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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973



ENROLLED

HOUSE BILL No. 785

(By Mrs. *Smirl and M. Tapp*)



PASSED *April 14,* 1973

In Effect *ninety days from* Passage



C 641

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

Veto - 785

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 discrimination; 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 pro-
2 vide all of its citizens equal opportunity for employment, equal
3 access to places of public accommodations, and equal oppor-
4 tunity in the sale, purchase, lease, rental and financing of hous-
5 ing accommodations or real property. Equal opportunity in the
6 areas of employment and public accommodations is hereby

7 declared to be a human right or civil right of all persons with-
8 out regard to race, religion, color, national origin, ancestry,
9 sex, age or handicap. Equal opportunity in housing accommo-
10 dations or real property is hereby declared to be a human right
11 or civil right of all persons without regard to race, religion,
12 color, national origin, ancestry or handicap.

13 The denial of these rights to properly qualified persons by
14 reason of race, religion, color, national origin, ancestry, sex,
15 age or handicap is contrary to the principles of freedom and
16 equality of opportunity and is destructive to a free and demo-
17 cratic society.

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term "person" means one or more individuals, part-
3 nerships, associations, organizations, corporations, labor or-
4 ganizations, cooperatives, legal representatives, trustees,
5 trustees in bankruptcy, receivers and other organized groups
6 of persons;

7 (b) The term "commission" means the West Virginia
8 human rights commission;

9 (c) The term "director" means the executive director of
10 the commission;

11 (d) The term "employer" means the state, or any political
12 subdivision thereof, and any person employing twelve or more
13 persons within the state: *Provided*, That such terms shall not
14 be taken, understood or construed to include a private club;

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

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

23 (g) The term "employment agency" includes any person
24 undertaking with or without compensation to procure, recruit,
25 refer or place employees. A newspaper engaged in the activity
26 of advertising in the normal course of its business shall not be
27 deemed to be an employment agency;

28 (h) The term "discriminate" or "discrimination" means to

29 exclude from, or fail or refuse to extend to, a person equal
30 opportunities because of race, religion, color, national origin,
31 ancestry, sex, age, or handicap and includes to separate or
32 segregate;

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

35 (j) The term "place of public accommodations" means any
36 establishment or person, as defined herein, including the
37 state, or any political or civil subdivision thereof, which offers
38 its services, goods, facilities or accommodations to the general
39 public, but shall not include any accommodations which are in
40 their nature private;

41 (k) The term "housing accommodations" means any build-
42 ing or portion thereof, which is used or intended for use as the
43 residence or sleeping place of one or more persons. Nothing
44 contained in this definition or this article shall apply to the
45 rental of a room or rooms in a rooming house occupied by the
46 owner as a place of residence and containing no more than
47 four rented rooms, or rooms to be rented;

48 (l) The term "real property" includes real estate, lands,
49 leaseholds, commercial or industrial buildings and any vacant
50 land offered for sale or rent on which the construction of a
51 housing accommodation, commercial or industrial building
52 is intended, and any land operated as a trailer camp or rented
53 or leased for the use, parking or storage of mobile homes or
54 house trailers;

55 (m) The term "real estate broker" includes any person,
56 firm or corporation who, for a fee, commission or other valu-
57 able consideration, or by reason of a promise or reasonable
58 expectation thereof, lists for sale, sells, exchanges, buys or
59 rents, or offers or attempts to negotiate a sale, exchange, pur-
60 chase, or rental of real estate or an interest therein, or collects
61 or offers or attempts to collect rent for the use of real estate or
62 solicits for prospective purchaser or assists or directs in the
63 procuring of prospects or the negotiation or closing of any
64 transaction which does or is contemplated to result in the sale,
65 exchange, leasing, renting or auctioning of any real estate
66 or negotiates, offers or attempts or agrees to negotiate a loan
67 secured or to be secured by mortgage or other encumbrance
68 upon or transfer of any real estate for others, or any person
69 who, for pecuniary gain or expectation of pecuniary gain, con-

