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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2475 Session of  
2018

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INTRODUCED BY GALLOWAY, DAVIS, DERMODY, J. McNEILL, READSHAW,  
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DEASY AND DALEY, JUNE 18, 2018

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JUNE 18, 2018

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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, for unlawful  
12 discriminatory practices and for powers and duties of the  
13 commission; providing for policies and procedures; and  
14 further providing for procedure.

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

17 Section 1. Section 4(b) and (c) of the act of October 27,  
18 1955 (P.L.744, No.222), known as the Pennsylvania Human  
19 Relations Act, are amended and the section is amended by adding  
20 clauses to read:

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

23 \* \* \*

1 (b) The term "employer" includes the Commonwealth or any  
2 political subdivision or board, department, commission or school  
3 district thereof and any person employing [four] one or more  
4 persons within the Commonwealth, but except as hereinafter  
5 provided, does not include religious, fraternal, charitable or  
6 sectarian corporations or associations, except such corporations  
7 or associations supported, in whole or in part, by governmental  
8 appropriations. The term "employer" with respect to  
9 discriminatory practices based on race, color, age, sex,  
10 national origin or non-job related handicap or disability,  
11 includes religious, fraternal, charitable and sectarian  
12 corporations and associations employing [four] one or more  
13 persons within the Commonwealth.

14 (c) The term "employee" means an individual who performs work  
15 for an employer for wages. The term "employee" does not include  
16 (1) [any individual employed in agriculture or in the domestic  
17 service of any person,] (Reserved) (2) any individuals who, as a  
18 part of their employment, reside in the personal residence of  
19 the employer, (3) any individual employed by said individual's  
20 parents, spouse or child.

21 \* \* \*

22 (bb) The term "intern" means a student or trainee who  
23 performs work on a temporary basis for an employer under the  
24 direct supervision of an existing employe in order to gain work  
25 experience, regardless of whether the employer pays a wage to  
26 the student or trainee.

27 (cc) The term "volunteer" means an individual who holds an  
28 unpaid position under the direct supervision of an employe.

29 Section 2. Sections 5(a) and 7(f) of the act are amended to  
30 read:

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

8 (a) For any employer because of the race, color, religious  
9 creed, ancestry, age, sex, national origin or non-job related  
10 handicap or disability or the use of a guide or support animal  
11 because of the blindness, deafness or physical handicap of any  
12 individual, intern, volunteer or independent contractor, to  
13 refuse to hire or employ or contract with, or to bar or to  
14 discharge from employment such individual, intern, volunteer or  
15 independent contractor, or to otherwise discriminate against  
16 such individual, intern, volunteer or independent contractor  
17 with respect to compensation, hire, tenure, terms, conditions or  
18 privileges of employment or contract, if the individual, intern,  
19 volunteer or independent contractor is the best able and most  
20 competent to perform the services required. The provision of  
21 this paragraph shall not apply, to (1) operation of the terms or  
22 conditions of any bona fide retirement or pension plan which  
23 have the effect of a minimum service requirement, (2) operation  
24 of the terms or conditions of any bona fide group or employe  
25 insurance plan, (3) age limitations placed upon entry into bona  
26 fide apprenticeship programs of two years or more approved by  
27 the State Apprenticeship and Training Council of the Department  
28 of Labor and Industry, established by the act of July 14, 1961  
29 (P.L.604, No.304), known as "The Apprenticeship and Training  
30 Act." Notwithstanding any provision of this clause, it shall not

1 be an unlawful employment practice for a religious corporation  
2 or association to hire or employ on the basis of sex in those  
3 certain instances where sex is a bona fide occupational  
4 qualification because of the religious beliefs, practices, or  
5 observances of the corporation, or association.

6 \* \* \*

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

9 \* \* \*

10 (f) To initiate, receive, investigate and pass upon  
11 complaints charging unlawful discriminatory practices and  
12 violations of section 7.1.

13 \* \* \*

14 Section 3. The act is amended by adding a section to read:

15 Section 7.1. Policies and Procedures.--(a) An employer  
16 shall adopt written policies and procedures for preventing  
17 harassment, discrimination and retaliation against employes. The  
18 policies and procedures shall include, at a minimum, all of the  
19 following:

20 (1) An explanation that harassment, discrimination and  
21 retaliation are unlawful acts under Federal and State law.

22 (2) An explanation that sexual harassment is a form of  
23 unlawful discrimination under Federal and State law.

