

1 **H. B. 2045**

2
3 (By Delegates Doyle, Brown, Fleischauer,
4 Marshall, Michael and Moore)

5 [Introduced January 12, 2011; referred to the
6 Committee on Energy, Industry and Labor, Economic
7 Development and Small Business then the Judiciary.]
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9

10 A BILL to amend and reenact §5-11-2, §5-11-3, §5-11-4, §5-11-8, §5-
11 11-9 and §5-11-13 of the Code of West Virginia, 1931, as
12 amended; and to amend and reenact §5-11A-3, §5-11A-5, §5-11A-6
13 and §5-11A-7 of said code, all relating to unlawful
14 discriminatory practices; prohibiting discrimination based
15 upon age and sexual orientation; and defining sexual
16 orientation.

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

18 That §5-11-2, §5-11-3, §5-11-4, §5-11-8, §5-11-9 and §5-11-13
19 of the Code of West Virginia, 1931, as amended, be amended and
20 reenacted; and that §5-11A-3, §5-11A-5, §5-11A-6 and §5-11A-7 of
21 said code be amended and reenacted, all to read as follows:

22 **ARTICLE 11. HUMAN RIGHTS COMMISSION.**

23 **§5-11-2. Declaration of policy.**

1 It is the public policy of the State of West Virginia to
2 provide all of its citizens equal opportunity for employment, equal
3 access to places of public accommodations and equal opportunity in
4 the sale, purchase, lease, rental and financing of housing
5 accommodations or real property. Equal opportunity in the areas of
6 employment and public accommodations is hereby declared to be a
7 human right or civil right of all persons without regard to race,
8 religion, color, national origin, ancestry, sex, age, sexual
9 orientation, blindness or disability. Equal opportunity in housing
10 accommodations or real property is hereby declared to be a human
11 right or civil right of all persons without regard to race,
12 religion, color, national origin, ancestry, sex, blindness, sexual
13 orientation, disability or familial status.

14 The denial of these rights to properly qualified persons by
15 reason of race, religion, color, national origin, ancestry, sex,
16 age, sexual orientation, blindness, disability or familial status
17 is contrary to the principles of freedom and equality of
18 opportunity and is destructive to a free and democratic society.

19 **§5-11-3. Definitions.**

20 When used in this article:

21 (a) The term "person" means one or more individuals,
22 partnerships, associations, organizations, corporations, labor
23 organizations, cooperatives, legal representatives, trustees,
24 trustees in bankruptcy, receivers and other organized groups of

1 persons;

2 (b) The term "commission" means the West Virginia Human Rights
3 Commission;

4 (c) The term "director" means the Executive Director of the
5 Commission;

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

13 (e) The term "employee" ~~shall~~ does not include any individual
14 employed by his or her parents, spouse or child;

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

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

1 (h) The term "discriminate" or "discrimination" means to
2 exclude from, or fail or refuse to extend to, a person equal
3 opportunities because of race, religion, color, national origin,
4 ancestry, sex, age, sexual orientation, blindness, disability or
5 familial status and includes to separate or segregate;

6 (i) The term "unlawful discriminatory practices" includes only
7 those practices specified in section nine of this article;

8 (j) The term "place of public accommodations" means any
9 establishment or person, as defined herein, including the state, or
10 any political or civil subdivision thereof, which offers its
11 services, goods, facilities or accommodations to the general
12 public, but ~~shall~~ does not include any accommodations which are in
13 their nature private. To the extent that any ~~penitentiary~~
14 correctional facility, detention center, ~~regional jail~~ or ~~county~~
15 jail is a place of public accommodation, the rights, remedies and
16 requirements provided by this article for any violation of
17 subdivision (6), section nine of this article ~~shall~~ do not apply to
18 any person other than: (1) Any person employed at a ~~penitentiary~~
19 correctional facility, detention center ~~regional jail~~ or ~~county~~
20 jail; (2) any person employed by a law-enforcement agency; or (3)
21 any person visiting any ~~such~~ employee or visiting any person
22 detained in custody at ~~such~~ the facility;

23 (k) The term "age" means the age of forty or above;

24 (l) For the purpose of this article, a person shall be

1 considered to be blind only if his or her central visual acuity
2 does not exceed 20/200 ~~hundred~~ in the better eye with correcting
3 lenses, or if his or her visual acuity is greater than 20/200
4 ~~hundred~~ but is occasioned by a limitation in the fields of vision
5 such that the widest diameter of the visual field subtends an angle
6 no greater than twenty degrees; and

