WEST VIRGINIA CODE CHAPTER 16b ARTICLE 17

WV Legislature

§16B-17-1. Short title.

This article shall be known and may be cited and referred to as "The West Virginia Human Rights Act."

WV Legislature

§16B-17-2. Declaration of policy.

It is the public policy of the State of West Virginia to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, or disability. Equal opportunity in housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness, disability, or familial status.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, disability, or familial status is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

WV Legislature

§16B-17-3. Definitions.

When used in this article:

(a) The term "person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons;

(b) The term "commission" means the West Virginia Human Rights Commission;

(c) The term "director" means the executive director of the commission who reports to the Inspector General;

(d) The term "employer" means the state, or any political subdivision thereof, and any person employing 12 or more persons within the state for 20 or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year: *Provided,* That such terms shall not be taken, understood or construed to include a private club;

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

(f) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or for other mutual aid or protection in relation to employment;

(g) The term "employment agency" includes any person undertaking, with or without 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 §16B-17-9 of this code;

(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

WV Legislature

violation of subdivision (6), §16B-17-9 of this code shall 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 twenty 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.

WV Legislature

§16B-17-4. Powers and objectives.

The commission shall have the power and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, blindness, handicap or familial status.

WV Legislature

§16B-17-5. Composition; appointment, terms, and oath of members; compensation and expenses.

The commission shall be composed of nine members, all residents, and citizens of the State of West Virginia and broadly representative of the several racial, religious, and ethnic groups residing within the state, to be appointed by the Governor, by and with the advice and consent of the Senate. Not more than five members of the commission shall be members of the same political party and not more than five members shall be appointed from any one congressional district.

Members of the commission shall be appointed for terms of three years commencing on July 1 of the year of their appointments, except that the nine members first appointed hereunder shall be appointed for terms of from one to three years, respectively, so that the terms of three members of the commission will expire on June 30 of each succeeding year thereafter. Upon the expiration of the initial terms, all subsequent appointments shall be for terms of three years each, except that appointments to fill vacancies shall be for the unexpired term thereof. Members shall be eligible for reappointment. Before assuming and performing any duties as a member of the commission, each commission member shall take and subscribe to the official oath prescribed by section 5, article IV of the Constitution of West Virginia, which executed oath shall be filed in the office of the Secretary of State.

The members of the commission shall not receive a salary, but each appointed member shall be paid $50 per diem for actual time spent in the performance of duties under this article and shall be reimbursed for actual and necessary expenses incident to the performance of their duties, upon presentation of an itemized and sworn statement thereof. The foregoing per diem and reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the commission.

WV Legislature

§16B-17-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

As soon as practical after July 1, of each year, the Governor shall call a meeting of the commission to be convened at the State Capitol. The commission shall at such meeting organize by electing one of its members as chairperson of the commission and one as vice chairperson thereof for a term of one year or until their successors are elected and qualified. At such meeting the commission shall also elect from its membership such other officers as may be found necessary and proper for its effective organization.

The Governor shall, by and with the advice and consent of the Senate, appoint an executive director to serve at his or her will and pleasure. The executive director shall serve as secretary of the commission. The executive director shall have a college degree. He or she shall be selected with particular reference to his or her training, experience and qualifications for the position and shall be paid an annual salary, payable in monthly installments, from any appropriations made therefor. The commission, upon recommendation of the executive director and in accordance with the requirements of the civil service law, may employ such personnel as may be necessary for the effective and orderly performance of the functions and services of the commission. The commission shall employ an administrative law judge who shall be an attorney, duly licensed to practice law in the State of West Virginia, for the conduct of the public hearings authorized in §16B-17-8(d)(3) of this code.

The commission shall equip and maintain its offices at the State Capitol and shall hold its annual organizational meeting there. The commission may hold other meetings during the year at such times and places within the state as may be found necessary and may maintain one branch office within the state as determined by the commission to be necessary for the effective and orderly performance of the functions and services of the commission. Any five members of the commission shall constitute a quorum for the transaction of business. Minutes of its meetings shall be kept by its secretary.

The executive director and other commission personnel shall be reimbursed for necessary and reasonable travel and subsistence expenses actually incurred in the performance of commission services upon presentation of properly verified expense accounts as prescribed by law.

WV Legislature

§16B-17-7. Assistance to commission; legal services.

