

No. 318

AN ACT

HB 921

Amending the act of October 27, 1955 (P.L.744, No.222), entitled, as amended, "An act prohibiting certain practices of discrimination because of race, color, religious creed, ancestry, age or national origin by employers, employment agencies, labor organizations and others as herein defined; creating the Pennsylvania Human Relations Commission in the Department of Labor and Industry; defining its functions, powers and duties; providing for procedure and enforcement; providing for formulation of an educational program to prevent prejudice; providing for judicial review and enforcement and imposing penalties," prohibiting discrimination for reasons of handicaps and disabilities of any individual and providing a penalty.

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

Section 1. Sections 2 and 3, act of October 27, 1955 (P.L.744, No.222), known as the "Pennsylvania Human Relations Act," amended July 9, 1969 (P.L.133, No.56), are amended to read:

Section 2. Findings and Declaration of Policy.—

(a) The practice or policy of discrimination against individuals or groups by reason of their race, color, religious creed, ancestry, **handicap or disability**, use of guide dogs because of blindness of the user, age, sex, or national origin is a matter of concern of the Commonwealth. Such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth, and undermines the foundations of a free democratic state. The denial of equal employment, housing and public accommodation opportunities because of such discrimination, and the consequent failure to utilize the productive capacities of individuals to their fullest extent, deprives large segments of the population of the Commonwealth of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensifies group conflicts, thereby resulting in grave injury to the public health and welfare, compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded, resulting in racial segregation in public schools and other community facilities, juvenile delinquency and other evils, thereby threatening the peace, health, safety and general welfare of the Commonwealth and its inhabitants.

(b) It is hereby declared to be the public policy of this Commonwealth to foster the employment of all individuals in accordance with their fullest capacities regardless of their race, color, religious creed, ancestry, **handicap or disability, use of guide dogs because of blindness of the user**, age, sex, or national origin, and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights at places of public accommodation and to secure

commercial housing regardless of race, color, religious creed, ancestry, sex, **handicap or disability**, use of guide dogs because of blindness of the user or national origin.

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

Section 3. Right to Freedom from Discrimination in Employment, Housing and Places of Public Accommodation.—The opportunity for an individual to obtain employment for which he is qualified, and to obtain all the accommodations, advantages, facilities and privileges of any place of public accommodation and of commercial housing without discrimination because of race, color, religious creed, ancestry, **handicap or disability**, age, sex or national origin are hereby recognized as and declared to be civil rights which shall be enforceable as set forth in this act.

The opportunity of an individual to obtain all the accommodations, advantages, facilities and privileges of commercial housing without discrimination due to the sex of an individual or to the use of a guide dog because of blindness of the user is hereby recognized as and declared to be a civil right which shall be enforceable as set forth in this act.

Section 2. Clause (b) of section 4 of the act, amended November 27, 1967 (P.L.622, No.284), is amended to read:

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

* * *

(b) The term “employer” includes the Commonwealth or any political subdivision or board, department, commission or school district thereof and any person employing four or more persons within the Commonwealth, but except as hereinafter provided, does not include religious, fraternal, charitable or sectarian corporations or associations, except such corporations or associations supported, in whole or in part, by governmental appropriations. The term “employer” with respect to discriminatory practices based on race, color, age, [or] national origin **or non-job related handicap or disability**, includes religious, fraternal, charitable and sectarian corporations and associations employing four or more persons within the Commonwealth.

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Section 3. Section 4 of the act is amended by adding a clause to read:

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

* * *

(p) *The term “non-job related handicap or disability” means any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which a*

handicapped person applies for, is engaged in or has been engaged in. Uninsurability or increased cost of insurance under a group or employe insurance plan does not render a handicap or disability job related.

Section 4. Clauses (a), (b), (f), (h) and (i) of section 5 of the act, clauses (a) and (b) reenacted November 27, 1967 (P.L.622, No.284), clauses (a), (b), (f) and (h) amended July 9, 1969 (P.L.133, No.56), and clause (i) amended June 9, 1972 (P.L.368, No.102), are amended and a paragraph is added at the end of the section to read:

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

(a) For any employer because of the race, color, religious creed, ancestry, age, sex, [or] national origin ***or non-job related handicap or disability*** of any individual to refuse to hire or employ, or to bar or to discharge from employment such individual, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required. The provision of this paragraph shall not apply, to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which have the effect of a minimum service requirement, (3) operation of the terms or conditions of any bona fide group or employe insurance plan.

(b) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to

(1) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, color, religious creed, ancestry, sex, [or] national origin ***or past handicap or disability*** of any applicant for employment or membership. ***An employer may inquire as to the existence and nature of a present handicap or disability. To determine whether such handicap or disability substantially interferes with the ability to perform the essential function of the employment which is applied for, is being engaged in, or has been engaged in, the employer must inquire beyond the mere existence of a handicap or disability.***

(2) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, color, religious creed, ancestry, age, sex, [or] national origin ***or non-job related handicap or disability.***

(3) Deny or limit, through a quota system, employment or membership because of race, color, religious creed, ancestry, age, sex, national origin, ***non-job related handicap or disability*** or place of birth.

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

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

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

* * *

(f) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, color, religious creed, ancestry, age, sex, [or] national origin ***or non-job related handicap or disability***.

