
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 912 Session of
2021

INTRODUCED BY SAVAL, STREET, MUTH, HUGHES, KANE, KEARNEY, COSTA,
CAPPELLETTI, HAYWOOD, L. WILLIAMS AND COMMITTA,
OCTOBER 27, 2021

REFERRED TO URBAN AFFAIRS AND HOUSING, OCTOBER 27, 2021

AN ACT

1 Amending the act of October 27, 1955 (P.L.744, No.222), entitled
2 "An act prohibiting certain practices of discrimination
3 because of race, color, religious creed, ancestry, age or
4 national origin by employers, employment agencies, labor
5 organizations and others as herein defined; creating the
6 Pennsylvania Human Relations Commission in the Governor's
7 Office; defining its functions, powers and duties; providing
8 for procedure and enforcement; providing for formulation of
9 an educational program to prevent prejudice; providing for
10 judicial review and enforcement and imposing penalties,"
11 further providing for definitions; prohibiting use of
12 criminal history and retaliation relating to use of criminal
13 history; providing for notice to prospective occupants and
14 tenants related to use of criminal history and for exclusions
15 and other legal requirements related to use of criminal
16 history; and further providing for procedure and for civil
17 penalties.

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

20 Section 1. Section 4 of the act of October 27, 1955
21 (P.L.744, No.222), known as the Pennsylvania Human Relations
22 Act, is amended by adding clauses to read:

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

25 * * *

1 (bb) The term "accessory dwelling unit" means one or more
2 rooms that are located within a principle residence, or within
3 an accessory structure on the same lot as a principal residence,
4 that is designed, arranged and intended to be occupied by not
5 more than one household as living accommodations independent
6 from any other household and is so occupied or vacant.

7 (cc) The term "adverse action" means:

8 (1) refusing to engage in or negotiate a rental real estate
9 transaction;

10 (2) denying tenancy;

11 (3) representing that a housing accommodation is not
12 available for inspection, rental or lease when in fact it is so
13 available;

14 (4) failing or refusing to add a household member to an
15 existing lease;

16 (5) expelling or evicting, or threatening to expel or evict,
17 an occupant from a housing accommodation or otherwise making
18 unavailable or denying a housing accommodation;

19 (6) creating conditions that make a housing accommodation
20 uninhabitable or unsafe for an occupant;

21 (7) applying different terms, conditions or privileges to a
22 rental real estate transaction, including, but not limited to,
23 the setting of rates for rental or lease, establishment of
24 damage deposits or other financial conditions for rental or
25 lease or in the furnishing of facilities or services in
26 connection with the transaction;

27 (8) refusing or intentionally failing to list a housing
28 accommodation for rent or lease;

29 (9) refusing or intentionally failing to show a housing
30 accommodation listed for rent or lease;

1 (10) refusing or intentionally failing to accept or transmit
2 a reasonable offer to lease or rent a housing accommodation;
3 (11) terminating a lease; or
4 (12) threatening, penalizing, retaliating or otherwise
5 discriminating against an individual for any reason prohibited
6 by section 5.4.

7 (dd) The term "arrest record" means information indicating
8 that a person has been apprehended, detained, taken into
9 custody, held for investigation or restrained by a law
10 enforcement department, military authority or United States
11 Immigration and Customs Enforcement due to an accusation or
12 suspicion that the person committed a crime. The term includes a
13 pending criminal charge where the accusation has not yet
14 resulted in a final judgment, disposition, adjudication,
15 acquittal, conviction, plea, dismissal or withdrawal.

16 (ee) The term "consumer report" means a written, oral or
17 other communication of information by a consumer reporting
18 agency bearing on a consumer's creditworthiness, credit standing
19 or credit capacity.

20 (ff) The term "consumer reporting agency" means a person
21 which, for monetary fees, dues or on a cooperative nonprofit
22 basis, regularly engages in whole or in part in the practice of
23 assembling or evaluating consumer credit information or other
24 information on consumers for the purpose of furnishing consumer
25 reports to third parties.

