

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973



ENROLLED

HOUSE BILL No. 269

(By Mrs. Swirl and M. Kopp)



PASSED June 6, 1973

In Effect Ninety days from Passage



269

FILED IN THE OFFICE
OF CAROL F. HENKELL III
SECRETARY OF STATE
THIS DATE 6-13-73

ENROLLED

House Bill No. 269

(By MRS. SMIRL and MR. KOPP)

[Passed June 6, 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 inclusion of "blindness" under the antidiscrimination provisions of the West Virginia human rights act; the West Virginia human rights commission; declaration of policy; definitions; human rights commission continued; status, powers and objects; commission powers, functions, services; unlawful discriminatory practices; exclusiveness of remedy; certain records exempt.

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
2 provide all of its citizens equal opportunity for employment,
3 equal access to places of public accommodations, and equal
4 opportunity in the sale, purchase, lease, rental and financing
5 of housing accommodations or real property. Equal oppor-
6 tunity in the areas of employment and public accommodations

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

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

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term "person" means one or more individuals,
3 partnerships, associations, organizations, corporations, labor
4 organizations, 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 ac-
26 tivity of advertising in the normal course of its business shall
27 not be 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 blindness 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
36 any 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
40 in 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
43 the residence or sleeping place of one or more persons.
44 Nothing contained in this definition or this article shall apply
45 to the rental of a room or rooms in a rooming house oc-
46 cupied by the owner as a place of residence and containing
47 no more than 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 is
52 intended, and any land operated as a trailer camp or rented
53 or leased for the use, parking or storage of mobile homes
54 or house trailers;

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

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

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

98 (o) The term "purchaser" includes any occupant, prospec-
99 tive occupant, lessee, prospective lessee, renter, prospec-
100 tive renter, buyer or prospective buyer;

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

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

108 (r) The term "rooming house" means a house or build-

109 ing where there are one or more bedrooms which the
110 proprietor can spare for the purpose of giving lodgings to
111 such persons as he chooses to receive;

112 (s) For the purpose of this article, a person shall be
113 considered to be blind only if his central visual acuity does not
114 exceed twenty/two hundred in the better eye with correcting
115 lenses, or if his visual acuity is greater than twenty/two
116 hundred but is occasioned by a limitation in the fields of
117 vision such that the widest diameter of the visual field sub-
118 tends an angle no greater than twenty degrees.

§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 bring
6 about mutual understanding and respect among all racial,
7 religious and ethnic groups within the state and shall strive to
8 eliminate all discrimination in employment and places of public
9 accommodations by virtue of race, religion, color, national
10 origin, ancestry, sex, age or blindness and shall strive to
11 eliminate all discrimination in the sale, purchase, lease, rental
12 or financing of housing and other real property by virtue of
13 race, religion, color, national origin, ancestry or blindness.

§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 and
5 greater equality of rights between and among all racial, religious
6 and ethnic groups in this state;

7 (b) To enlist the cooperation of racial, religious and
8 ethnic units, community and civic organizations, industrial and
9 labor organizations and other identifiable groups of the state in
10 programs and campaigns devoted to the advancement of toler-
11 ance, understanding and the equal protection of the laws of all
12 groups and peoples;

13 (c) To receive, investigate and pass upon complaints al-

14 leging discrimination in employment or places of public ac-
15 commodations, because of race, religion, color, national
16 origin, ancestry, sex, age or blindness, 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 blindness 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 or
23 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 and,
28 in connection therewith, relating to discrimination in employ-
29 ment, or places of public accommodations, housing accommo-
30 dations or real property and during the investigation of any
31 formal complaint before the commission relating to employ-
32 ment, places of public accommodations, housing accommoda-
33 tions or real property to:

34 (1) Issue subpoenas and subpoenas duces tecum upon the
35 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 and
38 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, as
46 herein provided, but all decisions and actions growing out of or
47 upon any such hearings shall be reserved for determination by
48 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 the
52 respondent resides or transacts business for enforcement of any
53 conciliation agreement or consent order by seeking specific
54 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 of
57 this article or the rules and regulations of the commission;
58 (7) To apply to the circuit court of the county where the
59 respondent resides or transacts business for an order enforcing
60 any lawful cease and desist order issued by the commission;
61 (e) To recommend to the governor and Legislature policies,
62 procedures, practices and legislation in matters and questions
63 affecting human rights;
64 (f) To delegate to its executive director such powers, duties
65 and functions as may be necessary and expedient in carrying out
66 the objectives and purposes of this article;
67 (g) To prepare a written report on its work, functions and
68 services for each year ending on the thirtieth day of June and
69 to deliver copies thereof to the governor on or before the first
70 day of December next thereafter;
71 (h) To do all other acts and deeds necessary and proper to
72 carry out and accomplish effectively the objects, functions and
73 services contemplated by the provisions of this article, including
74 the promulgation of rules and regulations in accordance with
75 the provisions of article three, chapter twenty-nine-a of this
76 code, implementing the powers and authority hereby vested in
77 the commission;
78 (i) To create such advisory agencies and conciliation coun-
79 cils, local, regional or statewide, as in its judgment will aid in
80 effectuating the purposes of this article, to study the problem
81 of discrimination in all or specific fields or instances of dis-
82 crimination because of race, religion, color, national origin,
83 ancestry, sex, age or blindness; to foster, through community
84 effort or otherwise, goodwill, cooperation and conciliation
85 among the groups and elements of the population of this state,
86 and to make recommendations to the commission for the
87 development of policies and procedures, and for programs of
88 formal and informal education, which the commission may
89 recommend to the appropriate state agency. Such advisory
90 agencies and conciliation councils shall be composed of
91 representative citizens serving without pay. The commission
92 may itself make the studies and perform the acts authorized
93 by this subdivision. It may, by voluntary conferences with
94 parties in interest, endeavor by conciliation and persuasion to
95 eliminate discrimination in all the stated fields and to foster

