

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL**

**No. 609**      Session of  
2003

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

REFERRED TO EDUCATION, APRIL 24, 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:

AN ACT

22 Declaring the policy of the Commonwealth with regard to  
23 discriminatory practices in educational institutions based  
24 upon race, class, religion, color, ancestry, national origin

1     [or], sex, sexual orientation, gender identity or expression;  
2     prohibiting such discriminatory practices; providing for  
3     procedure and enforcement; providing for judicial review;  
4     providing for administration by the Pennsylvania Human  
5     Relations Commission in the Department of Labor and Industry;  
6     and defining its functions, powers and duties hereunder.

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

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

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

21    (c) It is recognized that there is a fundamental American  
22    right for members of various religious faiths to establish and  
23    maintain educational institutions exclusively or primarily for  
24    students of their own religious faith. In such institutions  
25    students, otherwise qualified, should have equal opportunity to  
26    attend therein without discrimination because of race, class,  
27    color, ancestry, national origin, sexual orientation, gender  
28    identity or expression, handicap or disability or, except as  
29    provided in section 9, sex.

30    (d) This act shall be deemed an exercise of the police power

1 of the Commonwealth for the protection of the public welfare,  
2 prosperity, health and peace of the people of the Commonwealth  
3 of Pennsylvania.

4 Section 3. Section 3 of the act is amended by adding clauses  
5 to read:

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

7 \* \* \*

8 (9) "Sexual orientation" means a person's actual or  
9 perceived heterosexuality, homosexuality or bisexuality.

10 (10) "Gender identity" means a person's self-identification  
11 as male or female, distinguished from the person's biological  
12 sex.

13 (11) "Sex" means the gender of a person, as perceived,  
14 presumed or assumed by others, including those who are changing  
15 or who have changed their gender identification.

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, class, religion, color, ancestry, national origin, sex,  
24 sexual orientation, gender identity or expression, 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, class, religion, color, ancestry,  
29 national origin, sex, sexual orientation, gender identity or  
30 expression, handicap or disability in the admission of students.

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

6 (3) To expel, suspend, punish, deny facilities or otherwise  
7 discriminate against any student because of race, class,  
8 religion, color, ancestry, national origin, sex, sexual  
9 orientation, gender identity or expression, handicap or  
10 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, class, color, ancestry, national origin, sex, sexual  
2 orientation, gender identity or expression, handicap or  
3 disability, against any student or students seeking admission as  
4 students to such institutions: Provided, That it shall not be  
5 unfair educational practice for any religious educational  
6 institution to use criteria other than race, class, color,  
7 ancestry, national origin, sex, sexual orientation, gender  
8 identity or expression, handicap or disability in the admission  
9 of students.

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

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

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

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

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

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

1 \* \* \*

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

8 \* \* \*

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

17 \* \* \*

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

29 (b) An action under this section shall be filed within two  
30 years after the date of notice from the commission closing the

1 complaint. Any complaint so filed shall be served on the  
2 commission at the time the complaint is filed in court. The  
3 commission shall notify the complainant of this requirement.

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

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

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

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

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

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

1 commenced by or against the commission shall be subject to the  
2 provisions of that act.

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

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



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

5 \* \* \*

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

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