



SPONSOR: Sen. Townsend & Rep. Bolden & Rep. Lynn &
Rep. Potter
Sens. Henry, Marshall, McDowell, Poore, Walsh; Reps.
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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 49

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO HOMELESS PERSONS.

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

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

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

CHAPTER 78.

Homeless Individuals' Bill Of Rights.

§ 7801. Short title.

This chapter shall be known and may be cited as the "Bill of Rights for Homeless Individuals".

§ 7802. Declaration of Policy.

It is hereby declared that the policy of this State is to assure all individuals, regardless of housing status, equal opportunity to live in decent, safe, sanitary, and healthful accommodations anywhere within the State, and to enjoy equality of opportunities more generally, in order that the peace, health, safety, and general welfare of all the inhabitants of the State may be protected and insured.

§ 7803. Bill of Rights.

(a) No individual's rights, privileges, or access to public services may be denied or abridged solely because the individual is homeless. Such an individual 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 any State, county, and 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, however, introduce any new requirement with regard to the obligation of shelters or other providers to update their facilities or provide new accommodations.

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

(6) To vote, register to vote, and receive documentation necessary to prove identity for voting without discrimination due to the individual's housing status. This right may not, however, be construed to require a temporary shelter to accept documents on that individual's behalf.

(7) To protection from unlawful disclosure of the individual's records and information provided to temporary shelters, service providers, and State, 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, and the Federal Violence Against Women Act.

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

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

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

(11) To pray, meditate, worship, or practice religion in public spaces without discrimination based on housing status.

(12) To eat, share, accept, or give food in any public space in which having food is not prohibited.

(b) No political subdivision of this State may enact any law, ordinance, or regulation contrary to subsection (a) of this section.

(c) The aggrieved individual, or an individual lawfully acting on behalf of the aggrieved individual may file complaints alleging an unlawful practice under this section with the Division of Human Relations. The Division of Human Relations shall enforce this section in the manner provided in this chapter regarding other unlawful practices.

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

§ 7804. Definitions.

As used in this chapter:

(1) "Commission" means the State Human Relations Commission.

(2) "Complainant" means an individual who files a complaint alleging that a discriminatory practice has occurred in violation of the provisions of § 7803(a) of this title.

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

(4) "Discriminatory practices" means an act or omission of an act that occurs in violation of the provisions of § 7803(a) of this title.

(2) "Division" means the Division of Human Relations.

(3) "Emergency shelter" means any facility whose primary purpose is to provide shelter for individuals who are homeless.

(4) "Homeless individual" or "individual who is homeless" means any of the following:

a. An individual who is living in a place not meant for human habitation, in an emergency shelter, or in transitional housing, and an individual who is exiting an institution where the individual resided for up to 90 days and who was in a shelter or a place not meant for human habitation immediately prior to entering that institution.

b. An individual who will lose the individual's primary nighttime residence within 14 days.

c. A family with a child, children, or unaccompanied youth who do not have stable housing and are likely to continue in that state, including families with a child, children, or unaccompanied youth who have not had a

83 lease or ownership interest in a housing unit in at least the previous 60 days, have changed housing at least twice
84 in the last 60 days, and are likely to continue to not have stable housing.

85 d. An individual who is fleeing or attempting to flee domestic abuse, has no other residence, and lacks the
86 resources or support networks to obtain permanent housing.

87 (5) "Housing status" means the type and location of housing in which an individual resides or has resided, and
88 the status of having or not having a fixed or regular residence, including any of the following:

89 a. The status of living or having lived on the street, in a temporary shelter, or other temporary residence.

90 b. The status of living or having lived in an institution, such as a mental health facility or physical health
91 facility.

92 c. The status of living or having lived in public housing, at a particular address, or in a particular
93 neighborhood.

94 d. The status of being homeless as defined in § 7804(4) of this title.

