

# **Pennsylvania Human Relations Act**

## **43 P.S. § 951 - 963**

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#### **§ 951. Short title**

This act may be cited as the "Pennsylvania Human Relations Act".

#### **§ 952. Findings and declaration of policy**

(a) The practice or policy of discrimination against individuals or groups by reason of their race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals 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, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, 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 to public accommodation and to secure housing accommodation and commercial property regardless of race,

color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of blindness or deafness of the user or because the user is a handler or trainer of guide or support animals.

(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.

### **§ 953. Right to freedom from discrimination in employment, housing and 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 public accommodation and of any housing accommodation and commercial property without discrimination because of race, color, familial status, religious creed, ancestry, handicap or disability, age, sex, national origin, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals is hereby recognized as and declared to be a civil right which shall be enforceable as set forth in this act.

### **§ 954. 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. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employe, independent contractor, lending institution and the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards and commissions thereof.

(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, sex, 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.

(c) The term "EMPLOYEE" does not include (1) any individual employed in agriculture or in the domestic service of any person, (2) any individuals who, as a part of their employment, reside in the personal residence of the employer, (3) any individual employed by said individual's 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 Human Relations Commission created by this act.

(g) The term "DISCRIMINATE" includes segregate.

(h) The term "AGE" includes any person forty years of age or older and shall also include any other person so protected by further amendment to the Federal Age Discrimination in Employment Act.

(i) The term "HOUSING ACCOMMODATIONS" includes (1) any building, structure, mobile home site or facility, or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or families whether or not living independently of each

other; and (2) any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, mobile home site or facility. The term "HOUSING ACCOMMODATION" shall not include any personal residence offered for rent by the owner or lessee thereof or by his or her broker, salesperson, agent or employe.

(j) The term "COMMERCIAL PROPERTY" means (1) any building, structure or facility, or portion thereof, which is used, occupied or is intended, arranged or designed to be used or occupied for the purpose of operating a business, an office, a manufactory or any public accommodation; and (2) any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, facility, business concern or public accommodation.

(k) The term "PERSONAL RESIDENCE" means a building or structure containing living quarters occupied or intended to be occupied by no more than two individuals, two groups or two families living independently of each other and used by the owner or lessee thereof as a bona fide residence for himself and any members of his family forming his household.

(l) The term "PUBLIC ACCOMMODATION, RESORT OR AMUSEMENT" means any accommodation, resort or amusement which is open to, accepts or solicits the patronage of the general public, including but not limited to inns, taverns, roadhouses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants or eating houses, or any place where food is sold for consumption on the premises, buffets, saloons, barrooms or any store, park or enclosure where spirituous or malt liquors are sold, ice cream parlors, confectioneries, soda fountains and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises, drug stores, dispensaries, clinics, hospitals, bathhouses, swimming pools, barber shops, beauty parlors, retail stores and establishments, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses and all educational institutions under the supervision of this Commonwealth, nonsectarian cemeteries, garages and all public conveyances operated on land or water or in the air as well as the stations, terminals and airports thereof, financial institutions and all Commonwealth facilities and services, including such facilities and services of all political subdivisions thereof, but shall not include any accommodations which are in their nature distinctly private.

(m) The term "POLITICAL SUBDIVISION" means any county, city, borough, incorporated town or township of this Commonwealth.

(n) The term "LEGISLATIVE BODY" means the body or board authorized by law to enact ordinances or adopt resolutions for the political subdivision.

(o) The term "LOCAL COMMISSION" means a Human Relations Commission created by the legislative body of a political subdivision.

(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.

(p.1) The term "HANDICAP OR DISABILITY," with respect to a person, means:

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) a record of having such an impairment; or

(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance, as defined in section 102 of the Controlled Substances Act.

(q) The term "PERMANENT HEARING EXAMINER" shall mean a full-time employe who is an attorney.

(r) The term "DESIGNATED AGENT OF THE COMPLAINANT" shall mean an individual who is a para-legal under the supervision of a practicing attorney.

(s) The term "COMMERCIAL PROFIT" means any form of compensation in money, or which can be measured in terms of money.

