

**H. B. 3227**

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(By Delegate Longstreth)  
[Introduced February 21, 2011; referred to the  
Committee on the Judiciary.]

10 A BILL to amend and reenact §5-11-3 of the Code of West Virginia,  
11 1931, as amended, relating to providing a definition of sex  
12 for unlawful discriminatory practices.

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

14 That §5-11-3 of the Code of West Virginia, 1931, as amended,  
15 be amended and reenacted to read as follows:

16 **ARTICLE 11. HUMAN RIGHTS COMMISSION.**

17 **§5-11-3. Definitions.**

18 When used in this article:

19 (a) The term "person" means one or more individuals,  
20 partnerships, associations, organizations, corporations, labor  
21 organizations, cooperatives, legal representatives, trustees,  
22 trustees in bankruptcy, receivers and other organized groups of  
23 persons;

24 (b) The term "commission" means the West Virginia Human Rights  
25 Commission;

26 (c) The term "director" means the executive director of the  
27 commission;

1 (d) The term "employer" means the state, or any political  
2 subdivision thereof, and any person employing twelve or more  
3 persons within the state for twenty or more calendar weeks in the  
4 calendar year in which the act of discrimination allegedly took  
5 place or the preceding calendar year: *Provided*, That such terms  
6 shall not be taken, understood or construed to include a private  
7 club;

8 (e) The term "employee" shall not include any individual  
9 employed by his or her parents, spouse or child;

10 (f) The term "labor organization" includes any organization  
11 which exists for the purpose, in whole or in part, of collective  
12 bargaining or of dealing with employers concerning grievances,  
13 terms or conditions of employment or for other mutual aid or  
14 protection in relation to employment;

15 (g) The term "employment agency" includes any person  
16 undertaking, with or without compensation, to procure, recruit,  
17 refer or place employees. A newspaper engaged in the activity of  
18 advertising in the normal course of its business shall not be  
19 deemed to be an employment agency;

20 (h) The term "discriminate" or "discrimination" means to  
21 exclude from, or fail or refuse to extend to, a person equal  
22 opportunities because of race, religion, color, national origin,  
23 ancestry, sex, age, blindness, disability or familial status and  
24 includes to separate or segregate;

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

27 (j) The term "place of public accommodations" means any

1 establishment or person, as defined herein, including the state, or  
2 any political or civil subdivision thereof, which offers its  
3 services, goods, facilities or accommodations to the general  
4 public, but shall not include any accommodations which are in their  
5 nature private. To the extent that any penitentiary, correctional  
6 facility, detention center, regional jail or county jail is a place  
7 of public accommodation, the rights, remedies and requirements  
8 provided by this article for any violation of subdivision (6),  
9 section nine of this article shall not apply to any person other  
10 than: (1) Any person employed at a penitentiary, correctional  
11 facility, detention center, regional jail or county jail; (2) any  
12 person employed by a law-enforcement agency; or (3) any person  
13 visiting any such employee or visiting any person detained in  
14 custody at such facility;

15 (k) The term "age" means the age of forty or above;

16 (l) For the purpose of this article, a person shall be  
17 considered to be blind only if his or her central visual acuity  
18 does not exceed twenty/two hundred in the better eye with  
19 correcting lenses, or if his or her visual acuity is greater than  
20 twenty/two hundred but is occasioned by a limitation in the fields  
21 of vision such that the widest diameter of the visual field  
22 subtends an angle no greater than twenty degrees; and

23 (m) The term "disability" means:

24 (1) A mental or physical impairment which substantially limits  
25 one or more of such person's major life activities. The term  
26 "major life activities" includes functions such as caring for one's  
27 self, performing manual tasks, walking, seeing, hearing, speaking,

1 breathing, learning and working;

2 (2) A record of such impairment; or

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

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

10 (n) The terms "sex," "because of sex" or "based on sex"  
11 includes, but is not limited to, pregnancy, childbirth or related  
12 medical conditions. Women affected by pregnancy, childbirth or  
13 related medical conditions shall be treated the same for all  
14 employment-related purposes as other persons not so affected but  
15 similar in their ability or inability to work.

NOTE: The purpose of this bill is to provide a definition of sex for unlawful discriminatory practices.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.