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DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 182

AN ACT TO AMEND TITLES 29, 31, AND 6 OF THE DELAWARE CODE RENAMING THE OFFICE OF HUMAN RELATIONS, AND RELATING TO THE STATE HUMAN RELATIONS COMMISSION, EQUAL ACCOMMODATIONS, AND FAIR HOUSING.

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

1 Section 1. Amend § 8733, Title 29 of the Delaware Code, by striking the section heading thereof in its entirety
2 and by substituting in lieu thereof the following:

3 “§ 8733. Division of Human Relations.”

4 Section 2. Amend § 8733, Title 29 of the Delaware Code by striking subsection (a) thereof in its entirety and by
5 substituting in lieu thereof the following:

6 “(a) The Division of Human Relations is established, and shall be responsible for the performance of
7 all the administrative, ministerial, fiscal and clerical functions of the State Human Relations Commission. The Director of
8 the Division may appoint and remove employees of the Division as provided by law.”.

9 Section 3. Amend § 3001(d), Title 31 of the Delaware Code, by striking the phrase “and a replacement shall be
10 appointed” as it appears at the end thereof and by substituting in lieu thereof the following:

11 “and the Chairperson shall immediately notify the Governor that a vacancy on the Commission exists
12 and that a replacement must be appointed. The notice shall identify the member deemed to have resigned and the reason
13 therefore.”

14 Section 4. Amend § 3001, Title 31 of the Delaware Code, by inserting therein a new subsection (e) as follows:

15 “(e) The Commission shall adopt bylaws that provide for operating procedures such as: election of
16 officers, appointment of committees, designation of a quorum, conducting of meetings, and other matters that will
17 promote the efficient operation of the Commission in the performance of its duties under this chapter.”.

18 Section 5. Amend Chapter 30, Title 31 of the Delaware Code, by deleting § 3003 thereof in its entirety and by
19 substituting in lieu thereof the following:

20 “§ 3003. Responsibilities.

21 The Commission shall be responsible for carrying out public information and education programs, for preparing
22 reports and recommendations, and for making surveys and studies necessary for the performance of its duties under this
23 chapter. The Commission may delegate one or more of its responsibilities under this section to the Division; provided,
24 however, that such delegation shall specifically state the responsibility the Division must undertake.”.

25 Section 6. Amend § 3004(1), Title 31 of the Delaware Code, by adding immediately after the semicolon at the
26 end thereof a new sentence to read as follows:

27 “provided, however, that the provisions of the Freedom of Information Act in 29 Del. C. Chapter 100
28 shall not apply to meetings that involve conciliation or mediation;”

29 Section 7. Amend Chapter 30, Title 31 of the Delaware Code, by adding thereto a new section as follows:

30 “§ 3006. Subpoenas; compelling testimony.

31 (a) The Commission, in the performance of any duty or the execution of any power prescribed by law, may
32 administer oaths, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance and
33 testimony of witnesses and the production of documents.

34 (b) Any subpoena, process, order of the Commission, or other paper requiring service may be served by any
35 sheriff, deputy-sheriff, or constable, or by any employee of the Division of Human Relations.

36 (c) If a witness refuses to obey a subpoena lawfully issued by the Commission, or to give evidence properly
37 requested by the Commission, the Commission may petition the Superior Court to compel the witness to obey the
38 subpoena or give the evidence. The Court shall immediately issue process to the witness and shall hold a hearing on the
39 petition as soon as possible. If the witness refuses, without reasonable cause or legal grounds, to obey the subpoena or to
40 give the evidence, the Court shall punish the witness for contempt.”

41 Section 8. Amend § 4502, Title 6 of the Delaware Code, by redesignating paragraphs (8) through (13) thereof as
42 paragraphs (9) through (14) respectively and by inserting therein a new paragraph (8) as follows:

43 “(8) “Division” means the Division of Human Relations.”.

