

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 518**

BY SENATORS WALTERS, FACEMIRE, KESSLER,  
KIRKENDOLL, LAIRD, SNYDER, WILLIAMS AND PALUMBO

[Introduced February 4, 2016;

Referred to the Committee on Government Organization;

and then to the Committee on the Judiciary.]

1 A BILL to amend and reenact §5-11-3 and §5-11-9 of the Code of West Virginia, 1931, as  
 2 amended, all relating to making it unlawful to discriminate against persons due to their  
 3 sexual orientation; providing an exception for religious officials who preside over wedding  
 4 ceremonies; defining a new term; and changing the definition of an existing term.

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

1 That §5-11-3 and §5-11-9 of the Code of West Virginia, 1931, as amended, be amended  
 2 and reenacted, all to read as follows:

**ARTICLE 11. HUMAN RIGHTS COMMISSION.**

**§5-11-3. Definitions.**

1 When used in this article:

2 (a) The term “person” means one or more individuals, partnerships, associations,  
 3 organizations, corporations, labor organizations, cooperatives, legal representatives, trustees,  
 4 trustees in bankruptcy, receivers and other organized groups of persons;

5 (b) The term “commission” means the West Virginia Human Rights Commission;

6 (c) The term “director” means the executive director of the commission;

7 (d) The term “employer” means the state, or any political subdivision thereof, and any  
 8 person employing twelve or more persons within the state for twenty or more calendar weeks in  
 9 the calendar year in which the act of discrimination allegedly took place or the preceding calendar  
 10 year: *Provided*, That ~~such terms shall~~ the term does not be taken, understood or construed to  
 11 include a private club; *Provided, however*, That this article, with regards to sexual orientation,  
 12 does not apply to a corporation, association, educational institution or institution of learning, or  
 13 society that is exempt from the religious discrimination provisions of Title VII of the Civil Rights  
 14 Act of 1964, 42 U.S.C. §2000e, et seq., pursuant to Section 702(a) or 703(e)(2) of that act, 42  
 15 U.S.C. §2000e-1(a) and §2000-2(e)(2), except in the operation of a program funded by the state.

16 (e) The term “employee” shall does not include any individual employed by his or her  
 17 parents, spouse or child;

18 (f) The term “labor organization” includes any organization which exists for the purpose,  
19 in whole or in part, of collective bargaining or of dealing with employers concerning grievances,  
20 terms or conditions of employment or for other mutual aid or protection in relation to employment;

21 (g) The term “employment agency” includes any person undertaking, with or without  
22 compensation, to procure, recruit, refer or place employees. A newspaper engaged in the activity  
23 of advertising in the normal course of its business ~~shall is not be deemed to be~~ an employment  
24 agency;

25 (h) The term “discriminate” or “discrimination” means to exclude from, or fail or refuse to  
26 extend to, a person equal opportunities because of race, religion, color, national origin, ancestry,  
27 sex, age, sexual orientation, blindness, disability or familial status and includes to separate or  
28 segregate;

29 (i) The term “unlawful discriminatory practices” includes only those practices specified in  
30 section nine of this article;

31 (j) The term “place of public accommodations” means any establishment or person, as  
32 defined herein, including the state, or any political or civil subdivision thereof, which offers its  
33 services, goods, facilities or accommodations to the general public, but ~~shall~~ does not include any  
34 accommodations which are in their nature private. To the extent that any penitentiary, correctional  
35 facility, detention center, regional jail or county jail is a place of public accommodation, the rights,  
36 remedies and requirements provided by this article for any violation of subdivision (6), section  
37 nine of this article ~~shall do~~ not apply to any person other than: (1) Any person employed at a  
38 penitentiary, correctional facility, detention center, regional jail or county jail; (2) any person  
39 employed by a law-enforcement agency; or (3) any person visiting ~~any such~~ the employee or  
40 visiting any person detained in custody at ~~such~~ the facility;

