

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 440 Session of
2005

INTRODUCED BY ORIE, STACK, EARLL, COSTA, STOUT, M. WHITE AND
C. WILLIAMS, MARCH 22, 2005

REFERRED TO LABOR AND INDUSTRY, MARCH 22, 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 "marital status"; and further
14 providing for unlawful discriminatory practices.

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

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

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

22 (a) The practice or policy of discrimination against
23 individuals or groups by reason of their race, color, familial

1 status, marital status, religious creed, ancestry, age, sex,
2 national origin, handicap or disability, use of guide or support
3 animals because of the blindness, deafness or physical handicap
4 of the user or because the user is a handler or trainer of
5 support or guide animals is a matter of concern of the
6 Commonwealth. Such discrimination foments domestic strife and
7 unrest, threatens the rights and privileges of the inhabitants
8 of the Commonwealth, and undermines the foundations of a free
9 democratic state. The denial of equal employment, housing and
10 public accommodation opportunities because of such
11 discrimination, and the consequent failure to utilize the
12 productive capacities of individuals to their fullest extent,
13 deprives large segments of the population of the Commonwealth of
14 earnings necessary to maintain decent standards of living,
15 necessitates their resort to public relief and intensifies group
16 conflicts, thereby resulting in grave injury to the public
17 health and welfare, compels many individuals to live in
18 dwellings which are substandard, unhealthful and overcrowded,
19 resulting in racial segregation in public schools and other
20 community facilities, juvenile delinquency and other evils,
21 thereby threatening the peace, health, safety and general
22 welfare of the Commonwealth and its inhabitants.

23 (b) It is hereby declared to be the public policy of this
24 Commonwealth to foster the employment of all individuals in
25 accordance with their fullest capacities regardless of their
26 race, color, religious creed, familial status, marital status,
27 ancestry, age, sex, national origin, handicap or disability, use
28 of guide or support animals because of the blindness, deafness
29 or physical handicap of the user or because the user is a
30 handler or trainer of support or guide animals, and to safeguard

1 their right to obtain and hold employment without such
2 discrimination, to assure equal opportunities to all individuals
3 and to safeguard their rights to public accommodation and to
4 secure housing accommodation and commercial property regardless
5 of race, color, familial status, marital status, religious
6 creed, ancestry, age, sex, national origin, handicap or
7 disability, use of guide or support animals because of blindness
8 or deafness of the user or because the user is a handler or
9 trainer of guide or support animals.

10 (c) This act shall be deemed an exercise of the police power
11 of the Commonwealth for the protection of the public welfare,
12 prosperity, health and peace of the people of the Commonwealth
13 of Pennsylvania.

14 Section 3. Right to Freedom from Discrimination in
15 Employment, Housing and Public Accommodation.--The opportunity
16 for an individual to obtain employment for which he is
17 qualified, and to obtain all the accommodations, advantages,
18 facilities and privileges of any public accommodation and of any
19 housing accommodation and commercial property without
20 discrimination because of race, color, familial status, marital
21 status, religious creed, ancestry, handicap or disability, age,
22 sex, national origin, the use of a guide or support animal
23 because of the blindness, deafness or physical handicap of the
24 user or because the user is a handler or trainer of support or
25 guide animals is hereby recognized as and declared to be a civil
26 right which shall be enforceable as set forth in this act.

27 Section 2. Section 4 of the act is amended by adding a
28 definition to read:

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

1 * * *

2 (bb) The term "marital status" means whether a person is
3 single, married, divorced, separated or widowed.

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

6 Section 5. Unlawful Discriminatory Practices.--It shall be
7 an unlawful discriminatory practice, unless based upon a bona
8 fide occupational qualification, or in the case of a fraternal
9 corporation or association, unless based upon membership in such
10 association or corporation, or except where based upon
11 applicable security regulations established by the United States
12 or the Commonwealth of Pennsylvania:

