House Bill No. 4545
(By Delegates Amores, Rowe, Fleischauer, Trump, Johnson, Faircloth and Mahan)

Passed March 14, 1998
In Effect Ninety Days from Passage
ENROLLED

H. B. 4545

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

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

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.

It is the public policy of the state of West Virginia to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness or disability. Equal opportunity in housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness, disability or familial status.

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

§5-11-3. Definitions.

When used in this article:

(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;

(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 for twenty or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year: 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 or her parents, spouse or child;

(f) The term “labor organization” includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of 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, disability or familial status 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. To the extent that any penitentiary, correctional facility, detention center, regional jail or county jail is a
place of public accommodation, the rights, remedies and requirements provided by this article for any violation of subdivision six, section nine of this article shall not apply to any person other than: (1) Any person employed at a penitentiary, correctional facility, detention center, regional jail or county jail; (2) any person employed by a law-enforcement agency; or (3) any person visiting any such employee or visiting any person detained in custody at such facility;

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

(l) 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; and

(m) The term “disability” means;

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

(2) A record of such impairment; or

(3) Being regarded as having such an impairment.

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

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

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

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

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

Members of the commission shall be appointed for terms of three years commencing on the first day of July of the year of their appointments, except that the nine members first appointed hereunder shall be appointed for terms of from one to three years, respectively, so that the terms of three members of the commission will expire on the thirtieth day of June of each succeeding year thereafter. Upon the expiration of the initial terms, all subsequent appointments shall be for terms of three years each, except that appointments to fill vacancies shall be for
the unexpired term thereof. Members shall be eligible for reappointment. Before assuming and performing any duties as a member of the commission, each commission member shall take and subscribe to the official oath prescribed by section five, article four of the constitution of West Virginia, which executed oath shall be filed in the office of the secretary of state.

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

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

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

The governor shall, by and with the advice and consent of the Senate, appoint an executive director to serve at his or her will and pleasure. The executive director shall serve as secretary of the commission. The executive director shall have a college degree. He or she shall be selected with particular reference to his or her training, experience and qualifications for the position and shall be paid an annual salary, payable in monthly installments, from any appropriations made therefor. The commission, upon recommendation of the executive
director and in accordance with the requirements of the civil service law, may employ such personnel as may be necessary for the effective and orderly performance of the functions and services of the commission. The commission shall employ an administrative law judge who shall be an attorney, duly licensed to practice law in the state of West Virginia, for the conduct of the public hearings authorized in subdivision three, subsection (d), section eight of this article.

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

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

§5-11-8. Commission powers; functions; services.

The commission is hereby authorized and empowered:

(a) To cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this state;

(b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the state in programs and campaigns devoted to the
advancement of tolerance, understanding and the equal
protection of the laws of all groups and peoples;

(c) To receive, investigate and pass upon complaints
alleging discrimination in employment or places of public
accommodations, because of race, religion, color, national
origin, ancestry, sex, age, blindness or disability, and
complaints alleging discrimination in the sale, purchase,
lease, rental and financing of housing accommodations or
real property because of race, religion, color, national
origin, ancestry, sex, blindness, disability or familial status,
and to initiate its own consideration of any situations,
circumstances or problems, including therein any racial,
religious or ethnic group tensions, prejudice, disorder or
discrimination reported or existing within the state relating
to employment, places of public accommodations,
housing accommodations and real property;

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

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

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

(3) Delegate to an administrative law judge who shall
be an attorney, duly licensed to practice law in West
Virginia, the power and authority to hold and conduct
hearings, as herein provided, to determine all questions of
fact and law presented during the hearing and to render a
final decision on the merits of the complaint, subject to the
review of the commission as hereinafter set forth.

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

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

(B) Within the commission’s statutory jurisdiction or
authority;

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

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

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

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

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

If the respondent and the commission agree upon
conciliation terms, the commission shall serve upon the
complainant a copy of the proposed conciliation
agreement. If the complainant agrees to the terms of the
agreement or fails to object to such terms within fifteen
days after its service upon him or her, the commission
shall issue an order embodying such conciliation
agreement. If the complainant objects to the agreement, he or she shall serve a specification of his or her objections upon the commission within such period. Unless such objections are met or withdrawn within ten days after service thereof, the commission shall notice the complaint for hearing.

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

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

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

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

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

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

(e) To recommend to the governor and Legislature policies, procedures, practices and legislation in matters and questions affecting human rights;
(f) To delegate to its executive director such powers, duties and functions as may be necessary and expedient in carrying out the objectives and purposes of this article;

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

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

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

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;
(k) To issue such publications and such results of investigation and research as in its judgment will tend to promote goodwill and minimize or eliminate discrimination: Provided, That the identity of the parties involved shall not be disclosed.


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

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

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

(3) For any labor organization because of race, religion, color, national origin, ancestry, sex, age, blindness
or disability of any individual to deny full and equal
membership rights to any individual or otherwise to
discriminate against such individual with respect to hire,
tenure, terms, conditions or privileges of employment or
any other matter, directly or indirectly, related to
employment;

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

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

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

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

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

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

(6) For any person being the owner, lessee, proprietor,
manager, superintendent, agent or employee of any place
of public accommodations to:
(A) Refuse, withhold from or deny to any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness or disability, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of the place of public accommodations;

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

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

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

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

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

(a) Except as provided in subsection (b), nothing contained in this article shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this state relating to discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness or disability, but as to acts declared unlawful by section nine of this article the procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this article, he or she may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this article and the interpretation of a similar provision contained in any municipal ordinance authorized by charter, the interpretation of the provision in this article shall apply to such municipal ordinance.

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

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

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

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

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


Notwithstanding any other provisions of this article, it
shall not be an unlawful discriminatory practice for the
bureau of employment programs to ascertain and record
the age, sex, race, religion, color, national origin, ancestry,
blindness or disability of any individual for the purpose of
making such reports as may from time to time be required
by agencies of the federal government or be necessary to
show compliance with any rule or regulation issued by
any such agency. Said records may be made and kept in
the manner required by the federal government: 
Provided, That such recording of the age, sex, race,
religion, color, national origin, ancestry, blindness or
disability of any individual shall not be used to
discriminate, within the meaning of this article, directly or indirectly, against any such individual as prohibited by all other sections of this article.

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

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

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

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

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

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

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

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

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

(d) Each preliminary, temporary, or permanent injunction issued under this section must include a statement describing the penalties to be imposed for a
knowing violation of the order or injunction as provided in subsection (e) of this section. The clerk of the circuit court shall transmit one certified copy of each order or injunction issued under this section to the appropriate law enforcement agency or agencies having authority over locations where the defendant was alleged to have committed the act giving rise to the action, and service of the order or injunction must be accomplished pursuant to the West Virginia rules of civil procedure.

(e) A person who knowingly violates a preliminary, temporary or permanent injunction issued under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county or regional jail not more than 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 26th day of April, 1998.

Governor