



SPONSOR: Rep. Phillips & Rep. Dorsey Walker & Rep. Lynn &
Sen. Hoffner & Sen. Pinkney & Sen. Townsend
Reps. Baumbach, Bolden, Lambert, Morrison, Neal,
Romer, Wilson-Anton; Sen. S. McBride

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 55

AN ACT TO AMEND TITLE 6 AND TITLE 31 OF THE DELAWARE CODE RELATING TO INDIVIDUALS WHO
ARE HOMELESS.

1 WHEREAS, it is the policy of the State to ensure that the peace, health, safety, and general welfare of all the
2 inhabitants of the State are protected.

3 NOW, THEREFORE:

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

5 Section 1. Amend Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as
6 shown by underline as follows:

7 Chapter 45A. Bill of Rights for Individuals Experiencing Homelessness.

8 § 4501A. Short title.

9 This chapter may be cited as the “Bill of Rights for Individuals Experiencing Homelessness”.

10 § 4502A. Declaration of Policy.

11 The policy of this State is to assure that all individuals, regardless of housing status, have equal opportunity to live
12 in decent, safe, sanitary, and healthful accommodations anywhere within the State. It is also the policy of this State that all
13 individuals, regardless of housing status, enjoy equality of opportunities, more generally, in order to protect and ensure the
14 peace, health, safety, and general welfare of all inhabitants of the State.

15 § 4503A. Definitions.

16 As used in this chapter:

17 (1) “Commission” means the State Human and Civil Rights Commission.

18 (2) “Complainant” means an individual who files a complaint alleging that a discriminatory practice occurred.

19 (3) “Conciliation” means the mediation of a dispute regarding an alleged discriminatory practice.

20 (4) “Discriminatory practice” means a violation of § 4504A(a) of this title.

(5) “Division” means the Division of Human Relations.

(6) “Emergency shelter” means a facility that provides shelter for individuals experiencing homelessness.

(7) “Housing status” means the type and location of housing in which an individual resides or has resided, and the status of having or not having a fixed or regular residence. All of the following are examples of “housing status”:

- a. The status of living or having lived on the street, in a temporary shelter, or other temporary residence.
- b. The status of living or having lived in an institution.
- c. The status of living or having lived in public housing, at a particular address, or in a particular neighborhood.
- d. The status of being an individual experiencing homelessness.

(8) “Individual experiencing homelessness” means any of the following:

- a. An individual who is living in a place not meant for human habitation or in a temporary shelter.
- b. An individual who is exiting an institution and who met the definition of individual experiencing homelessness under another paragraph (8)a., (8)c., (8)d., or (8)e. of this section immediately before entering the institution.
- c. An individual who will lose the individual’s housing within 14 days.
- d. An individual that does not have housing and is unlikely to obtain housing, including an unaccompanied youth or guardian with a child, that satisfies either of the following:
 - 1. Has not had a lease or ownership interest in a housing unit in at least the previous 60 days and is unlikely to obtain housing.
 - 2. Changed housing at least twice in the last 60 days, and who is unlikely to obtain housing.
- e. An individual who is fleeing or attempting to flee domestic abuse, has no other housing, and lacks the resources or support networks to obtain housing.
- f. An individual regarded as being an individual experiencing homelessness.

(9) “Institution” means a facility in which an individual is committed due to involvement with the criminal justice system or committed or enters for treatment, and includes a prison, behavioral health facility, hospital, half-way house.

(10) “Respondent” means the person named in a complaint filed with the Division of Human Relations and that is alleged to have committed a discriminatory practice.

(11) “Temporary shelter” means an emergency shelter or transitional housing provided to individuals experiencing homelessness.

(12) “Transitional housing” means any facility whose primary purpose is to facilitate the movement of individuals experiencing homelessness to permanent housing within approximately 24 months.

(13) “Unaccompanied youth” means a homeless child that is not in the physical custody of a parent or guardian.

§ 4504A. Bill of rights.

(a) An individual’s rights, privileges, and access to public services may not be denied or abridged solely because the individual is an individual experiencing homelessness. An individual experiencing homelessness is granted the same rights and privileges as any other resident of this State. An individual experiencing homelessness has all of the following rights:

(1) To use and move freely in public spaces, including public sidewalks, public parks, public transportation, and public buildings, in the same manner as any other individual and without discrimination on the basis of the individual’s housing status.

(2) Not to face discrimination by a State, county, or municipal agency.