41 (k) The term “age” means the age of forty or above;

42 (l) For the purpose of this article, a person shall be considered to be blind only if his or her  
43 central visual acuity does not exceed twenty/two hundred in the better eye with correcting lenses,

44 or if his or her visual acuity is greater than twenty/two hundred but is occasioned by a limitation in  
45 the fields of vision such that the widest diameter of the visual field subtends an angle no greater  
46 than twenty degrees; and

47 (m) The term “disability” means:

48 (1) A mental or physical impairment which substantially limits one or more of such persons  
49 major life activities. The term “major life activities” includes functions such as caring for ones self,  
50 performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

51 (2) A record of ~~such~~the impairment; or

52 (3) Being regarded as having ~~such an~~ the impairment.

53 For the purposes of this article, this term does not include persons whose current use of  
54 or addiction to alcohol or drugs prevents ~~such persons~~ the individual from performing the duties  
55 of the job in question or whose employment, by reason of such current alcohol or drug abuse,  
56 would constitute a direct threat to property or the safety of others.

57 (n) The term “sexual orientation” means heterosexuality, bisexuality, homosexuality or  
58 gender identity or expression, whether actual or perceived.

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

1 It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational  
2 qualification, or except where based upon applicable security regulations established by the  
3 United States or the State of West Virginia or its agencies or political subdivisions:

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

10 (2) For any employer, employment agency or labor organization, prior to the employment

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

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

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

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

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

33 (C) Discriminate against any individual in his or her pursuit of such programs or to  
34 discriminate against such a person in the terms, conditions or privileges of such programs;

35 (D) Print or circulate or cause to be printed or circulated any statement, advertisement or  
36 publication, or to use any form of application for these programs or to make any inquiry in

37 connection with a program which expresses, directly or indirectly, discrimination or any intent to  
38 discriminate unless based upon a bona fide occupational qualification;

39 (5) For any employment agency to fail or refuse to classify properly, refer for employment  
40 or otherwise to discriminate against any individual because of his or her race, religion, color,  
41 national origin, ancestry, sex, age, blindness, ~~or~~ disability or sexual orientation;

42 (6) For any person being the owner, lessee, proprietor, manager, superintendent, agent  
43 or employee of any place of public accommodations to:

44 (A) Refuse, withhold from or deny to any individual because of his or her race, religion,  
45 color, national origin, ancestry, sex, age, blindness, ~~or~~ disability or sexual orientation, either  
46 directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of  
47 the place of public accommodations;

48 (B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written  
49 or printed communication, notice or advertisement to the effect that any of the accommodations,  
50 advantages, facilities, privileges or services of any such place shall be refused, withheld from or  
51 denied to any individual on account of race, religion, color, national origin, ancestry, sex, age,  
52 blindness, ~~or~~ disability or sexual orientation, or that the patronage or custom thereof of any  
53 individual, belonging to or purporting to be of any particular race, religion, color, national origin,  
54 ancestry, sex or age, ~~or~~ who is blind or disabled, or sexual orientation, is unwelcome,  
55 objectionable, not acceptable, undesired or not solicited; or

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

58 (A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with  
59 others to commit acts or activities of any nature, the purpose of which is to harass, degrade,  
60 embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any  
61 person to engage in any of the unlawful discriminatory practices defined in this section;

62 (B) Willfully obstruct or prevent any person from complying with the provisions of this

63 article, or to resist, prevent, impede or interfere with the commission or any of its members or  
64 representatives in the performance of a duty under this article; or

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

68 However, it is not an unlawful discriminatory practice for a religious official who refuses to  
69 conduct a marriage ceremony based on the sexual orientation of individuals seeking to be  
70 married.

NOTE: The purpose of this bill is to make it unlawful to discriminate against persons due to their sexual orientation. The bill provides an exception for religious officials who preside over wedding ceremonies. The bill defines a new term and changes the definition of an existing term.

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