

No. 222

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 Fair Employment Practice 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.

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

Short Title:
"Pennsylvania
Fair Employment
Practice Act."

Practice of
discrimination
in employment.

Public policy
declaration.

Police power.

Declaration of
civil right.

Section 1. Short Title.—This act may be cited as the "Pennsylvania Fair Employment Practice Act."

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, age 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 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.

(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, age or national origin, and to safeguard their right to obtain and hold employment without such discrimination.

(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.—The opportunity for an individual to employment for which he is qualified without discrimination because of race, color, religious creed, ancestry,

* "deprive" in original.

age or national origin is hereby recognized as and declared to be a civil right which shall be enforceable only as set forth in this act.

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

(a) The term “person” includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy or receivers.

(b) The term “employer” includes the Commonwealth or any political subdivision or board, department, commission or school district thereof and any person employing twelve or more persons within the Commonwealth, but 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.

(c) The term “employee” does not include any individual employed in agriculture or in the domestic service of any person, nor any individual employed by his parents, spouse or child.

(d) The term “labor organizations” includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

(e) The term “employment agency” includes any person regularly undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer or place employes.

(f) The term “Commission” means the Pennsylvania Fair Employment Practice Commission created by this act.

(g) The term “discriminate” includes segregate.

(h) The term “age” includes any person between the ages of forty and sixty-two inclusive.

Section 5. Unlawful Employment Practices. — It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, 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 or national origin 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

Unlawful employment practices detailed.

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.

(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, age or national origin of any applicant for employment or membership.

(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 or national origin.

(3) Deny or limit, through a quota system, employment or membership because of race, color, religious creed, ancestry, age, national origin 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 predominately of the same race, color, religious creed, ancestry, age or national origin.

(c) For any labor organization because of the race, color, religious creed, ancestry, age or national origin of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment.

(d) For any employer, employment agency or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this act.

(e) For any person, whether or not an employer, employment agency, labor organization or employe, to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful employment practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be unlawful employment practice.

(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 or national origin.

(g) For any individual seeking employment to publish or cause to be published any advertisement which specifies or in any manner expresses his race, color, religious creed, ancestry, age or national origin, or in any manner expresses a limitation or preference as to the race, color, religious creed, ancestry, age or national origin of any prospective employer.

Section 6. Pennsylvania Fair Employment Practice Commission.—There shall be, and there is hereby established in the Department of Labor and Industry a non-partisan, departmental administrative commission for the administration of this act, which shall be known as the “Pennsylvania Fair Employment Practice Commission,” and which is hereinafter referred to as the “Commission.”

Pennsylvania
Fair Employment
Practice
Commission.

Said Commission shall consist of nine members, to be known as Commissioners, who shall be appointed by the Governor by and with the advice and consent of two-thirds of all the members of the Senate, not more than five of such Commissioners to be from the same political party, and each of whom shall hold office for a term of five years or until his successor shall have been duly appointed and qualified: Provided, however, That in making the first appointments to said Commission one member shall be appointed for a term of one year, two for a term of two years, two for a term of three years, two for a term of four years and two for a term of five years. Vacancies occurring in an office of a member of the Commission by expiration of term, death, resignation, removal or for any other reason shall be filled in the manner aforesaid for the balance of that term.

Membership, ap-
pointment and
term.

Subject to the provisions of this act, the Commission shall have all the powers and shall perform the duties generally vested in and imposed upon departmental administrative boards and commissions by the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws 177), known as “The Administrative Code of one thousand nine hundred twenty-nine,” and its amendments, and shall be subject to all the provisions of such code which apply generally to departmental administrative boards and commissions.

Powers and
duties of Com-
mission generally.

The Governor shall designate one of the members of the Commission to be its chairman who shall preside at all meetings of the Commission and perform all the

Chairman of
Commission.

duties and functions of the chairman thereof. The Commission may designate one of its members to act as chairman during the absence or incapacity of the chairman and, when so acting, the member so designated shall have and perform all the powers and duties of the chairman of the Commission.

Quorum of Commission.

Five members of the Commission shall constitute a quorum for transacting business, and a majority vote of those present at any meeting shall be sufficient for any official action taken by the Commission.

Compensation of Commissioners.

Each member of the Commission shall receive per diem compensation at the rate of fifteen dollars (\$15) per day for the time actually devoted to the business of the Commission.