The commission may call upon other officers, departments, and agencies of the state government to assist in its hearings, programs, and projects. The Attorney General of the state shall render legal services to the commission upon request made by the commission or by the chairman or the executive director thereof.

WV Legislature

§16B-17-8. Commission powers; functions; services.

The commission is hereby authorized and empowered:

(a) To cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this state;

(b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the state in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and peoples;

(c) To receive, investigate and pass upon complaints alleging discrimination in employment or places of public accommodations, because of race, religion, color, national origin, ancestry, sex, age, blindness or disability, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property because of race, religion, color, national origin, ancestry, sex, blindness, disability or familial status, and to initiate its own consideration of any situations, circumstances or problems, including therein any racial, religious or ethnic group tensions, prejudice, disorder or discrimination reported or existing within the state relating to employment, places of public accommodations, housing accommodations and real property;

(d) To hold and conduct public and private hearings, in the county where the respondent resides or transacts business or where agreed to by the parties or where the acts complained of occurred, on complaints, matters and questions before the commission and, in connection therewith, relating to discrimination in employment or places of public accommodations, housing accommodations or real property and during the investigation of any formal complaint before the commission relating to employment, places of public accommodations, housing accommodations or real property to:

(1) Issue subpoenas and subpoenas duces tecum upon the approval of the executive director or the chairperson of the commission; administer oaths; take the testimony of any person under oath; and make reimbursement for travel and other reasonable and necessary expenses in connection with such attendance;

(2) Furnish copies of public hearing records to parties involved therein upon their payment of the reasonable costs thereof to the commission;

(3) Delegate to an administrative law judge who shall be an attorney, duly licensed to practice law in West Virginia, the power and authority to hold and conduct hearings, as herein provided, to determine all questions of fact and law presented during the hearing and to render a final decision on the merits of the complaint, subject to the review of the commission as hereinafter set forth.

WV Legislature

Any respondent or complainant who shall feel aggrieved at any final action of an administrative law judge shall file a written notice of appeal with the commission by serving such notice on the executive director and upon all other parties within 30 days after receipt of the administrative law judge's decision. The commission shall limit its review upon such appeals to whether the administrative law judge's decision is:

(A) In conformity with the Constitution and the laws of the state and the United States;

(B) Within the commission's statutory jurisdiction or authority;

(C) Made in accordance with procedures required by law or established by appropriate rules of the commission;

(D) Supported by substantial evidence on the whole record; or

(E) Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(4) To enter into conciliation agreements and consent orders.

Each conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and shall contain such further provisions as may be agreed upon by the commission and the respondent.

If the respondent and the commission agree upon conciliation terms, the commission shall serve upon the complainant a copy of the proposed conciliation agreement. If the complainant agrees to the terms of the agreement or fails to object to such terms within 15 days after its service upon him or her, the commission shall issue an order embodying such conciliation agreement. If the complainant objects to the agreement, he or she shall serve a specification of his or her objections upon the commission within such period. Unless such objections are met or withdrawn within 10 days after service thereof, the commission shall notice the complaint for hearing.

Notwithstanding any other provisions of this section, the commission may, where it finds the terms of the conciliation agreement to be in the public interest, execute such agreement, and limit the hearing to the objections of the complainant.

If a conciliation agreement is entered into, the commission shall serve a copy of the order embodying such agreement upon all parties to the proceeding.

Not later than one year from the date of a conciliation agreement, the commission shall investigate whether the respondent is complying with the terms of such agreement. Upon a finding of noncompliance, the commission shall take appropriate action to assure compliance;

(5) To apply to the circuit court of the county where the respondent resides or transacts

WV Legislature

business for enforcement of any conciliation agreement or consent order by seeking specific performance of such agreement or consent order;

(6) To issue cease and desist orders against any person found, after a public hearing, to have violated the provisions of this article or the rules of the commission;

(7) To apply to the circuit court of the county where the respondent resides or transacts business for an order enforcing any lawful cease and desist order issued by the commission;

(e) To recommend to the Governor and Legislature policies, procedures, practices and legislation in matters and questions affecting human rights;

(f) To delegate to its executive director such powers, duties and functions as may be necessary and expedient in carrying out the objectives and purposes of this article who shall report to the Inspector General;

(g) To prepare a written report on its work, functions and services for each year ending on June 30 and to deliver copies thereof to the Governor on or before December 1, next thereafter;

(h) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this article, including the promulgation of legislative rules in accordance with the provisions of §29A-3-1 *et seq*. of this code, implementing the powers and authority hereby vested in the commission;

(i) To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purposes of this article, to study the problems of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status; to foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the population of this state, and to make recommendations to the commission for the development of policies and procedures, and for programs of formal and informal education, which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this subdivision. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster goodwill and cooperation among all elements of the population of the state;

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;

(k) To issue such publications and such results of investigation and research as in its

WV Legislature

judgment will tend to promote goodwill and minimize or eliminate discrimination: *Provided,* That the identity of the parties involved shall not be disclosed.