7 (m) The term "disability" means:

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

13 (2) A record of such impairment; or

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

15 For the purposes of this article, this term does not include
16 persons whose current use of or addiction to alcohol or drugs
17 prevents ~~such persons~~ the individual from performing the duties of
18 the job in question or whose employment, by reason of such current
19 alcohol or drug abuse, would constitute a direct threat to property
20 or the safety of others; and

21 (n) The term "sexual orientation" means heterosexuality,
22 bisexuality, homosexuality or gender identity or expression,
23 whether actual or perceived.

24 **§5-11-4. Powers and Objectives.**

1 The commission ~~shall have~~ has the power and authority and
2 shall perform the functions and services as in this article
3 prescribed and as otherwise provided by law. The commission shall
4 encourage and endeavor to bring about mutual understanding and
5 respect among all racial, religious and ethnic groups within the
6 state and shall strive to eliminate all discrimination in
7 employment and places of public accommodations by virtue of race,
8 religion, color, national origin, ancestry, sex, age, sexual
9 orientation, blindness or ~~handicap~~ disability and shall strive to
10 eliminate all discrimination in the sale, purchase, lease, rental
11 or financing of housing and other real property by virtue of race,
12 religion, color, national origin, ancestry, sex, age, sexual
13 orientation, blindness, ~~handicap~~ disability or familial status.

14 **§5-11-8. Commission powers; functions; services.**

15 The commission is hereby authorized and empowered:

16 (a) To cooperate and work with federal, state and local
17 government officers, units, activities and agencies in the
18 promotion and attainment of more harmonious understanding and
19 greater equality of rights between and among all racial, religious
20 and ethnic groups in this state;

21 (b) To enlist the cooperation of racial, religious and ethnic
22 units, community and civic organizations, industrial and labor
23 organizations and other identifiable groups of the state in
24 programs and campaigns devoted to the advancement of tolerance,

1 understanding and the equal protection of the laws of all groups
2 and peoples;

3 (c) To receive, investigate and pass upon complaints alleging
4 discrimination in employment or places of public accommodations,
5 because of race, religion, color, national origin, ancestry, sex,
6 age, sexual orientation, blindness or disability, and complaints
7 alleging discrimination in the sale, purchase, lease, rental and
8 financing of housing accommodations or real property because of
9 race, religion, color, national origin, ancestry, sex, age, sexual
10 orientation, blindness, disability or familial status, and to
11 initiate its own consideration of any situations, circumstances or
12 problems, including therein any racial, religious or ethnic group
13 tensions, prejudice, disorder or discrimination reported or
14 existing within the state relating to employment, places of public
15 accommodations, housing accommodations and real property;

16 (d) To hold and conduct public and private hearings, in the
17 county where the respondent resides or transacts business or where
18 agreed to by the parties or where the acts complained of occurred,
19 on complaints, matters and questions before the commission and, in
20 connection therewith, relating to discrimination in employment or
21 places of public accommodations, housing accommodations or real
22 property and during the investigation of any formal complaint
23 before the commission relating to employment, places of public
24 accommodations, housing accommodations or real property to:

1 (1) Issue subpoenas and subpoenas duces tecum upon the
2 approval of the executive director or the chairperson of the
3 commission; administer oaths; take the testimony of any person
4 under oath; and make reimbursement for travel and other reasonable
5 and necessary expenses in connection with such attendance;

6 (2) Furnish copies of public hearing records to parties
7 involved therein upon their payment of the reasonable costs thereof
8 to the commission;

9 (3) Delegate to an administrative law judge who shall be an
10 attorney, duly licensed to practice law in West Virginia, the power
11 and authority to hold and conduct hearings, as herein provided, to
12 determine all questions of fact and law presented during the
13 hearing and to render a final decision on the merits of the
14 complaint, subject to the review of the commission as hereinafter
15 set forth.