(t) The term "FAMILIAL STATUS" means one or more individuals who have not attained the age of eighteen years being domiciled with:

(1) a parent or other person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(u) The term "FAIR HOUSING ACT" means Public Law 90-284, 42 U.S.C. § 3601 et seq.

(v) The term "ACCESSIBLE" means being in compliance with the applicable standards set forth in the following:

(1) the Fair Housing Act (Public Law 90-284, 42 U.S.C. § 3601 et seq.);

(2) the Americans with Disabilities Act of 1990 (Public Law 101-336, 42 U.S.C. § 12101 et seq.); and

(3) the act of September 1, 1965, entitled, as amended, "An act requiring that certain buildings and facilities adhere to certain principles, standards and specifications to make the same accessible to and usable by persons with physical handicaps, and providing for enforcement."

(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) Deleted.

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

(iii) 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.

(x) The term "INDEPENDENT CONTRACTOR" includes any person who is subject to the provisions governing any of the professions and occupations regulated by State licensing laws enforced by the Bureau of Professional and Occupational Affairs in the Department of State, or is included in the Fair Housing Act.

(y) The term "REAL ESTATE-RELATED TRANSACTION" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing or maintaining a housing accommodation or commercial property.

(2) The purchasing, constructing, improving, repairing or maintaining a housing accommodation or commercial property.

(3) The selling, brokering or appraising of real property.

(z) The term "ADVERTISEMENT" or "ADVERTISING" means any advertisement and any similar written, printed, taped or broadcast communication, notice, statement or the like which is disseminated (whether published, printed, circulated, issued, displayed, posted or mailed) for the purpose of promoting housing activity, including, but not limited to, rentals, leases and sales.

(aa) The term "ADVERTISER" means any person who places, publishes, broadcasts or similarly causes to be disseminated by any other means an advertisement or advertising as defined in clause (z).

#### **§ 955. 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, national origin or non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any individual or independent contractor, to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is the best able and most competent to perform the services required. The provision of this paragraph shall not apply, to (1) operation of the terms or conditions of any bona fide retirement or pension plan which have the effect of a minimum service requirement, (2) operation of the terms or conditions of any bona fide group or employee insurance plan, (3) age limitations placed upon entry into bona fide apprenticeship programs of two years or more approved by the State Apprenticeship and Training Council of the Department of Labor and Industry, established by the act of July 14, 1961, known as "The Apprenticeship and Training Act." Notwithstanding any provision of this clause, it shall not be an unlawful employment practice for a religious corporation or association to hire or employ on the basis of sex in those certain instances where sex is a bona fide occupational qualification because of the religious beliefs, practices, or observances of the corporation, or association.

(b) For any employer, employment agency or labor organization, prior to the employment, contracting with an independent contractor 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, sex, national origin, past handicap or

disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any applicant for employment or membership. Prior to an offer of employment, an employer may not inquire as to whether an individual has a handicap or disability or as to the severity of such handicap or disability. An employer may inquire as to the individual's ability to perform the essential functions of the employment.

(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, national origin, non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user.

(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, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user 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, 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.

(c) For any labor organization because of the race, color, religious creed, ancestry, age, sex, national origin, non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap 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 person, 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, 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 discriminatory 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 an unlawful discriminatory 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, sex, national origin, non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user.

(g) For any individual seeking employment to publish or cause to be published any advertisement which in any manner expresses a limitation or preference as to the race, color, religious creed, ancestry, age, sex, national origin, non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any prospective employer.

(h) For any person to:

(1) Refuse to sell, lease, finance or otherwise to deny or withhold any housing accommodation or commercial property from any person because of the race, color, familial status, age, religious creed, ancestry, sex, national origin or handicap or disability of any person, prospective owner, occupant or user of such housing accommodation or commercial property, or to refuse to lease any housing accommodation or commercial property to any person due to use

of a guide animal because of the blindness or deafness of the user, use of a support animal because of a physical handicap of the user or because the user is a handler or trainer of support or guide animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

(1.1) Evict or attempt to evict an occupant of any housing accommodation before the end of the term of a lease because of pregnancy or the birth of a child.