70 ducts a public or private competitive sale of lands or any
71 interest in lands. In the sale of lots, the term "real estate
72 broker" shall also include any person, partnership, association
73 or corporation employed by or on behalf of the owner or
74 owners of lots or other parcels of real estate, at a stated
75 salary, or upon a commission, or upon a salary and commis-
76 sion, or otherwise to sell such real estate, or any parts thereof,
77 in lots or other parcels, and who shall sell or exchange, or
78 offer or attempt or agree to negotiate the sale or exchange, of
79 any such lot or parcel of real estate. A newspaper engaged in
80 the activity of advertising in the normal course of its business
81 shall not be deemed to be a real estate broker;

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

97 (o) The term "purchaser" includes any occupant, pros-
98 pective occupant, lessee, prospective lessee, renter, prospective
99 renter, buyer or prospective buyer;

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

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

107 (r) The term "rooming house" means a house or building
108 where there are one or more bedrooms which the proprietor
109 can spare for the purpose of giving lodgings to such persons as
110 he chooses to receive;

111 (s) The term "handicap" or "handicapped" means a person
112 who suffers from a physical defect through organic processes,
113 organic changes, injury, accident or any other cause.

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

1 The West Virginia human rights commission, heretofore
2 created, is hereby continued. The commission shall have the
3 power and authority and shall perform the functions and
4 services as in this article prescribed and as otherwise provided
5 by law. The commission shall encourage and endeavor to
6 bring about mutual understanding and respect among all
7 racial, religious and ethnic groups within the state and shall
8 strive to eliminate all discrimination in employment and places
9 of public accommodations by virtue of race, religion, color,
10 national origin, ancestry, sex, age or handicap and shall strive
11 to eliminate all discrimination in the sale, purchase, lease,
12 rental or financing of housing and other real property by
13 virtue of race, religion, color, national origin, ancestry or
14 handicap.

§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
3 government officers, units, activities and agencies in the pro-
4 motion and attainment of more harmonious understanding
5 and greater equality of rights between and among all racial,
6 religious and ethnic groups in this state;
7 (b) To enlist the cooperation of racial, religious and
8 ethnic units, community and civic organizations, industrial
9 and labor organizations and other identifiable groups of the
10 state in programs and campaigns devoted to the advancement
11 of tolerance, understanding and the equal protection of the
12 laws of all groups and peoples;
13 (c) To receive, investigate and pass upon complaints
14 alleging discrimination in employment or places of public
15 accommodations, because of race, religion, color, national
16 origin, ancestry, sex, age or handicap, and complaints alleging
17 discrimination in the sale, purchase, lease, rental and financing
18 of housing accommodations or real property because of race,
19 religion, color, national origin, ancestry or handicap and to

20 initiate its own consideration of any situations, circumstances
21 or problems, including therein any racial, religious or ethnic
22 group tensions, prejudice, disorder or discrimination reported
23 or existing within the state relating to employment, places of
24 public accommodations, housing accommodations and real
25 property;

26 (d) To hold and conduct public and private hearings on
27 complaints, matters and questions before the commission
28 and, in connection therewith, relating to discrimination in
29 employment, or places of public accommodations, housing
30 accommodations or real property and during the investigation
31 of any formal complaint before the commission relating to
32 employment, places of public accommodations, housing ac-
33 commodation or real property to:

34 (1) Issue subpoenas and subpoenas duces tecum upon
35 the concurrence of at least five members of the commission,
36 administer oaths, take the testimony of any person under oath,
37 and make reimbursement for travel and other reasonable
38 and necessary expenses in connection with such attendance;

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

42 (3) Delegate to a panel of one commission member ap-
43 pointed by the chairman and a hearing examiner who shall
44 be an attorney, duly licensed to practice law in West Virginia,
45 the power and authority to hold and conduct the hearings,
46 as herein provided, but all decisions and actions growing out
47 of or upon any such hearings shall be reserved for determina-
48 tion by the commission;