16 Any respondent or complainant who ~~shall feel~~ is aggrieved at
17 any final action of an administrative law judge ~~shall~~ may file a
18 written notice of appeal with the commission by serving such notice
19 on the executive director and upon all other parties within thirty
20 days after receipt of the administrative law judge's decision. The
21 commission shall limit its review upon ~~such~~ these appeals to
22 whether the administrative law judge's decision is:

23 (A) In conformity with the Constitution and the laws of the
24 state and the United States;

1 (B) Within the commission's statutory jurisdiction or
2 authority;

3 (C) Made in accordance with procedures required by law or
4 established by appropriate rules of the commission;

5 (D) Supported by substantial evidence on the whole record; or

6 (E) Not arbitrary, capricious or characterized by abuse of
7 discretion or clearly unwarranted exercise of discretion.

8 (4) To enter into conciliation agreements and consent orders.

9 Each conciliation agreement shall include provisions requiring
10 the respondent to refrain from the commission of unlawful
11 discriminatory practices in the future and shall contain ~~such~~
12 further provisions as may be agreed upon by the commission and the
13 respondent.

14 If the respondent and the commission agree upon conciliation
15 terms, the commission shall serve upon the complainant a copy of
16 the proposed conciliation agreement. If the complainant agrees to
17 the terms of the agreement or fails to object to ~~such~~ the terms
18 within fifteen days after its service upon him or her, the
19 commission shall issue an order embodying ~~such~~ the conciliation
20 agreement. If the complainant objects to the agreement, he or she
21 shall serve a specification of his or her objections upon the
22 commission within ~~such~~ this period. Unless ~~such~~ these objections
23 are met or withdrawn within ten days after service thereof, the
24 commission shall notice the complaint for hearing.

1 Notwithstanding any other provisions of this section, the
2 commission may, where it finds the terms of the conciliation
3 agreement to be in the public interest, execute ~~such~~ the agreement,
4 and limit the hearing to the objections of the complainant.

5 If a conciliation agreement is entered into, the commission
6 shall serve a copy of the order embodying ~~such~~ the agreement upon
7 all parties to the proceeding.

8 Not later than one year from the date of a conciliation
9 agreement, the commission shall investigate whether the respondent
10 is complying with the terms of ~~such~~ the agreement. Upon a finding
11 of noncompliance, the commission shall take appropriate action to
12 assure compliance;

13 (5) To apply to the circuit court of the county where the
14 respondent resides or transacts business for enforcement of any
15 conciliation agreement or consent order by seeking specific
16 performance of ~~such~~ the agreement or consent order;

17 (6) To issue cease and desist orders against any person found,
18 after a public hearing, to have violated the provisions of this
19 article or the rules of the commission;

20 (7) To apply to the circuit court of the county where the
21 respondent resides or transacts business for an order enforcing any
22 lawful cease and desist order issued by the commission;

23 (e) To recommend to the Governor and Legislature policies,
24 procedures, practices and legislation in matters and questions

1 affecting human rights;

2 (f) To delegate to its executive director ~~such~~ the powers,
3 duties and functions as may be necessary and expedient in carrying
4 out the objectives and purposes of this article;

5 (g) To prepare a written report on its work, functions and
6 services for each year ending on June 30 and to deliver copies
7 thereof to the Governor on or before December 1 next thereafter;

8 (h) To do all other acts and deeds necessary and proper to
9 carry out and accomplish effectively the objects, functions and
10 services contemplated by the provisions of this article, including
11 the promulgation of legislative rules in accordance with the
12 provisions of article three, chapter twenty-nine-a of this code,
13 implementing the powers and authority hereby vested in the
14 commission;

15 (i) To create ~~such~~ the advisory agencies and conciliation
16 councils, local, regional or statewide, as in its judgment will aid
17 in effectuating the purposes of this article, to study the problems
18 of discrimination in all or specific fields or instances of
19 discrimination because of race, religion, color, national origin,
20 ancestry, sex, age, sexual orientation, blindness, disability or
21 familial status; to foster, through community effort or otherwise,
22 goodwill, cooperation and conciliation among the groups and
23 elements of the population of this state, and to make
24 recommendations to the commission for the development of policies

1 and procedures, and for programs of formal and informal education,
2 which the commission may recommend to the appropriate state agency.
3 ~~Such~~ The advisory agencies and conciliation councils shall be
4 composed of representative citizens serving without pay. The
5 commission may itself make the studies and perform the acts
6 authorized by this subdivision. It may, by voluntary conferences
7 with parties in interest, endeavor by conciliation and persuasion
8 to eliminate discrimination in all the stated fields and to foster
9 goodwill and cooperation among all elements of the population of
10 the state;

11 (j) To accept contributions from any person to assist in the
12 effectuation of the purposes of this section and to seek and enlist
13 the cooperation of private, charitable, religious, labor, civic and
14 benevolent organizations for the purposes of this section;

15 (k) To issue ~~such~~ publications and ~~such~~ results of
16 investigation and research as in its judgment will tend to promote
17 goodwill and minimize or eliminate discrimination: *Provided*, That
18 the identity of the parties involved ~~shall~~ may not be disclosed.

