policies to effectuate the purposes of this
9 act and make recommendations to agencies and officers of the
10 Commonwealth or political subdivisions of government or board,
11 department, commission or school district thereof to effectuate
12 such policies.

13 (f) To initiate, receive, investigate and pass upon
14 complaints charging unlawful discriminatory practices.

15 (f.1) To investigate where no complaint has been filed but
16 with the consent of at least eight of the members of the
17 Commission any problem of racial discrimination with the intent
18 of avoiding and preventing the development of racial tension.

19 (f.2) On request of the Governor, the General Assembly or
20 the Attorney General, to investigate claims of excessive use of
21 force by police in civil rights protest activities.

22 (g) (1) To hold hearings, subpoena witnesses, compel their
23 attendance, administer oaths, take testimony of any person under
24 oath or affirmation and, in connection therewith, to compel
25 answers to interrogatories, to require the production for
26 examination of any books and papers relating to any matter under
27 investigation where a complaint has been properly filed before
28 the Commission. The Commission may make rules as to the issuance
29 of subpoenas by individual Commissioners. In case of contumacy
30 or refusal to obey a subpoena issued to any person any court of

1 jurisdiction, upon application by the Commission, may issue to
2 such person an order requiring such person to appear before the
3 Commission, there to produce documentary evidence, if so
4 ordered, or there to give evidence touching the matter in
5 question, and any failure to obey such order of the court may be
6 punished by said court as a contempt thereof.

7 (2) No person shall be excused from attending and
8 testifying, or from producing records, correspondence, documents
9 or other evidence in obedience to the subpoena of the Commission
10 or of any individual Commissioner, on the ground that the
11 testimony or evidence required of him may tend to incriminate
12 him or subject him to a penalty or forfeiture, but no person
13 shall be prosecuted or subjected to any penalty or forfeiture
14 for or on account of any transaction, matter or thing concerning
15 which he is compelled, after having claimed his privilege
16 against self-incrimination, to testify or produce evidence,
17 except that such person so testifying shall not be exempt from
18 prosecution and punishment for perjury committed in so
19 testifying. The immunity herein provided shall extend only to
20 natural persons so compelled to testify.

21 (h) To inspect upon request such records of the Commonwealth
22 or any political subdivision, board, department, commission or
23 school district thereof as it may deem necessary or advisable to
24 carry into effect the provisions of this act.

25 (i) To create such advisory agencies and conciliation
26 councils, local or state-wide, as will aid in effectuating the
27 purposes of this act. The Commission may itself or it may
28 empower these agencies and councils to (1) study the problems of
29 discrimination in all or specific fields of human relationships
30 when based on race, color, familial status, religious creed,

1 ancestry, age, sex, sexual orientation, gender identity or
2 expression, national origin or handicap or disability, and (2)
3 foster, through community effort or otherwise, good will among
4 the groups and elements of the population of the State. Such
5 agencies and councils may make recommendations to the Commission
6 for the development of policies and procedure in general.
7 Advisory agencies and conciliation councils created by the
8 Commission shall be composed of representative citizens, serving
9 without pay, but the Commission may make provision for technical
10 and clerical assistance to such agencies and councils, and for
11 the payment of the expenses of such assistance.

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

18 (k) To submit an annual report for each fiscal year by the
19 following March 31 to the General Assembly, the Labor and
20 Industry Committee of the Senate and the State Government
21 Committee of the House of Representatives and the Governor
22 describing in detail the types of complaints received, the
23 investigations, status of cases, Commission action which has
24 been taken, how many were found to have probable cause, how many
25 were resolved by public hearing and the length of time from the
26 initial complaint to final Commission resolution. It shall also
27 contain recommendations for such further legislation concerning
28 abuses and discrimination because of race, color, familial
29 status, religious creed, ancestry, national origin, age, sex,
30 sexual orientation, gender identity or expression, handicap or

1 disability or the use of a guide or support animal because of
2 the blindness, deafness or physical handicap of the user or
3 because the user is a handler or trainer of support or guide
4 animals, as may be desirable.

5 (l) To prepare and distribute fair practices notices.

6 (n) To notify local human relations commissions of
7 complaints received by the Pennsylvania Human Relations
8 Commission involving persons within a commission's jurisdiction.
9 The Pennsylvania Human Relations Commission may enter into work-
10 sharing agreements with those local commissions having
11 comparable jurisdiction and enforcement authority.

12 (o) To prepare and publish all findings of fact, conclusions
13 of the law, final decisions and orders made after a public
14 hearing by the hearing examiners, Commission panel or full
15 Commission.

16 (p) To give public access to the commission's compliance
17 manual.

18 (q) To preserve opinions rendered by the Commission for five
19 years from the date of publication.

