

1 **H. B. 2387**

2
3 (By Delegates Marshall and Moore)

4 [Introduced February 13, 2013; referred to the
5 Committee on the Judiciary.]

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10 A BILL to amend and reenact §5-11A-3, §5-11A-5, §5-11A-6 and
11 §5-11A-7 of the Code of West Virginia, 1931, as amended, all
12 relating to the West Virginia Fair Housing Act; defining the
13 term "assistance animal"; replacing the term disability with
14 the term handicap; requiring a person with a disability who
15 requests a reasonable accommodation to provide supporting
16 material documenting the need for the assistance animal;
17 providing exceptions; and imposing a liability provision.

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

19 That §5-11A-3, §5-11A-5, §5-11A-6 and §5-11A-7 of the Code of
20 West Virginia, 1931, as amended, be amended and reenacted, all to
21 read as follows:

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

23 **§5-11A-3. Definitions.**

1 As used in this article:

2 (a) "Commission" means the West Virginia Human Rights
3 Commission;

4 (b) "Dwelling" means any building, structure or portion
5 thereof which is occupied as, or designed or intended for occupancy
6 as, a residence or sleeping place by one or more persons or
7 families and any vacant land which is offered for sale or lease for
8 the construction or location thereon of any such building,
9 structure or portion thereof;

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

11 (d) "Person" includes one or more individuals, corporations,
12 partnerships, associations, labor organizations, legal
13 representatives, mutual companies, joint-stock companies, trusts,
14 unincorporated organizations, trustees, trustees in cases under
15 Title 11 of the United States Code, receivers and fiduciaries;

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

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

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

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

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

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

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

7 (1) Claims to have been injured by a discriminatory housing
8 practice; or

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

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

13 (j) "Familial status" means:

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

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

18 (B) The designee of ~~such~~ the parent or other person having
19 ~~such~~ custody of the individual with the written permission of ~~such~~
20 the parent or other person; or

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

24 (k) "Conciliation" means the attempted resolution of issues

1 raised by a complaint or by the investigation of ~~such~~ the complaint
2 through informal negotiations involving the aggrieved person, the
3 respondent and the commission;

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

6 (m) "Respondent" means:

7 (1) The person or other entity accused in a complaint of an
8 unfair housing practice; and

9 (2) Any other person or entity identified in the course of
10 investigation and notified as required with respect to respondents
11 ~~so~~ identified under subsection (a), section eleven of this article;

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

16 (o) The term "basic universal design" means the design of
17 products and environments to be useable by all people, to the
18 greatest extent possible, without the need for adaptation or
19 specialization.

20 (p) The term "assistance animal" means any service animal or
21 emotional support animal with or without specific training or
22 certification, or both, which is kept and used by a person with a
23 disability to perform one or more major life activities or to ease
24 or ameliorate the effects of its master's disability.

1 **§5-11A-5. Discrimination in sale or rental of housing and other**
2 **prohibited practices.**

3 As made applicable by section four of this article and except
4 as exempted by sections four and eight of this article, it ~~shall be~~
5 is unlawful:

6 (a) To refuse to sell or rent after the making of a bona fide
7 offer, or to refuse to negotiate for the sale or rental of, or
8 otherwise make unavailable or deny, a dwelling to any person
9 because of race, color, religion, ancestry, sex, familial status,
10 blindness, ~~handicap~~ disability or national origin;

11 (b) To discriminate against any person in the terms,
12 conditions or privileges of sale or rental of a dwelling, or in the
13 provision of services or facilities in connection therewith,
14 because of race, color, religion, ancestry, sex, familial status,
15 blindness, ~~handicap~~ disability or national origin;

16 (c) To make, print or publish, or cause to be made, printed or
17 published any notice, statement or advertisement, with respect to
18 the sale or rental of a dwelling that indicates any preference,
19 limitation or discrimination based on race, color, religion, sex,
20 blindness, ~~handicap~~ disability, familial status, ancestry or
21 national origin, or an intention to make any such preference,
22 limitation or discrimination;

23 (d) To represent to any person because of race, color,
24 religion, sex, blindness, ~~handicap~~ disability, familial status,

1 ancestry or national origin that any dwelling is not available for
2 inspection, sale or rental when ~~such~~ the dwelling is in fact ~~so~~
3 available;

4 (e) For profit, to induce or attempt to induce any person to
5 sell or rent any dwelling by representations regarding the entry or
6 prospective entry into the neighborhood of a person or persons of
7 a particular race, color, religion, sex, blindness, ~~handicap~~
8 disability, familial status, ancestry or national origin; or

9 (f) (1) To discriminate in the sale or rental, or to otherwise
10 make unavailable or deny, a dwelling to any buyer or renter because
11 of a ~~handicap~~ disability of: (A) That buyer or renter; (B) a
12 person residing in or intending to reside in that dwelling after it
13 is so sold, rented or made available; or (C) any person associated
14 with that buyer or renter.

15 (2) To discriminate against any person in the terms,
16 conditions or privileges of sale or rental of a dwelling, or in the
17 provision of services or facilities in connection with ~~such~~ the
18 dwelling, because of a ~~handicap~~ disability of: (A) That person;
19 (B) a person residing in or intending to reside in that dwelling
20 after it is so sold, rented or made available; or (C) any person
21 associated with that person.