44 Section 9. Amend Chapter 45, Title 6 of the Delaware Code, by deleting § 4505 thereof in its entirety and by
45 substituting in lieu thereof the following:

46 “§ 4505. Authority of the Commission; delegation.

47 (a) The State Human Relations Commission shall implement the provisions of this chapter not expressly
48 vested in another entity.

49 (b) The Commission may delegate, to a panel of its members, any power, duty, or function vested in it by this
50 chapter. No panel to which any power, duty, or function of the Commission is delegated shall consist of fewer than
51 3 members of the Commission.

52 (c) The Commission may delegate, to the Division of Human Services, any power, duty, or function vested in
53 it by this chapter unless the delegation is expressly prohibited. If the Commission delegates to the Division a power, duty,
54 or function vested in it by this chapter, the delegation shall specifically state the power, duty, or function being delegated.

55 (d) The Commission shall not delegated its power or duty to conduct public hearings or order relief to the
56 Division.”.

57 Section 10. Amend Chapter 45, Title 6 of the Delaware Code, by striking § 4507 thereof in its entirety and by
58 substituting in lieu thereof the following:

59 “§ 4507. Education and conciliation.

60 (a) The Commission may commence such educational activities as, in its judgment, will further the purposes of
61 this chapter. It may hold conferences for persons in the business industry and other interested parties to acquaint them
62 with the provisions of this chapter and its suggested means of implementing it. The Commission may issue reports on
63 such conferences as it deems appropriate.

64 (b) The Division may commence such conciliatory activities in order to further the purposes of this chapter. It
65 may call conferences of persons in the business industry and other interested parties to acquaint them with the provisions
66 of this chapter governing conciliation and the means it employs to implement those provisions. It shall endeavor, with
67 their advice, to develop programs of voluntary compliance and enforcement. The Division may issue reports on such
68 conferences as it deems appropriate.

69 (c) When undertaking their respective duties under this section, the Commission and the Division may consult
70 with state and local officials and other interested parties to learn the extent, if any, to which discriminatory public
71 accommodations practices exist in the State or locality, and whether and how State or local enforcement programs might

72 be utilized to combat such discrimination. The Commission may issue reports on such consultations as it deems
73 appropriate.”

74 Section 11. Amend § 4508(c), Title 6 of the Delaware Code, by adding thereto a new sentence as follows:

75 “If the Division determines that the allegations in the complaint do not state a claim for which relief is
76 available under this chapter or that the claim is not within the scope of the Commission’s jurisdiction, it may petition the
77 Commission to dismiss the complaint.”

78 Section 12. Amend § 4508, Title 6 of the Delaware Code, by adding thereto a new subsection as follows:

79 “(k) If, at any time following the filing of a complaint, a party or the Division challenges the complaint
80 on the basis that the allegations in the complaint do not state a claim for which relief is available under this chapter or that
81 the matter is not within the scope of the Commission’s jurisdiction, the Commission shall designate one of its members to
82 evaluate the complaint and to determine whether the allegations in the complaint state a claim for which relief is available
83 under this chapter, and whether the claim is within the scope of the Commission’s jurisdiction. If the Commission
84 member determines that the allegations in the complaint do not state a claim for which relief is available under this
85 chapter or that the claim is not within the scope of the Commission’s jurisdiction, the Commission shall dismiss the
86 complaint.”

87 Section 13. Amend § 4508, Title 6 of the Delaware Code, by striking the word “Commission” wherever it
88 appears in subsections (a), (b), (c), and (j) thereof and by substituting in lieu thereof the word “Division”.

89 Section 14. Amend § 4508, Title 6 of the Delaware Code by deleting the term “§ 4509” as it appears in
90 subsection (f) thereof and by substituting in lieu thereof the term “§ 4510.”

91 Section 15. Amend § 4509, Title 6 of the Delaware Code, by striking the word “Commission’s” as it appears in
92 the section heading thereof and by substituting in lieu thereof the word “Division’s”.