WV Legislature

§16B-17-9. Unlawful discriminatory practices.

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions:

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions, or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or disabled: *Provided*, That it shall not be an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision: *Provided further*, That an employer may grant preference in hiring to a military spouse or to a veteran or disabled veteran in accordance with the provisions of §16B-17-9a of this code without violating the provisions of this article. For purposes of this subdivision, "military spouse" means the husband or wife of a member of the Armed Forces who, as determined by the United States Secretary of Defense, is performing active duty pursuant to orders that authorize a permanent change of station move, if such husband or wife relocates to the member's new permanent duty station.

(2) For any employer, employment agency, or labor organization, prior to the employment or admission to membership, to: (A) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex, or age of any applicant for employment or membership; (B) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications, or discrimination based upon race, religion, color, national origin, ancestry, sex, disability, or age; or (C) Deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age, blindness, or disability;

(3) For any labor organization because of race, religion, color, national origin, ancestry, sex, age, blindness, or disability of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individual with respect to hire, tenure, terms, conditions, or privileges of employment or any other matter, directly or indirectly, related to employment;

(4) For an employer, labor organization, employment agency, or any joint labor-management committee controlling apprentice training programs to:

(A) Select individuals for an apprentice training program registered with the State of West Virginia on any basis other than their qualifications as determined by objective criteria which permit review;

(B) Discriminate against any individual with respect to his or her right to be admitted to or

WV Legislature

participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

(C) Discriminate against any individual in his or her pursuit of such programs or to discriminate against such a person in the terms, conditions, or privileges of such programs;

(D) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for these programs or to make any inquiry in connection with a program which expresses, directly or indirectly, discrimination or any intent to discriminate unless based upon a bona fide occupational qualification;

(5) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness, or disability;

(6) For any person being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodations to:

(A) Refuse, withhold from, or deny to any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness, or disability, either directly or indirectly, any of the accommodations, advantages, facilities, privileges, or services of the place of public accommodations;

(B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges, or services of any such place shall be refused, withheld from, or denied to any individual on account of race, religion, color, national origin, ancestry, sex, age, blindness, or disability, or that the patronage or custom thereat of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex, or age, or who is blind or disabled, is unwelcome, objectionable, not acceptable, undesired, or not solicited; or

(7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman, or financial institution to:

(A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass, or cause physical harm or economic loss or to aid, abet, incite, compel, or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;

(B) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede, or interfere with the commission or any of its members or representatives in the performance of a duty under this article; or

(C) Engage in any form of reprisal or otherwise discriminate against any person because he or she has opposed any practices or acts forbidden under this article or because he or she

WV Legislature

has filed a complaint, testified, or assisted in any proceeding under this article.

WV Legislature

§16B-17-9a. Veterans and military spouses preference not a violation of equal employment opportunity under certain circumstances.

(a) An employer may grant preference in hiring to a veteran or disabled veteran who has been honorably discharged from the United States Armed Services, or to a military spouse, provided that the person granted the hiring preference meets all of the knowledge, skills, and eligibility requirements of the job to be filled. Such hiring preference may be granted without violating the provisions of this article or any other state equal employment opportunity law.

(b) For purposes of this section:

(1) "Veteran" means any person who has received an honorable discharge and:

(A) Has provided more than 180 consecutive days of full-time, active-duty service in the United States Armed Services or Reserve components thereof, including the National Guard; or

(B) Has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

(2) "Military spouse" means the husband or wife of a member of the Armed Forces who, as determined by the United States Secretary of Defense, is performing active duty pursuant to orders that authorize a permanent change of station move, if such husband or wife relocates to the member's new permanent duty station.

