

CHAPTER 181

AN ACT AMENDING TITLE 6, DELAWARE CODE OF 1953, BY PROTECTING THE PUBLIC WELFARE, ENTITLING ALL PERSONS TO FULL AND EQUAL ACCOMMODATIONS, FACILITIES, ADVANTAGES AND PRIVILEGES OF PLACES OF PUBLIC ACCOMMODATIONS AND MAKING IT UNLAWFUL TO REFUSE THE SAME TO ANY PERSON ON ACCOUNT OF RACE, CREED, COLOR OR NATIONAL ORIGIN OR TO PUBLISH ANY COMMUNICATION TO THE EFFECT THAT THE SAME SHALL BE REFUSED ON ACCOUNT OF RACE, CREED, COLOR OR NATIONAL ORIGIN, EMPOWERING AND DIRECTING THE STATE HUMAN RELATIONS COMMISSION TO EFFECT VOLUNTARY COMPLIANCE THEREWITH AND PROVIDING CRIMINAL PENALTIES FOR THE VIOLATIONS THEREOF, AND REPEALING SECTION 1501 OF TITLE 24, SECTION 902 OF TITLE 28 AND SECTION 703 OF TITLE 26, DELAWARE CODE OF 1953, INSOFAR AS SAID SECTIONS ARE INCONSISTENT THEREWITH.

Be it enacted by the General Assembly of the State of Delaware:

Section 1. Title 6, Delaware Code of 1953, is amended by adding a new chapter thereto reading as follows:

CHAPTER 45. EQUAL ACCOMMODATIONS

§ 4501. Definitions

As used in this chapter—

“A place of public accommodation” means any establishment which caters to or offers goods or services or facilities to, or solicits patronage from, the general public. This definition shall apply to hotels and motels catering to the transient public, but it shall not apply to the sale or rental of houses, housing units, apartments, rooming houses, or other dwellings nor to tourist homes with less than ten rentals units catering to the transient public nor to Barbershops or hair dressing establishments.

"Commission" shall mean the State Human Relations Commission.

§ 4502. Purpose and Construction

This chapter is intended to prevent in places of public accommodations practices of discrimination against any person because of race, creed, color or national origin. This chapter shall be liberally construed to the end that the rights herein provided for all people without regard to race, creed, color or national origin may be effectively safeguarded.

§ 4503. Persons entitled to protection

All persons within the jurisdiction of this State are entitled to the full and equal accommodations, facilities, advantages and privileges of any place of public accommodation regardless of the race, creed, color or national origin of such persons.

§ 4504. Unlawful practices

(a) No person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, shall directly or indirectly refuse, withhold from or deny to any person, on account of race, creed, color or national origin, any of the accommodations, facilities, advantages or privileges thereof.

(b) No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation shall directly or indirectly publish, issue, circulate, post or display any written, typewritten, mimeographed, printed or radio communication, notice or advertisement to the effect that any of the accommodations, facilities, advantages and privileges of any place of public accommodation shall be refused, withheld from or denied to any person on account of race, creed, color or national origin, or that the patronage or custom thereof of any person belonging to or purporting to be or appearing to be of any particular race, creed, color or national origin, is unlawful, objectionable or not acceptable, desired, accommodated or solicited, or that the patronage of persons of any particular

race, creed, color or national origin is preferred or is particularly welcomed, desired or solicited.

§ 4505. Duty to induce compliance

The Commission, in addition to other powers granted by this chapter, is empowered and directed to induce compliance with the purposes of this chapter by informal methods of conference, persuasion, and conciliation.

§ 4506. Procedure on complaint

(a) A person believing himself aggrieved by an allegedly unlawful practice prescribed by Section 4504 may, by himself or his attorney-at-law, file with the Chairman of the Commission a complaint in writing which shall state:

- (i) The name and address of the complainant.
- (ii) The name and location of the place of public accommodation at which the unlawful discriminatory practice occurred, and the date and time thereof.
- (iii) If known, the name and address of each respondent, that is, the person or persons who committed the unlawful act and (if different) the person who is the owner, lessee, proprietor, manager or superintendent of the place of public accommodation.
- (iv) Such other information as may be required by the Commission.

(b) No complaint shall be filed with the Commission more than ninety (90) days after the occurrence of the alleged act of unlawful discrimination, but any complaint can be amended at any time.