93 Section 16. Amend § 4509, Title 6 of the Delaware Code, by striking the word “Commission” wherever it
94 appears therein and by substituting in lieu thereof the word “Division”.

95 Section 17. Amend § 4602(15), of Title 6 of the Delaware Code, by deleting subparagraph c.1. thereof in its
96 entirety by redesignating subparagraphs c.2. and c.3. thereof as c.1. and c.2 respectively.

97 Section 18. Amend § 4602, Title 6 of the Delaware Code, by striking paragraph (17) thereof in its entirety and
98 by substituting in lieu thereof the following:

99 “(17) “Panel” means three or more Commissioners appointed by the Chair to perform any act
100 authorized under this chapter.”.

101 Section 19. Amend § 4602, Title 6 of the Delaware Code, by redesignating paragraphs (11) through (24) thereof
102 as paragraphs (12) through (25) respectively and by inserting therein a new paragraph (11) as follows:

103 “(11) “Division” means the Division of Human Relations.”.

104 Section 20. Amend § 4603(b), Title 6 of the Delaware Code, by striking paragraph (6) thereof in its entirety and
105 by redesignating paragraph (7) thereof as new § 4603(c).

106 Section 21. Amend Chapter 46, Title 6 of the Delaware Code, by inserting therein a new § 4603A as follows:

107 “§ 4603A. Same; additional provisions relating to discrimination against persons with disabilities.

108 (a) For purposes of this chapter, discrimination on the basis of a individual’s disability includes, but is not
109 limited to:

110 (1) A refusal to permit, at the expense of the person with a disability, reasonable modifications of
111 existing premises occupied or to be occupied by such person if such modifications may be
112 necessary to afford such person full enjoyment of the premises; except that, in the case of a rental,
113 the landlord may where it is reasonable to do so condition permission for a modification on the
114 renter agreeing to restore the interior of the premises to the condition that existed before the
115 modification, reasonable wear and tear excepted;

116 (2) A refusal to make reasonable accommodations in rules, policies, practices or services, when such
117 accommodations may be necessary to afford such person equal opportunity to use and enjoy a
118 dwelling;

119 (3) a. A failure to design and construct or alter those 2 categories of multifamily dwellings specified
120 in subparagraph b. of this paragraph in such a manner that:

121 1. The dwellings have at least 1 building entrance on an accessible route, unless it is
122 impractical to do so because of the terrain or unusual characteristics of the site;

123 2. With respect to dwellings with a building entrance on an accessible route:

- 124 (i) The public use and common use portions of such dwellings are readily accessible to
125 and usable by a person with a disability;
- 126 (ii) All the doors designed to allow passage into and within all premises within such
127 dwellings are sufficiently wide to allow passage by a person in a wheelchair; and
- 128 (iii) All premises within such dwellings contain the following features of adaptive
129 design:
- 130 (A) An accessible route into and through the dwelling;
- 131 (B) Light switches, electrical outlets, thermostats and other environmental
132 controls in accessible locations;
- 133 (C) Reinforcements in bathroom walls to allow later installation of grab bars; and
- 134 (D) Usable kitchens and bathrooms such that an individual in a wheelchair can
135 maneuver about the space and make use of the facilities.
- 136 b. This paragraph applies to:
- 137 1. Covered multifamily dwellings for first occupancy after September 1, 1992; and
- 138 2. Covered multifamily dwellings after 1 year from September 1, 1992, undergoing
139 alterations costing 50 percent or more of the replacement cost of the building unless to do
140 so is structurally impracticable;
- 141 (4) To make an inquiry to determine whether an applicant for a dwelling, a person intending to reside
142 in that dwelling after it is so sold, rented or made available, or any person associated with that
143 person, has a disability or to make inquiry as to the nature or severity of a disability of such a
144 person. However, this paragraph does not prohibit the following inquiries, provided these
145 inquiries are made of all applicants, whether or not they have a disability:
- 146 a. Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
- 147 b. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons
148 with a particular type of disability;
- 149 c. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to
150 a person with a disability or to persons with a particular type of disability; or