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

22 Section 8. Educational Program.--Each student is entitled to
23 an educational experience that is free from bias and
24 discrimination and that reflects and supports the gender, race
25 and cultural diversity present in this Commonwealth. The twin
26 goals of the State's educational system are to provide equal
27 opportunity for all students in all State-supported elementary,
28 secondary, vocational, post-secondary and higher educational
29 institutions and to maximize the potential of all students
30 regardless of race or color, religion or creed, national origin

1 or cultural heritage, gender or gender identity or expression,
2 sexual orientation, ancestry, handicap or disability. The
3 Commission, in cooperation with the Department of Education, is
4 authorized to [recommend] support a multicultural multiracial,
5 gender-fair educational program, designed for the students of
6 the schools in this Commonwealth and for all other residents
7 thereof, with emphasis on [foreign] cultural and language
8 studies, as well as on the basic shared precepts and principles
9 of United States culture, in order to promote [cultural
10 understanding and appreciation and] knowledge about and respect
11 for diversity and pluralism to further good will among all
12 persons, [without regard to] inclusive of race, class, color,
13 familial status, religious creed, ancestry, age, sex, sexual
14 orientation, gender identity or expression, national origin,
15 handicap or disability.

16 Section 6. Section 9(b), (d.1) and (h) of the act, amended
17 December 20, 1991 (P.L.414, No.51) and June 25, 1997 (P.L.326,
18 No.34), are amended and the section is amended by adding a
19 subsection to read:

20 Section 9. Procedure.--* * *

21 (b) (1) After the filing of any complaint, or whenever
22 there is reason to believe that an unlawful discriminatory
23 practice has been committed, the Commission shall make a prompt
24 investigation in connection therewith.

25 (2) The Commission shall send a copy of the complaint to the
26 named respondent within thirty days from the date of docketing
27 the complaint, unless otherwise required by the Fair Housing
28 Act.

29 (3) A respondent shall file with the Commission the original
30 and one copy of a written, verified answer to the complaint

1 within thirty days of service of the complaint, along with any
2 accompanying exhibits and a certificate of service that the
3 answer and accompanying exhibits have been served on the
4 complainant, unless otherwise required by the Fair Housing Act.
5 The Commission, upon request of the respondent, may grant an
6 extension of not more than thirty additional days, unless
7 otherwise required by the Fair Housing Act. A respondent shall
8 send a copy of the answer, any accompanying exhibits and the
9 certificate of service to the named complainant at the time of
10 filing the answer with the Commission. The Commission shall
11 impose a fine of fifty dollars (\$50) upon the respondent,
12 payable to the Commission, if the respondent fails to serve a
13 copy of the answer and accompanying exhibits to the complainant
14 at the time of filing the answer with the Commission.

15 (4) After service of the complaint, the Commission shall
16 encourage voluntary and informed predetermination settlements
17 between parties.

18 * * *

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

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

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

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

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

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

1 (5) Any party may demand a trial by jury.

2 * * *

3 (h) Any complaint filed pursuant to this section must be so
4 filed within [one hundred eighty] three hundred days after the
5 alleged act of discrimination, unless otherwise required by the
6 Fair Housing Act.

7 * * *

8 (k) (1) At the conclusion of the Commission's involvement
9 in a complaint, either party may request in writing a copy of
10 the Commission's file of the investigation. Records provided to
11 the requesting party shall be furnished at the requesting
12 party's expense, except that these charges shall be waived if:

13 (i) the requesting party requests a waiver of charges due to
14 low family income; or

15 (ii) the Commission determines that the cost of producing
16 the records is de minimis.

17 (2) The Commission shall inform the requesting party of the
18 costs to produce the records, and the requesting party shall
19 remit this amount to the Commission prior to release of the
20 records, unless the charges are waived by the Commission as
21 provided. The Commission shall produce the records as soon as
22 reasonably possible, but not later than forty-five days from
23 receipt of the written request for the records, unless the
24 required payment or request for waiver of fees has not been
25 received by the Commission within forty-five days, in which case
26 the Commission shall release the records promptly upon receipt
27 of payment or request for waiver of fees.

28 (3) The Commission shall not be required under this section
29 to release any of the following:

30 (i) A record not within its custody and control at the time

1 of the request.

2 (ii) A record, report, memorandum or communication dealing
3 with the internal practice, policy and procedure of the
4 Commission.

5 (iii) A record, report, memorandum or mental impression
6 prepared by a Commission attorney.

7 (iv) A record, report, memorandum or communication regarding
8 any endeavor to eliminate the unlawful discriminatory practice
9 complained of by conference, conciliation or persuasion, as
10 required by subsections (b)(4) and (c), commonly referred to as
11 "settlement negotiations."

12 (v) The identity and statements of a witness which the
13 Commission's investigatory file states, in writing, was obtained
14 with an assurance of confidentiality to the witness.