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

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

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

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

61 commission;

62 (e) To recommend to the governor and Legislature poli-
63 cies, procedures, practices and legislation in matters and
64 questions affecting human rights;

65 (f) To delegate to its executive director such powers,
66 duties and functions as may be necessary and expedient in
67 carrying out the objectives and purposes of this article;

68 (g) To prepare a written report on its work, functions and
69 services for each year ending on the thirtieth day of June
70 and to deliver copies thereof to the governor on or before
71 the first day of December next thereafter;

72 (h) To do all other acts and deeds necessary and proper
73 to carry out and accomplish effectively the objects, functions
74 and services contemplated by the provisions of this article,
75 including the promulgation of rules and regulations in accord-
76 ance with the provisions of article three, chapter twenty-nine-a
77 of this code, implementing the powers and authority hereby
78 vested in the commission;

79 (i) To create such advisory agencies and conciliation
80 councils, local, regional or statewide, as in its judgment will
81 aid in effectuating the purposes of this article, to study the
82 problem of discrimination in all or specific fields or instances
83 of discrimination because of race, religion, color, national
84 origin, ancestry, sex, age or handicap; to foster, through
85 community effort or otherwise, goodwill, cooperation and
86 conciliation among the groups and elements of the population
87 of this state, and to make recommendations to the commission
88 for the development of policies and procedures, and for pro-
89 grams of formal and informal education, which the commis-
90 sion may recommend to the appropriate state agency. Such
91 advisory agencies and conciliation councils shall be composed
92 of representative citizens serving without pay. The com-
93 mission may itself make the studies and perform the acts
94 authorized by this subdivision. It may, by voluntary con-
95 ferences with parties in interest, endeavor by conciliation and
96 persuasion to eliminate discrimination in all the stated fields
97 and to foster goodwill and cooperation among all elements
98 of the population of the state;

99 (j) To accept contributions from any person to assist in
100 the effectuation of the purposes of this section and to seek
101 and enlist the cooperation of private, charitable, religious,

102 labor, civic and benevolent organizations for the purposes
103 of this section;

104 (k) To issue such publications and such results of in-
105 vestigation and research as in its judgment will tend to pro-
106 mote good will and minimize or eliminate discrimination:
107 *Provided*, That the identity of the parties involved shall not
108 be disclosed.

§5-11-9. Unlawful discriminatory practices.

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

6 (a) For any employer to discriminate against an individual
7 with respect to compensation, hire, tenure, terms, conditions or
8 privileges of employment if the individual is able and compe-
9 tent to perform the services required even if such individual is
10 handicapped: *Provided*, That it shall not be unlawful discrim-
11 inatory practice for an employer to observe the provisions of
12 any bona fide pension, retirement, group or employee insur-
13 ance, or welfare benefit plan or system not adopted as a sub-
14 terfuge to evade the provisions of this subdivision:

15 (b) For any employer, employment agency or labor organi-
16 zation, prior to the employment or admission to membership,
17 to (1) elicit any information or make or keep a record of or
18 use any form of application or application blank containing
19 questions or entries concerning the race, religion, color, na-
20 tional origin, ancestry, sex, or age of any applicant for
21 employment or membership; (2) print or publish or cause
22 to be printed or published any notice or advertisement relat-
23 ing to employment or membership indicating any preference,
24 limitation, specification or discrimination based upon race,
25 religion, color, national origin, ancestry, sex, or age; or
26 (3) deny or limit, through a quota system, employment or
27 membership because of race, religion, color, national origin,
28 ancestry, sex, age or handicap;

29 (c) For any labor organization because of race, religion,
30 color, national origin, ancestry, sex, age or handicap of any
31 individual to deny full and equal membership rights to any