26 (gg) The term "conviction record" means information
27 regarding a finding or verdict of guilty, an adjudication of
28 delinquency whether deferred or otherwise, a final disposition
29 of a summary offense, an admission of guilt or a plea of nolo
30 contendere.

1 (hh) The term "criminal history" has the same meaning as
2 criminal history record information in 18 Pa.C.S. § 9102
3 (relating to definitions).

4 (ii) The term "fair chance housing" means a practice that
5 reduces barriers to housing accommodations for persons with
6 criminal histories in accordance with section 5.4.

7 (jj) The term "landlord" means a person that owns, manages
8 or operates a housing accommodation for rent or a housing
9 accommodation that is offered or advertised as available for
10 rent.

11 (kk) The term "legitimate business reason" means a reason
12 that exists when a policy or practice is necessary to protect
13 resident safety or to protect property, in light of the
14 following factors:

15 (1) The nature and the severity of the offense underlying
16 the conviction as indicated by the Commonwealth through such
17 techniques as gradation and gravity score.

18 (2) The time that has elapsed since the date of conviction,
19 provided that the landlord may not consider a conviction that
20 occurred more than two years prior to the adverse action as a
21 factor supporting a legitimate business reason for taking an
22 adverse action. For purposes of this subclause, the term
23 "conviction" means a finding of guilt or a plea of guilty or
24 nolo contendere, whether or not a judgment of sentence has been
25 imposed as determined by the law of the jurisdiction in which
26 the prosecution was held, except that the term does not include
27 a conviction that has been expunged or overturned or for which
28 an individual has been pardoned or an order of accelerated
29 rehabilitative disposition.

30 (3) Supplemental information related to the person's

1 rehabilitation, good conduct and additional facts or
2 explanations provided by the person, if the person chooses to do
3 so. For purposes of this subclause, review of conviction
4 information is limited to those convictions included in registry
5 information.

6 (ll) The term "minor" means an individual under the age of
7 18 years.

8 (mm) The term "prospective occupant" means a person who
9 seeks to lease, sublease or rent a housing accommodation.

10 (nn) The term "registry information" means information
11 solely obtained from a county, statewide or national sex
12 offender registry, including a registrant's physical
13 description, address and conviction description and dates.

14 (oo) The term "supplemental information" means information
15 produced by a prospective occupant or tenant, or produced on the
16 individual's behalf, with respect to the individual's
17 rehabilitation or good conduct, including:

18 (1) written or oral statement from the prospective occupant
19 or the tenant;

20 (2) written or oral statement from a current or previous
21 employer;

22 (3) written or oral statement from a current or previous
23 landlord;

24 (4) written or oral statement from a member of the judiciary
25 or law enforcement, parole or probation officer or person that
26 provides similar services;

27 (5) written or oral statement from a member of the clergy,
28 counselor, therapist, social worker, community or volunteer
29 organization or person or institution that provides similar
30 services;

1 (6) certificate of rehabilitation;

2 (7) certificate of completion or enrollment in an
3 educational or vocational training program, including an
4 apprenticeship program; or

5 (8) certificate of completion or enrollment in a drug or
6 alcohol treatment program or certificate of completion or
7 enrollment in a rehabilitation program.

8 (pp) The term "tenant" means an individual who occupies or
9 holds possession of a housing accommodation according to a
10 rental agreement.

11 Section 2. The act is amended by adding sections to read:

12 Section 5.4. Prohibited Use of Criminal History.--(a) It is
13 an unlawful discriminatory practice for any person to:

14 (1) Advertise, publicize or implement a policy or practice
15 that automatically or categorically excludes individuals with an
16 arrest record, conviction record, conditions of sentence or
17 criminal history from a housing accommodation offered for rent
18 or lease.

19 (2) Require disclosure, inquire about or take an adverse
20 action against a prospective occupant, a tenant or a member of
21 their household, based on an arrest record, conviction record,
22 or criminal history, except for information under paragraph (3)
23 and subject to the exclusions and legal requirements in section
24 5.7.

