WEST VIRGINIA CODE: §16b-17-13

§16B-17-13. Exclusiveness of remedy; exceptions.

(a) Except as provided in subsection (b), nothing contained in this article shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this state relating to discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness or disability, but as to acts declared unlawful by §16B-17-9 of this article the procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this article, he or she may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this article and the interpretation of a similar provision contained in any municipal ordinance authorized by charter, the interpretation of the provision in this article shall apply to such municipal ordinance.

(b) Notwithstanding the provisions of subsection (a) of this section, a complainant may institute an action against a respondent in the county wherein the respondent resides or transacts business at any time within 90 days after the complainant is given notice of a right to sue pursuant to this subsection or, if the statute of limitations on the claim has not expired at the end of such 90-day period, then at any time during which such statute of limitations has not expired. If a suit is filed under this section, the proceedings pending before the commission shall be deemed concluded.

The commission shall give a complainant who has filed a complaint a notice of a right to sue upon: (1) The dismissal of the complaint for any reason other than an adjudication of the merits of the case; or (2) the request of a complainant at any time after the timely filing of the complaint in any case which has not been determined on its merits or has not resulted in a conciliation agreement to which the complainant is a party. Upon the issuance of a right to sue letter pursuant to subdivision (1) or (2), the commission may dismiss the complaint.

Notice of right to sue shall be given immediately upon complainant being entitled thereto, by personal service or certified mail, return receipt requested, which notice shall inform the complainant in plain terms of his or her right to institute a civil action as provided in this section within ninety days of the giving of such notice. Service of the notice shall be complete upon mailing.

(c) In any action filed under this section, if the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay or any other legal or equitable relief as the court deems appropriate. In actions brought under this section, the court in its discretion may award all

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or a portion of the costs of litigation, including reasonable attorney fees and witness fees, to the complainant.

(d) The provisions of this section shall be available to all complainants whose active cases are pending before the Human Rights Commission as well as those complainants who file after the effective date of this section.

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