- 151 d. Inquiry to determine whether an applicant for a dwelling is a current illegal user of a
152 controlled substance.
- 153 (b) Compliance with the appropriate requirements of the American National Standard for Buildings and
154 Facilities Providing Accessibility and Usability for Physically Handicapped People (commonly cited as “ANSI A117.1”)
155 suffices to satisfy the requirements of subparagraph (a)(3)a.2.(iii) of this paragraph.
- 156 (c) (1) If an agency or a political subdivision of the State has incorporated into its laws the requirements
157 set forth in subsection (a)(3) of this section, compliance with such laws shall be deemed to satisfy
158 the requirements of that subsection.
- 159 (2) The State or a political subdivision thereof with a building code may review and approve newly
160 constructed covered multifamily dwellings for the purpose of making determinations as to whether
161 the design and construction requirements of subsection (a)(3) of this section are met.
- 162 (3) The Division shall encourage, but may not require, any agency or political subdivision of the State
163 to include in their existing procedures for the review and approval of newly constructed covered
164 multifamily dwellings, determinations as to whether the design and construction of such dwellings
165 are consistent with subsection (a)(3) of this section, and may provide technical assistance to the
166 State, political subdivisions thereof and other persons to implement the requirements of
167 subparagraph (a)(3) of this section.
- 168 (4) Nothing in this section shall be construed to require the Division to review or approve the plans,
169 designs or construction of any covered multifamily dwellings, to determine whether the design
170 and construction of such dwellings are consistent with the requirements of subsection (a)(3) of this
171 section.
- 172 (d) (1) Nothing in subsection (e) of this section shall be construed to affect the authority and
173 responsibility of the Division to receive and process complaints or otherwise engage in
174 enforcement activities under this chapter.
- 175 (2) Determinations by an agency or a political subdivision of the State under subsections (c)(1) and
176 (c)(2) of this section shall not be conclusive in enforcement proceedings under this chapter.

177 (e) Nothing in this chapter shall be construed to invalidate or limit any law of the State or political subdivision
178 thereof, that requires dwellings to be designed and constructed in a manner that affords a person with a disability greater
179 access than is required by this chapter.

180 (f) Nothing in this section requires that a dwelling be made available to a person with a disability whose
181 tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in
182 substantial physical damage to the property of others.”

183 Section 22. Amend § 4603(b)(3), Title 6 of the Delaware Code, by striking the phrase “handicapped persons”
184 and by substituting in lieu thereof the phrase “a person with a disability”.

185 Section 23. Amend § 4602(14), Title 6 of the Delaware Code, by striking the phrase “‘Handicap’ or ‘disability’”
186 as it appears therein and by substituting in lieu thereof the word “‘Disability’”.

187 Section 24. Amend § 4601, § 4603, § 4604, § 4605, § 4607, and § 4619, Title 6 of the Delaware Code, by
188 striking the word “handicap” wherever it appears therein and by substituting in lieu thereof the word “disability”.

189 Section 25. Amend § 4607, Title 6 of the Delaware Code, by striking subsection (e) thereof in its entirety and by
190 substituting in lieu thereof the following:

191 “(e) Nothing in § 4603 of this title, except subsection (b)(3) thereof, or in § 4603A of this title, shall
192 apply to rentals of rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more
193 than 4 families living independently of each other, if the owner actually maintains and occupies one of such living
194 quarters as his or her residence.”

195 Section 26. Amend § 4608, Title 6 of the Delaware Code, by striking subsections (a) and (b) thereof in their
196 entirety and by substituting in lieu thereof the following:

197 “(a) The State Human Relations Commission shall implement the provisions of this chapter not
198 expressly vested in another entity.