Official seal, authentication, and certificates acceptable by courts in evidence as proof of acts of the Commission.

The Commission shall adopt an official seal by which its acts and proceedings shall be authenticated, and of which the courts shall take judicial notice. The certificate of the chairman of the Commission, under the seal of the Commission and attested by the secretary, shall be accepted in evidence in any judicial proceeding in any court of this Commonwealth as adequate and sufficient proof of the acts and proceedings of the Commission therein certified to.

Powers and duties of Commission enumerated.

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

(a) To establish and maintain a central office in the City of Harrisburg.

(b) To meet and function at any place within the Commonwealth.

(c) To appoint such attorneys and other employes and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(d) To adopt, promulgate, amend and rescind rules and regulations to effectuate the policies and provisions of this act.

(e) To formulate policies to effectuate the purposes of this act, and make recommendations to agencies and officers of the Commonwealth or political subdivisions of government or board, department, commission or school district thereof to effectuate such policies.

(f) To initiate, receive, investigate and pass upon complaints charging unlawful employment practices.

(g) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any person under oath or affirmation and, in connection therewith, to require the production for examination of any books and papers relating to any matter under

investigation where a complaint has been properly filed before the Commission. The Commission may make rules as to the issuance of subpoenas by individual Commissioners. In case of contumacy or refusal to obey a subpoena issued to any person, the Court of Common Pleas of Dauphin County or any court of common pleas within the jurisdiction of which the hearing is to be held or the said person charged with contumacy or refusal to obey is found, resides or transacts business, upon application by the Commission, may issue to such person an order requiring such person to appear before the Commission, there to produce documentary evidence, if so ordered, or there to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

No person shall be excused from attending and testifying, or from producing records, correspondence, documents or other evidence in obedience to the subpoena of the Commission or of any individual Commissioner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons so compelled to testify.

(h) To inspect upon request such records of the Commonwealth or any political subdivision, board, department, commission or school district thereof as it may deem necessary or advisable to carry into effect the provisions of this act.

(i) To create such advisory agencies and conciliation councils, local or state-wide, as will aid in effectuating the purposes of this act. The Commission may itself or it may empower these agencies and councils to (1) study the problems of discrimination in all or specific fields of human relationships when based on race, color, religious creed, ancestry, age or national origin, and (2) foster, through community effort or otherwise, good will among the groups and elements of the population of the State. Such agencies and councils may make recommendations to the Commission for the development of policies and procedure in general. Advisory agencies and conciliation councils created by the Commission shall be composed of representative citizens,

serving without pay, but the Commission may make provision for technical and clerical assistance to such agencies and councils, and for the payment of the expenses of such assistance.

(j) To issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination because of race, color, religious creed, ancestry, age or national origin.

(k) From time to time but not less than once a year, to report to the Legislature and the Governor describing in detail the investigations, proceedings and hearings it has conducted and their outcome, the decisions it has rendered and the other work performed by it, and make recommendations for such further legislation concerning abuses and discrimination because of race, color, religious creed, ancestry, age or national origin as may be desirable.

Section 8. Educational Program.—

In order to eliminate prejudice among the various racial, religious and nationality groups in this Commonwealth and to further good will among such groups, the Commission, in cooperation with the Department of Public Instruction, is authorized to prepare a comprehensive educational program, designed for the students of the schools in this Commonwealth and for all other residents thereof, in order to eliminate prejudice against such groups.

Authority to prepare educational program.

Section 9. Procedure.—Any individual claiming to be aggrieved by an alleged unlawful employment practice may make, sign and file with the Commission a verified complaint, in writing, which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the Commission. The Commission upon its own initiative or the Attorney General may, in like manner, make, sign and file such complaint. Any employer whose employes, or some of them, hinder or threaten to hinder compliance with the provisions of this act may file with the Commission a verified complaint, asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders or other actions shall be taken by the Commission against such employer.

Procedure before the Commission by initiating action, investigating facts, making determinations, and enforcing compliance of act.

After the filing of any complaint, or whenever there is reason to believe that an unlawful employment prac-

tice has been committed, the Commission shall make a prompt investigation in connection therewith.

