

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2025

FISCAL  
NOTE

BY DELEGATE FAST

[Introduced January 9, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §5-11-10 of the Code of West Virginia, 1931, as amended, relating  
2 to requiring the Human Rights Commission, when investigating a complaint of  
3 discrimination, to specifically include an examination of the intent of the person or entity  
4 alleged to have committed the unlawful discriminatory practice.

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

## **ARTICLE 11. HUMAN RIGHTS COMMISSION.**

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

1 Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall  
2 make, sign and file with the commission a verified complaint, which shall state the name and  
3 address of the person, employer, labor organization, employment agency, owner, real estate  
4 broker, real estate salesman or financial institution alleged to have committed the unlawful  
5 discriminatory practice complained of, and which shall set forth the particulars thereof and contain  
6 such other information as may be required by the commission's rules and regulations. The  
7 commission upon its own initiative, or the Attorney General, shall, in like manner, make, sign and  
8 file such complaint. Any employer, whose employees, or some of them, hinder or threaten to  
9 hinder compliance with the provisions of this article, shall file with the commission a verified  
10 complaint, asking for assistance by conciliation or other remedial action and, during such period  
11 of conciliation or other remedial action, no hearings, orders or other actions shall be held, made  
12 or taken by the commission against such employer. Any complaint filed pursuant to this article  
13 must be filed within 365 days after the alleged act of discrimination.

14 After the filing of any complaint, or whenever there is reason to believe that an unlawful  
15 discriminatory practice has been committed, the commission shall make a prompt investigation in  
16 connection therewith. That investigation shall specifically include an examination of the intent of  
17 the person, employer, labor organization, employment agency, owner, real estate broker, real  
18 estate salesman or financial institution alleged to have committed the unlawful discriminatory  
19 practice complained of against that individual.

20           If it shall be determined after such investigation that no probable cause exists for  
21 substantiating the allegations of the complaint, the commission shall, within 10 days from such  
22 determination, cause to be issued and served upon the complainant written notice of such  
23 determination, and the said complainant or his or her attorney may, within 10 days after such  
24 service, file with the commission a written request for a meeting with the commission to show  
25 probable cause for substantiating the allegations of the complaint. If it shall be determined after  
26 such investigation or meeting that probable cause exists for substantiating the allegations of the  
27 complaint, the commission shall immediately endeavor to eliminate the unlawful discriminatory  
28 practices complained of by conference, conciliation and persuasion. The members of the  
29 commission and its staff shall not disclose what has transpired in the course of such endeavors:  
30 *Provided*, That the commission may publish the facts in the case of any complaint which has been  
31 dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing  
32 the identity of the parties involved.

33           In case of failure so to eliminate such practice or in advance thereof, if in the judgment of  
34 the commission circumstances so warrant, the commission shall cause to be issued and served  
35 a written notice, together with a copy of such complaint as the same may have been amended,  
36 in the manner provided by law for the service of summons in civil actions, requiring the person,  
37 employer, labor organization, employment agency, owner, real estate broker, real estate  
38 salesman or financial institution named in such complaint, hereinafter referred to as respondent,  
39 to answer the charges of such complaint at a hearing before the commission in the county where  
40 the respondent resides or transacts business at a time and place to be specified in such notice:  
41 *Provided*, That said written notice be served at least 30 days prior to the time set for the hearing.

42           The case in support of the complaint shall be presented before the commission by one of  
43 its attorneys or agents. The respondent may file a written, verified answer to the complaint and  
44 appear at such hearing in person or otherwise, with or without counsel, and submit testimony and  
45 evidence. Except as provided in this article, all of the pertinent provisions of §29A-5-1 *et seq.* of

46 this code shall apply to and govern the hearing and the administrative procedures in connection  
47 with and following such hearing, with like effect as if the provisions of said §29-5A-1 *et seq.* of this  
48 code were set forth in extensor in this section.

49         If, after such hearing and consideration of all of the testimony, evidence and record in the  
50 case, the commission shall find that a respondent has engaged in or is engaging in any unlawful  
51 discriminatory practice as defined in this article, the commission shall issue and cause to be  
52 served on such respondent an order to cease and desist from such unlawful discriminatory  
53 practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or  
54 upgrading of employees, with or without back pay, admission or restoration to membership in any  
55 respondent labor organization, or the admission to full and equal enjoyment of the services,  
56 goods, facilities, or accommodations offered by any respondent place of public accommodation,  
57 and the sale, purchase, lease, rental or financial assistance to any complainant otherwise  
58 qualified for the housing accommodation or real property, denied in violation of this article, as in  
59 the judgment of the commission, will effectuate the purposes of this article, and including a  
60 requirement for report of the manner of compliance. Such order shall be accompanied by findings  
61 of fact and conclusions of law as specified in §29A-5-3 of this code.

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

67         A copy of its order shall be delivered in all cases by the commission to the complainant,  
68 the respondent, the Attorney General and to such other public officers as the commission may  
69 deem proper. Any such order shall not be enforceable except as provided in §5-11-11 of this  
70 code.

NOTE: The purpose of this bill is to require the Human Rights Commission, when investigating a complaint of discrimination, to specifically include an examination of the intent of the person or entity alleged to have committed the unlawful discriminatory practice.

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