19 **§5-11-9. Unlawful discriminatory practices.**

20 It ~~shall be~~ is an unlawful discriminatory practice, unless
21 based upon a bona fide occupational qualification, or except where
22 based upon applicable security regulations established by the
23 United States or the State of West Virginia or its agencies or
24 political subdivisions:

1 (1) For any employer to discriminate against an individual
2 with respect to compensation, hire, tenure, terms, conditions or
3 privileges of employment if the individual is able and competent to
4 perform the services required even if ~~such~~ the individual is blind
5 or disabled: *Provided*, That it ~~shall~~ may not be an unlawful
6 discriminatory practice for an employer to observe the provisions
7 of any bona fide pension, retirement, group or employee insurance
8 or welfare benefit plan or system not adopted as a subterfuge to
9 evade the provisions of this subdivision;

10 (2) For any employer, employment agency or labor organization,
11 prior to the employment or admission to membership, to: (A) Elicit
12 any information or make or keep a record of or use any form of
13 application or application blank containing questions or entries
14 concerning the race, religion, color, national origin, ancestry,
15 sex, sexual orientation or age of any applicant for employment or
16 membership; (B) print or publish or cause to be printed or
17 published any notice or advertisement relating to employment or
18 membership indicating any preference, limitation, specifications or
19 discrimination based upon race, religion, color, national origin,
20 ancestry, sex, sexual orientation, disability or age; or (C) deny
21 or limit, through a quota system, employment or membership because
22 of race, religion, color, national origin, ancestry, sex, age,
23 sexual orientation, blindness or disability;

24 (3) For any labor organization because of race, religion,

1 color, national origin, ancestry, sex, age, sexual orientation,
2 blindness or disability of any individual to deny full and equal
3 membership rights to any individual or otherwise to discriminate
4 against ~~such~~ the individual with respect to hire, tenure, terms,
5 conditions or privileges of employment or any other matter,
6 directly or indirectly, related to employment;

7 (4) For an employer, labor organization, employment agency or
8 any joint labor-management committee controlling apprentice
9 training programs to:

10 (A) Select individuals for an apprentice training program
11 registered with the State of West Virginia on any basis other than
12 their qualifications as determined by objective criteria which
13 permit review;

14 (B) Discriminate against any individual with respect to his or
15 her right to be admitted to or participate in a guidance program,
16 an apprenticeship training program, on-the-job training program or
17 other occupational training or retraining program;

18 (C) Discriminate against any individual in his or her pursuit
19 of ~~such~~ these programs or to discriminate against ~~such~~ a person in
20 the terms, conditions or privileges of ~~such~~ these programs;

21 (D) Print or circulate or cause to be printed or circulated
22 any statement, advertisement or publication, or to use any form of
23 application for these programs or to make any inquiry in connection
24 with a program which expresses, directly or indirectly,

1 discrimination or any intent to discriminate unless based upon a
2 bona fide occupational qualification;

3 (5) For any employment agency to fail or refuse to classify
4 properly, refer for employment or otherwise to discriminate against
5 any individual because of his or her race, religion, color,
6 national origin, ancestry, sex, age, sexual orientation, blindness
7 or disability;

8 (6) For any person being the owner, lessee, proprietor,
9 manager, superintendent, agent or employee of any place of public
10 accommodations to:

11 (A) Refuse, withhold from or deny to any individual because of
12 his or her race, religion, color, national origin, ancestry, sex,
13 age, sexual orientation, blindness or disability, either directly
14 or indirectly, any of the accommodations, advantages, facilities,
15 privileges or services of the place of public accommodations;

16 (B) Publish, circulate, issue, display, post or mail, either
17 directly or indirectly, any written or printed communication,
18 notice or advertisement to the effect that any of the
19 accommodations, advantages, facilities, privileges or services of
20 any ~~such~~ place shall be refused, withheld from or denied to any
21 individual on account of race, religion, color, national origin,
22 ancestry, sex, age, sexual orientation, blindness or disability, or
23 that the patronage or custom thereof of any individual, belonging
24 to or purporting to be of any particular race, religion, color,