(2) Refuse to lend money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or commercial property or otherwise withhold financing of any housing accommodation or commercial property from any person because of the race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability of any person, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

(3) Discriminate against any person in the terms or conditions of selling or leasing any housing accommodation or commercial property or in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any housing accommodation or commercial property because of the race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability of any person, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

(3.1) Refuse to permit, at the expense of a person with a handicap, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, grant permission for a modification if the renter agrees to restore the interior of the premises to the condition that existed before the modification, with reasonable wear and tear excepted.

(3.2) Refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a housing accommodation.

(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 housing accommodation or commercial property because of the race, color, familial status, age, religious creed, ancestry, sex, national origin or handicap or disability of any person, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of guide or support animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

(5) Print, publish or circulate any statement or advertisement: (i) relating to the sale, lease or acquisition of any housing accommodation or commercial property or the loan of money, whether or not secured by mortgage, or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or commercial property which indicates any preference, limitation, specification, or discrimination based upon race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability or because of the handicap or disability of an individual with whom the person is known to have a relationship or association, or (ii) relating to the sale, lease or acquisition of any housing accommodation or commercial property which indicates any preference, limitation, specification or discrimination based upon use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals.

(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, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability or because of the handicap or disability of an individual with whom the person is known to have a relationship or association in connection with the sale or lease of any housing accommodation or commercial property or loan of any money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or commercial property, 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 or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, in connection with the lease of any housing accommodation or commercial property.

(7) Construct, operate, offer for sale, lease or rent or otherwise make available housing or commercial property which is not accessible.

(8) Discriminate in real estate-related transactions, as described by and subject to the following:

(i) It shall be unlawful for any person or other entity whose business includes engaging in real estate-related transactions to discriminate against any person in making available such a transaction or in the terms of conditions of such a transaction because of race, color, religious creed, ancestry, national origin, sex, age, handicap or disability, use of a guide or support animal because of a physical handicap or because the user is a handler or trainer of guide or support animals or familial status.

(ii) Nothing in this act prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religious creed, ancestry, national origin, sex, age, handicap or disability, use of a guide or support animal because of a physical handicap or because the user is a handler or trainer of guide or support animals or familial status.

(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.

(10) Nothing in this clause shall bar any religious or denominational institution or organization or any charitable or educational organization which is operated, supervised or controlled by or in connection with a religious organization or any bona fide private or fraternal organization from giving preference to persons of the same religion or denomination or to members of such private or fraternal organization or from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained. Nor shall it apply to the rental of rooms in a landlord-occupied rooming house with a common entrance, nor with respect to discrimination based on sex, the advertising, rental or leasing of housing accommodations in a single-sex dormitory or rooms in one's personal residence in which common living areas are shared.

(11) Nothing in this act limits the applicability of the Fair Housing Act and reasonable State or local restrictions on the maximum number of occupants permitted to occupy a dwelling or a reasonable restriction relating to health or safety standards or business necessity. Owners and managers of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit so long as the standards do not violate the Fair Housing Act or State or local restrictions.

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

(1) Refuse, withhold from, or deny to any person because of his race, color, sex, religious creed, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such 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, sex, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user, or because the user is a handler or trainer of support or guide animals, or that the patronage or custom thereof of any person, belonging to or purporting to be of any particular race, color, religious creed, sex, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, is unwelcome, objectionable or not acceptable, desired or solicited.

(3) Exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to a person because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

(4) Construct, operate or otherwise make available such place of public accommodation, resort or amusement which is not accessible.

(j) For any person subject to the act to fail to post and exhibit prominently in his place of business any fair practices notice prepared and distributed by the Pennsylvania Human Relations Commission.

(k) For any employer to discriminate against an employe or a prospective employe because the employe only has a diploma based on passing a general educational development test as compared to a high school diploma. However, should vocational technical training or other special training be required with regard to a specific position, then such training or special training may be considered by the employer.

(l) To exclude or otherwise deny equal jobs or benefits to a person because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

This section of the act 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.

#### **§ 955.1. Religious observance; public employes**

(a) It shall be an unlawful discriminatory practice for any officer, agency or department of the State or any of its political subdivisions, to prohibit, prevent or disqualify any person from, or otherwise to discriminate against any person in, obtaining or holding employment by the State or by any such subdivision, because of such person's observance of any particular day or days or any portion thereof as a sabbath or other holy day in accordance with the requirements of the person's religion.