24 (3) A complaint procedure to report and address harassment,  
25 discrimination and retaliation claims, including a provision  
26 allowing employes to report the claims to persons other than  
27 their supervisor.

28 (4) The specific responsibilities of a supervisor in the  
29 identification, prevention and reporting of harassment,  
30 discrimination and retaliation.

1 (5) An explanation of the procedures for maintaining  
2 confidentiality surrounding the reporting of harassment,  
3 discrimination and retaliation claims.

4 (6) A procedure for the timely, thorough and prompt  
5 investigation of claims of harassment, discrimination and  
6 retaliation filed by an employe.

7 (b) An employer shall make the policies and procedures  
8 available and easily accessible to all employes.

9 (c) An employer shall review and update the policies for  
10 harassment, discrimination and retaliation as needed to remain  
11 in compliance with Federal and State law.

12 (d) An employer shall keep records of the current policies  
13 and procedures and make them available for inspection by the  
14 Commission upon request. If applicable, employers shall also  
15 keep a record of the immediately preceding policies and  
16 procedures for a period of three years after the effective date  
17 of the current policies and procedures and make them available  
18 for inspection by the Commission upon request.

19 (e) The Commission shall develop standard policies and  
20 procedures that may be used by employers to satisfy the  
21 requirements under clause (a). The policies and procedures shall  
22 be made publicly available at no cost on the Commission's  
23 publicly accessible Internet website.

24 (f) The Commission shall publish on its publicly accessible  
25 Internet website, and transmit to the Legislative Reference  
26 Bureau for publication in the Pennsylvania Bulletin, any changes  
27 to Federal or State harassment, discrimination or retaliation  
28 laws that would impact the standard policies and procedures  
29 under clause (e) within 45 days of the changes. The Commission  
30 may establish an electronic notification system to alert

1 employers of changes to the standard policies and procedures.

2 (g) An employer who violates this section shall be subject  
3 to a civil penalty of not less than one hundred dollars (\$100)  
4 nor more than five hundred dollars (\$500) for the first  
5 violation and not less than five hundred dollars (\$500) nor more  
6 than two thousand dollars (\$2,000) for the second and each  
7 subsequent violation. The Commission may waive the civil penalty  
8 for a first-time violation of this section if, within sixty days  
9 of the issuance of the notice of violation, the employer proves  
10 to the satisfaction of the Commission that the violation has  
11 been cured.

12 Section 4. Section 9(a), (c), (d), (d.1)(4) and (f)(1) and  
13 (4) of the act are amended to read:

14 Section 9. Procedure.--(a) Any person claiming a violation  
15 of section 7.1 or claiming to be aggrieved by an alleged  
16 unlawful discriminatory practice may make, sign and file with  
17 the Commission a verified complaint, in writing, which shall  
18 state the name and address of the person, employer, labor  
19 organization or employment agency alleged to have violated  
20 section 7.1 or to have committed the unlawful discriminatory  
21 practice complained of, and which shall set forth the  
22 particulars thereof and contain such other information as may be  
23 required by the Commission. Commission representatives shall not  
24 modify the substance of the complaint. Whenever a person invokes  
25 the procedures set forth in this act, the Commission shall  
26 refuse to accept for filing a complaint it determines to be  
27 untimely with no grounds for equitable tolling, outside its  
28 jurisdiction or frivolous on its face. The Commission upon its  
29 own initiative or the Attorney General may, in like manner,  
30 make, sign and file such complaint. Any employer whose employes,

1 or some of them, hinder or threaten to hinder compliance with  
2 the provisions of this act may file with the Commission a  
3 verified complaint, asking for assistance by conciliation or  
4 other remedial action and, during such period of conciliation or  
5 other remedial action, no hearings, orders or other actions  
6 shall be taken by the Commission against such employer.

7 \* \* \*

8 (c) If it shall be determined after such investigation that  
9 no probable cause exists for crediting the allegations of the  
10 complaint, the Commission shall, within ten days from such  
11 determination, cause to be issued and served upon the  
12 complainant written notice of such determination, and the said  
13 complainant or his attorney may, within ten days after such  
14 service, file with the Commission a written request for a  
15 preliminary hearing before the Commission to determine probable  
16 cause for crediting the allegations of the complaint. If it  
17 shall be determined after such investigation that probable cause  
18 exists for crediting the allegations of the complaint, the  
19 Commission shall immediately endeavor to cause compliance with  
20 section 7.1 or to eliminate the unlawful discriminatory practice  
21 complained of by conference, conciliation and persuasion. The  
22 members of the Commission and its staff shall not disclose what  
23 has transpired in the course of such endeavors: Provided, That  
24 the Commission may publish the facts in the case of any  
25 complaint which has been dismissed, and the terms of  
26 conciliation when the complaint has been adjusted, without  
27 disclosing, except as required by the Fair Housing Act, the  
28 identity of the parties involved.

