

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2693**

BY DELEGATES STEELE, FOSTER, AND J. PACK

[Introduced February 23, 2021; Referred to the  
Committee on Government Organization]

1 A BILL to repeal §5-11-5, §5-11-6, §5-11-7, §5-11-8, §5-11-11, §5-11-12, §5-11-13, §5-11-14,  
 2 and §5-11-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-  
 3 11-3, §5-11-4, §5-11-10, and §5-11-18 of said code; and to amend said code by adding  
 4 thereto a new section, designated §5-11-22, all relating to the termination of the Human  
 5 Rights Commission; providing for the courts of this state to hear claims relating to  
 6 discrimination or other jurisdiction of the commission; providing for the courts the powers  
 7 and objectives to carry out the provisions; providing for the courts to receive complaints,  
 8 conduct hearings, and issue orders relating to discriminatory practices; providing for the  
 9 right of a plaintiff or defendant to request a jury trial; providing for the courts of this state  
 10 to issue injunctions relating to certain housing complaints; providing for termination of the  
 11 Human Rights Commission; providing for 180 days for the commission to wind up its  
 12 affairs; providing for other mechanisms persons in this state may seek redress for  
 13 complaints filed with the commission; providing for any remaining funds outstanding the  
 14 day the commission ceases to exist to be used for any outstanding financial obligations;  
 15 and providing for any remaining funds from the commission after paying financial  
 16 obligations be transferred to the General Revenue Fund.

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

## **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)~~(b) The term "employer" means the state, or any political subdivision thereof, and any

8 person employing 12 or more persons within the state for 20 or more calendar weeks in the  
9 calendar year in which the act of discrimination allegedly took place or the preceding calendar  
10 year: *Provided*, That such terms shall not be taken, understood or construed to include a private  
11 club;

12 ~~(e)~~(c) The term “employee” shall not include any individual employed by his or her parents,  
13 spouse or child;

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

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

21 ~~(h)~~(f) The term “discriminate” or “discrimination” means to exclude from, or fail or refuse  
22 to extend to, a person equal opportunities because of race, religion, color, national origin,  
23 ancestry, sex, age, blindness, disability or familial status and includes to separate or segregate;

24 ~~(i)~~(g) The term “unlawful discriminatory practices” includes only those practices specified  
25 in section nine of this article;

26 ~~(j)~~(h) The term “place of public accommodations” means any establishment or person, as  
27 defined herein, including the state, or any political or civil subdivision thereof, which offers its  
28 services, goods, facilities or accommodations to the general public, but shall not include any  
29 accommodations which are in their nature private. To the extent that any penitentiary, correctional  
30 facility, detention center, regional jail or county jail is a place of public accommodation, the rights,  
31 remedies and requirements provided by this article for any violation of §5-11-9(6) of this code  
32 shall not apply to any person other than: (1) Any person employed at a penitentiary, correctional  
33 facility, detention center, regional jail or county jail; (2) any person employed by a law-enforcement

34 agency; or (3) any person visiting any such employee or visiting any person detained in custody  
 35 at such facility;

36 ~~(k)~~(i) The term "age" means the age of 40 or above;

37 ~~(h)~~(j) For the purpose of this article, a person shall be considered to be blind only if his  
 38 central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his  
 39 visual acuity is greater than 20/200 but is occasioned by a limitation in the fields of vision such  
 40 that the widest diameter of the visual field subtends an angle no greater than 20 degrees; and

41 ~~(m)~~(k) The term "disability" means:

42 (1) A mental or physical impairment which substantially limits one or more of such person's  
 43 major life activities. The term "major life activities" includes functions such as caring for one's self,  
 44 performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

45 (2) A record of such impairment; or

46 (3) Being regarded as having such an impairment.

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

#### **§5-11-4. Powers and objectives.**

1 The ~~commission~~ courts of this state shall have the power and authority and shall perform  
 2 the functions and services as in this article prescribed and as otherwise provided by law. ~~The~~  
 3 ~~commission shall~~ It is the purpose of this article to encourage and endeavor to bring about mutual  
 4 understanding and respect among all racial, religious and ethnic groups within the state and shall  
 5 strive to eliminate all discrimination in employment and places of public accommodations by virtue  
 6 of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and shall strive  
 7 to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other  
 8 real property by virtue of race, religion, color, national origin, ancestry, sex, blindness, handicap

9 or familial status.

**§5-11-5. Composition; appointment, terms and oath of members; compensation and expenses.**

1 [Repealed.]

**§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.**

1 [Repealed.]

