

APPROVED AND SIGNED BY THE GOVERNOR

Date 5-1-81

Time _____

No: 388

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981



ENROLLED

Revised Committee Substitute
for SENATE BILL NO. 388

(By Mr. *Jones, Mr. Polumbo & Mr. Halliclax*)



PASSED April 7, 1981

In Effect minutes 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
2 all of its citizens equal opportunity for employment, equal
3 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
6 opportunity in the areas of employment and public
7 accommodations is hereby declared to be a human right or
8 civil right of all persons without regard to race, religion, color,
9 national origin, ancestry, sex, age, blindness or handicap.
10 Equal opportunity in housing accommodations or real
11 property is hereby declared to be a human right or civil right

12 of all persons without regard to race, religion, color, national
13 origin, ancestry, sex, blindness or handicap.

14 The denial of these rights to properly qualified persons by
15 reason of race, religion, color, national origin, ancestry, sex,
16 age, blindness or handicap is contrary to the principles of
17 freedom and equality of opportunity and is destructive to a
18 free and 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
13 more persons within the state: *Provided*, That such term shall
14 not be taken, understood or construed to include a private
15 club;

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

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

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

30 (h) The term "discriminate" or "discrimination" means to
31 exclude from, or fail or refuse to extend to, a person equal
32 opportunities because of race, religion, color, national origin,
33 ancestry, sex, age, blindness or handicap and includes to
34 separate or segregate;

35 (i) The term “unlawful discriminatory practices” includes
36 only those practices specified in section nine of this article;

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

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

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

57 (m) The term “real estate broker” includes any person,
58 firm or corporation who, for a fee, commission or other
59 valuable consideration, or by reason of a promise or
60 reasonable expectation thereof, lists for sale, sells, exchanges,
61 buys or rents, or offers or attempts to negotiate a sale,
62 exchange, purchase, or rental of real estate or an interest
63 therein, or collects or offers or attempts to collect rent for the
64 use of real estate or solicits for prospective purchaser or
65 assists or directs in the procuring of prospects or the
66 negotiation or closing of any transaction which does or is
67 contemplated to result in the sale, exchange, leasing, renting
68 or auctioning of any real estate or negotiates, offers or
69 attempts or agrees to negotiate a loan secured or to be secured
70 by mortgage or other encumbrance upon transfer of any real
71 estate for others, or any person who, for pecuniary gain or
72 expectation of pecuniary gain, conducts a public or private
73 competitive sale of lands or any interest in lands. In the sale of
74 lots, the term “real estate broker” shall also include any
75 person, partnership, association or corporation employed by
76 or on behalf of the owner or owners of lots or other parcels of

77 real estate, at a stated salary, or upon a commission, or upon a
78 salary and commission, or otherwise to sell such real estate,
79 or any parts thereof, in lots or other parcels, and who shall sell
80 or exchange, or offer or attempt or agree to negotiate the sale
81 or exchange, of any such lot or parcel of real estate. A
82 newspaper engaged in the activity of advertising in the
83 normal course of its business shall not be deemed to be a real
84 estate broker;

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

100 (o) The term "purchaser" includes any occupant,
101 prospective occupant, lessee, prospective lessee, renter,
102 prospective renter, buyer or prospective buyer;

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

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

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

114 (s) For the purpose of this article, a person shall be
115 considered to be blind only if his central visual acuity does
116 not exceed twenty/two hundred in the better eye with
117 correcting lenses, or if his visual acuity is greater than
118 twenty/two hundred but is occasioned by a limitation in the

119 fields of vision such that the widest diameter of the visual
120 field subtends an angle no greater than twenty degrees;

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

**§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
5 provided by law. The commission shall encourage and
6 endeavor to bring about mutual understanding and respect
7 among all racial, religious and ethnic groups within the state
8 and shall strive to eliminate all discrimination in employment
9 and places of public accommodations by virtue of race,
10 religion, color, national origin, ancestry, sex, age, blindness or
11 handicap and shall strive to eliminate all discrimination in the
12 sale, purchase, lease, rental or financing of housing and other
13 real property by virtue of race, religion, color, national origin,
14 ancestry, sex, blindness or 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
4 promotion and attainment of more harmonious
5 understanding and greater equality of rights between and
6 among all racial, religious and ethnic groups in this state;
7 (b) To enlist the cooperation of racial, religious and ethnic
8 units, community and civic organizations, industrial and
9 labor organizations and other identifiable groups of the state
10 in programs and campaigns devoted to the advancement of
11 tolerance, understanding and the equal protection of the laws
12 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, blindness or handicap, and
17 complaints alleging discrimination in the sale, purchase,
18 lease, rental and financing of housing accommodations or
19 real property because of race, religion, color, national origin,

