

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]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

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

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

5 (1) An act of sexual assault.

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

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

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

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

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

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

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

31 (f) In determining the factual foundation of a cause of action for civil damages under
32 subsection (a) of this section, a court may consider the pleadings and other papers in the record,
33 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.