13 (a) For any employer because of the race, color, religious
14 creed, ancestry, familial status, marital status, age, sex,
15 national origin or non-job related handicap or disability or the
16 use of a guide or support animal because of the blindness,
17 deafness or physical handicap of any individual or independent
18 contractor, to refuse to hire or employ or contract with, or to
19 bar or to discharge from employment such individual or
20 independent contractor, or to otherwise discriminate against
21 such individual or independent contractor with respect to
22 compensation, hire, tenure, terms, conditions or privileges of
23 employment or contract, if the individual or independent
24 contractor is the best able and most competent to perform the
25 services required. The provision of this paragraph shall not
26 apply, to (1) operation of the terms or conditions of any bona
27 fide retirement or pension plan which have the effect of a
28 minimum service requirement, (2) operation of the terms or
29 conditions of any bona fide group or employe insurance plan, (3)
30 age limitations placed upon entry into bona fide apprenticeship

1 programs of two years or more approved by the State
2 Apprenticeship and Training Council of the Department of Labor
3 and Industry, established by the act of July 14, 1961 (P.L.604,
4 No.304), known as "The Apprenticeship and Training Act."
5 Notwithstanding any provision of this clause, it shall not be an
6 unlawful employment practice for a religious corporation or
7 association to hire or employ on the basis of sex in those
8 certain instances where sex is a bona fide occupational
9 qualification because of the religious beliefs, practices, or
10 observances of the corporation, or association.

11 (b) For any employer, employment agency or labor
12 organization, prior to the employment, contracting with an
13 independent contractor or admission to membership, to:

14 (1) Elicit any information or make or keep a record of or
15 use any form of application or application blank containing
16 questions or entries concerning the race, color, religious
17 creed, ancestry, familial status, marital status, age, sex,
18 national origin, past handicap or disability or the use of a
19 guide or support animal because of the blindness, deafness or
20 physical handicap of any applicant for employment or membership.
21 Prior to an offer of employment, an employer may not inquire as
22 to whether an individual has a handicap or disability or as to
23 the severity of such handicap or disability. An employer may
24 inquire as to the individual's ability to perform the essential
25 functions of the employment.

26 (2) Print or publish or cause to be printed or published any
27 notice or advertisement relating to employment or membership
28 indicating any preference, limitation, specification or
29 discrimination based upon race, color, religious creed,
30 ancestry, age, familial status, marital status, sex, national

1 origin, non-job related handicap or disability or the use of a
2 guide or support animal because of the blindness, deafness or
3 physical handicap of the user.

4 (3) Deny or limit, through a quota system, employment or
5 membership because of race, color, religious creed, ancestry,
6 age, familial status, marital status, sex, national origin, non-
7 job related handicap or disability, the use of a guide or
8 support animal because of the blindness, deafness or physical
9 handicap of the user or place of birth.

10 (4) Substantially confine or limit recruitment or hiring of
11 individuals, with intent to circumvent the spirit and purpose of
12 this act, to any employment agency, employment service, labor
13 organization, training school or training center or any other
14 employe-referring source which services individuals who are
15 predominantly of the same race, color, religious creed,
16 ancestry, age, familial status, marital status, sex, national
17 origin or non-job related handicap or disability.

18 (5) Deny employment because of a prior handicap or
19 disability.

20 Nothing in clause (b) of this section shall bar any
21 institution or organization for handicapped or disabled persons
22 from limiting or giving preference in employment or membership
23 to handicapped or disabled persons.

24 (c) For any labor organization because of the race, color,
25 religious creed, ancestry, age, familial status, marital status,
26 sex, national origin, non-job related handicap or disability or
27 the use of a guide or support animal because of the blindness,
28 deafness or physical handicap of any individual to deny full and
29 equal membership rights to any individual or otherwise to
30 discriminate against such individuals with respect to hire,

1 tenure, terms, conditions or privileges of employment or any
2 other matter, directly or indirectly, related to employment.

3 * * *

4 (f) For any employment agency to fail or refuse to classify
5 properly, refer for employment or otherwise to discriminate
6 against any individual because of his race, color, religious
7 creed, ancestry, age, sex, familial status, marital status,
8 national origin, non-job related handicap or disability or the
9 use of a guide or support animal because of the blindness,
10 deafness or physical handicap of the user.

11 (g) For any individual seeking employment to publish or
12 cause to be published any advertisement which in any manner
13 expresses a limitation or preference as to the race, color,
14 religious creed, ancestry, age, sex, familial status, marital
15 status, national origin, non-job related handicap or disability
16 or the use of a guide or support animal because of the
17 blindness, deafness or physical handicap of any prospective
18 employer.

19 * * *

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