WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973

ENROLLED

HOUSE BILL No. 785

(By Mrs. [Signature]

PASSED [Signature] 1973

In Effect [Signature] Passage

Veto: 785

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 5/3/73
ENROLLED

House Bill No. 785
(By MRS. SMIRL and MR. KOPP)

[Passed April 14, 1973; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, four, eight, nine, thirteen and sixteen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia human rights commission; declaring state public policy to be prevention of discrimination against the handicapped; defining handicapped person; giving commission authority to protect the handicapped against descrimination; making it unlawful to discriminate against the handicapped; and providing remedies to handicapped when discriminated against.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, eight, nine, thirteen and sixteen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§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, 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 or handicap. 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 or handicap.

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

§5-11-3. 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;

(d) The term “employer” means the state, or any political subdivision thereof, and any person employing twelve or more persons within the state: 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 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 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, or handicap 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;
k) The term "housing accommodations" means any build-
ing or portion thereof, which is used or intended for use as the
residence or sleeping place of one or more persons. Nothing
contained in this definition or this article shall apply to the
rental of a room or rooms in a rooming house occupied by the
owner as a place of residence and containing no more than
four rented rooms, or rooms to be rented;
l) The term "real property" includes real estate, lands,
leaseholds, commercial or industrial buildings and any vacant
land offered for sale or rent on which the construction of a
housing accommodation, commercial or industrial building
is intended, and any land operated as a trailer camp or rented
or leased for the use, parking or storage of mobile homes or
house trailers;
m) The term "real estate broker" includes any person,
firm or corporation who, for a fee, commission or other valu-
able consideration, or by reason of a promise or reasonable
expectation thereof, lists for sale, sells, exchanges, buys or
rents, or offers or attempts to negotiate a sale, exchange, pur-
chase, or rental of real estate or an interest therein, or collects
or offers or attempts to collect rent for the use of real estate or
solicits for prospective purchaser or assists or directs in the
procuring of prospects or the negotiation or closing of any
transaction which does or is contemplated to result in the sale,
exchange, leasing, renting or auctioning of any real estate
or negotiates, offers or attempts or agrees to negotiate a loan
secured or to be secured by mortgage or other encumbrance
upon or transfer of any real estate for others, or any person
who, for pecuniary gain or expectation of pecuniary gain, con-
ducts a public or private competitive sale of lands or any
interest in lands. In the sale of lots, the term "real estate
broker" shall also include any person, partnership, association
or corporation employed by or on behalf of the owner or
owners of lots or other parcels of real estate, at a stated
salary, or upon a commission, or upon a salary and commis-
sion, or otherwise to sell such real estate, or any parts thereof,
in lots or other parcels, and who shall sell or exchange, or
offer or attempt or agree to negotiate the sale or exchange, of
any such lot or parcel of real estate. A newspaper engaged in
the activity of advertising in the normal course of its business
shall not be deemed to be a real estate broker;

(n) The term "real estate salesman" includes any person
who, for compensation, valuable consideration or commission,
or other thing of value, or by reason of a promise or reasonable
expectation thereof, is employed by and operates under the
supervision of a real estate broker to sell, buy or offer to buy
or negotiate the purchase, sale or exchange of real estate,
offers or attempts to negotiate a loan secured or to be secured
by a mortgage or other encumbrance upon or transfer of real
estate for others, or to collect rents for the use of real estate,
or to solicit for prospective purchasers or lessees of real estate,
or who is employed by a licensed real estate broker to sell or
offer to sell lots or other parcels of real estate, at a stated salary,
or upon a commission, or upon a salary and commission, or
otherwise to sell real estate, or any parts thereof, in lots or
other parcels;

(o) The term "purchaser" includes any occupant, pros-
spective occupant, lessee, prospective lessee, renter, prospective
renter, buyer or prospective buyer;

(p) The term "owner" shall include the owner, lessee,
sublessee, assignee, manager, agents, or other person, firm or
corporation having the right to sell, rent or lease any housing
accommodation or real property within the state of West Vir-
ginia or any agent of any of these;

(q) The term "age" means ages forty through sixty-five,
both inclusive;

(r) The term "rooming house" means a house or building
where there are one or more bedrooms which the proprietor
can spare for the purpose of giving lodgings to such persons as
he chooses to receive;
The term "handicap" or "handicapped" means a person who suffers from a physical defect through organic processes, organic changes, injury, accident or any other cause.

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

The West Virginia human rights commission, heretofore created, is hereby continued. 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 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 or handicap.

