

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2125

By Delegate Steele

[Introduced January 11, 2023; 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, and
2 §5-11-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-11-3,
3 §5-11-4, §5-11-10, and §5-11-18 of said code; and to amend said code by adding thereto a
4 new section, designated §5-11-22, all relating to the termination of the Human Rights
5 Commission; providing for the courts of this state to hear claims relating to discrimination
6 or other jurisdiction of the commission; providing for the courts the powers and objectives
7 to carry out the provisions; providing for the courts to receive complaints, conduct
8 hearings, and issue orders relating to discriminatory practices; providing for the right of a
9 plaintiff or defendant to request a jury trial; providing for the courts of this state to issue
10 injunctions relating to certain housing complaints; providing for termination of the Human
11 Rights Commission; providing for 180 days for the commission to wind up its affairs;
12 providing for other mechanisms persons in this state may seek redress for complaints filed
13 with the commission; providing for any remaining funds outstanding the day the
14 commission ceases to exist to be used for any outstanding financial obligations; and
15 providing for any remaining funds from the commission after paying financial obligations
16 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 to
22 extend to, a person equal opportunities because of race, religion, color, national origin, ancestry,
23 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 shall
32 not apply to any person other than: (1) Any person employed at a penitentiary, correctional facility,
33 detention center, regional jail or county jail; (2) any person employed by a law-enforcement

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

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

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

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

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

(2) A record of such impairment; or

(3) Being regarded as having such an impairment.

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

§5-11-4. Powers and objectives.

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

9 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 the
3 aggrieved employee or in the jurisdiction and venue where the defendant maintains an office a
4 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 the
9 nature and of the allegations and specific alleged conduct that is in violation of this article. The
10 commission upon its own initiative, or the Attorney General, shall, in like manner, make, sign and
11 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 of
14 conciliation or other remedial action, no hearings, orders or other actions shall be held, made or

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

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

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

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

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

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

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

~~If, after such hearing and consideration of all of the testimony, evidence and record in adjudication of the case by the circuit court, the commission circuit court or other trier of fact shall 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 ~~aforesaid and shall issue and cause to be served on the complainant~~ issue an order dismissing the
69 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, the
71 ~~respondent, the Attorney General and to such other public officers as the commission may deem~~
72 ~~proper. Any such order shall not be enforceable except as provided in section eleven of this article.~~

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

7 other disposition of such housing unit or units except in compliance with the order of the court. No
8 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 is
13 needed for the disposal or determination of the complaint or case or the conclusion of such judicial
14 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 of
17 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 either
7 forum, and (4) notify said persons of the applicable time constraints on bringing a claim under
8 West Virginia law.

9 (b) The West Virginia Human Rights Commission, and any similar such body created by a
10 political subdivision of this state, shall have 180 days from the effective date of this legislation to:
11 (1) Adjudicate any claim brought before the body prior to the effective date of this legislation, (2)
12 take such action to transfer said claim to the Equal Employment Opportunity Commission of the
13 United States Federal Government, or (3) dismiss such complaint and notify the complainant of

- 14 their right to bring such action in the circuit courts of this state in compliance with this article.
- 15 (c) Upon the 181st 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.