

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3003**

BY DELEGATE YOUNG

[Introduced March 09, 2021; Referred to the  
Committee on Workforce Development then the  
Judiciary]

1 A BILL to amend and reenact §5-11-3 and §5-11-10 of the Code of West Virginia, 1931, as  
 2 amended, all relating to actions for discriminatory practices before the human rights  
 3 commission; providing that certain employers with two or more employees are subject to  
 4 the article; including an individual who provides work for an employer under the terms of  
 5 an independent contract with the employer in the definition of “employee”; increasing the  
 6 time period in which to bring an action before the human rights commission to three years  
 7 after the alleged act of discrimination.

*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~~ two or more persons within the state for twenty or more calendar weeks  
 9 in the calendar year in which the act of discrimination allegedly took place or the preceding  
 10 calendar year: *Provided*, That such terms shall not be taken, understood or construed to include  
 11 a private club;

12 (e) The term “employee” ~~shall~~ does not include any individual employed by his or her  
 13 parents, spouse or child; the term “employee” includes an individual who provides work for an  
 14 employer under the terms 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 §5-11-9(6) of this code  
33 shall not apply to any person other than: (1) Any person employed at a penitentiary, correctional  
34 facility, detention center, regional jail or county jail; (2) any person employed by a law-enforcement  
35 agency; or (3) any person visiting any such employee or visiting any person detained in custody  
36 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.

**§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~~ the employer. Any complaint filed pursuant to this article  
13 must be filed within three ~~hundred sixty-five days~~ years 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.

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

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

40 The case in support of the complaint shall be presented before the commission by one of  
41 its attorneys or agents. The respondent may file a written, verified answer to the complaint and

42 appear at ~~such~~ the hearing in person or otherwise, with or without counsel, and submit testimony  
43 and evidence. Except as provided in this article, all of the pertinent provisions of §29A-5-1 *et seq.*  
44 of this code shall apply to and govern the hearing and the administrative procedures in connection  
45 with and following ~~such~~ the hearing, with like effect as if the provisions of §29A-5-1 *et seq.* of this  
46 code were set forth in extensor in this section.

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

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

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

68 this code.

NOTE: The purpose of this bill is to include certain employers with two or more employees subject to actions for discriminatory practices before the human rights commission; to include individual independent contractors in the definition of “employee”; and to increase the time period in which to bring an action before the human rights commission to three years after the alleged act of discrimination.

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