1 national origin, ancestry, sexual orientation, sex or age, or who
2 is blind or disabled, is unwelcome, objectionable, not acceptable,
3 undesired or not solicited; or

4 (7) For any person, employer, employment agency, labor
5 organization, owner, real estate broker, real estate salesman or
6 financial institution to:

7 (A) Engage in any form of threats or reprisal, or to engage
8 in, or hire, or conspire with others to commit acts or activities
9 of any nature, the purpose of which is to harass, degrade,
10 embarrass or cause physical harm or economic loss or to aid, abet,
11 incite, compel or coerce any person to engage in any of the
12 unlawful discriminatory practices defined in this section;

13 (B) Willfully obstruct or prevent any person from complying
14 with the provisions of this article, or to resist, prevent, impede
15 or interfere with the commission or any of its members or
16 representatives in the performance of a duty under this article; or

17 (C) Engage in any form of reprisal or otherwise discriminate
18 against any person because he or she has opposed any practices or
19 acts forbidden under this article or because he or she has filed a
20 complaint, testified or assisted in any proceeding under this
21 article.

22 **§5-11-13. Exclusiveness of remedy; exceptions.**

23 (a) Except as provided in subsection (b), nothing contained in
24 this article shall be ~~deemed~~ considered to repeal or supersede any

1 of the provisions of any existing or hereafter adopted municipal
2 ordinance, municipal charter or of any law of this state relating
3 to discrimination because of race, religion, color, national
4 origin, ancestry, sex, age, sexual orientation, blindness or
5 disability, but as to acts declared unlawful by section nine of
6 this article, the procedure herein provided ~~shall~~ are, when
7 invoked, ~~be~~ exclusive and the final determination therein shall
8 exclude any other action, civil or criminal, based on the same
9 grievance of the complainant concerned. If ~~such~~ the complainant
10 institutes any action based on ~~such~~ the grievance without resorting
11 to the procedure provided in this article, he or she may not
12 subsequently resort to the procedure herein. ~~In the event of~~ If
13 there is a conflict between the interpretation of a provision of
14 this article and the interpretation of a similar provision
15 contained in any municipal ordinance authorized by charter, the
16 interpretation of the provision in this article shall apply to ~~such~~
17 the municipal ordinance.

18 (b) Notwithstanding the provisions of subsection (a) of this
19 section, a complainant may institute an action against a respondent
20 in the county wherein the respondent resides or transacts business
21 at any time within ninety days after the complainant is given
22 notice of a right to sue pursuant to this subsection or, if the
23 statute of limitations on the claim has not expired at the end of
24 such ninety-day period, then at any time during which ~~such~~ the

1 statute of limitations has not expired. If a suit is filed under
2 this section the proceedings pending before the commission ~~shall be~~
3 ~~deemed~~ are considered concluded.

4 The commission shall give a complainant who has filed a
5 complaint a notice of a right to sue upon: (1) The dismissal of
6 the complaint for any reason other than an adjudication of the
7 merits of the case; or (2) the request of a complainant at any time
8 after the timely filing of the complaint in any case which has not
9 been determined on its merits or has not resulted in a conciliation
10 agreement to which the complainant is a party. Upon the issuance
11 of a right-to-sue letter pursuant to subdivision (1) or (2), the
12 commission may dismiss the complaint.

13 Notice of right-to-sue shall be given immediately upon
14 complainant being entitled thereto, by personal service or
15 certified mail, return receipt requested, which notice shall inform
16 the complainant in plain terms of his or her right to institute a
17 civil action as provided in this section within ninety days of the
18 giving of ~~such~~ the notice. Service of the notice shall be complete
19 upon mailing.

20 (c) In any action filed under this section, if the court finds
21 that the respondent has engaged in or is engaging in an unlawful
22 discriminatory practice charged in the complaint, the court shall
23 enjoin the respondent from engaging in ~~such~~ an unlawful
24 discriminatory practice and order affirmative action which may

1 include, but is not limited to, reinstatement or hiring of
2 employees, granting of back pay or any other legal or equitable
3 relief as the court ~~deems~~ considers appropriate. In actions
4 brought under this section, the court in its discretion may award
5 all, or a portion of the costs of litigation, including reasonable
6 attorney fees and witness fees, to the complainant.