* * *

(h) For any person to:

(1) Refuse to sell, lease, finance or otherwise to deny or withhold commercial housing from any person because of the race, color, religious creed, ancestry, sex, [or] national origin ***or handicap or disability*** of any prospective owner, occupant or user of such commercial housing, or to refuse to lease commercial housing to any person due to use of a guide dog because of the blindness of the user.

(2) Refuse to lend money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of commercial housing or otherwise withhold financing of commercial housing from any person because of the race, color, religious creed, ancestry, sex, [or] national origin ***or handicap or disability*** of any present or prospective owner, occupant or user of such commercial housing.

(3) Discriminate against any person in the terms or conditions of selling or leasing any commercial housing or in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any commercial housing because of the race, color, religious creed, ancestry, sex, [or] national origin ***or handicap or disability*** of any present or prospective owner, occupant or user of such commercial housing or to discriminate against any person in the terms of leasing any commercial housing or in furnishing facilities, services or privileges in connection with the occupancy or use of any commercial housing due to use of a guide dog because of the blindness of the user.

(4) Discriminate against any person in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of commercial housing because of the race, color, religious creed, ancestry, sex, [or] national origin *or handicap or disability* of any present or prospective owner, occupant or user of such commercial housing.

(5) Print, publish or circulate any statement or advertisement relating to the sale, lease or acquisition of any commercial housing or the loan of money, whether or not secured by mortgage, or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of commercial housing which indicates any preference, limitation, specification, or discrimination based upon race, color, religious creed, ancestry, sex, [or] national origin *or handicap or disability*, or to print, publish or circulate any statement or advertisement relating to the lease of any commercial dwelling which indicates any preference, limitation, specification or discrimination based upon use of a guide dog because of the blindness of the user.

(6) Make any inquiry, elicit any information, make or keep any record or use any form of application, containing questions or entries concerning race, color, religious creed, ancestry, sex, [or] national origin *or handicap or disability* in connection with the sale or lease of any commercial housing or loan of any money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of commercial housing, or to make any inquiry, elicit any information, make or keep any record or use any form of application, containing questions or entries concerning the use of a guide dog because of the blindness of the user, in connection with the lease of any commercial housing.

(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any place of public accommodation, resort or amusement to

(1) Refuse, withhold from, or deny to any person because of his race, color, religious creed, ancestry, [or] national origin *or handicap or disability*, or to any person due to use of a guide dog because of the blindness of the user, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement.

(2) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, color, religious creed, ancestry, [or] national origin *or handicap or disability*, or to any person due to use of a guide dog because of the blindness of the user, or that the patronage or custom thereof of any person, belonging to

or purporting to be of any particular race, color, religious creed, ancestry, [or] national origin *or handicap or disability*, or to any person due to use of a guide dog because of the blindness of the user, is unwelcome, objectionable or not acceptable, desired or solicited.

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This section of the act as amended shall not be construed to prohibit the refusal to hire or the dismissal of a person who is not able to function properly in the job applied for or engaged in.

Section 5. Section 11 of the act, reenacted October 10, 1973 (No.78), is reenacted to read:

Section 11. Penalties.—Any person who shall wilfully resist, prevent, impede or interfere with the Commission, its members, agents or agencies in the performance of duties pursuant to this act, or shall wilfully violate an order of the Commission, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or to undergo imprisonment not exceeding thirty (30) days, or both, in the discretion of the court, but procedure for the review of an order shall not be deemed to be such wilful conduct.

Section 6. Subsection (b) of section 12 of the act, amended July 9, 1969 (P.L.133, No.56), is amended and subsections are added to read:

Section 12. Construction and Exclusiveness of Remedy.—

* * *

(b) [Nothing] *Except as provided in subsection (c), nothing* contained in this act shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this Commonwealth relating to discrimination because of race, color, religious creed, ancestry, age, sex, [or] national origin *or handicap or disability*, but as to acts declared unlawful by section five of this act the procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this act, he may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this act and the interpretation of a similar provision contained in any municipal ordinance, the interpretation of the provision in this act shall apply to such municipal ordinance.

(c) *In cases involving a claim of discrimination, if a complainant invokes the procedures set forth in this act, that individual's right of action in the courts of the Commonwealth shall not be foreclosed. If within one (1) year after the filing of a complaint with the Commission, the Commission dismisses the complaint or has not entered into a conciliation agreement to which the complainant is a party, the*

Commission must so notify the complainant. On receipt of such a notice the complainant shall be able to bring an action in the courts of common pleas of the Commonwealth based on the right to freedom from discrimination granted by this act. If the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employes, granting of back pay, or any other legal or equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than three years prior to the filing of a complaint charging violations of this act.

(d) Nothing in this act shall be construed to require any employer to hire any person with a job-related handicap or disability.

Section 7. The act is amended by adding a section to read:

Section 12.2. Cooperation of State Agencies.—The Bureau for the Visually and Physically Handicapped, the Bureau of Vocational Rehabilitation, and any other State agency which seeks to aid persons with handicaps or disability shall assist employers, the Commission and the courts of this Commonwealth in the implementation and enforcement of this act by providing expertise in the area of handicaps and disabilities.

Section 8. This act shall take effect immediately.

APPROVED—The 19th day of December, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 318.



Secretary of the Commonwealth.