95 (6) "Respondent" means the party named in a complaint filed with the Division of Human Relations as having
96 committed a discriminatory practice in violation of the provisions of § 7803(a) of this title.

97 (6) "Temporary shelter" means any emergency shelter or transitional housing provided to individuals who are
98 homeless.

99 (7) "Transitional housing" means any facility whose primary purpose is to facilitate the movement of
100 individuals who are homeless to permanent housing within (approximately 24 months).

101 § 7805. Authority of the Commission; delegation.

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

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

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

111 (d) The Commission may not delegate its power or duty to conduct public hearings or order relief to the Division.

§ 7806. Commission's power to adopt rules.

(a) The Commission has the power, in accordance with the Administrative Procedures Act in Title 29 [Chapter 101 of Title 29], to adopt rules and regulations concerning the manner in which complaints shall be investigated or other investigations under the provisions of this chapter shall be conducted, the manner in which public hearings shall be conducted, the general form and content of agreements and orders provided under the provisions of this chapter, and other rules that the Commission may consider appropriate to assist it in performing its duties and in carrying out the purposes of this chapter. Such rules and regulations shall have the force and effect of law.

§ 7807. Education and conciliation.

(a) The Commission may commence educational activities to further the purposes of this chapter. The Commission may hold conferences for interested parties to acquaint them with the provisions of this chapter and the Commission's suggested means of implementing it. The Commission may issue reports on its conferences.

(b) The Division may commence conciliation meetings in order to further the purposes of this chapter. The Division may call conferences of interested parties to acquaint them with the provisions of this chapter governing conciliation and the means the Division employs to implement those provisions. The Division shall endeavor to develop, with the advice of interested parties, programs of voluntary compliance and enforcement. The Division may issue reports on its conferences.

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

§ 7808. Procedure on complaint.

(a) An complainant who believes that the complainant has been aggrieved by a discriminatory practice may file with the Division a complaint in writing which states all of the following:

(1) The complainant's name.

(2) The name and location at which the alleged discriminatory practice occurred, with the date, time, and an explanation thereof.

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

(4) Any other information that the Division requires.

(b) No complaint may be filed with the Division more than 90 days after the occurrence of the alleged discriminatory practice.

142 (c) Within 120 days after the complaint is filed, the Division shall investigate the complaint, facilitate conciliation
143 meetings between the parties to an action filed under paragraph (a) of this section to determine whether a discriminatory
144 practice took place, and endeavor to eliminate any unlawful discriminatory practice discovered through conciliation.

145 (1) If possible, conciliation meetings shall 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 claim is not within the scope of the Division's jurisdiction, it may petition the
151 Commission, with notice to all of the individuals named in the complaint, to dismiss the complaint.

152 (d) When the Division has reasonable cause to believe that a respondent has breached a conciliation agreement,
153 the Division shall refer the matter to the Attorney General with a recommendation that a civil action be filed under § 7811
154 of this title for the enforcement of the conciliation agreement.

155 (e) If a complaint cannot be resolved through conciliation as provided in subsection (c) of this section, the
156 Commission shall appoint a panel to hold a public hearing within 60 days after the expiration of 120-day period for
157 investigation and conciliation. The Commission Chair or the panel's chair may extend the deadlines provided in subsection
158 (c) of this section and this subsection at the request of any party or an employee of the Human Relations Commission, upon
159 a showing of good cause.

160 (f) Public hearings shall be conducted in accordance with rules prescribed by the Commission. Each party may
161 appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of
162 subpoenas under § 7809 of this title. The Delaware Rules of Evidence shall apply to the presentation of evidence in a public
163 hearing as the Rules would apply in an administrative hearing conducted in accordance with subchapter III of the
164 Administrative Procedures Act in Title 29 [subchapter III of Chapter 101 of Title 29]. A record shall be kept of all public
165 hearings, a transcript of which shall be provided at cost upon request of a party. Decisions made by a majority of the
166 members of the panel shall be final.

