WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987

ENROLLED

HOUSE BILL No. 2638...

(By Delegate ...Ms. Speaker...Ms. Chambers)
and Del. Swann

Passed ..................
March 14, 1987

In Effect Ninety Days from Passage

By Request of the Executive
AN ACT to amend and reenact sections three, ten and eleven, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human rights commission, changing the definition of age; creating a direct appeal from commission orders to the supreme court of appeals; changing the procedure for enforcement of commission orders; and changing the time limit for filing a complaint.

Be it enacted by the Legislature of West Virginia:

That sections three, ten and eleven, 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.

§5-11-3. Definitions.

1 When used in this article:
2 (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;
7 (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 terms 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 concerning 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
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 the age of forty or above;

(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.

§5-11-10. Discriminatory practices; investigations, hear-
ings, procedures and orders.

Any individual claiming to be aggrieved by an alleged
unlawful discriminatory practice shall make, sign and
file with the commission a verified complaint, which
shall state the name and address of the person, em-
ployer, labor organization, employment agency, owner,
real estate broker, real estate salesman or financial
institution alleged to have committed the unlawful
discriminatory practice complained of, and which shall
set forth the particulars thereof and contain such other
information as may be required by the commission's
rules and regulations. The commission upon its own
initiative, or the attorney general, shall, in like manner,
make, sign and file such complaint. Any employer,
whose employees, or some of them, hinder or threaten
to hinder compliance with the provisions of this article,
shall file with the commission a verified complaint,
asking for assistance by conciliation or other remedial
action and, during such period of conciliation or other
remedial action, no hearings, orders or other actions
shall be held, made or taken by the commission against
such employer. Any complaint filed pursuant to this
article must be filed within one hundred eighty days
after the alleged act of discrimination.

After the filing of any complaint, or whenever there
is reason to believe that an unlawful discriminatory
practice has been committed, the commission shall make
a prompt investigation in connection therewith.

If it shall be determined after such investigation that
no probable cause exists for substantiating the allega-
tions of the complaint, the commission shall, within ten
days from such determination, cause to be issued and
served upon the complainant written notice of such
determination, and the said complainant or his attorney
may, within ten days after such service, file with the
commission a written request for a meeting with the
commission to show probable cause for substantiating
the allegations of the complaint. If it shall be deter-
mined after such investigation or meeting that probable
cause exists for substantiating the allegations of the
complaint, the commission shall immediately endeavor
to eliminate the unlawful discriminatory practices
complained of by conference, conciliation and persuas-
ion. The members of the commission and its staff shall
not disclose what has transpired in the course of such
endeavors: Provided, That the commission may publish
the facts in the case of any complaint which has been
dismissed, and the terms of conciliation when the
complaint has been adjusted, without disclosing the
identity of the parties involved.

In case of failure so to eliminate such practice or in
advance thereof, if in the judgment of the commission
circumstances so warrant, the commission shall cause to
be issued and served a written notice, together with a
copy of such complaint as the same may have been
amended, in the manner provided by law for the service
of summons in civil actions, requiring the person,
employer, labor organization, employment agency,
owner, real estate broker, real estate salesman or
financial institution named in such complaint, hereinaf-
ter referred to as respondent, to answer the charges of
such complaint at a hearing before the commission in
the county where the respondent resides or transacts
business at a time and place to be specified in such
notice: Provided, however, That said written notice be
served at least thirty days prior to the time set for the
hearing.

The case in support of the complaint shall be pres-
ented before the commission by one of its attorneys or
agents. The respondent may file a written, verified
answer to the complaint and appear at such hearing in
person or otherwise, with or without counsel, and submit
testimony and evidence. Except as provided in this
article, all of the pertinent provisions of article five,
chapter twenty-nine-a of this code shall apply to and
govern the hearing and the administrative procedures
in connection with and following such hearing, with like
effect as if the provisions of said article five were set
forth in extenso in this section.

If, after such hearing and consideration of all of the
testimony, evidence and record in the case, the commis-
sion shall find that a respondent has engaged in or is
engaging in any unlawful discriminatory practice as
defined in this article, the commission shall issue and
cause to be served on such respondent an order to cease
and desist from such unlawful discriminatory practice
and to take such affirmative action, including, but not
limited to, hiring, reinstatement or upgrading of
employees, with or without back pay, admission or
restoration to membership in any respondent labor
organization, or the admission to full and equal enjoy-
ment of the services, goods, facilities, or accommoda-
tions offered by any respondent place of public accom-
modation, and the sale, purchase, lease, rental or
financial assistance to any complainant otherwise
qualified for the housing accommodation or real
property, denied in violation of this article, as in the
judgment of the commission, will effectuate the pur-
poses of this article, and including a requirement for
report of the manner of compliance. Such order shall be
accompanied by findings of fact and conclusions of law
as specified in section three, article five, chapter twenty-
nine-a of this code.

If, after such hearing and consideration of all of the
testimony, evidence and record in the case, the commis-
sion shall find that a respondent has not engaged in such
unlawful discriminatory practice, the commission shall
state its findings of fact and conclusions of law as
aforesaid and shall issue and cause to be served on the
complainant an order dismissing the said complaint as
to such respondent.

A copy of its order shall be delivered in all cases by
the commission to the complainant, the respondent, the
attorney general and to such other public officers as the
commission may deem proper. Any such order shall not
be enforceable except as provided in section eleven of
§5-11-11. Appeal and enforcement of commission orders.

(a) From any final order of the commission, an application for review may be prosecuted by either party to the supreme court of appeals within thirty days from the receipt thereof by the filing of a petition therefor to such court against the commission and the adverse party as respondents, and the clerk of such court shall notify each of the respondents and the commission of the filing of such petition. The commission shall, within ten days after receipt of such notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. And if granted to a nonresident of this state, he shall be required to execute and file with the clerk before such order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him thereon. The commission may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review be granted or the certified question be docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the commission of the fact by mail. If a review be granted or the certified question docketed, the case shall be heard by the court in the manner provided for other cases.

The appeal procedure contained in this subsection shall be the exclusive means of review, notwithstanding the provisions of chapter twenty-nine-a of this code: Provided, That such exclusive means of review shall not apply to any case wherein an appeal or a petition for enforcement of a cease and desist order has been filed with a circuit court of this state prior to the first day of April, one thousand nine hundred eighty-seven.
(b) In the event that any person shall fail to obey a final order of the commission within thirty days after receipt of the same, or, if applicable, within thirty days after a final order of the supreme court of appeals, a party or the commission may seek an order from the circuit court for its enforcement. Such proceeding shall be initiated by the filing of a petition in said court, and served upon the respondent in the manner provided by law for the service of summons in civil actions; a hearing shall be held on such petition within sixty days of the date of service. The court may grant appropriate temporary relief, and shall make and enter upon the pleadings, testimony and proceedings such order as is necessary to enforce the order of the commission or supreme court of appeals.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Lyndel Latte
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Judd C. Willis
Clerk of the Senate

Donald E. Kopp
Clerk of the House of Delegates

Dan Teve ZZ
President of the Senate

Henry D. Johnson
Speaker of the House of Delegates

The within bill is approved this the 8th day of April, 1987.

Andrew P. Barnes, Jr.
Governor