

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2877

By Delegate Young

[Introduced January 20, 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 actions for discriminatory practices before the human rights
 3 commission; providing that certain employers with two or more employees are subject to
 4 the article; including an individual who provides work for an employer under the terms of an
 5 independent contract with the employer in the definition of "employee"; and increasing the
 6 time period in which to bring an action before the human rights commission to three years
 7 after the alleged act of discrimination.

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 not be taken, understood or construed to include a private
 11 club;

12 (e) The term "employee" ~~shall~~ does not include any individual employed by his or her
 13 parents, spouse or child; the term "employee" includes an individual who provides work for an
 14 employer under the terms of an independent contract with such employer;

15 (f) The term "labor organization" includes any organization which exists for the purpose, in
 16 whole or in part, of collective bargaining or of dealing with employers concerning grievances,

17 terms or conditions of employment or for other mutual aid or protection in relation to employment;

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

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

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

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

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

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

42 (m) The term "disability" means:

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

46 (2) A record of such impairment; or

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

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

§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 a verified complaint, which shall state the name and
3 address of the person, employer, labor organization, employment agency, owner, real estate
4 broker, real estate salesman or financial institution alleged to have committed the unlawful
5 discriminatory practice complained of, and which shall set forth the particulars thereof and contain
6 such other information as may be required by the commission's rules. ~~and regulations~~ The
7 commission upon its own initiative, or the Attorney General, shall, in like manner, make, sign and
8 file such complaint. Any employer, whose employees, or some of them, hinder or threaten to
9 hinder compliance with the provisions of this article, shall file with the commission a verified
10 complaint, asking for assistance by conciliation or other remedial action and, during such period of
11 conciliation or other remedial action, no hearings, orders or other actions shall be held, made or
12 taken by the commission against ~~such~~ the employer. Any complaint filed pursuant to this article
13 must be filed within three ~~hundred sixty-five days~~ years after the alleged act of discrimination.

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

17 If it shall be determined after ~~such~~ the investigation that no probable cause exists for
18 substantiating the allegations of the complaint, the commission shall, within 10 days from ~~such~~ the
19 determination, cause to be issued and served upon the complainant written notice of ~~such~~ the
20 determination, and the ~~said~~ complainant or his or her attorney may, within 10 days after ~~such~~
21 service, file with the commission a written request for a meeting with the commission to show
22 probable cause for substantiating the allegations of the complaint. If it ~~shall be~~ is determined after
23 ~~such~~ the investigation or meeting that probable cause exists for substantiating the allegations of
24 the complaint, the commission shall immediately endeavor to eliminate the unlawful discriminatory
25 practices complained of by conference, conciliation and persuasion. The members of the
26 commission and its staff shall not disclose what has transpired in the course of such endeavors:
27 *Provided*, That the commission may publish the facts in the case of any complaint which has been
28 dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing
29 the identity of the parties involved.

30 In case of failure so to eliminate ~~such~~ the practice or in advance thereof, if in the judgment
31 of the commission circumstances so warrant, the commission shall cause to be issued and served
32 a written notice, together with a copy of ~~such~~ the complaint as the same may have been amended,
33 in the manner provided by law for the service of summons in civil actions, requiring the person,
34 employer, labor organization, employment agency, owner, real estate broker, real estate salesman
35 or financial institution named in ~~such~~ the complaint, hereinafter referred to as respondent, to
36 answer the charges of ~~such~~ the complaint at a hearing before the commission in the county where
37 the respondent resides or transacts business at a time and place to be specified in ~~such~~ the notice:
38 *Provided*, That ~~said~~ the written notice be served at least 30 days prior to the time set for the
39 hearing.

40 The case in support of the complaint shall be presented before the commission by one of
41 its attorneys or agents. The respondent may file a written, verified answer to the complaint and
42 appear at ~~such~~ the hearing in person or otherwise, with or without counsel, and submit testimony

43 and evidence. Except as provided in this article, all of the pertinent provisions of §29A-5-1 *et seq.*
44 of this code shall apply to and govern the hearing and the administrative procedures in connection
45 with and following ~~such~~ the hearing, with like effect as if the provisions of §29A-5-1 *et seq.* of this
46 code were set forth in extensor in this section.

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

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

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

NOTE: The purpose of this bill is to include certain employers with two or more employees subject to actions for discriminatory practices before the human rights commission; to include individual independent contractors in the definition of "employee"; and to increase the time period in which to bring an action before the human rights commission to three years after the alleged act of discrimination.

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