

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



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## House Bill No. 4545

(By Delegates Amores, Rowe, Fleischauer, Trump,  
Johnson, Faircloth and Mahan)



Passed March 14, 1998

In Effect Ninety Days from Passage

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# H. B. 4545

(BY DELEGATES AMORES, ROWE, FLEISCHAUER, TRUMP,  
JOHNSON, FAIRCLOTH AND MAHAN)

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[Passed March 14, 1998; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two, three, four, five, six, eight, nine, thirteen and sixteen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty, all relating to the West Virginia human rights act; establishing public policy; defining terms; continuing the human rights commission; providing for appointment and composition of members; providing for organization and administration of commission; describing commission's authority and responsibilities; defining unlawful discriminatory practices; establishing exclusiveness of remedies and exceptions; issuance of notice of a right to sue; injunctions of discriminatory practices; exemption of certain records; establishing a civil action by attorney general; and providing for civil and criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That sections two, three, four, five, six, 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; and that said article be further amended

by adding thereto a new section, designated section twenty, all 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  
2 provide all of its citizens equal opportunity for  
3 employment, equal access to places of public  
4 accommodations, and equal opportunity in the sale,  
5 purchase, lease, rental and financing of housing  
6 accommodations or real property. Equal opportunity in  
7 the areas of employment and public accommodations is  
8 hereby declared to be a human right or civil right of all  
9 persons without regard to race, religion, color, national  
10 origin, ancestry, sex, age, blindness or disability. Equal  
11 opportunity in housing accommodations or real property  
12 is hereby declared to be a human right or civil right of all  
13 persons without regard to race, religion, color, national  
14 origin, ancestry, sex, blindness, disability or familial status.

15 The denial of these rights to properly qualified  
16 persons by reason of race, religion, color, national origin,  
17 ancestry, sex, age, blindness, disability or familial status is  
18 contrary to the principles of freedom and equality of  
19 opportunity and is destructive to a free and democratic  
20 society.

**§5-11-3. Definitions.**

1 When used in this article:

2 (a) The term "person" means one or more  
3 individuals, partnerships, associations, organizations,  
4 corporations, labor organizations, cooperatives, legal  
5 representatives, trustees, trustees in bankruptcy, receivers  
6 and other 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 for twenty or more  
14 calendar weeks in the calendar year in which the act of  
15 discrimination allegedly took place or the preceding  
16 calendar year: *Provided*, That such terms shall not be  
17 taken, understood or construed to include a private club;

18 (e) The term “employee” shall not include any  
19 individual employed by his or her parents, spouse or  
20 child;

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

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

33 (h) The term “discriminate” or “discrimination”  
34 means to exclude from, or fail or refuse to extend to, a  
35 person equal opportunities because of race, religion, color,  
36 national origin, ancestry, sex, age, blindness, disability or  
37 familial status and includes to separate or segregate;

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

41 (j) The term “place of public accommodations”  
42 means any establishment or person, as defined herein,  
43 including the state, or any political or civil subdivision  
44 thereof, which offers its services, goods, facilities or  
45 accommodations to the general public, but shall not  
46 include any accommodations which are in their nature  
47 private. To the extent that any penitentiary, correctional  
48 facility, detention center, regional jail or county jail is a

49 place of public accommodation, the rights, remedies and  
50 requirements provided by this article for any violation of  
51 subdivision six, section nine of this article shall not apply  
52 to any person other than: (1) Any person employed at a  
53 penitentiary, correctional facility, detention center,  
54 regional jail or county jail; (2) any person employed by a  
55 law-enforcement agency; or (3) any person visiting any  
56 such employee or visiting any person detained in custody  
57 at such facility;

58 (k) The term “age” means the age of forty or above;

59 (l) For the purpose of this article, a person shall be  
60 considered to be blind only if his central visual acuity  
61 does not exceed twenty/two hundred in the better eye with  
62 correcting lenses, or if his visual acuity is greater than  
63 twenty/two hundred but is occasioned by a limitation in  
64 the fields of vision such that the widest diameter of the  
65 visual field subtends an angle no greater than twenty  
66 degrees; and