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

27 (d) To hold and conduct public and private hearings at
28 such times and places around the state as may be practical on
29 complaints, matters and questions before the commission
30 and, in connection therewith, relating to discrimination in
31 employment, or places of public accommodations, housing
32 accommodations or real property and during the
33 investigation of any formal complaint before the commission
34 relating to employment, places of public accommodations,
35 housing accommodations or real property to:

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

42 (2) Furnish copies of public hearing records to parties
43 involved therein upon their payment of the reasonable costs
44 thereof to the commission;

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

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

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

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

61 (7) To apply to the circuit court of the county where the

62 respondent resides or transacts business for an order
63 enforcing any lawful cease and desist order issued by the
64 commission;

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

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

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

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

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

103 (j) To accept contributions from any person to assist in the

104 effectuation of the purposes of this section and to seek and
105 enlist the cooperation of private, charitable, religious, labor,
106 civic and benevolent organizations for the purposes of this
107 section;

108 (k) To issue such publications and such results of
109 investigation and research as in its judgment will tend to
110 promote goodwill and minimize or eliminate discrimination:
111 *Provided*, That the identity of the parties involved shall not
112 be disclosed.

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

1 It shall be an unlawful discriminatory practice, unless
2 based upon a bona fide occupational qualification, or except
3 where based upon applicable security regulations established
4 by the United States or the state of West Virginia or its
5 agencies or 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 or handicapped: *Provided*, That it shall not
11 be unlawful discriminatory practice for an employer to
12 observe the provisions of any bona fide pension, retirement,
13 group or employee insurance, or welfare benefit plan or
14 system not adopted as a subterfuge to evade the provisions of
15 this subdivision;

16 (b) For any employer, employment agency or labor
17 organization, prior to the employment or admission to
18 membership, to (1) elicit any information or make or keep a
19 record of or use any form of application or application blank
20 containing questions or entries concerning the race, religion,
21 color, 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, specifications 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
28 membership because of race, religion, color, national origin,
29 ancestry, sex, age, blindness or handicap;

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

33 membership rights to any individual or otherwise to
34 discriminate against such individual with respect to hire,
35 tenure, terms, conditions or privileges of employment or any
36 other matter, directly or indirectly, 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 his
45 right to be admitted to or participate in a guidance program,
46 an apprenticeship training program, on-the-job training
47 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 inquiry
55 in connection with such program which expresses, directly or
56 indirectly, discrimination or any intent to discriminate,
57 unless based upon a bona fide occupational qualification;

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

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

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

70 (2) Publish, circulate, issue, display, post or mail, either
71 directly or indirectly, any written or printed communication,
72 notice or advertisement to the effect that any of the
73 accommodations, advantages, facilities, privileges or services
74 of any such place shall be refused, withheld from or denied to

75 any individual on account of race, religion, color, national
76 origin, ancestry, sex, age, blindness or handicap, or that the
77 patronage or custom thereat of any individual, belonging to
78 or purporting to be of any particular race, religion, color,
79 national origin, ancestry, sex or age or who is blind or
80 handicapped, is unwelcome, objectionable, not acceptable,
81 undesired or not solicited;

82 (g) For the owner, lessee, sublessee, assignee or managing
83 agent of, or other person having the right of ownership or
84 possession of or the right to sell, rent, lease, assign or sublease
85 any housing accommodations or real property or part or
86 portion thereof, or any agent, or employee of any of them; or
87 for any real estate broker, real estate salesman, or employee
88 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 of
91 persons any housing accommodations or real property, or
92 part or portion thereof, because of race, religion, color,
93 national origin, ancestry, sex, blindness or handicap of such
94 person or group of persons: *Provided*, That this provision
95 shall not require any person named herein to rent, lease,
96 assign or sublease any housing accommodations or real
97 property, or any portion thereof to both sexes where the
98 facilities of such housing accommodations or real property,
99 or any portion thereof, are suitable for only one sex;