32 individual or otherwise to discriminate against such individuals
33 with respect to hire, tenure, terms, conditions or privileges of
34 employment or any other matter, directly or indirectly, related
35 to employment;

36 (d) For an employer, labor organization, employment agency
37 or any joint labor-management committee controlling appren-
38 tice training programs to:

39 (1) Select individuals for an apprentice training program
40 registered with the state of West Virginia on any basis other
41 than their qualifications as determined by objective criteria
42 which permit review;

43 (2) Discriminate against any individual with respect to his
44 right to be admitted to or participate in a guidance program,
45 an apprenticeship training program, on-the-job training pro-
46 gram, or other occupational training or retraining program;

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

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

56 (e) For any employment agency to fail or refuse to classify
57 properly, refer for employment or otherwise to discriminate
58 against any individual because of his race, religion, color, na-
59 tional origin, ancestry, sex, age or handicap;

60 (f) For any person being the owner, lessee, proprietor, man-
61 ager, superintendent, agent or employee of any place of pub-
62 lic accommodations to:

63 (1) Refuse, withhold from or deny to any individual because
64 of his race, religion, color, national origin, ancestry, sex, age or
65 handicap, either directly or indirectly, any of the accommo-
66 dations, advantages, facilities, privileges or services of such place
67 of public accommodations;

68 (2) Publish, circulate, issue, display, post or mail, either
69 directly or indirectly, any written or printed communication,
70 notice or advertisement to the effect that any of the accommo-
71 dations, advantages, facilities, privileges or services of any

72 such place shall be refused, withheld from or denied to any
73 individual on account of race, religion, color, national origin,
74 ancestry, sex, age or handicap, or that the patronage or cust-
75 om thereat of any individual, belonging to or purporting to be
76 of any particular race, religion, color, national origin, ancestry,
77 sex or age or who is handicapped is unwelcome, objectionable,
78 not acceptable, undesired or not solicited;

79 (g) For the owner, lessee, sublessee, assignee or managing
80 agent of, or other person having the right of ownership or
81 possession of or the right to sell, rent, lease, assign, or sublease
82 any housing accommodations or real property or part or por-
83 tion thereof, or any agent, or employee of any of them; or for
84 any real estate broker, real estate salesman, or employee or
85 agent thereof:

86 (1) To refuse to sell, rent, lease, assign or sublease or other-
87 wise to deny to or withhold from any person or group of per-
88 sons any housing accommodations or real property, or part or
89 portion thereof, because of race, religion, color, national ori-
90 gin, ancestry or handicap of such person or group of persons;

91 (2) To discriminate against any person or group of persons
92 because of the race, religion, color, national origin, ancestry or
93 handicap of such person or group of persons in the terms, con-
94 ditions, or privileges of the sale, rental, or lease of any housing
95 accommodations or real property, or part or portion thereof,
96 or in the furnishing of facilities or services in connection there-
97 with;

98 (3) To print, publish, circulate, issue, display, post or mail,
99 or cause to be printed, published, circulated, issued, displayed,
100 posted or mailed any statement, advertisement, publication, or
101 sign or to use any form of application for the purchase, rental,
102 lease, assignment or sublease of any housing accommodations
103 or real property, or part or portion thereof, or to make any
104 record or inquiry in connection with the prospective purchase,
105 rental, lease, assignment or sublease of any housing accom-
106 modations or real property or part or portion thereof, which
107 expresses, directly or indirectly, any discrimination as to race,
108 religion, color, national origin, ancestry or handicap or any
109 intent to make any such discrimination and the production of
110 any statement, advertisement, publicity, sign, form of applica-
111 tion, record or inquiry purporting to be made by any such

112 person shall be prima facie evidence in any action that the
113 same was authorized by such person;

114 (h) For any person or financial institution or lender to
115 whom application is made for financial assistance for the pur-
116 chase, acquisition, construction, rehabilitation, repair or main-
117 tenance of any housing accommodations or real property, or
118 part or portion thereof, or any agent or employee thereof to:

119 (1) Discriminate against any person or group of persons
120 because of race, religion, color, national origin, ancestry or
121 handicap, of such person or group of persons or of the pro-
122 spective occupants or tenants of such housing accommodations
123 or real property, or part or portion thereof, in the granting,
124 withholding, extending, modifying or renewing, or in the fix-
125 ing of the rates, terms, conditions or provisions of any such
126 financial assistance or in the extension of services in connec-
127 tion therewith;

128 (2) Use any form of application for such financial assis-
129 tance or to make any record of inquiry in connection with ap-
130 plications for such financial assistance which expresses, direct-
131 ly or indirectly, any discrimination as to race, religion, color,
132 national origin, ancestry or handicap or any intent to make
133 any such discrimination;

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

137 (1) Engage in any form of threats or reprisal, or to engage
138 in, or hire, or conspire with others to commit acts or activities
139 of any nature, the purpose of which is to harass, degrade, em-
140 barrass, or cause physical harm or economic loss or to aid,
141 abet, incite, compel or coerce any person to engage in any of
142 the unlawful discriminatory practices defined in this section;

143 (2) Willfully obstruct or prevent any person from com-
144 plying with the provisions of this article, or to resist, prevent,
145 impede or interfere with the commission or any of its mem-
146 bers or representatives in the performance of duty under this
147 article;

148 (3) Engage in any form of reprisal or otherwise discrimi-
149 nate against any person because he has opposed any practices
150 or acts forbidden under this article or because he has filed a
151 complaint, testified or assisted in any proceeding under this

152 article;

153 (4) For profit to induce or attempt to induce any person to
154 sell or rent or to not sell or rent any housing accommodations
155 or real property by representations regarding the entry or pro-
156 spective entry into the neighborhood of a person or persons
157 who are handicapped or who are of a particular race, religion,
158 color, national origin or ancestry.

§5-11-13. Exclusiveness of remedy.

1 Nothing contained in this article shall be deemed to repeal
2 or supersede any of the provisions of any existing or hereafter
3 adopted municipal ordinance, municipal charter or of any law
4 of this state relating to discrimination because of race, religion,
5 color, national origin, ancestry, sex, age or handicap, but as to
6 acts declared unlawful by section nine of this article the pro-
7 cedure herein provided shall, when invoked, be exclusive and
8 the final determination therein shall exclude any other action,
9 civil or criminal, based on the same grievance of the com-
10 plainant concerned. If such complainant institutes any action
11 based on such grievance without resorting to the procedure
12 provided in this article, he may not subsequently resort to
13 the procedure herein. In the event of a conflict between the
14 interpretation of a provision of this article and the interpreta-
15 tion of a similar provision contained in any municipal ordinance
16 authorized by charter, the interpretation of the provision in
17 this article shall apply to such municipal ordinance.

§5-11-16. Certain records exempt.

1 Notwithstanding any other provisions of this article, it
2 shall not be an unlawful discriminatory practice for the depart-
3 ment of employment security to ascertain and record the age,
4 sex, race, religion, color, national origin, ancestry or handicap
5 of any individual for the purpose of making such reports as
6 may from time to time be required by agencies of the federal
7 government or be necessary to show compliance with any rule
8 or regulation issued by any such agency. Said records may
9 be made and kept in the manner required by the federal govern-
10 ment: *Provided*, That such recording of the age, sex, race,
11 religion, color, national origin, ancestry or handicap of any in-
12 dividual shall not be used to discriminate, within the meaning
13 of this article, directly or indirectly, against any such individual
14 as prohibited by all other sections of this article.

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

H. Darrel Darby
Chairman Senate Committee

Clarence C. Christian Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Harold W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. J. Brotherton Jr.
President of the Senate

Lewis F. Thomas
Speaker House of Delegates

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

Arthur A. Thomas Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 4/24/73

Time 2:34 p.m.