67 (m) The term “disability” means;

68 (1) A mental or physical impairment which  
69 substantially limits one or more of such person’s major  
70 life activities. The term “major life activities” includes  
71 functions such as caring for one’s self, performing  
72 manual tasks, walking, seeing, hearing, speaking,  
73 breathing, learning and working;

74 (2) A record of such impairment; or

75 (3) Being regarded as having such an impairment.

76 For the purposes of this article, this term does not  
77 include persons whose current use of or addiction to  
78 alcohol or drugs prevents such persons from performing  
79 the duties of the job in question or whose employment, by  
80 reason of such current alcohol or drug abuse, would  
81 constitute a direct threat to property or the safety of  
82 others.

**§5-11-4. Human rights commission continued; status, powers  
and objects.**

1       The West Virginia human rights commission,  
2 heretofore created, is hereby continued. The commission  
3 shall have the power and authority and shall perform the  
4 functions and services as in this article prescribed and as  
5 otherwise provided by law. The commission shall  
6 encourage and endeavor to bring about mutual  
7 understanding and respect among all racial, religious and  
8 ethnic groups within the state and shall strive to eliminate  
9 all discrimination in employment and places of public  
10 accommodations by virtue of race, religion, color, national  
11 origin, ancestry, sex, age, blindness or disability and shall  
12 strive to eliminate all discrimination in the sale, purchase,  
13 lease, rental or financing of housing and other real  
14 property by virtue of race, religion, color, national origin,  
15 ancestry, sex, blindness, disability or familial status.

16       Pursuant to the provisions of article ten, chapter four  
17 of this code, the West Virginia human rights commission  
18 shall continue to exist until the first day of July, two  
19 thousand.

**§5-11-5. Composition; appointment, terms and oath of  
members; compensation and expenses.**

1       The commission shall be composed of nine members,  
2 all residents and citizens of the state of West Virginia and  
3 broadly representative of the several racial, religious and  
4 ethnic groups residing within the state, to be appointed by  
5 the governor, by and with the advice and consent of the  
6 Senate. Not more than five members of the commission  
7 shall be members of the same political party and at least  
8 one member, but not more than three members, shall be  
9 from any one congressional district.

10       Members of the commission shall be appointed for  
11 terms of three years commencing on the first day of July  
12 of the year of their appointments, except that the nine  
13 members first appointed hereunder shall be appointed for  
14 terms of from one to three years, respectively, so that the  
15 terms of three members of the commission will expire on  
16 the thirtieth day of June of each succeeding year  
17 thereafter. Upon the expiration of the initial terms, all  
18 subsequent appointments shall be for terms of three years  
19 each, except that appointments to fill vacancies shall be for

20 the unexpired term thereof. Members shall be eligible for  
21 reappointment. Before assuming and performing any  
22 duties as a member of the commission, each commission  
23 member shall take and subscribe to the official oath  
24 prescribed by section five, article four of the constitution  
25 of West Virginia, which executed oath shall be filed in the  
26 office of the secretary of state.

27 The members of the commission shall not receive a  
28 salary, but each appointed member shall be paid fifty  
29 dollars per diem for actual time spent in the performance  
30 of duties under this article and shall be reimbursed for  
31 actual and necessary expenses incident to the performance  
32 of their duties, upon presentation of an itemized and  
33 sworn statement thereof. The foregoing per diem and  
34 reimbursement for actual and necessary expenses shall be  
35 paid from appropriations made by the Legislature to the  
36 commission.

**§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.**

1 As soon as practical after the first day of July of each  
2 year, the governor shall call a meeting of the commission  
3 to be convened at the state capitol. The commission shall  
4 at such meeting organize by electing one of its members  
5 as chairperson of the commission and one as vice  
6 chairperson thereof for a term of one year or until their  
7 successors are elected and qualified. At such meeting the  
8 commission shall also elect from its membership such  
9 other officers as may be found necessary and proper for  
10 its effective organization.