7 (d) The provisions of this section shall be available to all
8 complainants whose active cases are pending before the Human Rights
9 Commission as well as those complainants who file after the
10 effective date of this section.

11 **ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.**

12 **§5-11A-3. Definitions.**

13 As used in this article:

14 (a) "Commission" means the West Virginia Human Rights
15 Commission;

16 (b) "Dwelling" means any building, structure or portion
17 thereof which is occupied as, or designed or intended for occupancy
18 as, a residence or sleeping place by one or more persons or
19 families, and any vacant land which is offered for sale or lease
20 for the construction or location thereon of any ~~such~~ building,
21 structure or portion thereof;

22 (c) "Family" includes a single individual;

23 (d) "Person" includes one or more individuals, corporations,
24 partnerships, associations, labor organizations, legal

1 representatives, mutual companies, joint-stock companies, trusts,
2 unincorporated organizations, trustees, trustees in cases under
3 Title 11 of the United States Code, receivers and fiduciaries;

4 (e) "To rent" includes to lease, to sublease, to let and
5 otherwise to grant for a consideration the right to occupy premises
6 not owned by the occupant;

7 (f) "Discriminatory housing practice" means an act that is
8 unlawful under section five, six, seven or nineteen of this
9 article;

10 (g) ~~"Handicap"~~ "Disability" means, with respect to a person:

11 (1) A physical or mental impairment which substantially limits
12 one or more of ~~such~~ the person's major life activities;

13 (2) A record of having such an impairment; or

14 (3) Being regarded as having such an impairment, but ~~such~~ the
15 term does not include current, illegal use of or addiction to a
16 controlled substance, as defined in Section 102 of the Controlled
17 Substances Act, Title 21, United States Code, Section 802;

18 (h) "Aggrieved person" includes any person who:

19 (1) Claims to have been injured by a discriminatory housing
20 practice; or

21 (2) Believes that ~~such~~ a person will be injured by a
22 discriminatory housing practice that is about to occur;

23 (i) "Complainant" means the person, including the commission,
24 who files a complaint under section eleven of this article;

1 (j) "Familial status" means:

2 (1) One or more individuals who have not attained the age of
3 eighteen years being domiciled with:

4 (A) A parent or another person having legal custody of ~~such~~
5 the individual or individuals; or

6 (B) The designee of ~~such~~ the parent or other person having
7 ~~such~~ the custody with the written permission of ~~such~~ the parent or
8 other person; or

9 (2) Any person who is pregnant or is in the process of
10 securing legal custody of any individual who has not attained the
11 age of eighteen years;

12 (k) "Conciliation" means the attempted resolution of issues
13 raised by a complaint or by the investigation of ~~such~~ the complaint
14 through informal negotiations involving the aggrieved person, the
15 respondent and the commission;

16 (l) "Conciliation agreement" means a written agreement setting
17 forth the resolution of the issues in conciliation;

18 (m) "Sexual orientation" is defined as heterosexuality,
19 bisexuality, homosexuality or gender identity or expression,
20 whether actual or perceived;

21 ~~(m)~~ (n) "Respondent" means:

22 (1) The person or other entity accused in a complaint of an
23 unfair housing practice;

24 (2) Any other person or entity identified in the course of

1 investigation and notified as required with respect to respondents
2 so identified under subsection (a), section eleven of this article;

3 ~~(n)~~ (o) The term "rooming house" means a house or building
4 where there are one or more bedrooms which the proprietor can spare
5 for the purpose of giving lodgings to ~~such~~ persons as he or she
6 chooses to receive; and

7 ~~(o)~~ (p) The term "basic universal design" means the design of
8 products and environments to be useable by all people, to the
9 greatest extent possible without the need for adaptation or
10 specialization.

