

No. 1996-117

AN ACT

HB 1689

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 Governor's Office; 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 definitions, for discrimination and for educational programs; and restricting the Pennsylvania Human Relations Commission and certain other government involvement in pupil school assignment.

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

Section 1. Sections 4(w), 5(h)(9) and 8 of the act of October 27, 1955 (P.L.744, No.222), known as the Pennsylvania Human Relations Act, amended December 20, 1991 (P.L.414, No.51), are amended to read:

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

* * *

(w) (1) The term "housing for older persons" means housing:

(i) provided under any Federal or State program that the Pennsylvania Human Relations Commission determines is specifically designed and operated to assist elderly persons as defined in the Federal or State program;

(ii) is intended for and solely occupied by persons sixty-two years of age or older; or

(iii) is intended and operated for occupancy by at least one person fifty-five years of age or older per unit.

(2) In determining whether housing qualifies as housing for older persons under this clause, the Pennsylvania Human Relations Commission's requirements shall include, but not be limited to, the following:

[(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;]

(ii) [that at] At least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit[; and].

(iii) [the] There is publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(iv) The housing complies with regulations promulgated by the Pennsylvania Human Relations Commission for verification of occupancy. Regulations under this paragraph shall do all of the following:

(A) Provide for verification by reliable surveys and affidavits. Surveys and affidavits under this subparagraph shall be admissible in administrative and judicial proceedings for the purpose of verification under this paragraph.

(B) Include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of paragraph (iii).

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of unoccupied units provided that such units are reserved for occupancy by persons who meet the age requirements of this clause.

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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:

* * *

(h) For any person to:

* * *

(9) Nothing in this clause, regarding age or familial status, shall apply with respect to housing for older persons. *A person shall not be held personally liable for monetary damages for a violation of this act if the person reasonably relied, in good faith, on the application of the exemption of this subclause. A person may only prove good faith reliance on the application of the exemption of this subclause by proving that at the time of the act complained of all of the following applied:*

(i) The person had no actual knowledge that the housing was not eligible for exemption under this subclause.

(ii) The owner or manager of the housing had stated formally, in writing, that the housing complied with the requirements for exemption under this subclause.

* * *

Section 8. Educational Program.—The Commission, in cooperation with the Department of Education, is authorized to [prepare a comprehensive] *recommend a multicultural* educational program, designed for the students of the schools in this Commonwealth and for all other residents thereof, *with emphasis on foreign cultural and language studies, as well as on the basic shared precepts and principles of United States culture*, in order to [eliminate prejudice against] *promote cultural understanding and appreciation* and to further good will among all persons, without regard to race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability.

Section 2. The act is amended by adding a section to read:

Section 8.2. Restriction on Commission Authority Over Pupil School Assignment.—(a) *It is the finding of the General Assembly that the neighborhood school is the cornerstone of Pennsylvania's education policy on the assignment of pupils to public schools and that the assignment of pupils to public schools is a matter that falls within the special competence and expertise of education authorities, and it is the policy of the General Assembly that this act shall not interfere with the neighborhood school system or with the authority of education officials to provide for the assignment of pupils to public schools unless such assignment is necessary to remedy a violation of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States.*

(b) *Neither the Pennsylvania Human Relations Commission nor any local human relations commission nor any court, as part of its review of any commission or local commission action or any complaint filed pursuant to this act, shall impose upon the Commonwealth, any school district or other school entity, or any governing body, officer or employe of any of the foregoing, any requirement that pupils be assigned to attend any public school other than the school of appropriate grade level that the pupil qualifies to attend closest to the student's home and shall not impose any other obligation or responsibility with respect to pupil school assignment or pupil transportation related to pupil assignment unless:*

(1) *imposing that requirement, obligation or responsibility upon such party is necessary to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States; and*

(2) *a court would be permitted under decisional law to impose that requirement, obligation or responsibility upon such party to remedy the specific violation of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States.*

(c) *Nothing in this section shall prohibit a school district from voluntarily continuing or commencing a school integration plan within its territorial jurisdiction or from assigning pupils for any appropriate reason within the scope of its authority under the act of March 10, 1949 (P.L.30, No.14), known as the "Public School Code of 1949," or the act of August 9, 1963 (P.L.643, No.341), known as the "First Class City Public Education Home Rule Act," including, but not limited to, the assignment of pupils who request English as a second language to a school other than the school closest to the pupil's home, if such instruction is unavailable at the closest school.*

Section 3. Section 8.2 of the act shall not diminish or enlarge any powers or duties conferred by the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, or the act of August 9, 1963 (P.L.643, No.341), known as the First Class City Public Education Home Rule Act.

Section 4. Section 8.2 of the act shall apply to all matters pending before the Pennsylvania Human Relations Commission or before any court on the effective date of this act.

Section 5. This act shall take effect immediately.

APPROVED—The 12th day of July, A.D. 1996.

THOMAS J. RIDGE