25 (3) Carry out an adverse action based on registry
26 information of a prospective adult occupant, an adult tenant or
27 an adult member of their household, unless the landlord has a
28 legitimate business reason for taking the action.

29 (4) Carry out an adverse action based on registry
30 information regarding a prospective occupant who is a minor, a

1 minor tenant, or a minor member of their household.

2 (5) Carry out an adverse action based on registry
3 information regarding a prospective occupant who is an adult, an
4 adult tenant or an adult member of their household if the
5 conviction occurred when the individual was a minor or a minor
6 tried as an adult.

7 (b) If a landlord takes an adverse action based on a
8 legitimate business reason, the landlord shall provide written
9 notice by email, mail or in person of the adverse action to the
10 prospective occupant or the tenant and state the specific
11 registry information that was the basis for the adverse action.
12 If a prospective occupant provides supplemental information
13 regarding rehabilitation, the landlord must explain why, in
14 light of the supplemental information, a legitimate business
15 reason remains.

16 (c) If a consumer report is used by a landlord as part of
17 the screening process, the landlord must provide a free copy of
18 the consumer report to the prospective occupant or tenant in the
19 event of a denial or other adverse action, and the landlord must
20 provide the prospective occupant or tenant with an opportunity
21 to dispute the accuracy of information appearing in the consumer
22 report.

23 Section 5.5. Retaliation Prohibited Relating to Use of
24 Criminal History.--(a) It is an unlawful discriminatory
25 practice for any person to:

26 (1) Interfere with, restrain or deny the exercise of, or the
27 attempt to exercise, a right protected under section 5.4.

28 (2) Take adverse action against another person because the
29 other person exercised in good faith the rights protected under
30 section 5.4. The rights include the following:

1 (i) The right to fair chance housing accommodations and
2 regulation of the use of criminal history under section 5.4.

3 (ii) The right to make inquiries about the rights protected
4 under section 5.4.

5 (iii) The right to inform others about their rights under
6 section 5.4.

7 (iv) The right to inform the person's legal counsel or
8 another person about an alleged violation of section 5.4.

9 (v) The right to file an oral or written complaint with the
10 Commission for an alleged violation of section 5.4.

11 (vi) The right to cooperate with the Commission in its
12 investigations of section 5.4.

13 (vii) The right to testify in a proceeding under or related
14 to section 5.4.

15 (viii) The right to refuse to participate in an activity
16 that would result in a violation of section 5.4.

17 (ix) The right to oppose any policy, practice or act that is
18 unlawful under section 5.4.

19 (3) Communicate to another person exercising rights
20 protected under this section, directly or indirectly, the
21 willingness to inform a government employee that the other
22 person is not lawfully in the United States or to report, or to
23 make an implied or express assertion of a willingness to report,
24 suspected citizenship or immigration status of a prospective
25 occupant, a tenant or a member of their household to a Federal,
26 State or local agency because the prospective occupant or tenant
27 has exercised a right under this section or section 5.4.

28 (4) Communicate to another person exercising rights
29 protected under this section, directly or indirectly, the
30 willingness to take an action so as to cause an issue with the

1 other person's probation or parole through contacting a person
2 responsible for the other person's supervision.

3 (b) It shall be a rebuttable presumption of retaliation if a
4 landlord or person takes an adverse action against another
5 person within 90 days of the other person's exercise of rights
6 protected under this section. The landlord or person who took
7 the adverse action may rebut the presumption with clear and
8 convincing evidence that the adverse action was taken for a
9 permissible purpose.

10 (c) Proof of retaliation under this section shall be
11 sufficient upon a showing that a landlord or person has taken an
12 adverse action against another person and the other person's
13 exercise of rights protected under this section was a motivating
14 factor in the adverse action, unless the landlord or person who
15 took the adverse action can prove that the action would have
16 been taken in the absence of the protected activity.

