

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2872

BY DELEGATE YOUNG

[Introduced March 03, 2021; 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,
 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) 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) 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) The term “unlawful discriminatory practices” includes only those practices specified in
25 section nine of this article;

26 (j) 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~~ may not apply to any person other than: (1) Any person employed at a penitentiary,
33 correctional facility, detention center, regional jail or county jail; (2) any person employed by a
34 law-enforcement agency; or (3) any person visiting any such employee or visiting any person
35 detained in custody at such facility;

36 (k) The term “age” means the age of 40 or above;

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

41 (m) 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.

§5-11-10. 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
11 of conciliation or other remedial action, no hearings, orders, or other actions shall be held, made,
12 or taken by the commission against such employer. Any complaint filed pursuant to this article
13 must be filed within ~~three hundred sixty-five days~~ three years after the alleged act of
14 discrimination.

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

18 If it ~~shall be~~ is determined after such investigation that no probable cause exists for
19 substantiating the allegations of the complaint, the commission shall, within 10 days from ~~such~~

20 the determination, cause to be issued and served upon the complainant written notice of such
21 determination, and the said complainant or his or her attorney may, within 10 days after such
22 service, file with the commission a written request for a meeting with the commission to show
23 probable cause for substantiating the allegations of the complaint. If it ~~shall be~~ is determined after
24 such investigation or meeting that probable cause exists for substantiating the allegations of the
25 complaint, the commission shall immediately endeavor to eliminate the unlawful discriminatory
26 practices complained of by conference, conciliation, and persuasion. The members of the
27 commission and its staff ~~shall~~ may not disclose what has transpired in the course of ~~such~~ these
28 endeavors: *Provided*, That the commission may publish the facts in the case of any complaint
29 which has been dismissed, and the terms of conciliation when the complaint has been adjusted,
30 without disclosing the identity of the parties involved.

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

41 The case in support of the complaint shall be presented before the commission by one of
42 its attorneys or agents. The respondent may file a written, verified answer to the complaint and
43 appear at ~~such~~ the hearing in person or otherwise, with or without counsel, and submit testimony
44 and evidence. Except as provided in this article, all of the pertinent provisions of §29A-5-1 *et eq.*
45 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-~~
47 ~~1 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 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
57 qualified for the housing accommodation or real property, denied in violation of this article, as in
58 the 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,
67 the respondent, the Attorney General and to such other public officers as the commission may
68 deem proper. Any such order ~~shall~~ may not be enforceable except as provided in §5-11-11 of this
69 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.