(c) Within ten (10) days after the complaint is filed, the Chairman of the commission shall designate three or more Commissioners who shall themselves or by employees or agents of the Commission, investigate the complaint, ascertain the identity

of the respondents, and endeavor to eliminate any unlawful discriminatory practice they discover by conference, persuasion, and conciliation. The Commissioners so appointed shall decide whether they shall hold a public hearing as part of their investigation.

(d) Within forty-five (45) days from the date the complaint is filed with the Commission, unless another date is fixed by the Chairman, the Commissioners so appointed shall submit a written report to the Chairman which shall:

- (i) State findings of fact.
- (ii) State which of the respondents, if any, had committed an act forbidden by this Chapter, and if so,
- (iii) State what efforts were made to adjust the complainant's grievance by conference, persuasion, and conciliation, and the result thereof.
- (iv) State what action was taken to prevent future violation by the respondents.
- (v) Make recommendations for future handling of the case.

Copies of the report shall be mailed to the complainant, to each respondent, and to the attorney-at-law of any party thus represented.

(e) If a majority of the Commissioners appointed to investigate the complaint determine that no respondent has committed an act prescribed by Section 4504, the complaint shall be dismissed. The order of dismissal shall be signed by the Chairman and mailed to the complainant, to each respondent, and to the attorney-at-law of any party thus represented. However, no order shall issue pursuant to subsection (f) unless a public hearing shall have been held with at least five days' notice to the respondent and unless the respondent shall have been given an opportunity to be represented by counsel and to present evidence.

(f) If a majority of the Commissioners appointed to investigate the complaint determine that one or more of the respondents has committed an act prescribed by Section 4504, the Chairman shall execute with such respondent or respondents who committed such act, an agreement that he or they shall discontinue such unlawful practice and shall refrain from unlawful practices prescribed by Section 4504 of this Chapter. The agreement shall contain such other terms as are reasonable and will effectuate the purposes of this chapter. In the event that the respondent or respondents shall refuse to execute such an agreement the Chairman shall issue an order ordering him or them to discontinue such unlawful practice, to refrain from unlawful practices prescribed in Section 4504 of this chapter and to comply with such other terms of the order as may be contained therein and which are reasonable and will effectuate the purposes of this chapter. Such order shall be served personally on each respondent subject to the order by a member of the Commission or its staff or shall be served by registered or certified mail. A copy of the agreement or order, as the case may be, shall be mailed to the complainant and to the attorney-at-law of any party thus represented.

§ 4507. Commission's Power to Investigate Compliance

The Commission is empowered to investigate compliance with this Chapter whether or not a complaint is filed. In furtherance and not in limitation of this power, the Commission may review practices of any place of public accommodation within this State by three or more Commissioners appointed by the Chairman. The Commissioners thus appointed shall conduct an investigation in a manner which shall follow, so far as is reasonably practicable, the procedure specified in Section 4506 and the Chairman shall conclude such investigation by an agreement or order as provided in Section 4506 (f) or shall notify such place of public accommodation that no agreement or order is deemed necessary.

§ 4508. Commission's Power to adopt Rules

The Commission shall have the power to adopt rules and regulations concerning the manner in which complaints shall be

investigated or other investigations pursuant to this chapter shall be conducted, the manner in which public hearings shall be conducted, the general form and content of agreements and orders provided for in this chapter and such other rules as the Commission shall 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.

§ 4509. Compelling Attendance of Witnesses and Production of Documents, Oaths, Subpoenas

(a) The Commission, or any group of Commissioners appointed to investigate a complaint or otherwise to investigate compliance with this chapter, may compel the attendance of witnesses and the production of papers, books, accounts and all other documents at any public hearing.

(b) At any public hearing, any member of the Commission may administer oaths to all witnesses who may be called before the Commission, or any group of Commissioners appointed to investigate a complaint or otherwise to investigate compliance with this chapter as the case may be.

(c) To compel attendance at any public hearing, subpoenas may be issued in the name of the Commission and shall be signed by a member thereof and may be served by any Sheriff, deputy sheriff, constable or any employee of, or member of, the Commission and return thereof made to the Commission.

§ 4510. Witness Fees and Mileage

Any witness appearing in response to a subpoena shall receive fees and mileage allowances computed at the rate allowed to witnesses in the Superior Court, such fees to be paid when the witness is excused from further attendance.