17 (d) The protections afforded under this section shall apply
18 to a person who mistakenly, but in good faith, alleges
19 violations of this section and section 5.4.

20 (e) A complaint or other communication by any person
21 triggers the protections of this section regardless of whether
22 the complaint or communication is in writing or makes explicit
23 reference to this section or section 5.4.

24 Section 5.6. Notice to Prospective Occupants and Tenants
25 Related to Use of Criminal History.--(a) A landlord shall
26 provide written notice to prospective occupants and tenants that
27 the landlord is prohibited from requiring disclosure, asking
28 about, rejecting an applicant or taking adverse action based on
29 an arrest record, conviction record or criminal history, except
30 for information under section 5.4(a)(3) and subject to the

1 exclusions and legal requirements in section 5.7.

2 (b) If the landlord uses a criminal history record check on
3 a prospective occupant or tenant for information under section
4 5.4(a) (3), the landlord must provide a free copy of the criminal
5 history record check to the prospective tenant or occupant.

6 (c) If a landlord screens prospective occupants under
7 section 5.4(a) (3), the landlord must provide notice of an
8 applicant's ability to provide supplemental information related
9 to the applicant's rehabilitation, good conduct and facts or
10 explanations regarding the applicant's registry information.

11 (d) The Commission shall adopt a rule or rules to enforce
12 this section.

13 Section 5.7. Exclusions and Other Legal Requirements Related
14 to Use of Criminal History.--(a) Sections 5.4 and 5.5 shall not
15 be interpreted or applied to diminish or conflict with a
16 requirement of Federal or State law. In the event of a conflict,
17 the Federal or State law requirement shall supersede the
18 requirements of this section.

19 (b) Sections 5.4 and 5.5 shall not apply to the renting,
20 subrenting, leasing or subleasing of the personal residence of
21 the landlord.

22 (c) Sections 5.4 and 5.5 shall not apply to the renting,
23 subrenting, leasing or subleasing of an accessory dwelling unit
24 or detached accessory dwelling unit in which the owner or person
25 entitled to possession maintains a bona fide residence, home or
26 abode on the same lot.

27 (d) Sections 5.4 and 5.5 shall not be construed to
28 discourage or prohibit a landlord from adopting screening
29 policies that are more generous to prospective occupants and
30 tenants than the requirements of those sections.

1 Section 3. Sections 9(f), (f.1) and (f.2) and 9.3 of the act
2 are amended to read:

3 Section 9. Procedure.--* * *

4 (f) (1) If, upon all the evidence at the hearing, the
5 Commission shall find that a respondent has engaged in or is
6 engaging in any unlawful discriminatory practice as defined in
7 this act, the Commission shall state its findings of fact, and
8 shall issue and cause to be served on such respondent an order
9 requiring such respondent to cease and desist from such unlawful
10 discriminatory practice and to take such affirmative action,
11 including, but not limited to, reimbursement of certifiable
12 travel expenses in matters involving the complaint, compensation
13 for loss of work in matters involving the complaint, hiring,
14 reinstatement or upgrading of employes, with or without back
15 pay, admission or restoration to membership in any respondent
16 labor organization, the making of reasonable accommodations, or
17 selling or leasing specified housing accommodations or
18 commercial property upon such equal terms and conditions and
19 with such equal facilities, services and privileges or lending
20 money, whether or not secured by mortgage or otherwise for the
21 acquisition, construction, rehabilitation, repair or maintenance
22 of housing accommodations or commercial property, upon such
23 equal terms and conditions to any person discriminated against
24 or all persons, and any other verifiable, reasonable out-of-
25 pocket expenses caused by such unlawful discriminatory practice,
26 provided that, in those cases alleging a violation of section
27 5(d), (e) or (h) or 5.3 where the underlying complaint is a
28 violation of section 5(h) or 5.3, or in those cases alleging a
29 violation of section 5.4 or 5.5, the Commission may award actual
30 damages, including damages caused by humiliation and

1 embarrassment, as, in the judgment of the Commission, will
2 effectuate the purposes of this act, and including a requirement
3 for report of the manner of compliance.

