WEST virginia legislature

2021 regular session

Introduced

House Bill 2112

By Delegates Thompson And Fleischauer

[Introduced February 10, 2021; Referred to the Committee on the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-11-22, relating to prohibiting provisions within settlement agreements that prevent the disclosure of factual information related to a claim filed in a civil action or a complaint filed in an administrative action, regarding: (1) Sexual assaults; (2) acts of sexual harassment; (3) acts of discrimination and harassment, retaliation or failure to prevent an act of harassment based on sex in the workplace; and (4) acts of discrimination and harassment, or retaliation based on sex in violation of the West Virginia Fair Housing Act; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-22. Settlement agreements; confidentiality.

(a) Notwithstanding any other law or provision in this code to the contrary, a provision within a settlement agreement that prevents the disclosure of factual information related to a claim filed in a civil action or a complaint filed in an administrative action, regarding any of the following, is prohibited:

(1) An act of sexual assault.

(2) An act of sexual harassment, as defined by the West Virginia Supreme Court in *Westmoreland Coal Co. v. West Virginia Human Rights Commission.,* 382 S.E.2d 562 (1989) or the Human Rights Commission Rules Regarding Sexual Harassment, 77 CSR 4.

(3) An act of workplace harassment or discrimination based on sex, or failure to prevent an act of workplace harassment or discrimination based on sex or an act of retaliation against a person for reporting harassment or discrimination based on sex, as prohibited by this article.

(4) An act of harassment or discrimination based on sex, or an act of retaliation against a person for reporting harassment or discrimination based on sex, by the owner of a housing accommodation, as prohibited by the West Virginia Fair Housing Act, §5-11A-1 *et seq.* of this code.

(b) Notwithstanding any other law or provision in this code to the contrary, in a civil matter described of subsection (a) of this section, a court may not enter, by stipulation or otherwise, an order that restricts the disclosure of information in a manner that conflicts with subsection (a) of this section.

(c) Notwithstanding subsections (a) and (b) of this section, a provision that shields the identity of the claimant and all facts that could lead to the discovery of his or her identity, including pleadings filed in court, may be included within a settlement agreement at the request of the claimant. This subsection does not apply if a government agency or public official is a party to the settlement agreement.

(d) Except as authorized by subsection (c) of this section, a provision within a settlement agreement that prevents the disclosure of factual information related to the claim described in subsection (a) of this section that is entered into on or after July 1, 2021, is void as a matter of law and against public policy.

(e) This section does not prohibit the entry or enforcement of a provision in any agreement that precludes the disclosure of the amount paid in settlement of a claim.

(f) In determining the factual foundation of a cause of action for civil damages under subsection (a) of this section, a court may consider the pleadings and other papers in the record, or any other findings of the court.

NOTE: The purpose of this bill is to prohibit provisions within settlement agreements that prevent the disclosure of factual information related to a claim filed in a civil action or a complaint filed in an administrative action, regarding: (1) Sexual assaults; (2) acts of sexual harassment; (3) acts of discrimination and harassment, retaliation or failure to prevent an act of harassment based on sex in the workplace; and (4) acts of discrimination and harassment, or retaliation based on sex in violation of the West Virginia Fair Housing Act. The bill provides exceptions.

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