

No. 2638

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



ENROLLED

HOUSE BILL No. 2638...

(By Delegate *Mr. Spiker, Mr. Chambers*
and Del. Swann

By Request of the Executive



Passed *March 14,* 1987

In Effect *Ninety Days from* Passage

ENROLLED
H. B. 2638

(By MR. SPEAKER, MR. CHAMBERS and DELEGATE SWANN)
[By request of the Executive]

[Passed March 14, 1987; in effect ninety days from passage.]

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,
- 3 partnerships, associations, organizations, corporations,
- 4 labor organizations, cooperatives, legal representatives,
- 5 trustees, trustees in bankruptcy, receivers and other
- 6 organized groups of persons;
- 7 (b) The term "commission" means the West Virginia
- 8 human rights commission;

9 (c) The term "director" means the executive director
10 of the commission;

11 (d) The term "employer" means the state, or any
12 political subdivision thereof, and any person employing
13 twelve or more persons within the state: *Provided*, That
14 such terms shall not be taken, understood or construed
15 to include a private club;

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

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

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

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

36 (i) The term "unlawful discriminatory practices"
37 includes only those practices specified in section nine of
38 this article;

39 (j) The term "place of public accommodations" means
40 any establishment or person, as defined herein, includ-
41 ing the state, or any political or civil subdivision thereof,
42 which offers its services, goods, facilities or accommo-
43 dations to the general public, but shall not include any
44 accommodations which are in their nature private;

45 (k) The term "housing accommodations" means any
46 building or portion thereof, which is used or intended

47 for use as the residence or sleeping place of one or more
48 persons. Nothing contained in this definition or this
49 article shall apply to the rental of a room or rooms in
50 a rooming house occupied by the owner as a place of
51 residence and containing no more than four rented
52 rooms, or rooms to be rented;

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

61 (m) The term "real estate broker" includes any
62 person, firm or corporation who, for a fee, commission
63 or other valuable consideration, or by reason of a
64 promise or reasonable expectation thereof, lists for sale,
65 sells, exchanges, buys or rents, or offers or attempts to
66 negotiate a sale, exchange, purchase, or rental of real
67 estate or an interest therein, or collects or offers or
68 attempts to collect rent for the use of real estate or
69 solicits for prospective purchaser or assists or directs in
70 the procuring of prospects or the negotiation or closing
71 of any transaction which does or is contemplated to
72 result in the sale, exchange, leasing, renting or auction-
73 ing of any real estate or negotiates, offers or attempts
74 or agrees to negotiate a loan secured or to be secured
75 by mortgage or other encumbrance upon transfer of any
76 real estate for others, or any person who, for pecuniary
77 gain or expectation of pecuniary gain, conducts a public
78 or private competitive sale of lands or any interest in
79 lands. In the sale of lots, the term "real estate broker"
80 shall also include any person, partnership, association or
81 corporation employed by or on behalf of the owner or
82 owners of lots or other parcels of real estate, at a stated
83 salary, or upon a commission, or upon a salary and
84 commission, or otherwise to sell such real estate, or any
85 parts thereof, in lots or other parcels, and who shall sell
86 or exchange, or offer or attempt or agree to negotiate
87 the sale or exchange, of any such lot or parcel of real

88 estate. A newspaper engaged in the activity of adver-
89 tising in the normal course of its business shall not be
90 deemed to be a real estate broker;

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

108 (o) The term "purchaser" includes any occupant,
109 prospective occupant, lessee, prospective lessee, renter,
110 prospective renter, buyer or prospective buyer;

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

116 (q) The term "age" means the age of forty or above;

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

121 (s) For the purpose of this article, a person shall be
122 considered to be blind only if his central visual acuity
123 does not exceed twenty-two hundred in the better eye
124 with correcting lenses, or if his visual acuity is greater
125 than twenty/two hundred but is occasioned by a
126 limitation in the fields of vision such that the widest

127 diameter of the visual field subtends an angle no greater
128 than twenty degrees;

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

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

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

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

28 If it shall be determined after such investigation that
29 no probable cause exists for substantiating the allega-
30 tions of the complaint, the commission shall, within ten
31 days from such determination, cause to be issued and
32 served upon the complainant written notice of such
33 determination, and the said complainant or his attorney

34 may, within ten days after such service, file with the
35 commission a written request for a meeting with the
36 commission to show probable cause for substantiating
37 the allegations of the complaint. If it shall be deter-
38 mined after such investigation or meeting that probable
39 cause exists for substantiating the allegations of the
40 complaint, the commission shall immediately endeavor
41 to eliminate the unlawful discriminatory practices
42 complained of by conference, conciliation and persua-
43 sion. The members of the commission and its staff shall
44 not disclose what has transpired in the course of such
45 endeavors: *Provided*, That the commission may publish
46 the facts in the case of any complaint which has been
47 dismissed, and the terms of conciliation when the
48 complaint has been adjusted, without disclosing the
49 identity of the parties involved.

