

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2879**

BY DELEGATE YOUNG

[Introduced March 03, 2021; Referred to the  
Committee on Workforce Development then the  
Judiciary]

1 A BILL to amend and reenact §5-11-3 of the Code of West Virginia, 1931, as amended, relating  
2 to modifying the definition of ‘employee’ under the Human Rights Commission.

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

**ARTICLE 11. HUMAN RIGHTS COMMISSION.**

**§5-11-3. Definitions.**

1 When used in this article:

2 (a) The term “person” means one or more individuals, partnerships, associations,  
3 organizations, corporations, labor organizations, cooperatives, legal representatives, trustees,  
4 trustees in bankruptcy, receivers and other organized groups of persons;

5 (b) The term “commission” means the West Virginia Human Rights Commission;

6 (c) The term “director” means the executive director of the commission;

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

12 (e) The term “employee” shall not include any individual employed by his or her parents,  
13 spouse or child, but shall include an individual who provides work for an employer under the terms  
14 of an independent contract with such employer;

15 (f) The term “labor organization” includes any organization which exists for the purpose,  
16 in whole or in part, of collective bargaining or of dealing with employers concerning grievances,  
17 terms or conditions of employment or for other mutual aid or protection in relation to employment;

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

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

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

27 (j) The term “place of public accommodations” means any establishment or person, as  
28 defined herein, including the state, or any political or civil subdivision thereof, which offers its  
29 services, goods, facilities or accommodations to the general public, but shall not include any  
30 accommodations which are in their nature private. To the extent that any penitentiary, correctional  
31 facility, detention center, regional jail or county jail is a place of public accommodation, the rights,  
32 remedies and requirements provided by this article for any violation of subdivision (6), section  
33 nine of this article shall not apply to any person other than: (1) Any person employed at a  
34 penitentiary, correctional facility, detention center, regional jail or county jail; (2) any person  
35 employed by a law-enforcement agency; or (3) any person visiting any such employee or visiting  
36 any person detained in custody at such facility;

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

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

43 (m) The term “disability” means:

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

47 (2) A record of such impairment; or

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

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

NOTE: The purpose of this bill is to modify the term 'employee' to include an individual who provides work for an employer under the terms of an independent contract with such employer.

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