4 (2) Such order may also assess a civil penalty against the
5 respondent in a complaint of discrimination filed under sections
6 5(h) [or], 5.3, 5.4 or 5.5:

7 (i) in an amount not exceeding ten thousand dollars
8 (\$10,000) if the respondent has not been adjudged to have
9 committed any prior discriminatory practice;

10 (ii) in an amount not exceeding twenty-five thousand dollars
11 (\$25,000) if the respondent has been adjudged to have committed
12 one other discriminatory practice during the five-year period
13 ending on the date of this order; or

14 (iii) in an amount not exceeding fifty thousand dollars
15 (\$50,000) if the respondent has been adjudged to have committed
16 more than one other discriminatory practice during the seven-
17 year period ending on the date of this order.

18 If, however, the acts constituting the discriminatory practice
19 that is the object of the charge are committed by the same
20 natural person who has been previously adjudged to have
21 committed acts constituting a discriminatory practice, then the
22 civil penalties set forth in subparagraphs (ii) and (iii) may be
23 imposed without regard to the period of time within which any
24 subsequent discriminatory practice occurred.

25 (3) When the respondent is a licensee of the Commonwealth,
26 the Commission shall inform the appropriate State licensing
27 authority of the order with the request that the licensing
28 authority take such action as it deems appropriate against such
29 licensee. An appeal from the Commission's order shall act as a
30 supersedeas and stay such action by the State licensing

1 authority until a final decision on said appeal.

2 (4) If, upon all the evidence, the Commission shall find
3 that a respondent has not engaged in any such unlawful
4 discriminatory practice, the Commission shall state its findings
5 of fact, and shall issue and cause to be served on the
6 complainant an order dismissing the said complaint as to such
7 respondent.

8 (f.1) If, upon all the evidence at the hearing, in those
9 cases alleging a violation of section 5(d), (e), (h) or 5.3
10 where the underlying complaint is a violation of section 5(h) or
11 5.3, or in those cases alleging a violation of section 5.4 or
12 5.5, the Commission finds that a respondent has engaged in or is
13 engaging in any unlawful discriminatory practice as defined in
14 this act, the Commission may award attorney fees and costs to
15 prevailing complainants.

16 (f.2) If, upon all the evidence at the hearing, in those
17 cases alleging a violation of section 5(d), (e), (h) or 5.3
18 where the underlying complaint is a violation of section 5(h) or
19 5.3, or in those cases alleging a violation of section 5.4 or
20 5.5, the Commission finds that a respondent has not engaged in
21 or is not engaging in any unlawful discriminatory practice as
22 defined in this act, the Commission may award attorney fees and
23 costs to a prevailing respondent if the respondent proves that
24 the complaint was brought in bad faith.

25 * * *

26 Section 9.3. Civil Penalties.--The Commission shall have the
27 power to adopt a schedule of civil penalties for violation of
28 section 5(h) (5) or 5.4(1) by the advertiser and the publisher in
29 instances where the complainant does not take action to secure
30 housing accommodations or financing and is not denied housing

1 accommodations or financing based on the alleged discriminatory
2 language in the advertisement. The schedule of penalties,
3 guidelines for their imposition and procedures for appeal shall
4 be published in the Pennsylvania Bulletin, provided that the
5 Commission shall, within two (2) years of such publication,
6 promulgate a regulation setting forth the schedule of penalties,
7 guidelines and procedures. Any such penalty shall not exceed the
8 sum of five hundred dollars (\$500.00). Duly authorized agents of
9 the Commission shall have the power and authority to issue
10 citations and impose penalties for any such violations. Any such
11 penalty imposed may be appealed to the Commission pursuant to
12 regulations promulgated under this act. All proceedings shall be
13 conducted in accordance with the provisions of 2 Pa.C.S.
14 (relating to administrative law and procedure).

15 Section 4. This act shall take effect in 60 days.