§ 4511. Refusal to Obey Subpoena, Answer Question or Produce Documents; Contempt

If a person subpoenaed to attend before any group of Commissioners appointed to investigate a complaint or compliance

with this chapter fails to obey the command of such subpoena without reasonable cause, or if a person in attendance refuses without lawful cause to be examined or to answer a legal pertinent question, or to produce papers, books, accounts or other documents when ordered to do so by the Chairman of the public hearing, any member of the Commission may apply to the Superior Court in and for the county where such hearing is being held for an order returnable in not less than two or more than ten days directing such person to show cause before the Court why he would not comply with the subpoena or order of the Chairman of the public hearing. Upon the return of such order the judge before whom the matter comes on for hearing shall examine under oath the persons whose testimony may be relevant to be heard and if the judge determines that the person refused without legal excuse to obey the command of such subpoena or to be examined, or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to produce, the judge may order such person to comply forthwith with the subpoena or order of the Chairman of the public hearing and any failure to obey such order of the court or judge may be punished by the court or judge as a contempt of the Superior Court.

§ 4512. Rules Governing Conduct of Hearings

All public hearings before any group of Commissioners appointed to investigate a complaint or failure to comply with this chapter shall be conducted in accordance with the rules prescribed by the Commission. In investigations and the conduct of public hearings, the Commissioners shall not be bound by the technical rules of evidence. A record shall be kept of all investigations and all public hearings and all parties shall be entitled to be heard in person or by attorney, and to introduce evidence.

§ 4513. Right to Appeal

(a) Any complainant aggrieved by a dismissal of a complaint under Section 4506 (e) or by an agreement or order as provided by Section 4506 (f) or any respondent aggrieved by any order as provided in Section 4506 (f) or Section 4507, shall have a right of appeal to the Superior Court of the State of

Delaware in and for the county in which the unlawful act is alleged to have occurred by filing a complaint in such Court. Such appeal shall be filed within thirty (30) days of the date of dismissal of the complaint, execution of the agreement or issuance of the order.

(b) On appeal, the aggrieved party shall designate himself as plaintiff and the Commission and any other parties to the matter in which the appeal is taken as defendants. The case shall then be tried *de novo* in the same manner as any other civil action brought in the Superior Court in accordance with its rules of civil procedure.

(c) Unless otherwise ordered by the Court, the filing of an appeal to the Superior Court shall act as a stay of any agreement or order until disposition of the appeal.

(d) Any aggrieved party shall have a right to appeal from a judgment of the Superior Court.

§ 4514. No Prosecution Unless Approved by the Commission

Other than prosecution instituted by the Attorney General, by way of indictment or information, no criminal prosecution under this chapter shall be instituted unless the Commissioners appointed to investigate the alleged offense, or a majority of them, shall first have certified in writing that such prosecution is in the public interest. The basis for such certification shall not be reviewed in any proceeding whatsoever. The Commissioners may consider that a prosecution is in the public interest when they determine that there is probable cause to believe that any person has violated any provision of any agreement or order executed or issued within twelve months prior to such violation or when they shall determine that there is probable cause to believe that an unlawful practice as prescribed by Section 4504 has occurred and that efforts to eliminate the unlawful practice by informal methods of conference, persuasion and conciliation have failed and that further efforts are likely to be futile.

§ 4515. Violations and Penalties

Any person who, on prosecution instituted by the Attorney General, or on prosecution instituted by any other person after

certification by the Commissioners as provided in Section 4514, shall be found guilty of any unlawful practice prescribed by Section 4504 or who shall be found guilty of violating any provisions of any agreement or order executed or issued within twelve months prior to such violation shall be guilty of a misdemeanor and shall be fined not more than \$500.00 or imprisoned for not more than ninety days, or both.

§ 4516. Action for Specific Performance; Commission to be a Party; Attorney General to Represent the Commission

Compliance with an order of the Chairman from which an appeal has not been taken as provided in Section 4513, or of an agreement executed by a respondent may be enforced by a civil action in the Court of Chancery to compel specific performance of the order or agreement.

In any action brought under this section the Commission shall be a party and shall be represented by the Attorney General.

Section 2. Section 1501 of Title 24, Section 902, of Title 28, and Section 703 of Title 26, Delaware Code of 1953, and all laws or parts of laws inconsistent with the provisions of this Act are hereby repealed insofar as such inconsistency does occur.

Section 3. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act.

Approved December 18, 1963.

NOTE: Section 3 of this act has been codified as § 4577, Title 6, Delaware Code. ,