WV Legislature

§16B-17-10. 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 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 employer. Any complaint filed pursuant to this article must be filed within 365 days 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 determined after such investigation that no probable cause exists for substantiating the allegations of the complaint, the commission shall, within 10 days from such determination, cause to be issued and served upon the complainant written notice of such 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 determined after such 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 not disclose what has transpired in the course of such 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 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 complaint as the same 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 complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the commission in the county where the respondent resides or transacts business at a time and

WV Legislature

place to be specified in such notice: *Provided,* That said 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 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 seq*. of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extensor in this section.

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

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

A copy of its order shall be delivered in all cases by the commission to the complainant, the respondent, the Attorney General and to such other public officers as the commission may deem proper. Any such order shall not be enforceable except as provided in §16B-17-11 of this code.

WV Legislature

§16B-17-11. Appeal and enforcement of commission orders.

(a) From any final order of the commission, an application for review may be prosecuted by either party to the Supreme Court of Appeals within thirty days from the receipt thereof by the filing of a petition therefor to such court against the commission and the adverse party as respondents, and the clerk of such court shall notify each of the respondents and the commission of the filing of such petition. The commission shall, within ten days after receipt of such notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. And if granted to a nonresident of this state, he or she shall be required to execute and file with the clerk before such order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him or her thereon. The commission may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review be granted or the certified question be docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the commission of the fact by mail. If a review be granted or the certified question docketed, the case shall be heard by the court in the manner provided for other cases: *Provided,* That in the following cases the appellant may prosecute the appeal in the circuit court of Kanawha County pursuant to section four, §29A-5-1 *et seq*. of this code: (1) Cases in which the commission awards damages other than back pay exceeding $5,000; (2) cases in which the commission awards back pay exceeding $30,000; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. In such cases the appellee shall respond within thirty days of filing and the court shall make a determination within the following 30 days: *Provided, however,* That appeals filed erroneously in the circuit court after April 1, 1987, and prior to July 1, 1989, may be prosecuted in the Supreme Court of Appeals without regard to the time limits specified herein: *Provided further,* That any party adversely affected by the final judgment of the circuit court of Kanawha County may seek review thereof by appeal to the Supreme Court of Appeals pursuant to §29A-6-1 of this code filed within 30 days of entry of the final order of the circuit court.

The appeal procedure contained in this subsection shall be the exclusive means of review, notwithstanding the provisions of chapter twenty-nine-a of this code: *Provided,* That such exclusive means of review shall not apply to any case wherein an appeal or a petition for enforcement of a cease and desist order has been filed with a circuit court of this state prior to April 1, 1987.

(b) In the event that any person shall fail to obey a final order of the commission within thirty days after receipt of the same, or, if applicable, within thirty days after a final order of the circuit court or the Supreme Court of Appeals, a party or the commission may seek an order from the circuit court for its enforcement. Such proceedings shall be initiated by filing of a petition in said court, and served upon the respondent in the manner provided by law for the service of summons in civil actions; a hearing shall be held on such petition within 60

days of the date of service. The court may grant appropriate temporary relief, and shall make and enter upon the pleadings, testimony, and proceedings such order as is necessary to enforce the order of the commission or Supreme Court of Appeals.

WV Legislature

§16B-17-12. Local human relations commissions.

(a) The legislative body of a political subdivision may, by ordinance or resolution, authorize the establishment or membership in and support of a local human relations commission. The number and qualifications of the members of any local commission and their terms and method of appointment or removal shall be such as may be determined and agreed upon by the legislative body, except that no such member shall hold office in any political party.

(b) The legislative body of any political subdivision shall have the authority to appropriate funds, in such amounts as may be deemed necessary, for the purpose of contributing to the operation of a local commission.

(c) The local commission shall have the power to appoint such employees and staff, as it may deem necessary, to fulfill its purpose.

WV Legislature

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

WV Legislature

(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.

WV Legislature

§16B-17-14. Penalty.

Any person who shall willfully resist, prevent, impede or interfere with the commission, its members, agents or agencies in the performance of duties pursuant to this article, or shall willfully violate a final order of the commission, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment not exceeding 30 days, or by both such fine and imprisonment, in the discretion of the court, but seeking judicial review of an order shall not be deemed to be such willful conduct.

WV Legislature

§16B-17-15. Construction; severability.