**§5-11-7. Assistance to commission; legal services.**

1 [Repealed.]

**§5-11-8. Commission powers; functions; services.**

1 [Repealed.]

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

1 Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall

2 ~~make, sign and file with the commission~~ file in the Circuit Court in the jurisdiction and venue of

3 the aggrieved employee or in the jurisdiction and venue where the defendant maintains an office

4 a verified complaint, ~~which shall state the name and address of the person, employer, labor~~

5 ~~organization, employment agency, owner, real estate broker, real estate salesman or financial~~

6 ~~institution alleged to have committed the unlawful discriminatory practice complained of, and~~

7 which shall set forth the particulars thereof and contain such other information as may be required

8 ~~by the commission's rules and regulations~~ to reasonably inform the defendant or defendants of

9 the nature and of the allegations and specific alleged conduct that is in violation of this article.

10 ~~The commission upon its own initiative, or the Attorney General, shall, in like manner, make, sign~~

11 ~~and file such complaint. Any employer, whose employees, or some of them, hinder or threaten to~~

12 ~~hinder compliance with the provisions of this article, shall file with the commission a verified~~

13 ~~complaint, asking for assistance by conciliation or other remedial action and, during such period~~

14 ~~of conciliation or other remedial action, no hearings, orders or other actions shall be held, made~~

15 ~~or taken by the commission against such employer.~~ Any complaint filed pursuant to this article  
16 must be filed within 365 days after the alleged act of discrimination.

17 ~~After the filing of any complaint, or whenever there is reason to believe that an unlawful~~  
18 ~~discriminatory practice has been committed, the commission shall make a prompt investigation in~~  
19 ~~connection therewith.~~

20 ~~If it shall be determined after such investigation that no probable cause exists for~~  
21 ~~substantiating the allegations of the complaint, the commission shall, within ten days from such~~  
22 ~~determination, cause to be issued and served upon the complainant written notice of such~~  
23 ~~determination, and the said complainant or his or her attorney may, within ten days after such~~  
24 ~~service, file with the commission a written request for a meeting with the commission to show~~  
25 ~~probable cause for substantiating the allegations of the complaint. If it shall be determined after~~  
26 ~~such investigation or meeting that probable cause exists for substantiating the allegations of the~~  
27 ~~complaint, the commission shall immediately endeavor to eliminate the unlawful discriminatory~~  
28 ~~practices complained of by conference, conciliation and persuasion. The members of the~~  
29 ~~commission and its staff shall not disclose what has transpired in the course of such endeavors:~~  
30 *Provided,* ~~That the commission may publish the facts in the case of any complaint which has been~~  
31 ~~dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing~~  
32 ~~the identity of the parties involved.~~

33 ~~In case of failure so to eliminate such practice or in advance thereof, if in the judgment of~~  
34 ~~the commission circumstances so warrant, the commission shall cause to be issued and served~~  
35 ~~a written notice, together with a copy of such complaint as the same may have been amended,~~  
36 ~~in the manner provided by law for the service of summons in civil actions, requiring the person,~~  
37 ~~employer, labor organization, employment agency, owner, real estate broker, real estate~~  
38 ~~salesman or financial institution named in such complaint, hereinafter referred to as respondent,~~  
39 ~~to answer the charges of such complaint at a hearing before the commission in the county where~~  
40 ~~the respondent resides or transacts business at a time and place to be specified in such notice:~~

41 ~~Provided, That said written notice be served at least thirty days prior to the time set for the hearing.~~

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

49 ~~If, after such hearing and consideration of all of the testimony, evidence and record in~~  
50 ~~adjudication of the case, the commission circuit court or other trier of fact shall find that a~~  
51 ~~respondent defendant or defendants has engaged in or is engaging in any unlawful discriminatory~~  
52 ~~practice as defined in this article, the commission circuit court shall issue and cause to be served~~  
53 ~~on such respondent defendant or defendants an order to cease and desist from such unlawful~~  
54 ~~discriminatory practice and to take such affirmative action, including, but not limited to, hiring,~~  
55 ~~reinstatement or upgrading of employees, with or without back pay, admission or restoration to~~  
56 ~~membership in any respondent labor organization, or the admission to full and equal enjoyment~~  
57 ~~of the services, goods, facilities, or accommodations offered by any respondent defendant or~~  
58 ~~defendants place of public accommodation, and the sale, purchase, lease, rental or financial~~  
59 ~~assistance to any complainant otherwise qualified for the housing accommodation or real~~  
60 ~~property, denied in violation of this article, as in the judgment of the commission circuit judge, will~~  
61 ~~effectuate the purposes of this article, and including a requirement for report of the manner of~~  
62 ~~compliance. Such order shall be accompanied by findings of fact and conclusions of law as~~  
63 ~~specified in §29A-5-3 of this code.~~