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

23 (A) A refusal to permit, at the expense of the ~~handicapped~~
24 disabled person, reasonable modifications of existing premises

1 occupied or to be occupied by ~~such~~ the person if ~~such~~ the
2 modifications may be necessary to afford ~~such~~ the person full
3 enjoyment of the premises, except that, in the case of a rental,
4 the landlord may where it is reasonable to do so condition
5 permission for a modification on the renter agreeing to restore the
6 interior of the premises to the condition that existed before the
7 modification, reasonable wear and tear excepted;

8 (B) A refusal to make reasonable accommodations in rules,
9 policies, practices or services when ~~such~~ the accommodations may be
10 necessary to afford ~~such~~ the person equal opportunity to use and
11 enjoy a dwelling; or

12 (C) In connection with the design and construction of covered
13 multifamily dwellings for first occupancy after the date that is
14 thirty months after the date of enactment of the West Virginia Fair
15 Housing Act, a failure to design and construct those dwellings in
16 ~~such~~ a manner that:

17 (i) The public use and common use portions of ~~such~~ the
18 dwellings are readily accessible to and usable by ~~handicapped~~
19 disabled persons;

20 (ii) All the doors designed to allow passage into and within
21 all premises within ~~such~~ the dwellings are sufficiently wide to
22 allow passage by ~~handicapped~~ disabled persons in wheelchairs; and

23 (iii) All premises within ~~such~~ the dwellings contain the
24 following features of adaptive design: (I) An accessible route

1 into and through the dwelling; (II) light switches, electrical
2 outlets, thermostats and other environmental controls in accessible
3 locations; (III) reinforcements in bathroom walls to allow later
4 installation of grab bars; and (IV) usable kitchens and bathrooms
5 ~~such~~ that an individual in a wheelchair can maneuver about the
6 space.

7 (4) Compliance with the appropriate requirements of the
8 *American National Standard for Buildings and Facilities Providing*
9 *Accessibility and Usability for Physically Handicapped People,*
10 commonly cited as ANSI A117.1, suffices to satisfy the requirements
11 of subparagraph (3) (C) (iii) of this subdivision.

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

16 (B) The commission or unit of general local government may
17 review and approve newly constructed covered multifamily dwellings
18 for the purpose of making determinations as to whether the design
19 and construction requirements of subparagraph (3) (C) of this
20 subdivision are met.

21 (C) The commission shall encourage, but may not require, units
22 of local government to include in their existing procedures for the
23 review and approval of newly constructed covered multifamily
24 dwellings, determinations as to whether the design and construction

1 of such dwellings are consistent with subparagraph (3) (C) of this
2 subdivision, and may provide technical assistance to units of local
3 government and other persons to implement the requirements of ~~such~~
4 that subparagraph.

5 (D) Nothing in this article ~~shall be construed to require~~
6 requires the commission to review or approve the plans, designs or
7 construction of all covered multifamily dwellings to determine
8 whether the design and construction of ~~such~~ the dwellings are
9 consistent with the requirements of subparagraph (3) (C) of this
10 subdivision.

11 (6) (A) Nothing in paragraph (5) of this subdivision ~~shall be~~
12 ~~construed to affect~~ affects the authority and responsibility of the
13 commission or a local public agency to receive and process
14 complaints or otherwise engage in enforcement activities under this
15 article.

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

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

23 (8) Nothing in this article ~~shall be construed to invalidate~~
24 ~~or limit~~ invalidates or limits any law of this state or any

1 political subdivision ~~hereof~~ of this state that requires dwellings
2 to be designed and constructed in a manner that affords ~~handicapped~~
3 disabled persons greater access than is required by this article.

4 (9) ~~Nothing in~~ This section requires does not require that a
5 dwelling be made available to an individual whose tenancy would
6 constitute a direct threat to the health or safety of other
7 individuals or whose tenancy would result in substantial physical
8 damage to the property of others. The burden of proving such
9 threat to health or safety or the likelihood of such damage ~~shall~~
10 be is upon the respondent.

11 (10) (A) For the purposes of this subdivision, rules,
12 policies, practices or services regarding pets are subject to the
13 reasonable accommodation requirements of subparagraph (B), paragraph
14 (3) of this subdivision: Provided, That in connection with a
15 request for reasonable accommodation to the rules, policies or
16 services, a person with a disability may be required to provide
17 supporting material documenting the need for the assistance animal.

18 (B) A person with a disability may be refused the
19 accommodation of an assistance animal if there is credible evidence
20 that the assistance animal would be a direct threat to the health
21 or safety of others.

22 (C) A person with a disability who keeps or uses an assistance
23 animal is responsible for seeing that the assistance animal lives
24 in the dwelling of the person without disturbing the property or

1 quiet enjoyment of the property owner or the person's neighbors and
2 is liable for any damage caused by the assistance animal.

3 **§5-11A-6. Discrimination in residential real estate-related**
4 **transactions.**

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

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

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

17 (2) The selling, brokering or appraising of residential real
18 property.

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

24 **§5-11A-7. Discrimination in provision of brokerage services.**

1 It ~~shall be~~ is unlawful to deny any person access to or
2 membership or participation in any multiple listing service, real
3 estate broker's organization or other service, organization or
4 facility relating to the business of selling or renting dwellings,
5 or to discriminate against him or her in the terms or conditions of
6 such access, membership or participation on account of race, color,
7 religion, sex, blindness, ~~handicap~~ disability, familial status,
8 ancestry or national origin.

NOTE: The purpose of this bill is to adjust the West Virginia Fair Housing Act to realign it with the federal Fair Housing Act with regard to support animals. The bill also substitutes the term disability for the term handicap in the West Virginia Fair Housing Act. The bill defines the term "assistance animal." The bill requires a person with a disability who requests a reasonable accommodation to provide supporting material documenting the need for the assistance animal. The bill provides exceptions and imposes a liability provision.

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