15 (vi) Those investigatory records which constitute interim
16 mental impressions of a Commission employe about a case.
17 However, the final case analysis by the fact-finder supporting a
18 finding of the fact-finder shall be produced.

19 (4) Any reasonably segregable portion of a record shall be
20 provided to any person requesting such record after deletion of
21 the portions which are exempt under paragraph (3).

22 (5) This section shall not create or alter any privilege
23 under the law.

24 Section 7. The act is amended by adding a section to read:

25 Section 9.4. Evidence of Complainant's Sexual Conduct in
26 Sexual Harassment Cases.--(a) In cases including allegations of
27 sexual harassment, evidence of specific instances of
28 complainant's past sexual conduct, opinion evidence of the
29 complainant's past sexual conduct and reputation evidence of the
30 complainant's past sexual conduct shall not be admissible in

1 proceedings under this act before the Commission or in court to
2 prove welcomeness by the complainant or the absence of injury to
3 the complainant, unless the injury alleged by the complainant is
4 in the nature of loss of consortium. This prohibition shall not
5 apply to past sexual conduct with the respondent where
6 welcomeness of respondent's alleged conduct by the complainant
7 is at issue and such evidence is otherwise admissible pursuant
8 to the rules of evidence.

9 (b) A respondent who proposes to offer evidence of the
10 complainant's past sexual conduct under subsection (a) shall
11 file a written motion and offer of proof at the time of a
12 Commission hearing or trial in court, wherever the case may be.
13 If, in connection with the Commission hearing or trial in court,
14 the Commission or court determines that the motion and offer of
15 proof are sufficient on their faces, the Commission or court
16 shall order an in camera proceeding. If the Commission or court
17 finds that evidence offered by the respondent regarding the
18 sexual conduct of the complainant is relevant and that the
19 probative value of the evidence offered is not outweighed by its
20 collateral nature or the probability that its admission will
21 create undue prejudice, confusion of the issues or unwarranted
22 invasion of the privacy of the complainant, the Commission or
23 court shall enter an order setting forth with specificity what
24 evidence may be introduced and the reasons why the Commission or
25 court finds that such evidence satisfies the standards contained
26 in this section. The respondent may then offer evidence under
27 the order of the Commission or court.

28 Section 8. Section 12 of the act, amended December 20, 1991
29 (P.L.414, No.51), is amended to read:

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

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

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

23 (c) (1) In cases involving a claim of discrimination, if a
24 complainant invokes the procedures set forth in this act, that
25 individual's right of action in the courts of the Commonwealth
26 shall not be foreclosed. If within [one (1) year] six months, or
27 in cases alleging age discrimination, within sixty days, after
28 the filing of a complaint with the Commission, the Commission
29 dismisses the complaint or has not entered into a conciliation
30 agreement to which the complainant is a party, the Commission

1 must so notify the complainant. [On] The notice shall also
2 inform the complainant that on receipt of such a notice the
3 complainant [shall be able] has the right to bring an action in
4 the courts of common pleas of the Commonwealth based on the
5 right to freedom from discrimination granted by this act.

6 (2) An action under this subsection shall be filed within
7 two years after the date of notice from the Commission closing
8 the complaint. Any complaint so filed shall be served on the
9 Commission at the time the complaint is filed in court. The
10 Commission shall notify the complainant of this requirement.

11 (3) If the court finds that the respondent has engaged in or
12 is engaging in an unlawful discriminatory practice charged in
13 the complaint, the court shall enjoin the respondent from
14 engaging in such unlawful discriminatory practice and order
15 affirmative action which may include, but is not limited to,
16 reinstatement or hiring of employes, granting of back pay, or
17 any other legal or equitable relief as the court deems
18 appropriate. Back pay liability shall not accrue from a date
19 more than three years prior to the filing of a complaint
20 charging violations of this act.

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

23 (5) In any action under this subsection, any party may
24 demand a trial by jury.

25 (c.1) Notwithstanding subsections (a) and (c) or any other
26 provision of this act, nothing in this act shall be deemed to
27 authorize imposition by the Commission of remedial quota relief
28 in cases involving hiring or promoting of employes of the
29 Commonwealth, its agencies or instrumentalities or employes of
30 local governments and school districts in this Commonwealth.

1 This subsection shall not, however, prohibit the voluntary
2 adoption of an affirmative action plan designed to assure that
3 all persons are accorded equality of opportunity in employment.

4 (c.2) If, after a trial held pursuant to subsection (c), the
5 court of common pleas finds that a defendant engaged in or is
6 engaging in any unlawful discriminatory practice as defined in
7 this act, the court may award attorney fees and costs to the
8 prevailing plaintiff.

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

15 (d) Nothing in this act shall be construed to require any
16 employer to hire any person with a job-related handicap or
17 disability.

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

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

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