64 ~~If, after such hearing and consideration of all of the testimony, evidence and record in~~  
65 ~~adjudication of the case by the circuit court, the commission circuit court or other trier of fact shall~~  
66 ~~find that a respondent defendant or defendants has not engaged in such unlawful discriminatory~~

67 practice, the ~~commission~~ circuit court shall ~~state its findings of fact and conclusions of law as~~  
 68 ~~aforsaid and shall issue and cause to be served on the complainant~~ issue an order dismissing  
 69 the said complaint as to such ~~respondent~~ defendant or defendants.

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

74 In a cause of action brought under this article, the plaintiff or defendant may request a trial  
 75 by jury either in the verified complaint, in the case of the plaintiff, or in the verified answer, in the  
 76 case of a defendant or defendants.

**§5-11-11. Appeal and enforcement of commission orders.**

1 [Repealed.]

**§5-11-12. Local human relations commissions.**

1 [Repealed.]

**§5-11-13. Exclusiveness of remedy; exceptions.**

1 [Repealed.]

**§5-11-14. Penalty.**

1 [Repealed.]

**§5-11-17. Posting of law and information.**

1 [Repealed.]

**§5-11-18. Injunctions in certain housing complaints.**

1 When it appears that a housing unit or units described in a complaint may be sold, rented  
 2 or otherwise disposed of before a determination of the complaint or case has been made by the  
 3 ~~commission~~ circuit court or during judicial review of any final order of the ~~commission~~ circuit court,  
 4 the circuit court of the county in which such housing unit or units are located may, upon the joint  
 5 petition of the ~~commission and the complainant~~ plaintiff, or if there be more than one complainant



6 plaintiff, all such ~~complainants~~ plaintiffs, issue a prohibitive injunction restraining the sale, rental  
7 or other disposition of such housing unit or units except in compliance with the order of the court.  
8 No such injunction shall be issued by the court until the ~~complainant or complainants~~ plaintiff or  
9 plaintiffs shall have posted bond, with good security therefor, in such penalty as the court or judge  
10 awarding it may direct. The court may include in any such injunction granted such other conditions  
11 as it deems proper and just. Such injunction, if granted, shall be of no more than 30 days duration.  
12 If at the end of such 30 day period the ~~commission~~ plaintiff notifies the court that additional time  
13 is needed for the disposal or determination of the complaint or case or the conclusion of such  
14 judicial review, the court, for good cause shown, may extend the period of the injunction for such  
15 additional time as the court deems proper. No such extension shall be granted except upon the  
16 continuation or reposting of the bond required for the original injunction and any such extension  
17 of the injunction may be granted upon such additional terms and conditions as to the court seem  
18 proper and just.

**§5-11-22. Termination; disposition of complaints; disposition of funds.**

1 (a) Upon the effective date of this legislation, the former West Virginia Human Rights  
2 Commission, and any similar such body created by a political subdivision of this state, shall cease  
3 receiving complaints from complainants, and notify said persons making said complaints to: (1)  
4 Make a similar filing with the Equal Employment Opportunity Commission of the United States  
5 Federal Government, (2) notify said persons of the availability of the circuit courts of this state to  
6 hear their complaint, (3) notify said persons of their right to hire counsel to bring said claim in  
7 either forum, and (4) notify said persons of the applicable time constraints on bringing a claim  
8 under West Virginia law.

9 (b) The West Virginia Human Rights Commission, and any similar such body created by  
10 a political subdivision of this state, shall have 180 days from the effective date of this legislation  
11 to: (1) Adjudicate any claim brought before the body prior to the effective date of this legislation,  
12 (2) take such action to transfer said claim to the Equal Employment Opportunity Commission of

13 the United States Federal Government, or (3) dismiss such complaint and notify the complainant  
14 of their right to bring such action in the circuit courts of this state in compliance with this article.

15 (c) Upon the 181<sup>st</sup> day following the effective date of this legislation the West Virginia  
16 Human Rights Commission shall cease to exist, and any financial obligation of the commission  
17 shall be satisfied with the balance of any funds retained by the commission. Should a balance of  
18 funds remain after the satisfaction of all obligations by the commission, said funds shall be  
19 transferred to the General Revenue Funds of the state.

NOTE: The purpose of this bill is to terminate the Human Rights Commission and other similar commissions enacted by political subdivisions in this state.

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