199 (b) (1) The Commission may delegate to a panel of its members any power, duty, or function vested in
200 it by this chapter. No panel to which any power, duty, or function of the Commission is delegated shall consist of fewer
201 than 3 members of the Commission.

202 (2) The Commission may delegate, to the Division of Human Services, any power, duty, or
203 function vested in it by this chapter unless the delegation is expressly prohibited. If the Commission delegates to the
204 Division a power, duty, or function vested in it by this chapter, the delegation shall specifically state the power, duty, or
205 function being delegated. The Commission shall not delegated its power or duty to conduct public hearings or order relief
206 to the Division.”

207 Section 27. Amend Chapter 46, Title 6 of the Delaware Code, by striking § 4609 thereof in its entirety and by
208 substituting in lieu thereof the following:

209 “§ 4609. Education and conciliation.

210 (a) The Commission may commence such educational activities as, in its judgment, will further the purposes of
211 this chapter. It may hold conferences for persons in the business industry and other interested parties to acquaint them
212 with the provisions of this chapter and its suggested means of implementing it. The Commission may issue reports on
213 such conferences as it deems appropriate.

214 (b) The Division may commence such conciliatory activities in order to further the purposes of this chapter. It
215 may call conferences of persons in the business industry and other interested parties to acquaint them with the provisions
216 of this chapter governing conciliation and the means it employs to implement those provisions. It shall endeavor, with
217 their advice, to develop programs of voluntary compliance and enforcement. The Division may issue reports on such
218 conferences as it deems appropriate.

219 (c) When undertaking their respective duties under this section, the Commission and the Division may consult
220 with state and local officials and other interested parties to learn the extent, if any, to which discriminatory public
221 accommodations practices exist in the State or locality, and whether and how State or local enforcement programs might
222 be utilized to combat such discrimination. The Commission may issue reports on such consultations as it deems
223 appropriate.”

224 Section 28. Amend § 4610, Title 6 of the Delaware Code, by striking the words “Commission” and
225 “Commission’s” wherever they appear therein and by substituting in lieu thereof the words “Division” and “Division’s”,
226 respectively.

227 Section 29. Amend § 4612, Title 6 of the Delaware Code, by striking the word “Commission” wherever it
228 appears in subsections (a) and (g) thereof and by substituting in lieu thereof the word “Division”.

229 Section 30. Amend § 4612(d), Title 6 of the Delaware Code, by deleting paragraph (3) thereof in its entirety.

230 Section 31. Amend § 4613, Title 6 of the Delaware Code, by striking the word “Commission” wherever it
231 appears therein and by substituting in lieu thereof the word “Division”.

232 Section 32. Amend § 4614(b), Title 6 of the Delaware Code, by striking the word “Commission” wherever it
233 appears therein and by substituting in lieu thereof the word “Division”.

SYNOPSIS

This bill will implement the recommendations of the Joint Sunset Committee.

The designation of the Division of Human Relations is updated in Title 29. Both Chapters 45 and 46 in Title 6 relating Public Accommodations and Housing, respectively, are revised to clarify that the Division is the agency that investigates and conciliates complaints filed under those chapters and the Commission is the independent agency that decides the merits in a hearing.

The Commission is given the power to enact bylaws in Title 31 and the power to issue subpoenas to support its investigatory function in Title 31. Any conciliation or mediation meeting held as authorized under Title 31 is not subject to the provisions of the Freedom of Information Act.

The Commission Chair, or his or her designee, is empowered to dismiss a complaint filed under Chapter 45 of Title 6 when the allegations are outside of the jurisdiction of the Commission or do not state a claim for which the Commission is able to order relief; a complainant can appeal this decision like any other final order to Superior Court.

The bill is amended to be consistent with changes in the similar federal Fair Housing Act in the provisions for housing for older persons. The 80% occupancy requirement for housing for persons over 55 is maintained, but the requirement for significant “facilities and services” is deleted. A person providing qualified “housing for older persons” is not exposed to liability for excluding families with children.

Author: The Joint Sunset Committee