WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JUN 17 3 51 PM '97

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Human Rights Commission TITLE NUMBER: 77

RULE TYPE: Legislative ; CITE AUTHORITY W. Va. Code §§ 5-11-8(h) 29A-3-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

_____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: Rule Regarding the Definition of Employer Under the West Virginia Human Rights Act

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON Friday, July 18, 1997 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Herman H. Jones
Executive Director
West Virginia Human Rights Commission
1321 Plaza East, Room 108A
Charleston, WV 25301-1400

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Joan E. Ord
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

$3.40

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

Office of the Secretary
State Capitol Complex
Building 3, Room 206
Charleston, West Virginia 25305
Telephone: (304) 558-0684 FAX: (304) 558-1130

Joan E. Ohl
Secretary

June 17, 1997

Judy Cooper, Director
Administrative Law Division
Office of the Secretary of State
Building 1, Suite 157-K
State Capitol Complex
Charleston, West Virginia 25305

RE: Title 77, Series 9, Proposed Legislative Rule of the West Virginia Human Rights Commission

Dear Ms. Cooper:

Having reviewed the West Virginia Human Rights Commission's Proposed Legislative Rule Regarding the Definition of Employer under the West Virginia Human Rights Act and accompanying documents, I hereby authorize the filing of said rule with your office and with the Legislative Rule-Making Review Committee.

Please do not hesitate to contact me if you have any questions. Thank you for your consideration in this matter.

Sincerely,

Joan E. Ohl

Joan E. Ohl
Secretary

TITLE 77
LEGISLATIVE RULE
WEST VIRGINIA HUMAN RIGHTS COMMISSION
SERIES 9

RULE REGARDING THE DEFINITION OF EMPLOYER UNDER THE WEST VIRGINIA HUMAN RIGHTS ACT

Brief Summary of the Proposed Rule

The proposed rule more specifically defines the term "employer."

TITLE 77
LEGISLATIVE RULE
WEST VIRGINIA HUMAN RIGHTS COMMISSION
SERIES 9

RULE REGARDING THE DEFINITION OF EMPLOYER UNDER THE WEST VIRGINIA HUMAN RIGHTS ACT

Statement of Circumstances Which Require this Rule

This rule is proposed pursuant to the recent decision of the West Virginia Supreme Court of Appeals in *Sharon Williamson v. Warren O. Greene, et al.*, No. 23742 (W. Va. Sup. Ct. June 2, 1997). That decision inadvertently renders the state act narrower than the federal act. Such an interpretation seriously jeopardizes the federal funding which the West Virginia Human Rights Commission receives as the substantially equivalent agency to the Equal Employment Opportunity Commission.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rule Regarding the Definition of Employer Under the West Virginia Human Rights Act

Type of Rule: x **Legislative** ____ **Interpretive** ____ **Procedural**

Agency West Virginia Human Rights Commission

Address 1321 Plaza East, Room 108A Attn: Herman H. Jones

Charleston, WV 25301-1400 Executive Director

(304) 558-2616

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$ 0	$ 0	$ 0	$ 0	$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

The rule will have no fiscal impact on the West Virginia Human Rights Commission.

3. Objectives of these rules:

To interpret and implement the provisions of the West Virginia Human Rights Act, particularly W. Va. Code § 5-11-3(d) related to the definition of employer, and to assist all persons in understanding their rights, obligations and duties under the law.

Rule Title: Rule Regarding the Definition of Employer Under the West Virginia Human Rights Act

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 17, 1997

Signature of Agency Head or Authorized Reprensentative

Joan E. Ohl

FILED

JUN 17 3 52 PM '97

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

TITLE 77
LEGISLATIVE RULE
WEST VIRGINIA HUMAN RIGHTS COMMISSION
SERIES 9

RULE REGARDING THE DEFINITION OF EMPLOYER UNDER THE WEST VIRGINIA HUMAN RIGHTS ACT

§ 77-9-1. General

1.1. Scope -- The following legislative regulation sets forth a rule for complying with the definitions provisions of the West Virginia Human Rights Act, West Virginia Code § 5-11-3 *et seq.*, and is intended to interpret and implement the provisions of the West Virginia Human Rights Act, particularly W. Va. Code § 5-11-3(d) related to the definition of employer, and to assist all persons in understanding their rights, obligation and duties under the law.

1.2. Authority -- This regulation is issued under authority of W. Va. Code §§ 5-11-8(h) and 29A-3-1 *et seq.*

1.3. Filing Date -- This regulation is promulgated on the ____ day of _____, filed on the ____ day of _____, in the Secretary of State's Office.

1.4. Effective Date -- This regulation becomes effective on _____.

§ 77-9-2. Definition

2.1. "Employer" means the state, or any political subdivision thereof, and any person employing twelve or more persons within the state at any time during the period of the complainant's employment within one calendar year preceding the date of the alleged discriminatory act.