(b) Except as may be required in an emergency or where personal presence is indispensable to the orderly transaction of public business, no person employed by the State or any of its political subdivisions shall be required to remain at the place of employment during any day or days or portion thereof that, as a religious requirement, the person observes as the sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between the place of employment and home, provided however, that any such absence from work shall, wherever practicable in the judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient time, or shall be charged against any leave with pay ordinarily granted, other than sick leave, provided further, however, that any such absence not so made up or charged, may be treated by the employer of such person as leave taken without pay.

(c) This section shall not be construed to apply to any position dealing with the public health or safety where the person holding such position must be available for duty whenever needed, or to any position or class of positions the nature and quality of the duties of which are such that the personal presence of the holder of such position is regularly essential on any particular day or days or portion thereof for the normal performance of such duties with respect to any applicant therefor or holder thereof who, as a religious requirement, observes such day or days or portion thereof as the sabbath or other holy day.

**§ 955.2. Abortion and sterilization; immunity from requirement to perform; unlawful discriminatory practices**

(a) No hospital or other health care facility shall be required to, or held liable for refusal to, perform or permit the performance of abortion or sterilization contrary to its stated ethical policy. No physician, nurse, staff member or employe of a hospital or other health care facility, who shall state in writing to such hospital or health care facility an objection to performing, participating in, or cooperating in, abortion or sterilization on moral, religious or professional grounds, shall be required to, or held liable for refusal to, perform, participate in, or cooperate in such abortion or sterilization.

(b) It shall be an unlawful discriminatory practice:

(1) For any person to impose penalties or take disciplinary action against, or to deny or limit public funds, licenses, certifications, degrees, or other approvals or documents of qualification to, any hospital or other health care facility, refusal of such hospital or health care facility to perform or permit to be performed, participate in, or cooperate in, abortion or sterilization by reason of objection thereto on moral, religious or professional grounds, or because of any statement or other manifestation of attitude by such hospital or health care facility with respect to abortion or sterilization.

(2) For any person to impose penalties or take disciplinary action against, or to deny or limit public funds, licenses, certifications, degrees, or other approvals or documents of qualification to any physician, nurse or staff member or employe of any hospital or health care facility, due to the willingness or refusal of such physician, nurse or staff member or employe to perform or participate in abortion or sterilization by reason of objection thereto on moral, religious or professional grounds, or because of any statement or other manifestation of attitude by such physician, nurse or staff member or employe with respect to abortion or sterilization.

(3) For any public or private agency, institution or person, including a medical, nursing or other school, to deny admission to, impose any burdens in terms of conditions of employment upon, or otherwise discriminate against any applicant for admission thereto or any physician, nurse, staff member, student or employe thereof, on account of the willingness or refusal of such applicant, physician, nurse, staff member, student or employe to perform or participate in, abortion or sterilization by reason of objection thereto on moral, religious or professional grounds, or because of any statement or other manifestation of attitude by such person with respect to abortion or sterilization: Provided, however, That this subsection shall not apply to any health care facility operated exclusively for the performance of abortion or sterilization or directly related procedures or to a separate clinic of a health care facility for the performance of abortion or sterilization or directly related procedures.

**§ 955.3. Prohibition of certain real estate practices**

It shall be an unlawful discriminatory practice for any person to:

(a) Induce, solicit or attempt to induce or solicit for commercial profit any listing, sale or transaction involving any housing accommodation or commercial property by representing that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area in which there reside, or do not reside, persons of a particular race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability, or who are guide or support animal dependent.

(b) Discourage, or attempt to discourage, for commercial profit, the purchase or lease of any housing accommodation or commercial property by representing that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area in which there reside, or may in the future reside in increased or decreased numbers, persons of a particular race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability, or who are guide or support animal dependent.

(c) Misrepresent, create or distort a circumstance, condition or incident for the purpose of fostering the impression or belief, on the part of any owner, occupant or prospective owner or occupant of any housing accommodation or commercial property, that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area which would be adversely impacted by the residence, or future increased

or decreased residence, of persons of a particular race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability, or who are guide or support animal dependent within such neighborhood, community or area.