If it shall be determined after such investigation that no probable cause exists for crediting the allegations of the complaint, the Commission shall, within ten days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the said complainant or his attorney may, within ten days after such service, file with the Commission a written request for a preliminary hearing before the Commission to determine probable cause for crediting the allegations of the complaint. If it shall be determined after such investigation that probable cause exists for crediting the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful employment practice complained of by conference, conciliation and persuasion. The members of the Commission and its staff shall not disclose what has transpired in the course of such endeavors: Provided, That the Commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing the identity of the parties involved.

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

The case in support of the complaint shall be presented before the Commission by one of its attorneys or agents. The respondent may file a written, verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant may likewise appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The Commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The Commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed.

If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful employment practice as defined in this act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice and to take such affirmative action including but not limited to hiring, reinstatement or upgrading of employes, with or without back pay, admission or restoration to membership in any respondent labor organization as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance. If, upon all the evidence, the Commission shall find that a respondent has not engaged in any such unlawful employment practice, the Commission shall state its findings of fact, and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

The Commission shall establish rules or practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Any complaint filed pursuant to this section must be so filed within ninety days after the alleged act of discrimination. Any complaint may be withdrawn at any time by the party filing the complaint.

Enforcement of
an order of the
Commission. Ju-
dicial review.

Section 10. Enforcement and Judicial Review.—The complainant, the Attorney General or the Commission may secure enforcement of the order of the Commission or other appropriate relief by the Court of Common Pleas of Dauphin County. Such proceeding shall be initiated by the filing of a petition in such court, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of said petition as in proceedings in equity. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter, upon the pleadings, testimony and proceedings set forth in such transcript, an order or decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the Commission, and the jurisdiction of the court shall not be limited by acts pertaining to equity jurisdiction of the courts. An appeal may be taken as in other civil actions.

The Commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost, and for the purpose of enforcement or judicial review of the order. The case shall be heard without requirement of printing.

Any order of the Commission may be reviewed under the provisions of the act of June four, one thousand nine hundred forty-five (Pamphlet Laws 1388), known as the "Administrative Agency Law," and its amendments.

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. Penalties.

Section 12. Construction and Exclusiveness of Remedy.—

(a) The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof, and any law inconsistent with any provisions hereof shall not apply.

(b) Nothing contained in this act shall be deemed to repeal any of the provisions of any municipal ordinance, municipal charter or of any law of this Commonwealth relating to discrimination because of race, color, religious creed, ancestry, age or national origin, 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.

Section 13. Separability.—If any clause, sentence, paragraph or part of this act, or the application thereof, to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act nor the application of such clause, sentence, paragraph or part to other Separability.

* "ordinance" in original.

persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that this act would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage.

Effective dates.

Section 14. This act shall take effect in thirty days, except that all reference to provisions relating to discrimination on account of age shall not become effective until July one, one thousand nine hundred fifty-six.

APPROVED—The 27th day of October, A. D. 1955.

GEORGE M. LEADER

No. 223

AN ACT

Amending the act of June twenty-four, one thousand nine hundred thirty-seven (Pamphlet Laws 2017), entitled "An act creating in each county (except of the first class) as a separate corporation and in each city of the first and second class as a part of the city government, an institution district for the care and maintenance of certain indigent persons and children; prescribing the powers and duties of county commissioners, county treasurers, city departments of public welfare, the State Department of Welfare and the State Department of Public Assistance in respect thereto, abolishing certain poor districts and terminating the terms of directors, overseers, guardians and managers of the poor and poor district auditors, and providing for the temporary employment of certain of them; providing for the transfer, vesting, sale and disposition of the property of poor districts and the payment of their obligations; imposing certain existing obligations on institution districts and on the Commonwealth; regulating the affairs of poor districts until abolished; revising, amending, changing and consolidating the law relating to the care of the poor; and repealing existing laws," providing for annual salaries for county commissioners and the controller in counties of the second class for services as officers of the institution district.

"County Institution District Law."

Section 303, act of June 24, 1937, P. L. 2017, amended September 29, 1951, P. L. 1610, further amended.

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

Section 1. Section three hundred three, act of June twenty-four, one thousand nine hundred thirty-seven (Pamphlet Laws 2017), known as the "County Institution District Law," temporarily amended September twenty-nine, one thousand nine hundred fifty-one (Pamphlet Laws 1610), is amended to read:

Section 303. Salaries and Expenses of Officers.—For services as an officer of an institution district, *each commissioner and the controller in second class counties*