11 The governor shall, by and with the advice and  
12 consent of the Senate, appoint an executive director to  
13 serve at his or her will and pleasure. The executive  
14 director shall serve as secretary of the commission. The  
15 executive director shall have a college degree. He or she  
16 shall be selected with particular reference to his or her  
17 training, experience and qualifications for the position and  
18 shall be paid an annual salary, payable in monthly  
19 installments, from any appropriations made therefor. The  
20 commission, upon recommendation of the executive

21 director and in accordance with the requirements of the  
22 civil service law, may employ such personnel as may be  
23 necessary for the effective and orderly performance of the  
24 functions and services of the commission. The  
25 commission shall employ an administrative law judge who  
26 shall be an attorney, duly licensed to practice law in the  
27 state of West Virginia, for the conduct of the public  
28 hearings authorized in subdivision three, subsection (d),  
29 section eight of this article.

30 The commission shall equip and maintain its offices at  
31 the state capitol and shall hold its annual organizational  
32 meeting there. The commission may hold other meetings  
33 during the year at such times and places within the state as  
34 may be found necessary and may maintain one branch  
35 office within the state as determined by the commission to  
36 be necessary for the effective and orderly performance of  
37 the functions and services of the commission. Any five  
38 members of the commission shall constitute a quorum for  
39 the transaction of business. Minutes of its meetings shall  
40 be kept by its secretary.

41 The executive director and other commission  
42 personnel shall be reimbursed for necessary and  
43 reasonable travel and subsistence expenses actually  
44 incurred in the performance of commission services upon  
45 presentation of properly verified expense accounts as  
46 prescribed by law.

**§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  
8 ethnic units, community and civic organizations, industrial  
9 and labor organizations and other identifiable groups of  
10 the state in programs and campaigns devoted to the



11 advancement of tolerance, understanding and the equal  
12 protection of the laws 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 disability, 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  
20 origin, ancestry, sex, blindness, disability or familial status,  
21 and to initiate its own consideration of any situations,  
22 circumstances or problems, including therein any racial,  
23 religious or ethnic group tensions, prejudice, disorder or  
24 discrimination reported or existing within the state relating  
25 to employment, places of public accommodations,  
26 housing accommodations and real property;

27 (d) To hold and conduct public and private hearings,  
28 in the county where the respondent resides or transacts  
29 business or where agreed to by the parties or where the  
30 acts complained of occurred, on complaints, matters and  
31 questions before the commission and, in connection  
32 therewith, relating to discrimination in employment or  
33 places of public accommodations, housing  
34 accommodations or real property and during the  
35 investigation of any formal complaint before the  
36 commission relating to employment, places of public  
37 accommodations, housing accommodations or real  
38 property to:

39 (1) Issue subpoenas and subpoenas duces tecum upon  
40 the approval of the executive director or the chairperson  
41 of the commission; administer oaths; take the testimony of  
42 any person under oath; and make reimbursement for  
43 travel and other reasonable and necessary expenses in  
44 connection with such attendance;

45 (2) Furnish copies of public hearing records to parties  
46 involved therein upon their payment of the reasonable  
47 costs thereof to the commission;

48 (3) Delegate to an administrative law judge who shall  
49 be an attorney, duly licensed to practice law in West

50 Virginia, the power and authority to hold and conduct  
51 hearings, as herein provided, to determine all questions of  
52 fact and law presented during the hearing and to render a  
53 final decision on the merits of the complaint, subject to the  
54 review of the commission as hereinafter set forth.