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

67 The case in support of the complaint shall be pres-
68 ented before the commission by one of its attorneys or
69 agents. The respondent may file a written, verified
70 answer to the complaint and appear at such hearing in
71 person or otherwise, with or without counsel, and submit
72 testimony and evidence. Except as provided in this
73 article, all of the pertinent provisions of article five,
74 chapter twenty-nine-a of this code shall apply to and

75 govern the hearing and the administrative procedures
76 in connection with and following such hearing, with like
77 effect as if the provisions of said article five were set
78 forth in extenso in this section.

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

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

111 A copy of its order shall be delivered in all cases by
112 the commission to the complainant, the respondent, the
113 attorney general and to such other public officers as the
114 commission may deem proper. Any such order shall not
115 be enforceable except as provided in section eleven of

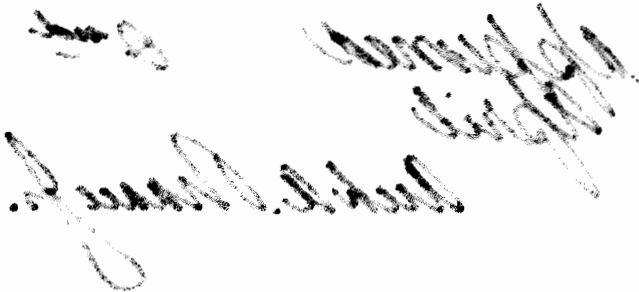
116 this article.

§5-11-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an
2 application for review may be prosecuted by either
3 party to the supreme court of appeals within thirty days
4 from the receipt thereof by the filing of a petition
5 therefor to such court against the commission and the
6 adverse party as respondents, and the clerk of such
7 court shall notify each of the respondents and the
8 commission of the filing of such petition. The commis-
9 sion shall, within ten days after receipt of such notice,
10 file with the clerk of the court the record of the
11 proceedings had before it, including all the evidence.
12 The court or any judge thereof in vacation may
13 thereupon determine whether or not a review shall be
14 granted. And if granted to a nonresident of this state,
15 he shall be required to execute and file with the clerk
16 before such order or review shall become effective, a
17 bond, with security to be approved by the clerk,
18 conditioned to perform any judgment which may be
19 awarded against him thereon. The commission may
20 certify to the court and request its decision of any
21 question of law arising upon the record, and withhold
22 its further proceeding in the case, pending the decision
23 of court on the certified question, or until notice that the
24 court has declined to docket the same. If a review be
25 granted or the certified question be docketed for
26 hearing, the clerk shall notify the board and the parties
27 litigant or their attorneys and the commission of the fact
28 by mail. If a review be granted or the certified question
29 docketed, the case shall be heard by the court in the
30 manner provided for other cases.

31 The appeal procedure contained in this subsection
32 shall be the exclusive means of review, notwithstanding
33 the provisions of chapter twenty-nine-a of this code:
34 *Provided*, That such exclusive means of review shall not
35 apply to any case wherein an appeal or a petition for
36 enforcement of a cease and desist order has been filed
37 with a circuit court of this state prior to the first day
38 of April, one thousand nine hundred eighty-seven.

39 (b) In the event that any person shall fail to obey a
40 final order of the commission within thirty days after
41 receipt of the same, or, if applicable, within thirty days
42 after a final order of the supreme court of appeals, a
43 party or the commission may seek an order from the
44 circuit court for its enforcement. Such proceeding shall
45 be initiated by the filing of a petition in said court, and
46 served upon the respondent in the manner provided by
47 law for the service of summons in civil actions; a hearing
48 shall be held on such petition within sixty days of the
49 date of service. The court may grant appropriate
50 temporary relief, and shall make and enter upon the
51 pleadings, testimony and proceedings such order as is
52 necessary to enforce the order of the commission or
53 supreme court of appeals.



Handwritten signatures and initials, including a large signature that appears to read "James A. ...".

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

Bruce O. Williams
.....
Chairman Senate Committee

Lyle Satter
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Judd C. Willis
.....
Clerk of the Senate

Donald L. Hoop
.....
Clerk of the House of Delegates

Sam Toukounil
.....
President of the Senate

Walter O. Williams
.....
Speaker of the House of Delegates

The within *approved* this the *2nd*
April day of, 1987.

Arch A. Prange Jr.
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/27/87

Time 2:35 p.m.