

**H. B. 3073**

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(By Delegates Perry, Hall, Hartman, Morgan,  
R. Phillips, and Skaff)

[Introduced February 9, 2011; referred to the  
Committee on the Judiciary.]

10 A BILL to amend and reenact §5-11-9 of the Code of West Virginia,  
11 1931, as amended, relating to the West Virginia Human Rights  
12 Act and clarifying that its purpose is to provide all citizens  
13 equal opportunity for employment, equal access to places of  
14 public accommodations, and equal opportunity in the sale,  
15 purchase, lease, rental and financing of housing  
16 accommodations or real property.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §5-11-9 of the Code of West Virginia, 1931, as amended,  
19 be amended and reenacted to read as follows:

20 **ARTICLE 11. HUMAN RIGHTS COMMISSION.**

21 **§5-11-9. Unlawful discriminatory practices.**

22 (a) It ~~shall be~~ is an unlawful discriminatory practice, unless  
23 based upon a bona fide occupational qualification, or except where  
24 based upon applicable security regulations established by the  
25 United States or the State of West Virginia or its agencies or  
26 political subdivisions:

27 (1) For any employer to discriminate against an individual

1 with respect to compensation, hire, tenure, terms, conditions or  
2 privileges of employment if the individual is able and competent to  
3 perform the services required even if ~~such~~ the individual is blind  
4 or disabled: *Provided*, That it ~~shall not be~~ is not an unlawful  
5 discriminatory practice for an employer to observe the provisions  
6 of any bona fide pension, retirement, group or employee insurance  
7 or welfare benefit plan or system not adopted as a subterfuge to  
8 evade the provisions of this subdivision;

9       (2) For any employer, employment agency or labor organization,  
10 prior to the employment or admission to membership, to: (A) Elicit  
11 any information or make or keep a record of or use any form of  
12 application or application blank containing questions or entries  
13 concerning the race, religion, color, national origin, ancestry,  
14 sex or age of any applicant for employment or membership; (B) print  
15 or publish or cause to be printed or published any notice or  
16 advertisement relating to employment or membership indicating any  
17 preference, limitation, specifications or discrimination based upon  
18 race, religion, color, national origin, ancestry, sex, disability  
19 or age; or (C) deny or limit, through a quota system, employment or  
20 membership because of race, religion, color, national origin,  
21 ancestry, sex, age, blindness or disability;

22       (3) For any labor organization because of race, religion,  
23 color, national origin, ancestry, sex, age, blindness or disability  
24 of any individual to deny full and equal membership rights to any  
25 individual or otherwise to discriminate against ~~such~~ the individual  
26 with respect to hire, tenure, terms, conditions or privileges of  
27 employment or any other matter, directly or indirectly, related to

1 employment;

2 (4) For an employer, labor organization, employment agency or  
3 any joint labor-management committee controlling apprentice  
4 training programs to:

5 (A) Select individuals for an apprentice training program  
6 registered with the State of West Virginia on any basis other than  
7 their qualifications as determined by objective criteria which  
8 permit review;

9 (B) Discriminate against any individual with respect to his or  
10 her right to be admitted to or participate in a guidance program,  
11 an apprenticeship training program, on-the-job training program or  
12 other occupational training or retraining program;

13 (C) Discriminate against any individual in his or her pursuit  
14 of ~~such~~ those programs or to discriminate against ~~such~~ a person in  
15 the terms, conditions or privileges of ~~such~~ those programs;

16 (D) Print or circulate or cause to be printed or circulated  
17 any statement, advertisement or publication, or to use any form of  
18 application for these programs or to make any inquiry in connection  
19 with a program which expresses, directly or indirectly,  
20 discrimination or any intent to discriminate unless based upon a  
21 bona fide occupational qualification;

22 (5) For any employment agency to fail or refuse to classify  
23 properly, refer for employment or otherwise to discriminate against  
24 any individual because of his or her race, religion, color,  
25 national origin, ancestry, sex, age, blindness or disability;

26 (6) For any person being the owner, lessee, proprietor,  
27 manager, superintendent, agent or employee of any place of public

1 accommodations to:

2 (A) Refuse, withhold from or deny to any individual because of  
3 his or her race, religion, color, national origin, ancestry, sex,  
4 age, blindness or disability, either directly or indirectly, any of  
5 the accommodations, advantages, facilities, privileges or services  
6 of the place of public accommodations;

7 (B) Publish, circulate, issue, display, post or mail, either  
8 directly or indirectly, any written or printed communication,  
9 notice or advertisement to the effect that any of the  
10 accommodations, advantages, facilities, privileges or services of  
11 any such place ~~shall~~ will be refused, withheld from or denied to  
12 any individual on account of race, religion, color, national  
13 origin, ancestry, sex, age, blindness or disability, or that the  
14 patronage or custom thereat of any individual, belonging to or  
15 purporting to be of any particular race, religion, color, national  
16 origin, ancestry, sex or age, or who is blind or disabled, is  
17 unwelcome, objectionable, not acceptable, undesired or not  
18 solicited; or

19 (7) For any person, employer, employment agency, labor  
20 organization, owner, real estate broker, real estate salesman or  
21 financial institution to:

22 (A) Engage in any form of threats or reprisal, or to engage  
23 in, or hire, or conspire with others to commit acts or activities  
24 of any nature that relate to equal opportunity for employment,  
25 equal access to places of public accommodations, and equal  
26 opportunity in the sale, purchase, lease, rental, and financing of  
27 housing accommodations or real property, the purpose of which is to

1 harass, degrade, embarrass or cause physical harm or economic loss  
2 or to aid, abet, incite, compel or coerce any person to engage in  
3 any of the unlawful discriminatory practices defined in this  
4 section;

5 (B) Willfully obstruct or prevent any person from complying  
6 with the provisions of this article, or to resist, prevent, impede  
7 or interfere with the commission or any of its members or  
8 representatives in the performance of a duty under this article; or

9 (C) Engage in any form of reprisal or otherwise discriminate  
10 against any person because he or she has opposed any practices or  
11 acts forbidden under this article or because he or she has filed a  
12 complaint, testified or assisted in any proceeding under this  
13 article.

14 (b) It is the intent of the Legislature that the amendments in  
15 this section enacted during the regular session of the 2011  
16 Legislature are:

17 (1) A clarification of existing law as previously enacted by  
18 the Legislature, including, but not limited to, the provisions of  
19 paragraph (A), subdivision (7) of this section; and

20 (2) Specifically intended to clarify the law and overrule the  
21 holding of the West Virginia Supreme Court of Appeals in the case  
22 of Michael v. Appalachian Heating, LLC, et al., Case No. 35127  
23 (June 11, 2010).

NOTE: The purpose of this bill is to clarify existing law as previously enacted by the Legislature, that the Human Rights Act relates only to the stated purpose outlined in its Declaration of Policy, that it is the policy of the State of West Virginia to provide all citizens equal opportunity for employment, equal access

to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.