(d) In any way misrepresent or otherwise misadvertise within a neighborhood or community, whether or not in writing, that any housing accommodation or commercial property within such neighborhood or community is available for inspection, sale, lease, sublease or other transfer, in any context where such misrepresentation or misadvertising would have the effect of fostering an impression or belief that there has been or will be an increase in real estate activity within such neighborhood or community due to the residence, or anticipated increased or decreased residence, of persons of a particular race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability, or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user.

#### **§ 956. Pennsylvania Human Relations Commission**

(a) There shall be, and there is hereby established in the Governor's Office a non-partisan, departmental administrative commission for the administration of this act, which shall be known as the "Pennsylvania Human Relations Commission," and which is hereinafter referred to as the "Commission."

(b) Said Commission shall consist of eleven members, to be known as Commissioners, who shall be appointed by the Governor by and with the advice and consent of a majority of the members of the Senate, not more than six 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. 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. Commission members failing to attend meetings for three consecutive months shall forfeit their seats unless the chairperson of the commission receives written notification from the member involved that the absence was due to personal illness or the death or illness of an immediate family member.

(c) 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.

(d) The Governor shall designate one of the members of the Commission to be its chairperson who shall preside at all meetings of the Commission and perform all the duties and functions of the chairperson thereof. The Commission may designate one of its members to act as chairperson during the absence or incapacity of the chairperson and, when so acting, the member so designated shall have and perform all the powers and duties of the chairperson of the Commission.

(e) Six members of the Commission or a majority of those duly appointed and qualified 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.

(f) Each member of the Commission shall receive per diem compensation at the rate of sixty dollars (\$60) per day for the time actually devoted to the business of the Commission. Members shall also receive the amount of reasonable traveling, hotel and other necessary expenses incurred in the performance of their duties in accordance with Commonwealth regulations.

(g) 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 chairperson 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.

**§ 957. 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 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.
  - (c.1) To conduct mandatory training seminars on the Pennsylvania Human Relations Act and other applicable Federal and State law, procedures and rules for all investigative personnel.
  - (c.2) To afford complainants and respondents the opportunity for comments after the final disposition of a complaint. These comments shall be provided to the Commission members.
  - (c.3) To appoint attorneys to perform the following functions: (1) render legal advice to Commission members on matters appearing before it; or (2) give legal assistance to complainants appearing before the Commission or hearing examiners. These responsibilities shall require a separate staff of attorneys to perform each function.
- (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 discriminatory practices.
  - (f.1) To investigate where no complaint has been filed but with the consent of at least eight of the members of the Commission any problem of racial discrimination with the intent of avoiding and preventing the development of racial tension.
  - (f.2) On request of the Governor, to investigate claims of excessive use of force by police in civil rights protest activities.
- (g) (1) 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 any court of jurisdiction, 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.
  - (2) 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, familial status, religious creed, ancestry, age, sex, national origin or handicap or disability, 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, familial status, religious creed, ancestry, age, sex, national origin or handicap or disability.

(k) To submit an annual report for each fiscal year by the following March 31 to the General Assembly, the Labor and Industry Committee of the Senate and the State Government Committee of the House of Representatives and the Governor describing in detail the types of complaints received, the investigations, status of cases, Commission action which has been taken, how many were found to have probable cause, how many were resolved by public hearing and the length of time from the initial complaint to final Commission resolution. It shall also contain recommendations for such further legislation concerning abuses and discrimination because of race, color, familial status, religious creed, ancestry, national origin, age, sex, handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, as may be desirable.

(l) To prepare and distribute fair practices notices.

(m) Deleted by amendment. 1991, Dec. 20, P.L. 414, No. 51, § 5, imd. effective.

(n) To notify local human relations commissions of complaints received by the Pennsylvania Human Relations Commission involving persons within a commission's jurisdiction. The Pennsylvania Human Relations Commission may enter into work-sharing agreements with those local commissions having comparable jurisdiction and enforcement authority.

(o) To prepare and publish all findings of fact, conclusions of the law, final decisions and orders made after a public hearing by the hearing examiners, Commission panel or full Commission.

(p) To give public access to the commission's compliance manual.