96 goodwill and cooperation among all elements of the population
97 of the state;

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

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

§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
8 or privileges of employment if the individual is able and
9 competent to perform the services required even if such
10 individual is blind: *Provided*, That it shall not be unlawful
11 discriminatory practice for an employer to observe the pro-
12 visions of any bona fide pension, retirement, group or em-
13 ployee insurance, or welfare benefit plan or system not
14 adopted as a subterfuge to evade the provisions of this sub-
15 division;

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

28 bership because of race, religion, color, national origin,
29 ancestry, sex, age or blindness;

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

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

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

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

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

52 (4) Print or circulate or cause to be printed or circulated
53 any statement, advertisement or publication, or to use any
54 form of application for such programs or to make any
55 inquiry in connection with such program which expresses,
56 directly or indirectly, discrimination or any intent to discrimi-
57 nate, unless based upon a bona fide occupational qualifica-
58 tion;

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

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

66 (1) Refuse, withhold from or deny to any individual be-
67 cause of his race, religion, color, national origin, ancestry,

68 sex, age or blindness, either directly or indirectly, any of
69 the accommodations, advantages, facilities, privileges or ser-
70 vices of such place of public accommodations;

71 (2) Publish, circulate, issue, display, post or mail, either
72 directly or indirectly, any written or printed communication,
73 notice or advertisement to the effect that any of the accom-
74 modations, advantages, facilities, privileges or services of
75 any such place shall be refused, withheld from or denied to
76 any individual on account of race, religion, color, national
77 origin, ancestry, sex, age or blindness, or that the patronage
78 or custom thereat of any individual, belonging to or purport-
79 ing to be of any particular race, religion, color, national
80 origin, ancestry, sex or age or who is blind is unwelcome,
81 objectionable, not acceptable, undesired or not solicited;

82 (g) For the owner, lessee, sublessee, assignee or manag-
83 ing agent of, or other person having the right of ownership
84 or possession of or the right to sell, rent, lease, assign, or
85 sublease any housing accommodations or real property or
86 part or portion thereof, or any agent, or employee of any of
87 them; or for any real estate broker, real estate salesman, or
88 employee or agent thereof:

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

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

102 (3) To print, publish, circulate, issue, display, post or
103 mail, or cause to be printed, published, circulated, issued,
104 displayed, posted or mailed any statement, advertisement,
105 publication, or sign or to use any form of application for the
106 purchase, rental, lease, assignment or sublease of any housing
107 accommodations or real property, or part or portion thereof,

108 or to make any record or inquiry in connection with the
109 prospective purchase, rental, lease, assignment or sublease
110 of any housing accommodations or real property or part or
111 portion thereof, which expresses, directly or indirectly, any
112 discrimination as to race, religion, color, national origin,
113 ancestry or blindness or any intent to make any such dis-
114 crimination and the production of any statement, advertise-
115 ment, publicity, sign, form of application, record or inquiry
116 purporting to be made by any such person shall be prima
117 facie evidence in any action that the same was authorized
118 by such person;

119 (h) For any person or financial institution or lender to
120 whom application is made for financial assistance for the
121 purchase, acquisition, construction, rehabilitation, repair or
122 maintenance of any housing accommodations or real property,
123 or part or portion thereof, or any agent or employee thereof
124 to:

125 (1) Discriminate against any person or group of persons
126 because of race, religion, color, national origin, ancestry or
127 blindness, of such person or group of persons or of the
128 prospective occupants or tenants of such housing accommoda-
129 tions or real property, or part or portion thereof, in the
130 granting, withholding, extending, modifying or renewing, or
131 in the fixing of the rates, terms, conditions or provisions of
132 any such financial assistance or in the extension of services
133 in connection therewith;

134 (2) Use any form of application for such financial assist-
135 ance or to make any record of inquiry in connection with
136 applications for such financial assistance which expresses,
137 directly or indirectly, any discrimination as to race, religion,
138 color, national origin, ancestry or blindness or any intent to
139 make any such discrimination;

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

143 (1) Engage in any form of threats or reprisal, or to engage
144 in, or hire, or conspire with others to commit acts or activities
145 of any nature, the purpose of which is to harass, degrade,
146 embarrass, or cause physical harm or economic loss or to
147 aid, abet, incite, compel or coerce any person to engage in any

148 of the unlawful discriminatory practices defined in this
149 section;

150 (2) Willfully obstruct or prevent any person from com-
151 plying with the provisions of this article, or to resist, prevent,
152 impede or interfere with the commission or any of its mem-
153 bers or representatives in the performance of duty under this
154 article;

155 (3) Engage in any form of reprisal or otherwise discrimi-
156 nate against any person because he has opposed any practices
157 or acts forbidden under this article or because he has filed a
158 complaint, testified or assisted in any proceeding under this
159 article;

160 (4) For profit to induce or attempt to induce any person
161 to sell or rent or to not sell or rent any housing accommoda-
162 tions or real property by representations regarding the entry
163 or prospective entry into the neighborhood of a person or
164 persons who are blind or who are of a particular race, religion,
165 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 blindness, 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 the
13 procedure herein. In the event of a conflict between the inter-
14 pretation of a provision of this article and the interpretation
15 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 shall
2 not be an unlawful discriminatory practice for the department

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

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

H. Daniel Darby
Chairman Senate Committee

Lawrence B. Clouston
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard B. Larson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. J. Brantley
President of the Senate

Lewis J. McManus
Speaker House of Delegates

The within approved this the 12th
day of June, 1973.

Arthur S. Hanes Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date June 8, 1913

Time 4:00 p.m.