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

107 (3) To print, publish, circulate, issue, display, post or mail,
108 or cause to be printed, published, circulated, issued,
109 displayed, posted or mailed any statement, advertisement,
110 publication, or sign or to use any form of application for the
111 purchase, rental, lease, assignment or sublease of any housing
112 accommodations or real property, or part or portion thereof,
113 or to make any record or inquiry in connection with the
114 prospective purchase, rental, lease, assignment or sublease of
115 any housing accommodations or real property or part or
116 portion thereof, which expresses, directly or indirectly, any

117 discrimination as to race, religion, color, national origin,
118 ancestry, sex, blindness or handicap or any intent to make
119 any such discrimination and the production of any statement,
120 advertisement, publicity, sign, form of application, record or
121 inquiry purporting to be made by any such person shall be
122 prima facie evidence in any action that the same was
123 authorized by such person: *Provided*, That with respect to
124 sex discrimination, this provision shall not apply to any
125 person named herein whose housing accommodations or real
126 property, or any portion thereof, have facilities which are
127 suitable for only one sex;

128 (h) For any person or financial institution or lender to
129 whom application is made for financial assistance for the
130 purchase, acquisition, construction, rehabilitation, repair or
131 maintenance of any housing accommodations or real
132 property, or part or portion thereof, or any agent or employee
133 thereof to:

134 (1) Discriminate against any person or group of persons
135 because of race, religion, color, national origin, ancestry, sex,
136 blindness or handicap of such person or group of persons or
137 of the prospective occupants or tenants of such housing
138 accommodation or real property, or part or portion thereof, in
139 the granting, withholding, extending, modifying or renewing,
140 or in the fixing of the rates, terms, conditions or provisions of
141 any such financial assistance or in the extension of services in
142 connection therewith;

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

149 (i) For any person, employer, employment agency, labor
150 organization, owner, real estate broker, real estate salesman
151 or financial institution to:

152 (1) Engage in any form of threats or reprisal, or to engage
153 in, or hire, or conspire with others to commit acts or activities
154 of any nature, the purpose of which is to harass, degrade,
155 embarrass, or cause physical harm or economic loss or to aid,
156 abet, incite, compel or coerce any person to engage in any of
157 the unlawful discriminatory practices defined in this section;

158 (2) Willfully obstruct or prevent any person from

159 complying with the provisions of this article, or to resist,
160 prevent, impede or interfere with the commission or any of its
161 members or representatives in the performance of duty under
162 this article;

163 (3) Engage in any form of reprisal or otherwise
164 discriminate against any person because he has opposed any
165 practices or acts forbidden under this article or because he
166 has filed a complaint, testified or assisted in any proceeding
167 under this article;

168 (4) Induce or attempt to induce for profit any person to sell
169 or rent or to not sell or rent any housing accommodations or
170 real property by representations regarding the entry or
171 prospective entry into the neighborhood of a person or
172 persons who are blind or handicapped or who are of a
173 particular race, religion, color, national origin, ancestry or
174 sex: *Provided*, That for the purposes of this article it shall not
175 be an unlawful discriminatory practice for any person,
176 employer or owner to refuse to make any unreasonable
177 capital expenditure to accommodate the physical or mental
178 impairment of any handicapped person.

§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,
5 religion, color, national origin, ancestry, sex, age, blindness or
6 handicap, but as to acts declared unlawful by section nine of
7 this article the procedure herein provided shall, when
8 invoked, be exclusive and the final determination therein
9 shall exclude any other action, civil or criminal, based on the
10 same grievance of the complainant concerned. If such
11 complainant institutes any action based on such grievance
12 without resorting to the procedure provided in this article, he
13 may not subsequently resort to the procedure herein. In the
14 event of a conflict between the interpretation of a provision of
15 this article and the interpretation of a similar provision
16 contained in any municipal ordinance authorized by charter,
17 the interpretation of the provision in this article shall apply to
18 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

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

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

L. P. Baylo
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Jody C. Willis
Clerk of the Senate

L. Blankenship
Clerk of the House of Delegates

Walter R. Wood
President of the Senate

Harold G. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *1*
day of *May*, 1981.

John R. Ramey
Governor

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OFFICE OF THE GOVERNOR

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SECY. OF STATE