The provisions of this article shall be liberally construed to accomplish its objectives and purposes. If any provision of this article be held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect or invalidate the other provisions hereof, all of which are declared and shall be construed to be separate and severable.

WV Legislature

§16B-17-16. Certain records exempt.

Notwithstanding any other provisions of this article, it shall not be an unlawful discriminatory practice for the Bureau of Employment Programs to ascertain and record the age, sex, race, religion, color, national origin, ancestry, blindness or disability of any individual for the purpose of making such reports as may from time to time be required by agencies of the federal government or be necessary to show compliance with any rule or regulation issued by any such agency. Said records may be made and kept in the manner required by the federal government: *Provided,* That such recording of the age, sex, race, religion, color, national origin, ancestry, blindness or disability of any individual shall not be used to discriminate, within the meaning of this article, directly or indirectly, against any such individual as prohibited by all other sections of this article.

WV Legislature

§16B-17-17. Posting of law and information.

Every employer, labor organization, employment agency and person operating a place of public accommodations, as defined herein, subject to this article, shall keep posted in a conspicuous place or places on his or her premises a notice or notices to be prepared or approved by the commission, which shall set forth excerpts of this article and such other relevant information which the commission shall deem necessary.

WV Legislature

§16B-17-18. Injunctions in certain housing complaints.

When it appears that a housing unit or units described in a complaint may be sold, rented or otherwise disposed of before a determination of the complaint or case has been made by the commission or during judicial review of any final order of the commission, the circuit court of the county in which such housing unit or units are located may, upon the joint petition of the commission and the complainant, or if there be more than one complainant, all such complainants, issue a prohibitive injunction restraining the sale, rental or other disposition of such housing unit or units except in compliance with the order of the court. No such injunction shall be issued by the court until the complainant or complainants shall have posted bond, with good security therefor, in such penalty as the court or judge awarding it may direct. The court may include in any such injunction granted such other conditions as it deems proper and just. Such injunction, if granted, shall be of no more than 30 days duration. If at the end of such 30-day period the commission notifies the court that additional time is needed for the disposal or determination of the complaint or case or the conclusion of such judicial review, the court, for good cause shown, may extend the period of the injunction for such additional time as the court deems proper. No such extension shall be granted except upon the continuation or reposting of the bond required for the original injunction and any such extension of the injunction may be granted upon such additional terms and conditions as to the court seem proper and just.

WV Legislature

§16B-17-19. Private club exemption.

Nothing in this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or guests of members or from giving preference to its members or guests of members: *Provided,* That this exemption shall not apply to any private club not in fact open to the public which owns or operates residential subdivisions providing lodgings for rental, occupancy or sale, or which provides real estate for sale for the construction of single or multiunit dwellings.

WV Legislature

§16B-17-20. Violations of human rights; civil action by attorney general.

(a) A person has the right to engage in lawful activities without being subject to actual or threatened:

(1) Physical force or violence against him or her or any other person, or

(2) Damage to, destruction of or trespass on property,

any of which is motivated by race, color, religion, sex, ancestry, national origin, political affiliation or disability.

(b) Whenever any person, whether or not acting under the color of law, intentionally interferes or attempts to interfere with another person's exercise or enjoyment of rights secured by this article or §16B-18-1 *et seq*. of this code, by actual or threatened physical force or violence against that person or any other person, or by actual or threatened damage to, destruction of or trespass on property, the Attorney General may bring a civil action:

(1) For injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured, or

(2) For civil penalties as specified in subsection (c) of this section, or

(3) For both equitable relief and civil penalties.

This action must be brought in the name of the state and instituted in the circuit court for the county where the alleged violator resides or has a principal place of business or where the alleged violation occurred.

(c) A civil penalty of not more than $5,000 per violation may be assessed against any person violating this section.

(d) Each preliminary, temporary, or permanent injunction issued under this section must include a statement describing the penalties to be imposed for a knowing violation of the order or injunction as provided in subsection (e) of this section. The clerk of the circuit court shall transmit one certified copy of each order or injunction issued under this section to the appropriate law-enforcement agency or agencies having authority over locations where the defendant was alleged to have committed the act giving rise to the action, and service of the order or injunction must be accomplished pursuant to the West Virginia rules of civil procedure.

(e) A person who knowingly violates a preliminary, temporary or permanent injunction issued under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in the county or regional jail not more than one year, or both fined and imprisoned.

WV Legislature