

No: 419

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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

Committee Substitute for

SENATE BILL NO. 419

(By Mr. *Baetjer, et al*)



PASSED *March 2* 1983

In Effect *from* Passage



APPROVED AND SIGNED BY THE GOVERNOR

Date 3-16-83

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 419

(MR. BOETTNER, MR. HOLLIDAY AND MR. PALUMBO,
original sponsors)

[Passed March 2, 1983; in effect from passage.]

AN ACT to amend and reenact section thirteen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human ~~ama~~ rights commission; providing for notice of and an alternative right to sue if a complaint is dismissed for certain reasons or no public hearing and no conciliation agreements have been had within specified time periods; and providing for ninety days in which to file suit and the conclusion of proceedings before the commission upon such filing.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.

§5-11-13. Exclusiveness of remedy; exceptions.

1 (a) Except as provided in subsection (b) nothing con-
2 tained in this article shall be deemed to repeal or super-
3 sede any of the provisions of any existing or hereafter
4 adopted municipal ordinance, municipal charter or of any
5 law of this state relating to discrimination because of
6 race, religion, color, national origin, ancestry, sex, age,

7 blindness or handicap, but as to acts declared unlawful by
8 section nine of this article the procedure herein provided
9 shall, when invoked, be exclusive and the final determina-
10 tion therein shall exclude any other action, civil or crimi-
11 nal, based on the same grievance of the complainant con-
12 cerned. If such complainant institutes any action based
13 on such grievance without resorting to the procedure
14 provided in this article, he may not subsequently resort
15 to the procedure herein. In the event of a conflict between
16 the interpretation of a provision of this article and the
17 interpretation of a similar provision contained in any
18 municipal ordinance authorized by charter, the interpre-
19 tation of the provision in this article shall apply to such
20 municipal ordinance.

21 (b) Notwithstanding the provisions of subsection (a) of
22 this section, a complainant may institute an action against
23 a respondent in the county wherein the respondent re-
24 sides or transacts business at any time within ninety
25 days after the complainant is given notice of a right to
26 sue pursuant to this subsection (b) or, if the statute of
27 limitations on the claim has not expired at the end of
28 such ninety-day period, then at any time during which
29 such statute of limitations has not expired. If a suit is
30 filed under this section the proceedings pending before
31 the commission shall be deemed concluded.

32 The commission shall give a complainant who has filed
33 a complaint a notice of a right to sue forthwith upon (1)
34 the dismissal of the complaint within one hundred eighty
35 days of the filing thereof for any reason other than a
36 decision on the merits of the case, or (2) the expiration
37 of a period of one hundred eighty days during which
38 period no public hearing has been held on such complaint
39 and the commission and the respondent have not entered
40 into a conciliation agreement to which the complainant is
41 a party: *Provided*, That the commission shall also give
42 the complainant notice of a right to sue in any case in
43 which, after the expiration of one year, the complaint has
44 not been determined on its merits or a conciliation agree-
45 ment entered into to which the complainant is a party.

46 Notice of right to sue shall be given immediately upon

47 complainant being entitled thereto, by personal service
48 or certified mail, return receipt requested, which notice
49 shall inform the complainant in plain terms of his right
50 to institute a civil action as provided in this section with-
51 in ninety days of the giving of such notice. Service of
52 the notice shall be complete upon mailing.

53 (c) In any action filed under this section, if the court
54 finds that the respondent has engaged in or is engaging
55 in an unlawful discriminatory practice charged in the
56 complaint, the court shall enjoin the respondent from
57 engaging in such unlawful discriminatory practice and
58 order affirmative ~~action~~^{action} which may include, but is not
59 limited to, reinstatement or hiring of employees, granting
60 of back pay, or any other legal or equitable relief as the
61 court deems appropriate. In actions brought under this
62 section, the court in its discretion may award all or a
63 portion of the costs of litigation, including reasonable
64 attorney fees and witness fees, to the complainant.

65 (d) The provisions of this section shall be available to
66 all complainants whose active cases are pending before
67 the human rights commission as well as those complain-
68 ants who file after the effective date of this section.

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

James L. Davis
Chairman Senate Committee

Arnold Ansell
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Fred C. Wuh
Clerk of the Senate

Donald L. Kapp
Clerk of the House of Delegates

Warren P. McKee
President of the Senate

W. M. Seid, Jr.
Speaker House of Delegates

The within *in approval* this the *16*

day of *March*, 1983.

John R. Roper
Governor



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