(q) To preserve opinions rendered by the Commission for five years from the date of publication.

#### **§ 958. Educational Program**

The Commission, in cooperation with the Department of Education, is authorized to 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 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.

### **§ 958.1. Investigatory hearings relating to racial problems**

Whenever any problem of racial discrimination or racial tension arises, the Commission may immediately hold an investigatory hearing. The place of any such hearing shall be in the county where the problem exists. The hearing may be public or private and the Commission shall have the same powers as provided in clause (g) for hearings on complaint filed.

The purpose of the hearing shall be to resolve the problem promptly by the gathering of all the facts from all the interested parties and making such recommendations as may be necessary.

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.

Should the recommendations of the Commission not be accepted within a reasonable time the Commission may, with the consent of eight members, on its own behalf initiate a complaint and the hearing findings and Commission order shall proceed the same as where a complaint has been filed.

### **§ 958.2. 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 employee 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.

### **§ 959. Procedure**

(a) Any person 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.

Commission representatives shall not modify the substance of the complaint. Whenever a person invokes the procedures set forth in this act, the Commission shall refuse to accept for filing a complaint it determines to be untimely with no grounds for equitable tolling, outside its jurisdiction or frivolous on its face. The Commission upon its own initiative or the Attorney General may, in like manner, make, sign and file such complaint. Any employer whose employees, 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) (1) 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.

(2) The Commission shall send a copy of the complaint to the named respondent within thirty days from the date of docketing the complaint, unless otherwise required by the Fair Housing Act.

(3) A respondent shall file a written, verified answer to the complaint within thirty days of service of the complaint, unless otherwise required by the Fair Housing Act. The Commission, upon request of the respondent, may grant an extension of not more than thirty additional days, unless otherwise required by the Fair Housing Act.

(4) After service of the complaint, the Commission shall encourage voluntary and informed predetermination settlements between parties.

(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, except as required by the Fair Housing Act, the identity of the parties involved.

(c.1) The Commission shall dismiss a case with prejudice, before or after a finding of probable cause, where, in its opinion, appropriate remedy has been offered by the respondent and refused by the complainant.

(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.

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

(1) All filing fees shall be waived for the Commission and all parties, including the action brought under Commonwealth Court's original jurisdiction and any appeal arising out of such action.

(2) If, after a trial, Commonwealth Court finds that a respondent engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the court may award attorney fees and costs to the complainant on whose behalf the action was commenced.

(3) If, after a trial, Commonwealth Court finds that a respondent has not engaged in or is not engaging in any unlawful discriminatory practice as defined in this act, the court may award attorney fees and costs to the prevailing respondent if the respondent proves that the complaint upon which the civil action was based was brought in bad faith.

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

(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 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) (1) 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, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for loss of work in matters involving the complaint, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, the making of reasonable accommodations, or selling or leasing specified housing accommodations or commercial property 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 housing accommodations or commercial property, upon such equal terms and conditions to any person discriminated against or all persons, and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice, provided that, in those cases alleging a violation of section 5(d), (e) or (h) or 5.3 where the underlying complaint is a violation of section 5(h) or 5.3, the Commission may award actual damages, including damages caused by humiliation and embarrassment, 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.

(2) Such order may also assess a civil penalty against the respondent in a complaint of discrimination filed under sections 5(h) or 5.3 of this act:

(i) in an amount not exceeding ten thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior discriminatory practice;

(ii) in an amount not exceeding twenty-five thousand dollars (\$25,000) if the respondent has been adjudged to have committed one other discriminatory practice during the five-year period ending on the date of this order; or

(iii) in an amount not exceeding fifty thousand dollars (\$50,000) if the respondent has been adjudged to have committed more than one other discriminatory practice during the seven-year period ending on the date of this order.



If, however, the acts constituting the discriminatory practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory practice, then the civil penalties set forth in subparagraphs (ii) and (iii) may be imposed without regard to the period of time within which any subsequent discriminatory practice occurred.

(3) 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.

(4) 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.

(f.1) If, upon all the evidence at the hearing, in those cases alleging a violation of section 5(d), (e), (h) or 5.3 where the underlying complaint is a violation of section 5(h) or 5.3, the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission may award attorney fees and costs to prevailing complainants.

