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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1271 Session of  
2005

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INTRODUCED BY SURRA, VEON, DeWEESE, BELFANTI, BELARDI, BEBKO-  
JONES, BISHOP, BLACKWELL, CALTAGIRONE, CAWLEY, DENLINGER,  
FABRIZIO, FREEMAN, GEORGE, GOODMAN, GRUCELA, HALUSKA, JAMES,  
JOSEPHS, LEACH, MANDERINO, McCALL, McGEEHAN, PALLONE,  
PISTELLA, SAINATO, SHANER, STABACK, TIGUE, WATERS AND  
YOUNGBLOOD, APRIL 6, 2005

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REFERRED TO COMMITTEE ON LABOR RELATIONS, APRIL 6, 2005

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AN ACT

1 Prohibiting discrimination against persons who use lawful  
2 products or participate in a lawful activity; providing for  
3 enforcement; and imposing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Definitions.

7 The following words and phrases when used in this act shall  
8 have the meanings given to them in this section unless the  
9 context clearly indicates otherwise:

10 "Department." The Department of Labor and Industry of the  
11 Commonwealth.

12 "Lawful activity." Any activity not prohibited by statute or  
13 regulation.

14 "Lawful participation." Any participation in a lawful  
15 activity.

16 "Lawful products." Any tangible item not prohibited by

1 statute or regulation.

2 "Lawful use." Any use of a lawful product not prohibited by  
3 law.

4 Section 2. Discrimination for use of lawful products or  
5 participation in a lawful activity prohibited.

6 (a) General rule.--Except as otherwise specifically provided  
7 by law and except as provided by subsection (b), it shall be  
8 unlawful for an employer to refuse to hire or to discharge any  
9 individual or otherwise disadvantage any individual, with  
10 respect to compensation, terms, conditions or privileges of  
11 employment because the individual uses lawful products or  
12 participates in a lawful activity off the premises of the  
13 employer during nonworking hours.

14 (b) Exception.--This section does not apply to the use of  
15 those lawful products or participation in a lawful activity  
16 which impairs the employee's ability to perform the employee's  
17 assigned duties.

18 Section 3. Administrative enforcement and civil remedy.

19 (a) Complaint.--Any person claiming to be aggrieved by a  
20 violation of this act may file a complaint with the department  
21 within six months of the alleged violation. The department shall  
22 conduct a hearing in accordance with 2 Pa.C.S. Ch. 5 Subch. A  
23 (relating to practice and procedure of Commonwealth agencies).

24 (b) Complaint not to be foreclosed.--If a person files a  
25 complaint with the department, that person's right of action in  
26 the courts of this Commonwealth shall not be foreclosed. If  
27 within six months after the filing of the complaint the  
28 department has dismissed the complaint or has not concluded its  
29 proceedings, the department shall notify the aggrieved person.  
30 On receipt of the notice, the aggrieved person shall, within two

1 years of receipt of the notification, be able to bring action,  
2 de novo, in the court of common pleas of this Commonwealth. If  
3 the employer is an agency or political subdivision of this  
4 Commonwealth, then the civil action shall be filed in  
5 Commonwealth Court.

6 Section 4. Relief.

7 (a) General rule.--Upon finding of a violation under section  
8 2 (relating to discrimination for use of lawful products or  
9 participation in a lawful activity prohibited), the aggrieved  
10 party may be granted the following relief:

11 (1) In any civil action or departmental proceeding  
12 brought under section 2, the department or a court may grant  
13 as relief any permanent or temporary injunction, temporary  
14 restraining order and other equitable relief as the  
15 department or court deems appropriate.

16 (2) Any employer that violates any provision of this act  
17 shall be liable to an injured party in an amount equal to any  
18 wages, salary, employment benefits or other compensation  
19 denied or lost to the party by reason of the violation, plus  
20 legal interest on the total monetary damages.

21 (3) Any employer that violates any provision of this act  
22 may also be liable to the injured party in the amount of \$100  
23 for each day the violation occurs. The maximum penalty  
24 imposed under this paragraph shall not exceed \$10,000.

25 (4) A prevailing injured party may be awarded a  
26 reasonable attorney fee as part of costs, in addition to any  
27 relief awarded. Any Commonwealth agency or political  
28 subdivision shall be liable for costs the same as a private  
29 person.

30 (b) Limitation.--Damages awarded under subsection (a)(2) may

1 not accrue from a date more than two years before the date on  
2 which the complaint was filed with the department.

3 Section 5. Construction.

4 Nothing in this act shall be construed to supersede any law  
5 or contract which provides greater employee rights than the  
6 rights established under this act.

7 Section 6. Effective date.

8 This act shall take effect in 60 days.