55 Any respondent or complainant who shall feel  
56 aggrieved at any final action of an administrative law  
57 judge shall file a written notice of appeal with the  
58 commission by serving such notice on the executive  
59 director and upon all other parties within thirty days after  
60 receipt of the administrative law judge's decision. The  
61 commission shall limit its review upon such appeals to  
62 whether the administrative law judge's decision is:

63 (A) In conformity with the constitution and the laws of  
64 the state and the United States;

65 (B) Within the commission's statutory jurisdiction or  
66 authority;

67 (C) Made in accordance with procedures required by  
68 law or established by appropriate rules of the commission;

69 (D) Supported by substantial evidence on the whole  
70 record; or

71 (E) Not arbitrary, capricious or characterized by abuse  
72 of discretion or clearly unwarranted exercise of discretion.

73 (4) To enter into conciliation agreements and consent  
74 orders.

75 Each conciliation agreement shall include provisions  
76 requiring the respondent to refrain from the commission  
77 of unlawful discriminatory practices in the future and shall  
78 contain such further provisions as may be agreed upon by  
79 the commission and the respondent.

80 If the respondent and the commission agree upon  
81 conciliation terms, the commission shall serve upon the  
82 complainant a copy of the proposed conciliation  
83 agreement. If the complainant agrees to the terms of the  
84 agreement or fails to object to such terms within fifteen  
85 days after its service upon him or her, the commission  
86 shall issue an order embodying such conciliation

87 agreement. If the complainant objects to the agreement,  
88 he or she shall serve a specification of his or her  
89 objections upon the commission within such period.  
90 Unless such objections are met or withdrawn within ten  
91 days after service thereof, the commission shall notice the  
92 complaint for hearing.

93 Notwithstanding any other provisions of this section,  
94 the commission may, where it finds the terms of the  
95 conciliation agreement to be in the public interest, execute  
96 such agreement, and limit the hearing to the objections of  
97 the complainant.

98 If a conciliation agreement is entered into, the  
99 commission shall serve a copy of the order embodying  
100 such agreement upon all parties to the proceeding.

101 Not later than one year from the date of a conciliation  
102 agreement, the commission shall investigate whether the  
103 respondent is complying with the terms of such  
104 agreement. Upon a finding of noncompliance, the  
105 commission shall take appropriate action to assure  
106 compliance;

107 (5) To apply to the circuit court of the county where  
108 the respondent resides or transacts business for  
109 enforcement of any conciliation agreement or consent  
110 order by seeking specific performance of such agreement  
111 or consent order;

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

115 (7) To apply to the circuit court of the county where  
116 the respondent resides or transacts business for an order  
117 enforcing any lawful cease and desist order issued by the  
118 commission;

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

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

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

129 (h) To do all other acts and deeds necessary and  
130 proper to carry out and accomplish effectively the objects,  
131 functions and services contemplated by the provisions of  
132 this article, including the promulgation of legislative rules  
133 in accordance with the provisions of article three, chapter  
134 twenty-nine-a of this code, implementing the powers and  
135 authority hereby vested in the commission;

136 (i) To create such advisory agencies and conciliation  
137 councils, local, regional or statewide, as in its judgment will  
138 aid in effectuating the purposes of this article, to study the  
139 problems of discrimination in all or specific fields or  
140 instances of discrimination because of race, religion, color,  
141 national origin, ancestry, sex, age, blindness, disability or  
142 familial status; to foster, through community effort or  
143 otherwise, goodwill, cooperation and conciliation among  
144 the groups and elements of the population of this state,  
145 and to make recommendations to the commission for the  
146 development of policies and procedures, and for programs  
147 of formal and informal education, which the commission  
148 may recommend to the appropriate state agency. Such  
149 advisory agencies and conciliation councils shall be  
150 composed of representative citizens serving without pay.  
151 The commission may itself make the studies and perform  
152 the acts authorized by this subdivision. It may, by  
153 voluntary conferences with parties in interest, endeavor by  
154 conciliation and persuasion to eliminate discrimination in  
155 all the stated fields and to foster goodwill and cooperation  
156 among all elements of the population of the state;

157 (j) To accept contributions from any person to assist  
158 in the effectuation of the purposes of this section and to  
159 seek and enlist the cooperation of private, charitable,  
160 religious, labor, civic and benevolent organizations for the  
161 purposes of this section;

162 (k) To issue such publications and such results of  
163 investigation and research as in its judgment will tend to  
164 promote goodwill and minimize or eliminate  
165 discrimination: *Provided*, That the identity of the parties  
166 involved shall not be disclosed.

