

H. B. 2696

(By Delegate Fast)

[Introduced February 11, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §5-11-10 of the Code of West Virginia, 1931, as amended, relating to requiring the Human Rights Commission, when investigating a complaint of discrimination, to specifically include an examination of the intent of the person or entity alleged to have committed the unlawful discriminatory practice.

Be it enacted by the Legislature of West Virginia:

That §5-11-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.

Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall make, sign and file with the commission a verified complaint, which shall state the name and address of the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman or financial institution alleged to have committed the unlawful discriminatory

1 practice complained of, and which shall set forth the particulars thereof and contain such other
2 information as may be required by the commission's rules and regulations. The commission upon
3 its own initiative, or the Attorney General, shall, in like manner, make, sign and file such complaint.
4 Any employer, whose employees, or some of them, hinder or threaten to hinder compliance with the
5 provisions of this article, shall file with the commission a verified complaint, asking for assistance
6 by conciliation or other remedial action and, during such period of conciliation or other remedial
7 action, no hearings, orders or other actions shall be held, made or taken by the commission against
8 such employer. Any complaint filed pursuant to this article must be filed within three hundred sixty-
9 five days after the alleged act of discrimination.

10 After the filing of any complaint, or whenever there is reason to believe that an unlawful
11 discriminatory practice has been committed, the commission shall make a prompt investigation in
12 connection therewith. That investigation shall specifically include an examination of the intent of
13 the person, employer, labor organization, employment agency, owner, real estate broker, real estate
14 salesman or financial institution alleged to have committed the unlawful discriminatory practice
15 complained of against that individual.

16 If it shall be determined after such investigation that no probable cause exists for
17 substantiating the allegations of the complaint, the commission shall, within ten days from such
18 determination, cause to be issued and served upon the complainant written notice of such
19 determination, and the said complainant or his or her attorney may, within ten days after such
20 service, file with the commission a written request for a meeting with the commission to show
21 probable cause for substantiating the allegations of the complaint. If it shall be determined after such
22 investigation or meeting that probable cause exists for substantiating the allegations of the complaint,

1 the commission shall immediately endeavor to eliminate the unlawful discriminatory practices
2 complained of by conference, conciliation and persuasion. The members of the commission and its
3 staff shall not disclose what has transpired in the course of such endeavors: *Provided*, That the
4 commission may publish the facts in the case of any complaint which has been dismissed, and the
5 terms of conciliation when the complaint has been adjusted, without disclosing the identity of the
6 parties involved.

7 In case of failure so to eliminate such practice or in advance thereof, if in the judgment of the
8 commission circumstances so warrant, the commission shall cause to be issued and served a written
9 notice, together with a copy of such complaint as the same may have been amended, in the manner
10 provided by law for the service of summons in civil actions, requiring the person, employer, labor
11 organization, employment agency, owner, real estate broker, real estate salesman or financial
12 institution named in such complaint, hereinafter referred to as respondent, to answer the charges of
13 such complaint at a hearing before the commission in the county where the respondent resides or
14 transacts business at a time and place to be specified in such notice: *Provided*, That said written
15 notice be served at least thirty days prior to the time set for the hearing.

16 The case in support of the complaint shall be presented before the commission by one of its
17 attorneys or agents. The respondent may file a written, verified answer to the complaint and appear
18 at such hearing in person or otherwise, with or without counsel, and submit testimony and evidence.
19 Except as provided in this article, all of the pertinent provisions of article five, chapter twenty-nine-
20 a of this code shall apply to and govern the hearing and the administrative procedures in connection
21 with and following such hearing, with like effect as if the provisions of said article five were set forth
22 in extensor in this section.

1 If, after such hearing and consideration of all of the testimony, evidence and record in the
2 case, the commission shall find that a respondent has engaged in or is engaging in any unlawful
3 discriminatory practice as defined in this article, the commission shall issue and cause to be served
4 on such respondent an order to cease and desist from such unlawful discriminatory practice and to
5 take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of
6 employees, with or without back pay, admission or restoration to membership in any respondent
7 labor organization, or the admission to full and equal enjoyment of the services, goods, facilities, or
8 accommodations offered by any respondent place of public accommodation, and the sale, purchase,
9 lease, rental or financial assistance to any complainant otherwise qualified for the housing
10 accommodation or real property, denied in violation of this article, as in the judgment of the
11 commission, will effectuate the purposes of this article, and including a requirement for report of the
12 manner of compliance. Such order shall be accompanied by findings of fact and conclusions of law
13 as specified in section three, article five, chapter twenty-nine-a of this code.

14 If, after such hearing and consideration of all of the testimony, evidence and record in the
15 case, the commission shall find that a respondent has not engaged in such unlawful discriminatory
16 practice, the commission shall state its findings of fact and conclusions of law as aforesaid and shall
17 issue and cause to be served on the complainant an order dismissing the said complaint as to such
18 respondent.

19 A copy of its order shall be delivered in all cases by the commission to the complainant, the
20 respondent, the Attorney General and to such other public officers as the commission may deem
21 proper. Any such order shall not be enforceable except as provided in section eleven of this article.

NOTE: The purpose of this bill is to require the Human Rights Commission, when investigating a complaint of discrimination, to specifically include an examination of the intent of the person or entity alleged to have committed the unlawful discriminatory practice.

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