11 **§5-11A-5. Discrimination in sale or rental of housing and other**
12 **prohibited practices.**

13 As made applicable by section four of this article and except
14 as exempted by sections four and eight of this article, it ~~shall be~~
15 is unlawful:

16 (a) To refuse to sell or rent after the making of a bona fide
17 offer, or to refuse to negotiate for the sale or rental of, or
18 otherwise make unavailable or deny, a dwelling to any person
19 because of race, color, religion, ancestry, sex, age, sexual
20 orientation, familial status, blindness, ~~handicap~~ disability or
21 national origin;

22 (b) To discriminate against any person in the terms,
23 conditions or privileges of sale or rental of a dwelling, or in the
24 provision of services or facilities in connection therewith,

1 because of race, color, religion, ancestry, sex, age, sexual
2 orientation, familial status, blindness, ~~handicap~~ disability or
3 national origin;

4 (c) To make, print or publish, or cause to be made, printed or
5 published any notice, statement or advertisement, with respect to
6 the sale or rental of a dwelling that indicates any preference,
7 limitation or discrimination based on race, color, religion, sex,
8 age, sexual orientation, blindness, ~~handicap~~ disability, familial
9 status, ancestry or national origin, or an intention to make any
10 such preference, limitation or discrimination;

11 (d) To represent to any person because of race, color,
12 religion, sex, age, sexual orientation, blindness, ~~handicap~~
13 disability, familial status, ancestry or national origin that any
14 dwelling is not available for inspection, sale or rental when ~~such~~
15 the dwelling is in fact so available;

16 (e) For profit, to induce or attempt to induce any person to
17 sell or rent any dwelling by representations regarding the entry or
18 prospective entry into the neighborhood of a person or persons of
19 a particular race, color, religion, sex, age, sexual orientation,
20 blindness, ~~handicap~~ disability, familial status, ancestry or
21 national origin; or

22 (f) (1) To discriminate in the sale or rental, or to otherwise
23 make unavailable or deny, a dwelling to any buyer or renter because
24 of a handicap of:

1 (A) That buyer or renter;

2 (B) A person residing in or intending to reside in that
3 dwelling after it is so sold, rented or made available; or

4 (C) Any person associated with that buyer or renter.

5 (2) To discriminate against any person in the terms,
6 conditions or privileges of sale or rental of a dwelling, or in the
7 provision of services or facilities in connection with ~~such~~ the
8 dwelling, because of a ~~handicap~~ disability of: (A) That person;
9 (B) a person residing in or intending to reside in that dwelling
10 after it is so sold, rented or made available; or (C) any person
11 associated with that person.

12 (3) For purposes of this subdivision, discrimination includes:

13 (A) A refusal to permit, at the expense of the handicapped
14 person, reasonable modifications of existing premises occupied or
15 to be occupied by ~~such~~ that person if ~~such~~ the modifications may be
16 necessary to afford ~~such~~ that person full enjoyment of the
17 premises, except that, in the case of a rental, the landlord may,
18 where it is reasonable to do so, condition permission for a
19 modification on the renter agreeing to restore the interior of the
20 premises to the condition that existed before the modification,
21 reasonable wear and tear excepted;

22 (B) A refusal to make reasonable accommodations in rules,
23 policies, practices or services when ~~such~~ the accommodations may be
24 necessary to afford ~~such~~ the person equal opportunity to use and

1 enjoy a dwelling; or

2 (C) In connection with the design and construction of covered
3 multifamily dwellings for first occupancy after the date that is
4 thirty months after the date of enactment of the West Virginia Fair
5 Housing Act, a failure to design and construct those dwellings in
6 such a manner that:

7 (i) The public use and common use portions of ~~such~~ the
8 dwellings are readily accessible to and usable by handicapped
9 persons;

10 (ii) All the doors designed to allow passage into and within
11 all premises within ~~such~~ the dwellings are sufficiently wide to
12 allow passage by handicapped persons in wheelchairs; and

13 (iii) All premises within ~~such~~ the dwellings contain the
14 following features of adaptive design: (I) An accessible route
15 into and through the dwelling; (II) light switches, electrical
16 outlets, thermostats and other environmental controls in accessible
17 locations; (III) reinforcements in bathroom walls to allow later
18 installation of grab bars; and (IV) usable kitchens and bathrooms
19 such that an individual in a wheelchair can maneuver about the
20 space.

21 (4) Compliance with the appropriate requirements of the
22 American National Standard for Buildings and Facilities providing
23 accessibility and usability for physically handicapped people,
24 commonly cited as ANSI A117.1, suffices to satisfy the requirements

1 of subparagraph (3) (C) (iii) of this subdivision.

2 (5) (A) If a unit of general local government has incorporated
3 into its laws the requirements set forth in subparagraph (3) (C) of
4 this subdivision, compliance with ~~such~~ those laws ~~shall be deemed~~
5 is considered to satisfy the requirements of that subparagraph.