**§5-11-9. Unlawful discriminatory practices.**

1 It shall be an unlawful discriminatory practice, unless  
2 based upon a bona fide occupational qualification, or  
3 except where based upon applicable security regulations  
4 established by the United States or the state of West  
5 Virginia or its agencies or political subdivisions:

6 (1) For any employer to discriminate against an  
7 individual with respect to compensation, hire, tenure,  
8 terms, conditions or privileges of employment if the  
9 individual is able and competent to perform the services  
10 required even if such individual is blind or disabled:  
11 *Provided*, That it shall not be an unlawful discriminatory  
12 practice for an employer to observe the provisions of any  
13 bona fide pension, retirement, group or employee  
14 insurance or welfare benefit plan or system not adopted as  
15 a subterfuge to evade the provisions of this subdivision;

16 (2) For any employer, employment agency or labor  
17 organization, prior to the employment or admission to  
18 membership, to: (A) Elicit any information or make or  
19 keep a record of or use any form of application or  
20 application blank containing questions or entries  
21 concerning the race, religion, color, national origin,  
22 ancestry, sex or age of any applicant for employment or  
23 membership; (B) print or publish or cause to be printed or  
24 published any notice or advertisement relating to  
25 employment or membership indicating any preference,  
26 limitation, specifications or discrimination based upon  
27 race, religion, color, national origin, ancestry, sex,  
28 disability or age; or (C) deny or limit, through a quota  
29 system, employment or membership because of race,  
30 religion, color, national origin, ancestry, sex, age, blindness  
31 or disability;

32 (3) For any labor organization because of race,  
33 religion, color, national origin, ancestry, sex, age, blindness

34 or disability of any individual to deny full and equal  
35 membership rights to any individual or otherwise to  
36 discriminate against such individual with respect to hire,  
37 tenure, terms, conditions or privileges of employment or  
38 any other matter, directly or indirectly, related to  
39 employment;

40 (4) For an employer, labor organization, employment  
41 agency or any joint labor-management committee  
42 controlling apprentice training programs to:

43 (A) Select individuals for an apprentice training  
44 program registered with the state of West Virginia on any  
45 basis other than their qualifications as determined by  
46 objective criteria which permit review;

47 (B) Discriminate against any individual with respect to  
48 his or her right to be admitted to or participate in a  
49 guidance program, an apprenticeship training program,  
50 on-the-job training program or other occupational  
51 training or retraining program;

52 (C) Discriminate against any individual in his or her  
53 pursuit of such programs or to discriminate against such a  
54 person in the terms, conditions or privileges of such  
55 programs;

56 (D) Print or circulate or cause to be printed or  
57 circulated any statement, advertisement or publication, or  
58 to use any form of application for these programs or to  
59 make any inquiry in connection with a program which  
60 expresses, directly or indirectly, discrimination or any  
61 intent to discriminate unless based upon a bona fide  
62 occupational qualification;

63 (5) For any employment agency to fail or refuse to  
64 classify properly, refer for employment or otherwise to  
65 discriminate against any individual because of his or her  
66 race, religion, color, national origin, ancestry, sex, age,  
67 blindness or disability;

68 (6) For any person being the owner, lessee, proprietor,  
69 manager, superintendent, agent or employee of any place  
70 of public accommodations to:

71 (A) Refuse, withhold from or deny to any individual  
72 because of his or her race, religion, color, national origin,  
73 ancestry, sex, age, blindness or disability, either directly or  
74 indirectly, any of the accommodations, advantages,  
75 facilities, privileges or services of the place of public  
76 accommodations;

