

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 402 Session of 2017

INTRODUCED BY GROVE, RYAN, BLOOM, GREINER, MILLARD, KAUFFMAN,
V. BROWN, B. MILLER, A. HARRIS, COX, ZIMMERMAN AND GILLEN,
FEBRUARY 8, 2017

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 8, 2017

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 procedure; providing for
12 reimbursement against wrongful claims; further providing for
13 construction and exclusiveness of remedy; repealing
14 provisions relating to local human relations commissions; and
15 prohibiting local human relations commissions.

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

18 Section 1. Section 9(b) and (e) of the act of October 27,
19 1955 (P.L.744, No.222), known as the Pennsylvania Human
20 Relations Act, are amended and the section is amended by adding
21 subsections to read:

22 Section 9. Procedure.--* * *

23 (b) (1) After the filing of any complaint, or whenever
24 there is reason to believe that an unlawful discriminatory

1 practice has been committed, the Commission shall make a prompt
2 investigation in connection therewith. If the Commission does
3 not complete its investigation, it may, after one hundred eighty
4 days of receiving a complaint, make a determination in
5 accordance with subsection (c). A hearing under subsection (e)
6 shall occur only if probable cause of disparate treatment exists
7 and the parties choose not to settle.

8 (2) The Commission shall send a copy of the complaint to the
9 named respondent within [thirty] twenty days from the date of
10 docketing the complaint, unless otherwise required by the Fair
11 Housing Act[.] in accordance with the following:

12 (i) The Commission shall not request information a second
13 time after a respondent provides the information to the
14 Commission's request.

15 (ii) If a respondent fails to provide evidence or the
16 Commission has reasonable proof that a respondent has failed to
17 provide requested information, the Commission may request the
18 Attorney General subpoena the information on behalf of the
19 Commission.

20 (3) A respondent shall file a written, verified answer to
21 the complaint within [thirty] twenty days of service of the
22 complaint, unless otherwise required by the Fair Housing Act.
23 The Commission, upon request of the respondent, may grant an
24 extension of not more than thirty additional days, unless
25 otherwise required by the Fair Housing Act.

26 (4) After service of the complaint, the Commission shall
27 encourage voluntary and informed predetermination settlements
28 between parties, including mediation by a neutral arbitrator
29 under rules and procedures specified by the Commission.

30 * * *

1 (e) The case in support of the complaint shall be presented
2 before the Commission or before a permanent hearing examiner
3 designated by the Commission for the purpose of hearing said
4 complaint by one of its attorneys or agents, by the
5 complainant's attorney or by a designated agent of the
6 complainant. The respondent may appear at such hearing in person
7 or otherwise, with or without counsel, and submit testimony. The
8 complainant may likewise appear at such hearing in person or
9 otherwise, with or without counsel, and submit testimony. The
10 Commission or the complainant shall have the power reasonably
11 and fairly to amend any complaint, and the respondent shall have
12 like power to amend his answer. The Commission shall not be
13 bound by the strict rules of evidence prevailing in courts of
14 law or equity. The Commission or the permanent hearing examiner
15 shall make a determination within thirty days after the
16 conclusion of the hearing. The testimony taken at the hearing
17 shall be under oath and be transcribed[.] and shall be heard for
18 a period of not more than five days of testimony. If the
19 Commission or the permanent hearing examiner determines, upon
20 request of either party, that more time is necessary, the
21 hearing may extend an additional seven days.

22 * * *

23 (k) Only disparate treatment claims may be brought under
24 this act. Disparate treatment may be proven by a repeated
25 history and pattern of decisions that have a disparate impact on
26 an individual class protected under this act.

27 (l) Except as otherwise provided under law, an unlawful
28 discriminatory practice is established when the complainant
29 demonstrates that discrimination was a motivating factor for any
30 employment practice, even though other factors also motivated

1 the practice.

2 Section 2. The act is amended by adding a section to read:

3 Section 11.1. Reimbursement Against Wrongful Claims.--After
4 a hearing under section 9(e), if a claim against a defendant is
5 determined to be unfounded, the defendant may seek and the
6 Commission may award reimbursement for reasonable attorney fees
7 incurred during the proceedings under section 9.

8 Section 3. Section 12 of the act is amended by adding a
9 subsection to read:

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

11 * * *

12 (g) Nothing in this act shall prohibit an employer from
13 requiring an employe, during the employe's hours at work, to
14 adhere to reasonable dress or grooming standards not prohibited
15 by other provisions of Federal, State or local law.

16 Section 4. Section 12.1 of the act is repealed:

17 [Section 12.1. Local Human Relations Commissions.--(a) The
18 legislative body of a political subdivision may, by ordinance or
19 resolution, authorize the establishment or membership in and
20 support of a Local Human Relations Commission. The number and
21 qualifications of the members of any local commission and their
22 terms and method of appointment or removal shall be such as may
23 be determined and agreed upon by the legislative body, except
24 that no such member shall hold office in any political party.
25 Members of a local commission shall serve without salary but may
26 be paid expenses incurred in the performance of their duties.

27 (b) The legislative body of any political subdivision shall
28 have the authority to appropriate funds, in such amounts as may
29 be deemed necessary, for the purpose of contributing to the
30 operation of a local commission including the payment of its

1 share of the salary of an investigator or staff member acting
2 jointly for it and one or more other local commissions.

3 (c) The local commission shall have the power to appoint
4 such employes and staff, as it may deem necessary, to fulfill
5 its purpose including the power to appoint an investigator or
6 staff member to act jointly for it and one or more other local
7 commissions.

8 (d) The legislative bodies of political subdivisions shall
9 have the authority to grant to local commissions powers and
10 duties similar to those now exercised by the Pennsylvania Human
11 Relations Commission under the provisions of this act.

12 (e) The local human relations commission shall notify the
13 Pennsylvania Human Relations Commission of complaints received
14 involving discriminatory acts within that commission's
15 jurisdiction.]

16 Section 5. The act is amended by adding a section to read:

17 Section 12.3. Local Human Relations Commissions
18 Prohibited.--(a) The legislative body of a political
19 subdivision may not, by ordinance or resolution, authorize the
20 establishment or membership in and support of a local human
21 relations commission with the same powers as the Commission
22 under this act.

23 (b) This act shall apply to each local human relations
24 commission. Each local human relations commission shall comply
25 with the policies and procedures in place for the Commission.

26 (c) A case brought before a local human relations commission
27 may not be brought before the Commission.

28 Section 6. The amendment of section 9(b) and (e) of the act
29 shall apply to complaints filed with the commission under
30 section 9(a) of the act on or after the effective date of this

1 section.

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