(f.2) If, upon all the evidence at the hearing, in those cases alleging a violation of section 5(d), (e), (h) or 5.3 where the underlying complaint is a violation of section 5(h) or 5.3, the Commission finds that a respondent has not engaged in or is not engaging in any unlawful discriminatory practice as defined in this act, the Commission may award attorney fees and costs to a prevailing respondent if the respondent proves that the complaint was brought in bad faith.

(g) The Commission shall establish rules of 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.

(h) Any complaint filed pursuant to this section must be so filed within one hundred eighty days after the alleged act of discrimination, unless otherwise required by the Fair Housing Act.

(i) Any complaint may be withdrawn at any time by the party filing the complaint.

(j) At any time after the filing of a complaint, the Commission shall dismiss with prejudice a complaint which, in its opinion, is untimely with no grounds for equitable tolling, outside its jurisdiction or frivolous on its face.

#### **§ 959.1. Procedure regarding housing advertisements**

(a) Where the alleged violation of this act complained of involves an advertisement, the following procedure specified in this section shall apply.

(b) The Commission shall compile, publish and update as required a list of words, phrases, symbols and the like which are impermissible under this act when used in housing advertisements and shall publish in the Pennsylvania Bulletin both this list and specific examples of housing advertisements which are impermissible under this act. This list shall be published within sixty days of the effective date of this section and shall serve thereafter as proposed rulemaking in full force and effect until such time as the final-form regulations are adopted.

(c) An advertiser who knowingly and wilfully violates this act may be penalized under section 9(f)(2) and (f.1). It shall be an affirmative defense precluding a finding that an advertiser has knowingly and wilfully violated this act if an advertiser has either:

(1) attempted in good faith to comply with the list and specific examples of impermissible housing advertisements described in subsection (b); or

(2) complied with an interpretation of the Commission or its personnel concerning what constitutes appropriate housing advertisements.

It shall also be an affirmative defense precluding a finding that an advertiser has knowingly and wilfully violated this act if an advertiser has made reasonable efforts in good faith to comply with this act. Guidelines as to the type of conduct which constitutes such reasonable efforts to comply shall be developed and published by the Commission in the Pennsylvania Bulletin along, with the list and specific examples of impermissible advertising described in subsection (b).

(d)(1) In order to facilitate the speedy implementation of this program, the Commission shall have the power and authority to promulgate, adopt and use guidelines which shall be published in the Pennsylvania Bulletin. The guidelines shall not be subject to review pursuant to section 205 of the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law, sections 204(b) and 301(10) of the act of October 15, 1980 (P.L. 950, No. 164), known as the "Commonwealth Attorneys Act," or the act of June 25, 1982 (P.L. 633, No. 181), known as the "Regulatory Review Act," and shall be effective for a period not to exceed two (2) years from the effective date of this section.

(2) After the expiration of the two (2) year period, all guidelines shall expire and shall be replaced by regulations which shall have been promulgated, adopted and published as provided by law within two (2) years from the effective date of this section.

### **§ 959.2. Injunctions**

If the Commission concludes, at any time following the filing of a complaint under this act, that prompt judicial action is necessary to prevent immediate and irreparable harm, the Commission may commence an action in Commonwealth Court or the appropriate court of common pleas, and that court may grant an appropriate preliminary or special injunction pending final disposition of the complaint. Any such order or relief shall be granted in accordance with *Rule 1531 of the Pennsylvania Rules of Civil Procedure*.

### **§ 959.3. Civil penalties**

The Commission shall have the power to adopt a schedule of civil penalties for violation of section 5(h)(5) by the advertiser and the publisher in instances where the complainant does not take action to secure housing accommodations or financing and is not denied housing accommodations or financing based on the alleged discriminatory language in the advertisement. The schedule of penalties, guidelines for their imposition and procedures for appeal shall be published in the Pennsylvania Bulletin, provided that the Commission shall, within two (2) years of such publication, promulgate a regulation setting forth the schedule of penalties, guidelines and procedures. Any such penalty shall not exceed the sum of five hundred dollars (\$ 500.00). Duly authorized agents of the Commission shall have the power and authority to issue citations and impose penalties for any such violations. Any such penalty imposed may be appealed to the Commission pursuant to regulations promulgated under this act. All proceedings shall be conducted in accordance with the provisions of 2 Pa.C.S. (relating to administrative law and procedure).