§5-11-8. 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 or handicap, 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 or handicap and to
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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 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 ac-
commodations or real property to:

(1) Issue subpoenas and subpoenas duces tecum upon
the concurrence of at least five members 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 a panel of one commission member ap-
pointed by the chairman and a hearing examiner who shall
be an attorney, duly licensed to practice law in West Virginia,
the power and authority to hold and conduct the hearings,
as herein provided, but all decisions and actions growing out
of or upon any such hearings shall be reserved for determina-

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

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

(g) To prepare a written report on its work, functions 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 objects, functions and services contemplated by the provisions 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, 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 problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age or handicap; 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 judgment will tend to promote good will and minimize or eliminate discrimination:

Provided, That the identity of the parties involved shall not be disclosed.


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:

(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 services required even if such individual is handicapped: Provided, That it shall not be 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:

(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, ancestry, sex, or age 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, ancestry, sex, or age; or (3) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age or handicap;

(c) For any labor organization because of race, religion, color, national origin, ancestry, sex, age or handicap 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 appren-
tice 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 pro-
gram, 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, na-
tional origin, ancestry, sex, age or handicap;
(f) For any person being the owner, lessee, proprietor, man-
ger, superintendent, agent or employee of any place of pub-
ic accommodations to:
  (1) Refuse, withhold from or deny to any individual because
of his race, religion, color, national origin, ancestry, sex, age or
handicap, either directly or indirectly, any of the accommoda-
tions, 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 accommo-
dations, 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 or handicap, or that the patronage or custom thereof of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex or age or who is handicapped is unwelcome, objectionable, not acceptable, undesired or not solicited;

(g) For the owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or sublease any housing accommodations or real property or part or portion thereof, or any agent, or employee of any of them; or for any real estate broker, real estate salesman, or employee or agent thereof:

(1) To refuse to sell, rent, lease, assign or sublease or otherwise to deny to or withhold from any person or group of persons any housing accommodations or real property, or part or portion thereof, because of race, religion, color, national origin, ancestry or handicap of such person or group of persons;

(2) To discriminate against any person or group of persons because of the race, religion, color, national origin or handicap of such person or group of persons in the terms, conditions, or privileges of the sale, rental, or lease of any housing accommodations or real property, or part or portion thereof, or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication, or sign or to use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodations or real property, or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment or sublease of any housing accommodations or real property or part or portion thereof, which expresses, directly or indirectly, any discrimination as to race, religion, color, national origin, ancestry or handicap or any intent to make any such discrimination and the production of any statement, advertisement, publicity, sign, form of application, record or inquiry purporting to be made by any such
person shall be prima facie evidence in any action that the
same was authorized by such person;
(h) For any person or financial institution or lender to
whom application is made for financial assistance for the pur-
chase, acquisition, construction, rehabilitation, repair or main-
tenance of any housing accommodations or real property, or
part or portion thereof, or any agent or employee thereof to:
(1) Discriminate against any person or group of persons
because of race, religion, color, national origin, ancestry or
handicap, of such person or group of persons or of the pro-
spective occupants or tenants of such housing accommodations
or real property, or part or portion thereof, in the granting,
withholding, extending, modifying or renewing, or in the fix-
ing of the rates, terms, conditions or provisions of any such
financial assistance or in the extension of services in connec-
tion therewith;
(2) Use any form of application for such financial assis-
tance or to make any record of inquiry in connection with ap-
lications for such financial assistance which expresses, direct-
ly or indirectly, any discrimination as to race, religion, color,
national origin, ancestry or handicap or any intent to make
any such discrimination;
(i) For any person, employer, employment agency, labor
organization, owner, real estate broker, real estate salesman
or financial institution 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, em-
barrass, 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 com-
plying with the provisions of this article, or to resist, prevent,
impede or interfere with the commission or any of its mem-
bers or representatives in the performance of duty under this
article;
(3) Engage in any form of reprisal or otherwise discrimi-
nate 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
(4) For profit to induce or attempt to induce any person to sell or rent or to not sell or rent any housing accommodations or real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons who are handicapped or who are of a particular race, religion, color, national origin or ancestry.


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 or handicap, 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 authorized by charter, the interpretation of the provision in this article shall apply to such municipal ordinance.


Notwithstanding any other provisions of this article, it shall not be an unlawful discriminatory practice for the department of employment security to ascertain and record the age, sex, race, religion, color, national origin, ancestry or handicap 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 or handicap 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

N. Darrel Darcy
Chairman Senate Committee

Clarence L. Christiansen, Jr.
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

Howard W. Casson
Clerk of the Senate

C.A. Blankenship
Clerk of the House of Delegates

W. B. Luttrell
President of the Senate

Louis F. W. Thomas
Speaker House of Delegates

The within appeared this the 24th
day of April, 1973.

Aubert Plante, Jr.
Governor