WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
Reduced Committee Substitute
for SENATE BILL NO. 388

(By Mr. Jones, Mr. Alumbe and Mr. Hulley)

PASSED April 7, 1981
In Effect 70 days from Passage
ENROLLED
REVISED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 388
(MR. JONES, MR. PALUMBO and MR. HOLLIDAY, original sponsors)
[Passed April 7, 1981; 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 requiring that all citizens be provided equal opportunities and rights in employment, public accommodations and housing accommodations regardless of handicap.

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, blindness 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, sex, blindness or handicap.
The denial of these rights to properly qualified persons by
reason of race, religion, color, national origin, ancestry, sex,
age, blindness 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 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
grievances, terms or conditions of employment,
or for other mutual aid or protection in relation to
employment;
(g) The term "employment agency" includes any person
undertaking with or without compensation to procure,
recruit, refer or place employees. A newspaper engaged in the
activity of advertising in the normal course of its business
shall not be deemed to be an employment agency;
(h) The term "discriminate" or "discrimination" means to
exclude from, or fail or refuse to extend to, a person equal
opportunities because of race, religion, color, national origin,
ancestry, sex, age, blindness 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 building 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 valuable 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, purchase, 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 transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts 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 commission, 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,
prospective 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
Virginia 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;
(s) For the purpose of this article, a person shall be
considered to be blind only if his central visual acuity does
not exceed twenty/two hundred in the better eye with
correcting lenses, or if his visual acuity is greater than
twenty/two hundred but is occasioned by a limitation in the
fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees;

(t) The term “handicap” means any physical or mental impairment which substantially limits one or more of an individual's major life activities.

§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, blindness or handicap and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, blindness 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, blindness 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, sex, blindness or handicap and to initiate its own
consideration of any situations, circumstances or problems,
including therein any racial, religious or ethnic group
tensions, prejudice, disorder or discrimination reported or
existing within the state relating to employment, places of
public accommodations, housing accommodations and real
property;
(d) To hold and conduct public and private hearings at
such times and places around the state as may be practical on
complaints, matters and questions before the commission
and, in connection therewith, relating to discrimination in
employment, or places of public accommodations, housing
accommodations or real property and during the
investigation of any formal complaint before the commission
relating to employment, places of public accommodations,
housing accommodations or real property to:
(1) Issue subpoenas and subpoenas duces tecum upon the
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
appointed 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
determination by the commission;
(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 commission;

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

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

(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 problems of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness 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 goodwill and minimize or eliminate discrimination:

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

§5-11-9. Unlawful discriminatory practices; exceptions.

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 blind or 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, specifications 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, blindness or handicap;

(c) For any labor organization because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap of any individual to deny full and equal
membership rights to any individual or otherwise to
discriminate against such individual with respect to hire,
tenure, terms, conditions or privileges of employment or any
other matter, directly or indirectly, related to employment;
(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, ancestry, sex, age, blindness or handicap;
(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, ancestry,
sex, age, blindness or handicap, 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, ancestry, sex, age, blindness or handicap, or that the
patronage or custom thereat of any individual, belonging to
or purporting to be of any particular race, religion, color,
national origin, ancestry, sex or age or who is blind or
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, sex, blindness or handicap of such
person or group of persons: Provided, That this provision
shall not require any person named herein to rent, lease,
assign or sublease any housing accommodations or real
property, or any portion thereof to both sexes where the
facilities of such housing accommodations or real property,
or any portion thereof, are suitable for only one sex;
(2) To discriminate against any person or group of persons
because of the race, religion, color, national origin, ancestry,
sex, blindness 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
117 discrimination as to race, religion, color, national origin, ancestry, sex, blindness 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: Provided, That with respect to sex discrimination, this provision shall not apply to any person named herein whose housing accommodations or real property, or any portion thereof, have facilities which are suitable for only one sex;

(h) For any person or financial institution or lender to whom application is made for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance 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, sex, blindness or handicap of such person or group of persons or of the prospective occupants or tenants of such housing accommodation or real property, or part or portion thereof, in the granting, withholding, extending, modifying or renewing, or in the fixing of the rates, terms, conditions or provisions of any such financial assistance or in the extension of services in connection therewith;

(2) Use any form of application for such financial assistance or to make any record of inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any discrimination as to race, religion, color, national origin, ancestry, sex, blindness 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, 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;

(4) Induce or attempt to induce for profit 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 blind or handicapped or who are of a particular race, religion, color, national origin, ancestry or sex: Provided, That for the purposes of this article it shall not be an unlawful discriminatory practice for any person, employer or owner to refuse to make any unreasonable capital expenditure to accommodate the physical or mental impairment of any handicapped person.


Nothing contained in this article shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this state relating to discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness or 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, blindness 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, blindness 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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the ___ day of May, 1981.

Governor