(3) Not to face discrimination while seeking or maintaining housing due to the individual’s lack of a permanent address, the individual’s address being that of a shelter or social service provider, or the individual’s housing status. This right does not, however, entitle an individual facing eviction to a truncated or expedited housing application process that might limit consideration of the reason for eviction in an evaluation of the individual’s reliability as a tenant, nor does it prohibit a shelter from establishing and adhering to a policy relating to a maximum length of stay for an individual in that shelter.

(4) Not to face discrimination while seeking temporary shelter because of race, color, religion, creed, age, gender, sexual orientation, gender identity, marital status, familial status, disability, national origin, or housing status, except in the case of temporary shelters specifically designated for a specific gender or familial status, or in the case of funding sources that require certain populations be served. This right does not introduce any new requirement with regard to the obligation of shelters or other providers to update their facilities or provide new accommodations.

(5) To medical and dental care, free from discrimination based on the individual’s housing status.

(6) To protection from unlawful disclosure of the individual’s records and information provided to temporary shelters, service providers, and State, county, municipal, and private entities, including the right to confidentiality of personal records and information in accordance with all limitations on disclosure established by the Delaware Community Management Information System, the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d, et seq., and the federal Violence Against Women Act, 34 U.S.C. §§ 12291, et seq.

81 (7) The same reasonable expectation of privacy in the individual's personal property while residing in
82 temporary shelter as an individual residing in a permanent residence. This right may not, however, be construed to
83 prevent reasonable searches performed pursuant to posted rules.

84 (8) The same reasonable expectation of privacy in the individual's personal property while in public spaces as
85 an individual who is not homeless, and the same reasonable expectation of respect for the individual's personal
86 property as an individual who is not an individual experiencing homelessness. These rights may not be construed to
87 prevent reasonable searches otherwise conducted in accordance with law, or to prevent nondiscriminatory enforcement
88 of other laws, including anti-loitering laws.

89 (9) To occupy a motor vehicle or recreational vehicle, provided that the vehicle is legally parked on public
90 property.

91 (10) To pray, meditate, worship, or practice religion in a public space without discrimination based on
92 housing status.

93 (11) To eat, drink, share, accept, or give food and non-alcoholic beverages in a public space in which having
94 food and beverages is not prohibited.

95 (b) A political subdivision of this State may not adopt any policy, including a law, ordinance, or regulation,
96 contrary to subsection (a) of this section.

97 (c) An individual may file a complaint alleging a discriminatory practice with the Division as described in §
98 4508A. The Division shall enforce this section in the manner provided in this chapter.

99 (d) Violation of this section subjects the violator to the civil penalties provided in this chapter.

100 § 4505A. Authority of the Commission to delegate.

101 (a) The Commission shall implement any of the provisions of this chapter that are not expressly vested in another
102 entity.

103 (b) The Commission may delegate to a panel of its members, any power, duty, or function vested in it under this
104 chapter. No panel to which any power, duty, or function of the Commission is delegated may consist of fewer than 3
105 members of the Commission.

106 (c) The Commission may delegate to the Division, any power, duty, or function vested in it under this chapter,
107 unless the delegation is expressly prohibited. If the Commission delegates to the Division a power, duty, or function vested
108 in it under this chapter, the delegation shall specifically state the power, duty, or function being delegated.

109 (d) The Commission may not delegate to the Division the Commission's power or duty to conduct public hearings
110 or order relief.

§ 4506A. Commission's power to adopt rules.

(a) The Commission may, in accordance with the Administrative Procedures Act [Chapter 101 of Title 29], adopt regulations concerning all of the following:

(1) The way in which complaints must be investigated.

(2) The way in which other investigations under this chapter must be conducted.

(3) The way in which public hearings must be conducted.

(4) The general form and content of agreements and orders provided under this chapter.

(5) Other topics that the Commission considers appropriate to assist it in performing its duties and in carrying out the purposes of this chapter.

§ 4507A. Education.

(a) The Commission and the Division may conduct educational activities and conferences to further the purposes of this chapter. The Commission and the Division may issue reports on conferences.

(b) The Division shall endeavor to develop, with the advice of interested parties, programs of voluntary compliance and enforcement.

(c) When undertaking their respective duties under this section, the Commission and the Division may consult with state, county, and municipal officials, and other interested parties, to learn the extent, if any, to which discriminatory practices exist in the State, county, or municipality, and whether and how state, county, or municipal enforcement programs might be utilized to combat the discrimination. The Commission may issue reports on the consultations described in this subsection.

