WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED
Com. Sub. for
HOUSE BILL No. 821

(By Mr. Speaker Mr. White)

PASSED March 11, 1967

In Effect July 1, 1967

FILED IN THE OFFICE
ROBERT D. OAKLEY
SECRETARY OF STATE
THIS DATE 3-20-67
ENROLLED

Com. Sub. for House Bill No. 821
(By MR. SPEAKER, MR. WHITE)

[Passed March 11, 1967; in effect July 1, 1967.]

AN ACT to repeal article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article eleven, relating to the West Virginia human rights commission; making unlawful certain discriminatory practices; authorizing said commission to issue cease and desist orders; providing for hearings and judicial review; providing for the enforcement of such orders; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be re-
pealed, and a new article eleven be enacted in lieu thereof, to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-1. Short title.

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

§5-11-2. Declaration of policy.

1 It is the public policy of the state of West Virginia to provide all of its citizens equal opportunity for employment and equal access to places of public accommodations. 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, age, sex or ancestry.

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

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term "person" means one or more individ-
The term "employer" means the state, or any political subdivision thereof, and any person employing twenty-five or more persons within the state: Provided, that such term shall not be taken, understood or construed to include a private club;

(e) The term "employee" shall not include any individual employed by his parents, spouse, or child, or in the domestic service of any person;

(f) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of em-
ployment, 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;

(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 or ancestry, and includes to separate or segregate;

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

(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.
§5-11-4. Human rights commission continued; status, powers and objects.

1 The West Virginia human rights commission, heretofore created, is hereby continued. The commission shall have the powers 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 or ancestry.

§5-11-5. Composition; appointment, terms and oath of members; expenses.

1 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 at least one member but not more than three
members shall be from any one congressional district.

Members of the commission shall be appointed for
terms of three years commencing on the first day of July
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 the thirtieth day of June 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 five, article four of
the constitution of West Virginia, which executed oath
shall be filed in the office of the secretary of state.

Each member of the commission shall receive a salary
of twenty-five dollars per day as compensation for his
services as such, and each member shall be reimbursed
for his reasonable and necessary travel expenses actu-
ally incurred in performance of his commission services.

§5-11-6. Commission organization and personnel.

As soon as practical after the first day of July of each
year, the governor shall call a meeting of the commis-
sion to be convened at the state capitol. The commis-
sion shall at such meeting organize by electing one of
its members as chairman of the commission and one
as vice-chairman thereof for a term of one year or until
their successors are elected and qualified. At such meet-
ing the commission shall also elect from its member-
ship such other officers as may be found necessary and
proper for its effective organization.

The governor shall, by and with the advice and con-
sent of the Senate, appoint an executive director to serve
at his will and pleasure. The executive director shall
serve as secretary of the commission. The executive
director shall have a college degree. He shall be selected
with particular reference to his 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 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. 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.
§5-11-7. Assistance to commission; legal services.

1 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.

§5-11-8. Commission powers; functions; services.

1 The commission is hereby authorized and empowered:

2 (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;

3 (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 pub-
lic accommodations, because of race, religion, color, na-
tional origin or ancestry, and to initiate its own con-
sideration 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 and
places of public accommodations;
(d) To hold and conduct public and private hearings on
complaints, matters and questions before the commis-
sion and, in connection therewith, relating to discrimi-
nation in employment or places of public accommoda-
tions and during the investigation of any formal com-
plaint before the commission relating to employment or
places of public accommodations to:
(1) Issue subpoenas and subpoenas duces tecum upon
the concurrence of at least five members of the commis-
sion, 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 a panel of three commission members appointed by the chairman, the power and authority to hold and conduct the hearings, as herein provided, but all decisions and action growing out of or upon any such hearings shall be reserved for determination by the commission;

(4) To enter into conciliation agreements;

(5) To apply to the circuit court of the county where the respondent resides or transacts business for enforcement of any conciliation agreement by seeking specific performance of such agreement;

(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 and regulations of the commission;

(7) To apply to the circuit court of the county where
the respondent resides or transacts business for an or-
der 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 mat-
ters and questions affecting human rights;
(f) To delegate to its executive director such pow-
ers, duties and functions as may be necessary and ex-
pedient in carrying out the objectives and purposes of
this article;
(g) To prepare a written report on its work, func-
tions and services for each year ending on the thirtieth
day of June and to deliver copies thereof to the governor
on or before the first day of December next thereafter;
(h) To do all other acts and deeds necessary and
proper to carry out and accomplish effectively the ob-
jects, functions and services contemplated by the pro-
visions of this article, including the promulgation of
rules and regulations in accordance with the provisions
of article three, chapter twenty-nine-a of this code, im-
plementing 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 act, to study the problem of discrimination in all or specific fields or instances or discrimination because of race, religion, color, national origin or ancestry; to foster, through community effort or otherwise, good will, 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 subsection. 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 good will and cooperation among all elements of the population of the state;

(j) To accept contributions from any person to as-
sist 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 judgment will tend
to promote good will and minimize or eliminate discrim-
ination: Provided, That the identity of the parties in-
volved shall not be disclosed.


