

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2844

By Delegate Young

[Introduced January 19, 2023; 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 to
2 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 12 or more persons within the state for 20 or more calendar weeks in the
9 calendar year in which the act of discrimination allegedly took place or the preceding calendar
10 year: *Provided*, That such terms ~~shall~~ may not be taken, understood or construed to include a
11 private club;

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

15 (f) The term "labor organization" includes any organization which exists for the purpose, in
16 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~~ may not be deemed considered to be an
21 employment 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 §5-11-9 of this code;

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 shall
33 may 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 at
36 such facility;

37 (k) The term "age" means the age of 40 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 20/200 in the better eye with correcting lenses, or if his visual acuity
40 is greater than 20/200 but is occasioned by a limitation in the fields of vision such that the widest
41 diameter of the visual field subtends an angle no greater than 20 degrees; and

42 (m) The term "disability" means:

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

46 (2) A record of such impairment; or

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

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