§ 4508A. Complaint procedure.

(a) An individual believing himself aggrieved by a discriminatory practice may file with the Division a complaint, in writing, which states all of the following:

(1) The individual's name.

(2) A description of where the alleged discriminatory practice occurred, including the name of the place, if applicable and known, and the location.

(3) The date, time, and a description of the alleged discriminatory practice.

(4) If known, the name and address of each respondent.

(5) The signature of the individual.

(6) Any other information that the Division requires.

140 (b) A complaint may not be filed with the Division more than 90 days after the occurrence of the alleged
141 discriminatory practice.

142 (c) Within 120 days after the complaint is filed, the Division shall investigate the complaint, and endeavor to
143 eliminate any unlawful discriminatory practice discovered through conciliation or refer the matter to the Attorney General
144 as set out in subsection (d) of this section.

145 (1) If possible, a conciliation meeting will be held in the county where the alleged discriminatory practice
146 occurred.

147 (2) If the matter is resolved through conciliation, the parties shall enter a conciliation agreement stating the
148 terms of the resolution of the matter.

149 (3) If the Division determines that the allegations in the complaint do not state a claim for which relief is
150 available under this chapter or that the Division lacks jurisdiction, the Division may petition the Commission, with
151 notice to the complainant and the respondent, if the respondent has been served the complaint at the time the Division
152 petitions, to dismiss the complaint.

153 (d) When the party alleged to have engaged in a discriminatory practice is a law enforcement officer or law
154 enforcement agency, the Division will conduct a preliminary investigation to verify an interaction occurred. Upon
155 preliminary confirmation, the Division shall refer the matter to the Department of Justice for further appropriate
156 investigation and resolution.

157 (e) When the Division has reasonable cause to believe that a respondent breached a conciliation agreement, the
158 Division shall refer the matter to the Attorney General with a recommendation that a civil action be filed under § 4511A of
159 this title for the enforcement of the conciliation agreement.

160 (f) If a complaint cannot be resolved through conciliation as provided in subsection (c) of this section, the
161 Commission shall appoint a panel to hold a public hearing within 60 days after the expiration of 120-day period for
162 investigation and conciliation. On a showing of good cause, the Commission Chair or the panel's chair may extend the
163 deadlines provided in subsection (c) of this section and this subsection at the request of a party or an employee of the
164 Commission.

165 (g) Public hearings must be conducted in accordance with rules prescribed by the Commission. Each party may
166 appear in person, be represented by an attorney, present evidence, cross-examine witnesses, and obtain the issuance of
167 subpoenas under § 4509A of this chapter. The Delaware Rules of Evidence apply to the presentation of evidence in a
168 public hearing as the Rules would apply in an administrative hearing conducted in accordance with subchapter III of the

Administrative Procedures Act [Chapter 101 of Title 29]. A record kept of all public hearings, a transcript of which must be provided at cost on request of a party. Decisions of the panel must be made by a majority of the members on the panel.

(h) If the panel determines that a violation of § 4504A of this title has not occurred, it shall issue an order dismissing the complaint. The panel may award reasonable attorneys' fees, costs, and expenses to the respondent if the panel determines that the complaint was brought for an improper purpose, such as to harass or embarrass the respondent.

(i) If the panel determines that a violation of § 4504A of this title has occurred, it shall issue an order stating its findings of fact and conclusions of law and containing such relief as may be appropriate, including actual damages suffered by the aggrieved individual, which may include damages caused by humiliation and embarrassment, costs, expenses, reasonable attorneys' fees, and injunctive or other equitable relief. To vindicate the public interest, the panel may assess a civil penalty against the respondent, to be paid to the Special Administration Fund as follows:

(1) In an amount not exceeding \$1,000 for each discriminatory practice if the respondent has not been adjudged to have committed any previous discriminatory practices under this chapter or does not satisfy paragraph (i)(2) or (i)(3) of this section.

(2) In an amount not exceeding \$5,000 for each discriminatory practice if the respondent has been adjudged to have committed 1 other discriminatory practice under this chapter during the 5-year period ending on the date that the complaint was filed.

(3) In an amount not exceeding \$15,000 for each discriminatory practice if the respondent has been adjudged to have committed 2 or more discriminatory practices during the 7-year period ending on the date that the complaint was filed.