6 (B) The commission or unit of general local government may
7 review and approve newly constructed covered multifamily dwellings
8 for the purpose of making determinations as to whether the design
9 and construction requirements of subparagraph (3) (C) of this
10 subdivision are met.

11 (C) The commission shall encourage, but may not require, units
12 of local government to include in their existing procedures for the
13 review and approval of newly constructed covered multifamily
14 dwellings, determinations as to whether the design and construction
15 of ~~such~~ the dwellings are consistent with subparagraph (3) (C) of
16 this subdivision, and may provide technical assistance to units of
17 local government and other persons to implement the requirements of
18 ~~such~~ that subparagraph.

19 (D) Nothing in this article ~~shall~~ may be construed to require
20 the commission to review or approve the plans, designs or
21 construction of all covered multifamily dwellings to determine
22 whether the design and construction of ~~such~~ the dwellings are
23 consistent with the requirements of subparagraph (3) (C) of this
24 subdivision.

1 (6) (A) Nothing in paragraph (5) of this subdivision ~~shall~~ may
2 be construed to affect the authority and responsibility of the
3 commission or a local public agency to receive and process
4 complaints or otherwise engage in enforcement activities under this
5 article.

6 (B) Determinations by a unit of general local government under
7 subparagraphs (5) (A) and (B) of this subdivision ~~shall not be~~ are
8 not conclusive in enforcement proceedings under this article.

9 (7) As used in this section, the term "covered multifamily
10 dwellings" means: (A) Buildings consisting of four or more units
11 if ~~such~~ the buildings have one or more elevators; and (B) ground
12 floor units in other buildings consisting of four or more units.

13 (8) Nothing in this article ~~shall~~ may be construed to
14 invalidate or limit any law of this state or any political
15 subdivision hereof that requires dwellings to be designed and
16 constructed in a manner that affords handicapped persons greater
17 access than is required by this article.

18 (9) Nothing in this section requires that a dwelling be made
19 available to an individual whose tenancy would constitute a direct
20 threat to the health or safety of other individuals or whose
21 tenancy would result in substantial physical damage to the property
22 of others. The burden of proving ~~such~~ a threat to health or safety
23 or the likelihood of ~~such~~ damage ~~shall be~~ is upon the respondent.

24 **§5-11A-6. Discrimination in residential real estate related**

1 **transactions.**

2 (a) It ~~shall be~~ is unlawful for any person or other entity
3 whose business includes engaging in residential real-estate-related
4 transactions to discriminate against any person in making available
5 such a transaction or in the terms or conditions of ~~such~~ a
6 transaction because of race, color, religion, sex, age, sexual
7 orientation, blindness, ~~handicap~~ disability, familial status,
8 ancestry or national origin.

9 (b) As used in this section, the term "residential real-
10 estate-related transaction" means any of the following:

11 (1) The making or purchasing of loans or providing other
12 financial assistance: (A) For purchasing, constructing, improving,
13 repairing or maintaining a dwelling; or (B) secured by residential
14 real estate; or

15 (2) The selling, brokering or appraising of residential real
16 property.

17 (c) Nothing in this article prohibits a person engaged in the
18 business of furnishing appraisals of real property to take into
19 consideration factors other than race, color, religion, national
20 origin, ancestry, sex, age, sexual orientation, blindness, ~~handicap~~
21 disability or familial status.

22 **§5-11A-7. Discrimination in provision of brokerage services.**

23 It ~~shall be~~ is unlawful to deny any person access to or
24 membership or participation in any multiple listing service, real

1 estate broker's organization or other service, organization or
2 facility relating to the business of selling or renting dwellings,
3 or to discriminate against him or her in the terms or conditions of
4 ~~such~~ the access, membership or participation on account of race,
5 color, religion, sex, age, sexual orientation, blindness, ~~handicap~~
6 disability, familial status, ancestry or national origin.

NOTE: The purpose of this bill is to add "sexual orientation" to the categories covered by the Human Rights Act, prohibiting discrimination in employment and places of public accommodations. This bill also adds "age" and "sexual orientation" to the categories covered by the Fair Housing Act prohibiting discrimination in housing. It also defines "sexual orientation" as "heterosexuality, bisexuality, homosexuality or gender identity or expression, whether actual or perceived".

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