

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1806 Session of
2005

INTRODUCED BY COHEN, DeWEESE, MELIO, MANDERINO, WATERS,
WASHINGTON, LEACH, TIGUE, DALEY, FABRIZIO, GOODMAN, JAMES,
FRANKEL, SHANER, ROEBUCK, PISTELLA, BEBKO-JONES, THOMAS AND
CURRY, JUNE 28, 2005

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JUNE 28, 2005

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 "genetic information"; and
14 further providing for unlawful discriminatory practices, for
15 powers and duties of commission, for education program and
16 for construction and exclusiveness of remedy.

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

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

23 AN ACT

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

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

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

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

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

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

27 Section 3. Right to Freedom from Discrimination in
28 Employment, Housing and Public Accommodation.--The opportunity
29 for an individual to obtain employment for which he is
30 qualified, and to obtain all the accommodations, advantages,

1 facilities and privileges of any public accommodation and of any
2 housing accommodation and commercial property without
3 discrimination because of race, color, familial status,
4 religious creed, ancestry, handicap or disability, age, sex,
5 national origin, genetic information, the use of a guide or
6 support animal because of the blindness, deafness or physical
7 handicap of the user or because the user is a handler or trainer
8 of support or guide animals is hereby recognized as and declared
9 to be a civil right which shall be enforceable as set forth in
10 this act.

11 Section 2. Section 4(b) of the act, amended December 20,
12 1991 (P.L.414, No.51), is amended and the section is amended by
13 adding a clause to read:

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

16 * * *

17 (b) The term "employer" includes the Commonwealth or any
18 political subdivision or board, department, commission or school
19 district thereof and any person employing four or more persons
20 within the Commonwealth, but except as hereinafter provided,
21 does not include religious, fraternal, charitable or sectarian
22 corporations or associations, except such corporations or
23 associations supported, in whole or in part, by governmental
24 appropriations. The term "employer" with respect to
25 discriminatory practices based on race, color, age, sex,
26 national origin, genetic information or non-job related handicap
27 or disability, includes religious, fraternal, charitable and
28 sectarian corporations and associations employing four or more
29 persons within the Commonwealth.

30 * * *

1 (bb) The term "genetic information" means any information
2 relating to genes, gene products and inherited characteristics
3 that may derive from an individual or a family member. This term
4 includes, but is not limited to:

5 (1) Information regarding carrier status and increased
6 likelihood of future disease or increased sensitivity to any
7 substance.

8 (2) Information derived from:

9 (i) laboratory tests that identify mutations in specific
10 genes or chromosomes;

11 (ii) physical medical examinations;

12 (iii) family histories;

13 (iv) inquiries;

14 (v) tests of gene products; and

15 (vi) direct analysis of genes or chromosomes.

16 Section 3. Sections 5(a), (b), (c), (f) and (g) of the act,
17 amended December 20, 1991 (P.L.414, No.51), are amended to read:

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

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

1 from 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 employee
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, age, sex, national origin, genetic information,
29 past handicap or disability or the use of a guide or support
30 animal because of the blindness, deafness or physical handicap

1 of any applicant for employment or membership. Prior to an offer
2 of employment, an employer may not inquire as to whether an
3 individual has a handicap or disability or as to the severity of
4 such handicap or disability. An employer may inquire as to the
5 individual's ability to perform the essential functions of the
6 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, age, sex, national origin, genetic information, non-
12 job related handicap or disability or the use of a guide or
13 support animal because of the blindness, deafness or physical
14 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 age, sex, national origin, genetic information, non-job related
18 handicap or disability, the use of a guide or support animal
19 because of the blindness, deafness or physical handicap of the
20 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, age, sex, national origin, genetic information or non-
28 job related handicap or disability.

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

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

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

14 * * *

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

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

29 * * *

30 Section 4. Section 7(i), (j) and (k) of the act, amended

1 December 20, 1991 (P.L.414, No.51), are amended to read:

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

4 * * *

5 (i) To create such advisory agencies and conciliation
6 councils, local or state-wide, as will aid in effectuating the
7 purposes of this act. The Commission may itself or it may
8 empower these agencies and councils to (1) study the problems of
9 discrimination in all or specific fields of human relationships
10 when based on race, color, familial status, religious creed,
11 ancestry, age, sex, national origin, genetic information or
12 handicap or disability, and (2) foster, through community effort
13 or otherwise, good will among the groups and elements of the
14 population of the State. Such agencies and councils may make
15 recommendations to the Commission for the development of
16 policies and procedure in general. Advisory agencies and
17 conciliation councils created by the Commission shall be
18 composed of representative citizens, serving without pay, but
19 the Commission may make provision for technical and clerical
20 assistance to such agencies and councils, and for the payment of
21 the expenses of such assistance.

22 (j) To issue such publications and such results of
23 investigations and research as, in its judgment, will tend to
24 promote good will and minimize or eliminate discrimination
25 because of race, color, familial status, religious creed,
26 ancestry, age, sex, national origin, genetic information or
27 handicap or disability.

28 (k) To submit an annual report for each fiscal year by the
29 following March 31 to the General Assembly, the Labor and
30 Industry Committee of the Senate and the State Government

1 Committee of the House of Representatives and the Governor
2 describing in detail the types of complaints received, the
3 investigations, status of cases, Commission action which has
4 been taken, how many were found to have probable cause, how many
5 were resolved by public hearing and the length of time from the
6 initial complaint to final Commission resolution. It shall also
7 contain recommendations for such further legislation concerning
8 abuses and discrimination because of race, color, familial
9 status, religious creed, ancestry, national origin, genetic
10 information, age, sex, handicap or disability or the use of a
11 guide or support animal because of the blindness, deafness or
12 physical handicap of the user or because the user is a handler
13 or trainer of support or guide animals, as may be desirable.

14 * * *

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

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

28 Section 6. Section 12(b) of the act, amended December 20,
29 1991 (P.L.414, No.51), is amended to read:

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

1 * * *

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

21 * * *

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