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DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 41

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 and by
2 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 substituting in
5 lieu thereof the following:

6 “(a) The Division of Human Relations is established, and shall be responsible for the performance of all the
7 administrative, ministerial, fiscal and clerical functions of the State Human Relations Commission. The Director
8 of 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 appointed” as
10 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
12 exists and that a replacement must be appointed. The notice shall identify the member deemed to
13 have resigned and the reason 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 officers, appointment
16 of committees, designation of a quorum, conducting of meetings, and other matters that will promote the efficient
17 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 substituting in
19 lieu thereof the following:

20 “§ 3003. Responsibilities.

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

26 Section 6. Amend § 3004(1), Title 31 of the Delaware Code, by substituting the word “disability” for the word “handicap” as it
27 appears therein and by adding immediately after the semicolon at the end thereof a new sentence to read as follows:

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

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

31 “§ 3006. Subpoenas; compelling testimony.

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

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

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

42 Section 8. Amend §4501, Title 6 of the Delaware Code, by inserting a new sentence at the end thereof to read as follows:

43 “Furthermore, in defining the scope or extent of any duty imposed by this chapter, higher or
44 more comprehensive obligations established by otherwise applicable federal, state, or local
45 enactments may be considered.”

46 Section 9. Amend §4502(1), Title 6 of the Delaware Code, by inserting a new second sentence to read as follows:
47 “This definition includes State agencies, local government agencies, and State-funded agencies
48 performing public functions.”

49 Section 10. Amend §4504(a), Title 6 of the Delaware Code, by inserting the words and punctuation “, director, supervisor,”
50 after the word “manager” and substituting the phrase “persons with disabilities” for the phrase “the handicapped”.

51 Section 11. Amend § 4502, Title 6 of the Delaware Code, by redesignating paragraphs (8) through (13) thereof as paragraphs
52 (9) through (14) respectively and by inserting therein a new paragraph (8) as follows:

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

54 Section 12. Amend Chapter 45, Title 6 of the Delaware Code, by deleting § 4505 thereof in its entirety and by substituting in
55 lieu thereof the following:

56 “§ 4505. Authority of the Commission; delegation.

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

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

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

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

67 Section 13. Amend Chapter 45, Title 6 of the Delaware Code, by striking § 4507 thereof in its entirety and by substituting in
68 lieu thereof the following:

69 “§ 4507. Education and conciliation.

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

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

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

84 Section 14. Amend § 4508(c), Title 6 of the Delaware Code, by adding thereto a new sentence as follows:

85 “If the Division determines that the allegations in the complaint do not state a claim for which relief
86 is available under this chapter or that the claim is not within the scope of the Commission’s
87 jurisdiction, it may petition the Commission, with notice to the complainant, to dismiss the
88 complaint.”

89 Section 15. Amend §4508, Title 6 of the Delaware Code, by adding thereto a new subsection as follows:

90 “(k) The Commission, by regulation, shall adopt procedures for dismissal of complaints based on lack of jurisdiction or
91 failure to state a claim upon which relief is available under this chapter. Notwithstanding the limitation of
92 delegation in §4505 of this chapter, the Commission may authorize such dismissal by a single commissioner prior
93 to appointment of a panel.

94 Section 16. Amend §4511, Title 6 of the Delaware Code, by inserting a new subsection (d) to read as follows:

95 “(d) If the Attorney General has not commenced a civil action within 60 days of notice of breach of a Commission order
96 or conciliation agreement as authorized by §4512 of this title, an aggrieved party may commence an action in the
97 Superior Court, or Court of Chancery, or both, seeking enforcement and appropriate relief, including conversion
98 of a Commission order conferring monetary relief to a judgment subject to execution. The Court may also award
99 the aggrieved party reasonable costs and attorneys’ fees in connection with the enforcement action.”

100 Section 17. Amend § 4508, Title 6 of the Delaware Code, by striking the word “Commission” wherever it appears in
101 subsections (a), (b), (c), and (j) thereof and by substituting in lieu thereof the word “Division”.

102 Section 18. Amend § 4508, Title 6 of the Delaware Code by deleting the term “§ 4509” as it appears in subsection (f) thereof
103 and by substituting in lieu thereof the term “§ 4510.”

104 Section 19. Amend § 4509, Title 6 of the Delaware Code, by striking the word “Commission’s” as it appears in the section
105 heading thereof and by substituting in lieu thereof the word “Division’s”.

106 Section 20. Amend § 4509, Title 6 of the Delaware Code, by striking the word “Commission” wherever it appears therein and
107 by substituting in lieu thereof the word “Division”.

108 Section 21. Amend § 4602(15), of Title 6 of the Delaware Code, by deleting subparagraph c.1. thereof in its entirety by
109 redesignating subparagraphs c.2. and c.3. thereof as c.1. and c.2. respectively.