It shall be an unlawful discriminatory practice, un-
less based upon a bona fide occupational qualification,
or except where based upon applicable security regu-
lations established by the United States or the state of
West Virginia or its agencies or political subdivisions:
(a) 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 serv-
ices required;
(b) For any employer, employment agency or labor
organization, prior to the employment or admission to membership, to (1) 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 or ancestry of any applicant for employment or membership; (2) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, religion, color, national origin or ancestry; or (3) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin or ancestry;

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

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

(1) 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;

(2) Discriminate against any individual with respect to his right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program.

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

(4) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate, unless based upon a bona fide occupational qualification;
(e) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, religion, color, national origin or ancestry;

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

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

(2) 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 or ancestry, or that the patronage or custom thereat of any individual, belonging to or purporting to be of any particular race,
religion, color, national origin or ancestry is unwelcome, objectionable, not acceptable, undesired or not solicited; 

(g) For any person, employer, employment agency or labor organization to:

(1) 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;

(2) 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 duty under this article;

(3) Engage in any form of reprisal or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this article or because he has filed a complaint, testified, or assisted in any proceeding under this article;
§5-11-10. Procedures.

1 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 or employment agency 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.

2 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 sixty
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 allega-
tions of the complaint, the commission shall, within ten
days from such determination, cause to be issued and
served upon the complainant written notice of such de-
termination, and the said complainant or his attorney
may, within ten 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 par-
ties 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 or employment agency named in such
complaint, hereinafter referred to as respondent, to an-
swer the charges of such complaint at a hearing before the
commission in the county of residence of the respondent,
at a time and place to be specified in such notice: Pro-
vided, however, That said written notice be served at least
thirty 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 the immediately preceding proviso, all of the pertinent provisions of article five, chapter twenty-nine-a 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 extenso 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 em-
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 accommodations, 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 section three, article five, chapter twenty-nine-a 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
104 attorney general and to such other public officers as the
105 commission may deem proper. Any such order shall
106 not be enforceable except as provided in section eleven
107 of this article.

§5-11-11. Enforcement of cease and desist orders.

1 In the event any person shall fail to obey a lawful
2 cease and desist order of the commission, the commis-
3 sion may seek an order of the circuit court for its en-
4 forcement, in a proceeding as provided in this section.
5 Such proceeding shall be brought in the circuit court of
6 the county wherein any person required in the order
7 to cease and desist from an unlawful discriminatory
8 practice or to take other affirmative action resides or trans-
9 acts business. Such proceeding shall be initiated by the
10 filing of a petition in such court, together with a written
11 transcript of the entire record of the hearing before
12 the commission. Notice of the filing of such petition to-
13 gether with a copy thereof shall be served upon the re-
14 spondent in the manner provided by law for the service
15 of summons in civil actions; no bearing shall be held on
16 such petition within twenty days of the date of service
thereof on the respondent. The court may grant such
temporary relief or restraining order as it deems just and
proper, and shall make and enter upon the pleadings, testi-
mony, and proceedings set forth in such transcript an
order enforcing, modifying, and enforcing as so modi-

cified, or setting aside in whole or in part the order of
the commission. All such proceedings shall be heard and
determined by the court. The jurisdiction of the circuit
court shall be exclusive and its judgment and order shall
be final, subject to review by the supreme court of appeals.

§5-11-12. Local human relations commissions.

(a) The legislative body of a political subdivision
may, by ordinance or resolution, authorize the estab-
lishment 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 legisla-
tive 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.


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 or ancestry, but as to acts declared unlawful by section nine 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 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 author-
ized by charter, the interpretation of the provision in this article shall apply to such municipal ordinance.


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 one hundred dollars nor more than five hundred dollars, or by imprisonment not exceeding thirty 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.

5-11-15. 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William W. Jasper
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect July 1, 1967.

James H. Hughes
Clerk of the Senate

C.A. Blankenship
Clerk of the House of Delegates

Howard R. Cannon
President of the Senate

H. Lamar White
Speaker House of Delegates

The within approved this the 17th day of March, 1967.

Herbert C. Smith
Governor