(j) Copies of orders entered under subsections (h) and (i) of this section must be served personally or by registered or certified mail to each party or their attorney.

(k) If the Division concludes, at any time following the filing of a complaint, that prompt judicial action is necessary to carry out the purpose of this chapter, the Division may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. On receipt of the authorization to pursue a civil action, the Attorney General may, in the absence of a conflict of duties, commence and maintain the civil action in the Court of Chancery on behalf of the Division. If the Attorney General does not commence the civil action, the Division may, with the written authorization of the Secretary of State, employ special counsel to commence and maintain an action notwithstanding § 2507 of Title 29. The commencement of a civil action under this subsection does not affect the initiation or continuation of proceedings under this section.

198 (l) The Commission shall promulgate regulations that establish procedures for dismissal of complaints based on
199 lack of jurisdiction or failure to state a claim for which relief is available under this chapter. Notwithstanding the limitation
200 of delegation in § 4505A of this chapter, the Commission may authorize dismissal for lack of jurisdiction or failure to
201 state a claim for which relief is available by a single commissioner before the appointment of a panel.

202 § 4509A. Compelling the attendance of witnesses and production of documents, oaths, subpoenas.

203 (a) The Commission may issue subpoenas and order discovery in aid of investigations and hearings under this
204 chapter.

205 (1) The Commission Chair or the panel chair shall sign a subpoena issued under this subsection, and a sheriff,
206 deputy sheriff, constable, member of the Commission, or employee of the Division may serve the subpoena.

207 (2) Subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would
208 apply if the subpoenas or discovery were ordered or served in aid of a civil action in the Superior Court, except that the
209 Attorney General shall first review the subpoenas and discovery in aid of investigations, to determine whether there is
210 reason to believe that there has been a violation of this chapter.

211 (b) At a public hearing, any member of the Commission may administer oaths to a witness who is called before the
212 Commission.

213 (c) A witness summoned by a subpoena under this chapter is entitled to the same witness and mileage fees as a
214 witness in proceedings in Superior Court.

215 (d) A person violates this section if the person fails or neglects to obey a subpoena or other lawful order under
216 subsection (a) of this section and had the power to obey the subpoena or order.

217 (1) The Attorney General, on behalf of the Commission, shall petition the Superior Court for an order
218 requiring the person to appear before the Commission to produce evidence or give testimony pertaining to the matter
219 under investigation or in question.

220 (2) The Attorney General shall file the petition under paragraph (d)(1) of this section in the county where the
221 person that is in violation of this section resides or conducts business.

222 (3) The Superior Court may punish the person who violates an order issued under paragraph (d)(1) of this
223 section as being in contempt of court.

224 (e) (1) A person who has the power to obey a subpoena or other lawful order under paragraph (a) of this section
225 but willfully fails or neglects to do so is subject to a fine for each instance of failure to obey of not more than \$2,500 or
226 imprisonment of not more than 1 year, or both.

(2) A person who, with intent to mislead another person in any proceeding under this chapter, commits any of the following is subject to a fine for each instance of not more than \$2,500 or imprisonment of not more than 1 year, or both:

a. Intentionally makes or causes to be made a false entry or statement of fact in a report, account, record, or other document produced pursuant to a subpoena or other lawful order under paragraph (a) of this section.

b. Intentionally neglects or fails to make or cause to be made full, true, and correct entries in reports, accounts, records, or other documents.

c. Intentionally mutilates, alters, or by any other means, falsifies documentary evidence.

§ 4510A. Judicial review.

(a) A party aggrieved by an order for relief under § 4508A of this chapter granting or denying, in whole or in part, the relief sought, may obtain a review of the order in the Superior Court in the county in which the discriminatory practice is alleged to have occurred, under the civil rules of that Court and the Administrative Procedures Act [Chapter 101 of Title 29]. An aggrieved party must file the petition for review not later than 30 days of the day the notice of the decision was mailed or delivered.

(b) A party to a proceeding before the panel may intervene in the appeal process in the Superior Court.

(c) The Superior Court may not consider an objection that was not made before the panel, unless the failure or neglect to object is excused because of extraordinary circumstances or when the interests of justice so require.

