

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2843

By Delegate Young

[Introduced January 19, 2023; Referred to the
Committee on Workforce Development then the
Judiciary]

1 A BILL to amend and reenact §5-11-3 and §5-11-10 of the Code of West Virginia, 1931, as
2 amended, all relating to the Human Rights Commission; amending the definition of
3 employer and the number of persons employed to qualify as an employer; and extending
4 the period of the statute of limitations to file a complaint for an alleged unlawful
5 discriminatory practice.

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) The term "employer" means the state, or any political subdivision thereof, and any
8 person employing ~~twelve~~ two or more persons within the state for 20 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 may not be taken, understood, or construed to include a
11 private club;

12 (e) The term "employee" shall may not include any individual employed by his or her
13 parents, spouse, or child;

14 (f) The term "labor organization" includes any organization which exists for the purpose, in
15 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) 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

of advertising in the normal course of its business shall not be deemed to be an employment agency;

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

(i) The term "unlawful discriminatory practices" includes only those practices specified in section nine of this article;

(j) The term "place of public accommodations" means any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities, or accommodations to the general public, but shall not include any accommodations which are in their nature private. To the extent that any penitentiary, correctional facility, detention center, regional jail or county jail is a place of public accommodation, the rights, remedies and requirements provided by this article for any violation of §5-11-9 (6), of this code shall may not apply to any person other than: (1) Any person employed at a penitentiary, correctional facility, 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) The term "age" means the age of 40 or above;

(l) 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) 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.

§5-11-10. 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 practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission's rules and regulations. The commission upon its own initiative, or the Attorney General, shall, in like manner, make, sign, and file ~~such~~ the complaint. Any employer, whose employees, or some of them, hinder or threaten to hinder compliance with the provisions of this article, shall file with the commission a verified complaint, asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders, or other actions shall be held, made, or taken by the commission against ~~such~~ the employer. Any complaint filed pursuant to this article ~~must~~ shall be filed within ~~three hundred sixty-five days~~ three years 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~~ is determined after ~~such~~ the investigation that no probable cause exists for substantiating the allegations of the complaint, the commission shall, within 10 days from ~~such~~ the

determination, cause to be issued and served upon the complainant written notice of ~~such~~ the determination, and the ~~said~~ complainant or his or her attorney may, within 10 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~~ is determined after ~~such~~ the 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~~ may not disclose what has transpired in the course of ~~such~~ these 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~~ the 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~~ the complaint as ~~the same~~ it 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~~ the complaint, hereinafter referred to as respondent, to answer the charges of ~~such~~ the 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~~ the notice: *Provided*, That ~~said~~ the written notice be served at least 30 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~~ the 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 §29A-5-1 *et eq.* of this code shall apply to and govern the hearing and the administrative procedures in connection

46 with and following ~~such~~ the hearing, with like effect as if the provisions of ~~said article five~~ §29A-5-1
47 *et eq.* of this code were set forth ~~in extensor~~ in this section.

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

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

66 A copy of its order shall be delivered in all cases by the commission to the complainant, the
67 respondent, the Attorney General and to such other public officers as the commission may deem
68 proper. Any such order ~~shall~~ may not be enforceable except as provided in §5-11-11 of this code.

NOTE: The purpose of this bill is to amend the definition of employer and the number of persons employed to qualify as an employer; and to extend the period of the statute of limitations to file a complaint for an alleged unlawful discriminatory practice under the the

Human Rights Commission.

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