29 \* \* \*

30 (d) In case of failure so to cause compliance with section

1 7.1 or eliminate such practice or in advance thereof, if in the  
2 judgment of the Commission circumstances so warrant, the  
3 Commission shall cause to be issued and served a written notice,  
4 together with a copy of such complaint as the same may have been  
5 amended, requiring the person, employer, labor organization or  
6 employment agency named in such complaint, hereinafter referred  
7 to as respondent, to answer the charges of such complaint at a  
8 hearing before the Commission at a time and place to be  
9 specified in such notice. The place of any such hearing shall be  
10 in the county in which the alleged offense was committed.

11 (d.1) When notice of hearing is given as set forth in  
12 subsection (d) and an election procedure is required by the Fair  
13 Housing Act, either party may elect to have the claim asserted  
14 in the complaint decided in a civil action brought under the  
15 original jurisdiction of Commonwealth Court. The written notice  
16 of the Commission shall be sent to all parties and will inform  
17 them of their right to take civil action. An election must be  
18 made within twenty days after receipt of the notice of hearing.  
19 A party making this election shall notify the Commission and all  
20 other parties. If an election for civil action is made by either  
21 party, the Commission shall, within thirty days from the date of  
22 election, commence and maintain a civil action on behalf of the  
23 complainant provided, however, that, whenever the Attorney  
24 General signs and files the complaint pursuant to subsection  
25 (a), the Attorney General shall, within thirty days from the  
26 date of election, commence and maintain a civil action on behalf  
27 of the complainant. In those cases commenced by the Attorney  
28 General, the Commission shall have the right to intervene. In  
29 any action brought under this subsection:

30 \* \* \*



1 (4) If, after a trial, the Commonwealth Court finds that a  
2 respondent has not violated section 7.1 or engaged in any  
3 unlawful discriminatory practice as defined in this act, the  
4 court may award attorney fees and costs to the prevailing  
5 respondent if the court determines that the complaint is  
6 frivolous and that the Commission dealt with the party  
7 complained against in a wilful, wanton and oppressive manner, in  
8 which case the Commission shall be ordered to pay such costs and  
9 attorney fees.

10 \* \* \*

11 (f) (1) If, upon all the evidence at the hearing, the  
12 Commission shall find that a respondent has violated section 7.1  
13 or engaged in or is engaging in any unlawful discriminatory  
14 practice as defined in this act, the Commission shall state its  
15 findings of fact, and shall issue and cause to be served on such  
16 respondent an order requiring such respondent to cease and  
17 desist from such unlawful discriminatory practice and to take  
18 such affirmative action, including, but not limited to,  
19 reimbursement of certifiable travel expenses in matters  
20 involving the complaint, compensation for loss of work in  
21 matters involving the complaint, hiring, reinstatement or  
22 upgrading of employes, with or without back pay, admission or  
23 restoration to membership in any respondent labor organization,  
24 the making of reasonable accommodations, or selling or leasing  
25 specified housing accommodations or commercial property upon  
26 such equal terms and conditions and with such equal facilities,  
27 services and privileges or lending money, whether or not secured  
28 by mortgage or otherwise for the acquisition, construction,  
29 rehabilitation, repair or maintenance of housing accommodations  
30 or commercial property, upon such equal terms and conditions to

1 any person discriminated against or all persons, and any other  
2 verifiable, reasonable out-of-pocket expenses caused by such  
3 unlawful discriminatory practice, provided that, in those cases  
4 alleging a violation of section 5(d), (e) or (h) or 5.3 where  
5 the underlying complaint is a violation of section 5(h) or 5.3,  
6 the Commission may award actual damages, including damages  
7 caused by humiliation and embarrassment, as, in the judgment of  
8 the Commission, will effectuate the purposes of this act, and  
9 including a requirement for report of the manner of compliance.

10 \* \* \*

11 (4) If, upon all the evidence, the Commission shall find  
12 that a respondent has not violated section 7.1 or engaged in any  
13 such unlawful discriminatory practice, the Commission shall  
14 state its findings of fact, and shall issue and cause to be  
15 served on the complainant an order dismissing the said complaint  
16 as to such respondent.

17 \* \* \*

18 Section 5. This act shall take effect in 90 days.