77 (B) Publish, circulate, issue, display, post or mail, either  
78 directly or indirectly, any written or printed  
79 communication, notice or advertisement to the effect that  
80 any of the accommodations, advantages, facilities,  
81 privileges or services of any such place shall be refused,  
82 withheld from or denied to any individual on account of  
83 race, religion, color, national origin, ancestry, sex, age,  
84 blindness or disability, or that the patronage or custom  
85 thereat of any individual, belonging to or purporting to be  
86 of any particular race, religion, color, national origin,  
87 ancestry, sex or age, or who is blind or disabled, is  
88 unwelcome, objectionable, not acceptable, undesired or  
89 not solicited; or

90 (7) For any person, employer, employment agency,  
91 labor organization, owner, real estate broker, real estate  
92 salesman or financial institution to:

93 (A) Engage in any form of threats or reprisal, or to  
94 engage in, or hire, or conspire with others to commit acts  
95 or activities of any nature, the purpose of which is to  
96 harass, degrade, embarrass or cause physical harm or  
97 economic loss or to aid, abet, incite, compel or coerce any  
98 person to engage in any of the unlawful discriminatory  
99 practices defined in this section;

100 (B) Willfully obstruct or prevent any person from  
101 complying with the provisions of this article, or to resist,  
102 prevent, impede or interfere with the commission or any  
103 of its members or representatives in the performance of a  
104 duty under this article; or

105 (C) Engage in any form of reprisal or otherwise  
106 discriminate against any person because he or she has  
107 opposed any practices or acts forbidden under this article  
108 or because he or she has filed a complaint, testified or  
109 assisted in any proceeding under this article.

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

1       (a) Except as provided in subsection (b), nothing  
2 contained in this article shall be deemed to repeal or  
3 supersede any of the provisions of any existing or  
4 hereafter adopted municipal ordinance, municipal charter  
5 or of any law of this state relating to discrimination  
6 because of race, religion, color, national origin, ancestry,  
7 sex, age, blindness or disability, but as to acts declared  
8 unlawful by section nine of this article the procedure  
9 herein provided shall, when invoked, be exclusive and the  
10 final determination therein shall exclude any other action,  
11 civil or criminal, based on the same grievance of the  
12 complainant concerned. If such complainant institutes  
13 any action based on such grievance without resorting to  
14 the procedure provided in this article, he or she may not  
15 subsequently resort to the procedure herein. In the event  
16 of a conflict between the interpretation of a provision of  
17 this article and the interpretation of a similar provision  
18 contained in any municipal ordinance authorized by  
19 charter, the interpretation of the provision in this article  
20 shall apply to such 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 resides  
24 or transacts business at any time within ninety days after  
25 the complainant is given notice of a right to sue pursuant  
26 to this subsection or, if the statute of limitations on the  
27 claim has not expired at the end of such ninety-day  
28 period, then at any time during which such statute of  
29 limitations has not expired. If a suit is filed under this  
30 section the proceedings pending before the commission  
31 shall be deemed concluded.

32       The commission shall give a complainant who has  
33 filed a complaint a notice of a right to sue upon (1) the  
34 dismissal of the complaint for any reason other than an  
35 adjudication of the merits of the case, or (2) the request of  
36 a complainant at any time after the timely filing of the  
37 complaint in any case which has not been determined on  
38 its merits or has not resulted in a conciliation agreement to  
39 which the complainant is a party. Upon the issuance of a



40 right to sue letter pursuant to subdivision (1) or (2), the  
41 commission may dismiss the complaint.

42 Notice of right to sue shall be given immediately upon  
43 complainant being entitled thereto, by personal service or  
44 certified mail, return receipt requested, which notice shall  
45 inform the complainant in plain terms of his or her right  
46 to institute a civil action as provided in this section within  
47 ninety days of the giving of such notice. Service of the  
48 notice shall be complete upon mailing.

