

No. 1982-247

AN ACT

HB 865

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," further providing for hearing examiners and making editorial changes.

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

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

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

* * *

(q) The term "permanent hearing examiner" shall mean a full-time employe who is an attorney or other person knowledgeable in human relations matters designated by the Commission to conduct hearings required to be held under this act. The person knowledgeable in human relations matters must demonstrate such knowledge through a written examination created, developed and administered by the Commission.

(r) The term "designated agent of the complainant" shall mean an individual who is a para-legal under the supervision of a practicing attorney.

Section 2. Subsection (c) of section 7 of the act, amended March 28, 1956 (1955 P.L.1354, No.428), is amended to read:

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

* * *

(c) To appoint such attorneys [with the approval of the Attorney General,] and permanent hearing examiners and other employes and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties. Permanent hearing examiners shall perform no duties inconsistent with their duties and responsibilities as permanent hearing examiners.

* * *

Section 3. Section 9 of the act, amended February 28, 1961 (P.L.47, No.19), December 27, 1965 (P.L.1225, No.498) and October 11, 1967 (P.L.425, No.190), is amended to read:

Section 9. Procedure.—(a) Any individual claiming to be aggrieved by an alleged unlawful discriminatory 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 discriminatory 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.

(b) After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation in connection therewith.

(c) 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 discriminatory 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.

(d) 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.

(e) The case in support of the complaint shall be presented before the Commission *or before a permanent hearing examiner designated by the*

Commission for the purpose of hearing said complaint by one of its attorneys or agents, *by the complainant's attorney or by a designated agent of the complainant*. 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.

(f) If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory 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 discriminatory practice and to take such affirmative action including but not limited to hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, or selling or leasing specified commercial housing upon such equal terms and conditions and with such equal facilities, services and privileges or lending money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of commercial housing, upon such equal terms and conditions to any person discriminated against or all persons 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. When the respondent is a licensee of the Commonwealth, the Commission shall inform the appropriate State licensing authority of the order with the request that the licensing authority take such action as it deems appropriate against such licensee. An appeal from the Commission's order shall act as a supersedeas and stay such action by the State licensing authority until a final decision on said appeal. If, upon all the evidence, the Commission shall find that a respondent has not engaged in any such unlawful discriminatory 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.

(g) The Commission shall establish rules or practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Three or more members of the Commission *or a permanent hearing examiner designated by the Commission* shall constitute the Commission for any hearing required to be held by the Commission under this act. *The recommended findings, conclusions and order made by said members or permanent hearing examiner shall be reviewed and approved or reversed by the Commission before such order may be served upon the parties to the complaint. The recommended findings,*

conclusions and order made by said members or permanent hearing examiner shall become a part of the permanent record of the proceeding and shall accompany any order served upon the parties to the complaint.

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.

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

APPROVED—The 9th day of December, A. D. 1982.

DICK THORNBURGH