### **§ 960. 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. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in 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 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.

**§ 961. 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.

**§ 962. 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) 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, familial status, religious creed, ancestry, age, sex, 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 the complainant institutes any action based on such grievance without resorting to the procedure provided in this act, such complainant 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) (1) 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.

(2) An action under this subsection shall be filed within two years after the date of notice from the Commission closing the complaint. Any complaint so filed shall be served on the Commission at the time the complaint is filed in court. The Commission shall notify the complainant of this requirement.

(3) 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 employees, 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.

(4) The court shall serve upon the Commission any final order issued in any action brought under this subsection.

(c.1) Notwithstanding subsections (a) and (c) or any other provision of this act, nothing in this act shall be deemed to authorize imposition by the Commission of remedial quota relief in cases involving hiring or promoting of employees of the Commonwealth, its agencies or instrumentalities or employees of local governments and school districts in this Commonwealth. This subsection shall not, however, prohibit the voluntary adoption of an affirmative action plan designed to assure that all persons are accorded equality of opportunity in employment.

(c.2) If, after a trial held pursuant to subsection (c), the court of common pleas finds that a defendant engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the court may award attorney fees and costs to the prevailing plaintiff.

(c.3) If, after a trial held pursuant to subsection (c), the court of common pleas finds that a defendant has not engaged in or is not engaging in any unlawful discriminatory practice as defined in this act, the court may award attorney fees and costs to the prevailing defendant if the defendant proves that the complaint was brought in bad faith.

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

(e) The time limits for filing under any complaint or other pleading under this act shall be subject to waiver, estoppel and equitable tolling.

(f) Nothing in this act shall be constructed as superseding any provision of the act of October 15, 1980 (P.L. 950, No. 164), known as the "Commonwealth Attorneys Act." All court actions commenced by or against the Commission shall be subject to the provisions of that act.

### **§ 962.1. Local human relations commissions**

(a) The legislative body of a political subdivision may, by ordinance or resolution, authorize the establishment of membership in and support of a Local Human Relations Commission. The number and qualifications of the members of any local commission and their terms and method of appointment or removal shall be such as may be determined and agreed upon by the legislative body, except that no such member shall hold office in any political party. Members of a local commission shall serve without salary but may be paid expenses incurred in the performance of their duties.

(b) The legislative body of any political subdivision shall have the authority to appropriate funds, in such amounts as may be deemed necessary, for the purpose of contributing to the operation of a local commission including the payment of its share of the salary of an investigator or staff member acting jointly for it and one or more other local commissions.

(c) The local commission shall have the power to appoint such employees and staff, as it may deem necessary, to fulfill its purpose including the power to appoint an investigator or staff member to act jointly for it and one or more other local commissions.

(d) The legislative bodies of political subdivisions shall have the authority to grant to local commissions powers and duties similar to those now exercised by the Pennsylvania Human Relations Commission under the provisions of this act.

(e) The local human relations commission shall notify the Pennsylvania Human Relations Commission of complaints received involving discriminatory acts within that commission's jurisdiction.

### **§ 962.2. Cooperation of state agencies**

The Bureau of Blindness and Visual Services, the Office of Vocational Rehabilitation, the Office for the Deaf and Hearing Impaired, 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.

### **§ 963. Separability**

(a) 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 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.

(b) Notwithstanding the provisions of subsection (a), if any clause, sentence, paragraph or part of this act, or the application thereof to any person or circumstance, shall be adjudged by a court of competent jurisdiction or finally determined by the Department of Housing and Urban Development not to be in substantial equivalence with the Fair Housing Act and if such judgment or final determination threatens the loss or reduction of Federal funds to the Commission, all provisions of this amendatory act except the provisions adding subsections (c.1) and (j) to section 9 shall be null and void. The Commission shall, in such event, apply the provisions of *16 Pa. Code* § § 45.8(a) (relating to advertisements) and 45.13(f) (relating to exemptions) which were in effect on March 1, 1997, such provisions having been revived by operation of law.