(d) If the Attorney General has not commenced a civil action within 60 days of notice of breach of a Commission order or conciliation agreement as authorized by § 4511A of this title, an aggrieved party may commence an action in the Superior Court or Court of Chancery, or both, seeking enforcement and appropriate relief within the court's subject matter jurisdiction, including conversion of a Commission order conferring monetary relief to a judgment subject to execution. The Court may also award the aggrieved party reasonable costs and attorneys' fees in connection with the enforcement action.

§ 4511A. Enforcement by the Attorney General.

(a) The Attorney General may commence a civil action in the Superior Court, Court of Chancery, or both, in any county of the State for appropriate relief within the court's subject matter jurisdiction, including equitable relief, monetary damages, reasonable attorneys' fees, costs, and expenses, if the Attorney General has reasonable cause to believe that any of the following has occurred:

(1) A person is engaging in a pattern of discriminatory practices in violation of this chapter.

(2) A person has been denied any of the rights granted by this chapter and the denial of rights raises an issue of general public importance.

(3) A party to a conciliation agreement has breached the conciliation agreement.

(b) To vindicate the public interest, the court may assess a civil penalty to be paid to the Special Administration Fund in an amount not exceeding \$25,000 for a first violation of this chapter and in an amount not exceeding \$50,000 for a subsequent violation of this chapter.

(c) When a civil action is initiated by the Attorney General pursuant to this section, no Court shall charge fees of any kind in such proceeding to the Attorney General, the Commission or any of its members.

§ 4512A. Criminal jurisdiction.

The Superior Court shall have exclusive original jurisdiction over all criminal violations of this chapter.

Section 2. Amend Chapter 30, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3004. Powers and duties.

The Commission shall cooperate with the Governor, the General Assembly, public agencies, officials, firms, corporations, civic groups, and individuals in promoting amicable relationships among the various racial and cultural groups within the State. To this end the Commission may do any of the following:

(4) Perform duties assigned to the Commission under Chapter ~~45~~ 45, 45A, and 46 of Title 6.

§ 3005. Special Administration Fund.

(a) Creation. A special fund in the State Treasury, to be known as the Special Administration Fund of the Human and Civil Rights Commission and referred to as “the Fund” throughout this section, consists of:

(1) All civil penalties assessed and collected under Chapter ~~45~~ 45, 45A, or 46 of Title 6.

(2) Costs, attorneys’ fees, and expenses awarded to the Commission under Chapter ~~45~~ 45, 45A, or 46 of Title 6.

(b) Administration.

(1) All moneys collected under this section must be deposited or paid into the Fund, are continuously available to the Commission for expenditure in accordance with this section, do not lapse at any time, and may not be transferred to any other fund, except as provided in subsection (d) of this section. All moneys in the Fund must be prudently invested to the credit of the Fund, administered and disbursed in the same manner as is provided by law for other special funds in the State Treasury, and maintained in a separate ledger account on the books of the Secretary of Finance.

286 (2) All moneys in the Fund which are received from the federal government, or any of its agencies, or
287 appropriated by this State for purposes described in this chapter or Chapters ~~45~~ 45, 45A, or 46 of Title 6, may be
288 expended solely for the proper and efficient administration of this chapter.

289 (c) Use. The Commission may use moneys in the Fund for any of the following purposes:

290 (1) The payment of litigation expenses, costs, and attorneys' fees in connection with the enforcement
291 provisions of Chapters ~~45~~ 45, 45A, and 46 of Title 6.

292 (2) The payment of the expenses of investigations conducted under Chapters ~~45~~ 45, 45A, and 46 of Title 6,
293 and this chapter.

294 Section 3. This Act is effective immediately and is to be implemented the earlier of the following:

295 (1) One year from the date of the Act's enactment.

296 (2) Notice by the Chair of the Commission, published in the Register of Regulations, that final regulations
297 to implement this Act have been promulgated.

SYNOPSIS

This Act is the Bill of Rights for Individuals Experiencing Homelessness to ensure that all individuals, regardless of housing status, have equal opportunity to live in decent, safe, sanitary, and healthful accommodations and enjoy equality of opportunities. To that end, this Act sets forth the rights of individuals experiencing homelessness and creates a process by which the State Human and Civil Rights Commission and the Division of Human Relations may accept and investigate complaints of discriminatory treatment, attempt conciliation, and refer enforcement actions to the Department of Justice where necessary.

This Substitute differs from the original House Bill No. 55 in that it expands the definition of "individuals experiencing homelessness" to include those who may be staying with different friends or family without a permanent home and it eliminates a reference to voting rights, since such rights are addressed elsewhere in the Code.