

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2398

By Delegate Fast

[Introduced January 11, 2023; Referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §5-11-10 of the Code of West Virginia, 1931, as amended, relating to
2 requiring the Human Rights Commission, when investigating a complaint of discrimination,
3 to specifically include an examination of the intent of the person or entity alleged to have
4 committed the unlawful discriminatory practice.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§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 employer. Any complaint filed pursuant to this article must
13 be filed within 365 days 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. That investigation shall specifically include an examination of the intent of
17 the person, employer, labor organization, employment agency, owner, real estate broker, real
18 estate salesman, or financial institution alleged to have committed the unlawful discriminatory
19 practice complained of against that individual.

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 10 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 10 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 a
35 written notice, together with a copy of such complaint as the same may have been amended, in the
36 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 salesman
38 or financial institution named in such complaint, hereinafter referred to as respondent, to answer
39 the charges of such complaint at a hearing before the commission in the county where the
40 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 30 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 §29A-5-1 *et seq.* of

46 this code shall apply to and govern the hearing and the administrative procedures in connection
47 with and following such hearing, with like effect as if the provisions of said §29-5A-1 *et seq.* of this
48 code were set forth in extensor in this section.

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

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

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

NOTE: The purpose of this bill is to require the Human Rights Commission, when

investigating a complaint of discrimination, to specifically include an examination of the intent of the person or entity alleged to have committed the unlawful discriminatory practice.

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