110 Section 22. Amend § 4602, Title 6 of the Delaware Code, by striking paragraph (17) thereof in its entirety and by substituting
111 in lieu thereof the following:

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

114 Section 23. Amend § 4602, Title 6 of the Delaware Code, by redesignating paragraphs (11) through (24) thereof as paragraphs
115 (12) through (25) respectively and by inserting therein a new paragraph (11) as follows:

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

117 Section 24. Amend § 4603(b), Title 6 of the Delaware Code, by striking paragraph (6) thereof in its entirety and by
118 redesignating paragraph (7) thereof as new § 4603(c).

119 Section 25. Amend Chapter 46, Title 6 of the Delaware Code, by inserting therein a new § 4603A as follows:

120 “§ 4603A. Same; additional provisions relating to discrimination against persons with disabilities.

- 121 (a) For purposes of this chapter, discrimination on the basis of a individual’s disability includes, but is not limited to:
- 122 (1) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing
123 premises occupied or to be occupied by such person if such modifications may be necessary to afford such
124 person full enjoyment of the premises; except that, in the case of a rental, the landlord may where it is
125 reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of
126 the premises to the condition that existed before the modification, reasonable wear and tear excepted;
- 127 (2) A refusal to make reasonable accommodations in rules, policies, practices or services, when such
128 accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling;

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

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

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

189 Section 26. Amend §4502(8), §4603(b)(3), and §4603(c), Title 6 of the Delaware Code, by striking the phrases “handicapped
190 person”, “handicapped persons”, and “handicapped individual” as they appear therein and substituting in lieu thereof the phrases
191 “person with a disability”, “persons with a disability”, and “individual with a disability” respectively.

192 Section 27. Amend § 4602(14), Title 6 of the Delaware Code, by striking the phrase “‘Handicap’ or ‘disability’” as it appears
193 therein and by substituting in lieu thereof the word “‘Disability’”.

194 Section 28. Amend §4502(8), §4504§ 4601, § 4603. § 4604, § 4605, § 4607, and § 4619, Title 6 of the Delaware Code, by
195 striking the word “handicap” wherever it appears therein and by substituting in lieu thereof the word “disability”.

196 Section 29. Amend § 4607, Title 6 of the Delaware Code, by striking subsection (e) thereof in its entirety and by substituting
197 in lieu thereof the following:

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

202 Section 30. Amend § 4608, Title 6 of the Delaware Code, by striking subsections (a) and (b) thereof in their entirety and by
203 substituting in lieu thereof the following:

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

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

209 (2) The Commission may delegate, to the Division of Human Relations, any power, duty, or function vested in it
210 by this chapter unless the delegation is expressly prohibited. If the Commission delegates to the Division a
211 power, duty, or function vested in it by this chapter, the delegation shall specifically state the power, duty, or
212 function being delegated. The Commission shall not delegated its power or duty to conduct public hearings
213 or order relief to the Division.”

214 Section 31. Amend Chapter 46, Title 6 of the Delaware Code, by striking § 4609 thereof in its entirety and by substituting in
215 lieu thereof the following:

216 “§ 4609. Education and conciliation.

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

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

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

231 Section 32. Amend § 4610, Title 6 of the Delaware Code, by striking the words “Commission” and “Commission’s” wherever
232 they appear therein and by substituting in lieu thereof the words “Division” and “Division’s”, respectively.

233 Section 33. Amend § 4612, Title 6 of the Delaware Code, by striking the word “Commission” wherever it appears in
234 subsections (a) and (g) thereof and by substituting in lieu thereof the word “Division”.

235 Section 34. Amend § 4612(d), Title 6 of the Delaware Code, by deleting paragraph (3) thereof in its entirety.

236 Section 35. Amend § 4613, Title 6 of the Delaware Code, by striking the word “Commission” wherever it appears therein and
237 by substituting in lieu thereof the word “Division”.

238 Section 36. Amend § 4614(b), Title 6 of the Delaware Code, by striking the word “Commission” wherever it appears therein
239 and by substituting in lieu thereof the word “Division”.

240 Section 37. Amend §4603, Title 6 of the Delaware Code, by striking “b(1) – b(6)” in the first line of §4603(a) and replacing in
241 lieu thereof “b(1) – b(5)”.

242 Section 38. amend §4603, Title 6 of the Delaware Code by Section b(7) by deleting the words “handicapped individual” and
243 replacing in lieu thereof “persons with disabilities”.

SYNOPSIS

This Act implements 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.

This Act helps ensure consistency between Delaware law and changes in the federal Fair Housing Act in the provisions for housing for older persons. For instance, 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.

This Act also revises the purposes section of the equal accommodations statute to add analogous provisions from Delaware’s fair housing and employment discrimination statutes, Title 6 Del C. §4601(b) and Title 19 Del. C. §721(b). Consistent with equivalent laws in other states, it clarifies the application of the equal accommodation statute to public agencies. It substitutes “disability” for “handicap” in multiple sections of the Code, and conforms standards for processing applications for dismissal of complaints to Commission regulations adopted in December, 2003. Finally, it provides a limited right to seek court enforcement of a favorable Commission disposition if a respondent refuses to abide by its terms.

Author: Senator McBride