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

61 (d) The provisions of this section shall be available to  
62 all complainants whose active cases are pending before the  
63 human rights commission as well as those complainants  
64 who file after the effective date of this section.

**§5-11-16. Certain records exempt.**

1 Notwithstanding any other provisions of this article, it  
2 shall not be an unlawful discriminatory practice for the  
3 bureau of employment programs to ascertain and record  
4 the age, sex, race, religion, color, national origin, ancestry,  
5 blindness or disability of any individual for the purpose of  
6 making such reports as may from time to time be required  
7 by agencies of the federal government or be necessary to  
8 show compliance with any rule or regulation issued by  
9 any such agency. Said records may be made and kept in  
10 the manner required by the federal government:  
11 *Provided*, That such recording of the age, sex, race,  
12 religion, color, national origin, ancestry, blindness or  
13 disability of any individual shall not be used to

14 discriminate, within the meaning of this article, directly or  
15 indirectly, against any such individual as prohibited by all  
16 other sections of this article.

**§5-11-20. Violations of human rights; civil action by attorney  
general.**

1 (a) A person has the right to engage in lawful activities  
2 without being subject to actual or threatened:

3 (1) Physical force or violence against him or her or  
4 any other person, or

5 (2) Damage to, destruction of or trespass on property,  
6 any of which is motivated by race, color, religion, sex,  
7 ancestry, national origin, political affiliation or disability.

8 (b) Whenever any person, whether or not acting under  
9 the color of law, intentionally interferes or attempts to  
10 interfere with another person's exercise or enjoyment of  
11 rights secured by this article or article eleven-a of this  
12 chapter, by actual or threatened physical force or violence  
13 against that person or any other person, or by actual or  
14 threatened damage to, destruction of or trespass on  
15 property, the attorney general may bring a civil action:

16 (1) For injunctive or other appropriate equitable relief  
17 in order to protect the peaceable exercise or enjoyment of  
18 the rights secured, or

19 (2) For civil penalties as specified in subsection (c) of  
20 this section, or

21 (3) For both equitable relief and civil penalties. This  
22 action must be brought in the name of the state and  
23 instituted in the circuit court for the county where the  
24 alleged violator resides or has a principal place of business  
25 or where the alleged violation occurred.

26 (c) A civil penalty of not more than five thousand  
27 dollars per violation may be assessed against any person  
28 violating this section.

29 (d) Each preliminary, temporary, or permanent  
30 injunction issued under this section must include a  
31 statement describing the penalties to be imposed for a

32 knowing violation of the order or injunction as provided  
33 in subsection (e) of this section. The clerk of the circuit  
34 court shall transmit one certified copy of each order or  
35 injunction issued under this section to the appropriate law  
36 enforcement agency or agencies having authority over  
37 locations where the defendant was alleged to have  
38 committed the act giving rise to the action, and service of  
39 the order or injunction must be accomplished pursuant to  
40 the West Virginia rules of civil procedure.

41 (e) A person who knowingly violates a preliminary,  
42 temporary or permanent injunction issued under this  
43 section is guilty of a misdemeanor and, upon conviction  
44 thereof, shall be fined not more than five thousand dollars,  
45 or imprisoned in the county or regional jail not more than  
46 one year, or both fined and imprisoned.

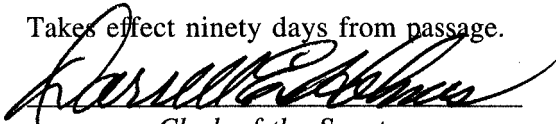
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

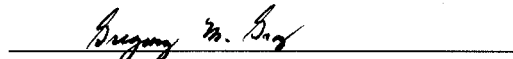
  
Chairman Senate Committee

  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 21<sup>st</sup>  
day of April, 1998.

  
Governor

PRESENTED TO THE

GOVERNOR

Date

4/6/98

Time

12:25 pm