167 (g) If the panel determines that a violation of § 7803 of this title has not occurred, it shall issue an order
168 dismissing the complaint. The panel may award reasonable attorneys' fees, costs, and expenses to the respondent if the
169 panel determines that the complaint was brought for an improper purpose, such as to harass or embarrass the respondent.

170 (h) If the panel determines that a violation of § 7803 of this title has occurred, it shall issue an order stating its
171 findings of fact and conclusions of law and containing such relief as may be appropriate, including actual damages suffered

by the complainant, including 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 prior discriminatory public accommodations practice.

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

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

(i) Copies of orders entered pursuant to subsections (g) and (h) of this section shall be served personally or by registered or certified mail to each party or their counsel.

(j) 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. Upon receipt of such authorization, the Attorney General may, in the absence of a conflict of duties, commence and maintain such an action in the Court of Chancery on behalf of the Division. If the Attorney General does not commence such an 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.

(k) The Commission shall adopt, by regulation, procedures for dismissal of complaints based on lack of jurisdiction or failure to state a claim upon which relief is available under this chapter. Notwithstanding the limitation of delegation in § 7805 of this title, the Commission may authorize such dismissal by a single commissioner prior to appointment of a panel.

§ 7809. Compelling the attendance of witnesses and production of documents, oaths, subpoenas.

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

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

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

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

208 (c) Witnesses summoned by a subpoena under this chapter is entitled to the same witness and mileage fees as
209 witnesses in proceedings in Superior Court.

210 (d) Any person who fails or neglects to obey a subpoena or other lawful order under paragraph (a) of this section,
211 and has the power to do so, is in violation of this section.

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

215 (2) The Attorney General shall file a petition under paragraph (d)(1) of this section in the county where such
216 person who is in violation of paragraph (a) of this section resides or conducts business.

217 (3) The Superior Court may punish any person who violates a subpoena or order under this section as being in
218 contempt of court.

219 (e) Criminal penalties.

220 (1) A person who has the power to obey a subpoena or other lawful order under paragraph (a) of this section
221 but willfully fails or neglects to do so shall, for each instance of failure to obey, be fined not more than \$2,500 or
222 imprisoned not more than 1 year, or both.

223 (2) Any person who, with intent to mislead another person in any proceeding under this chapter, commits any
224 of the following shall, for each instance, be fined not more than \$2,500 or imprisoned not more than 1 year, or both:

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

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

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

§ 7810. Judicial review.

(a) A party aggrieved by an order for relief under § 7808 of this title granting or denying, in whole or in part, the relief sought, may obtain a review of such order in the Superior Court in the county in which the discriminatory practice is alleged to have occurred, pursuant to 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.

(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 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 § 7811 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.

§ 7811. 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) An individual or group of individuals is engaging in a pattern of discriminatory practices in violation of the provisions of this chapter.

(2) An individual or group of individuals has been denied any of the rights granted by this chapter and such denial raises an issue of general public importance or that any party to a conciliation agreement has breached such 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 any subsequent violation of this chapter.

(b) If the Attorney General initiates a civil action under this chapter, the Court may not charge fees of any kind in such proceeding to the Attorney General, the Commission, or any of the Commission's members.

260 § 7812. Criminal jurisdiction.

261 The Superior Court has exclusive original jurisdiction over all criminal violations of this chapter.

262 Section 2. This Act takes effect 90 days after its enactment.

SYNOPSIS

An individual's housing status should not be a basis for discrimination. This bill establishes a "Homeless Individual's Bill of Rights" that provides rights to protections for individuals experiencing homelessness, including protections from discrimination while in public and while seeking access to housing, employment, and temporary shelter. This bill vests important investigatory and enforcement authority with the State's Division of Human Relations and the State Human Relations Commission, similar to their roles with Delaware's Equal Accommodations Law and Delaware's Fair Housing Act.

Author: Senator Townsend