

Senate Bill No. 486

(By Senators Kessler (Mr. President), Snyder, Palumbo, Wells,
Beach, McCabe, Edgell, Fitzsimmons and Cookman)

[Introduced March 8, 2013; referred to the Committee on the
Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§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: *Provided, however, That this article, with regards*
13 *to sexual orientation, shall not apply to a corporation,*
14 *association, educational institution or institution of learning, or*
15 *society that is exempt from the religious discrimination provisions*
16 *of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et*
17 *seq.) pursuant to section 702(a) or 703(e)(2) of such Act (42*
18 *U.S.C. 2000e-1(a), 2000e-2(e)(2)), except in the operation of a*
19 *program funded by the state;*

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

22 (f) The term "labor organization" includes any organization
23 which exists for the purpose, in whole or in part, of collective
24 bargaining or of dealing with employers concerning grievances,

1 terms or conditions of employment or for other mutual aid or
2 protection in relation to employment;

3 (g) The term "employment agency" includes any person
4 undertaking, with or without compensation, to procure, recruit,
5 refer or place employees. A newspaper engaged in the activity of
6 advertising in the normal course of its business shall not be
7 deemed to be an employment agency;

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

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

15 (j) The term "place of public accommodations" means any
16 establishment or person, as defined herein, including the state, or
17 any political or civil subdivision thereof, which offers its
18 services, goods, facilities or accommodations to the general
19 public, but ~~shall~~ does not include any accommodations which are in
20 their nature private. To the extent that any penitentiary,
21 correctional facility, detention center, regional jail or county
22 jail is a place of public accommodation, the rights, remedies and
23 requirements provided by this article for any violation of
24 subdivision (6), section nine of this article ~~shall~~ do not apply to

1 any person other than: (1) Any person employed at a penitentiary,
2 correctional facility, detention center, regional jail or county
3 jail; (2) any person employed by a law-enforcement agency; or (3)
4 any person visiting any such employee or visiting any person
5 detained in custody at ~~such~~ the facility;

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

7 (l) For the purpose of this article, a person shall be
8 considered to be blind only if his or her central visual acuity
9 does not exceed twenty/two hundred in the better eye with
10 correcting lenses, or if his or her visual acuity is greater than
11 twenty/two hundred but is occasioned by a limitation in the fields
12 of vision such that the widest diameter of the visual field
13 subtends an angle no greater than twenty degrees; and

14 (m) The term "disability" means:

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

20 (2) A record of such impairment; or

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

22 For the purposes of this article, this term does not include
23 persons whose current use of or addiction to alcohol or drugs
24 prevents ~~such persons~~ the individual from performing the duties of

1 the job in question or whose employment, by reason of such current
2 alcohol or drug abuse, would constitute a direct threat to property
3 or the safety of others; and

4 (n) The term "sexual orientation" means heterosexuality,
5 bisexuality, homosexuality or gender identity or expression,
6 whether actual or perceived.

7 **§5-11-4. Powers and objectives.**

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

21 **§5-11-8. Commission powers; functions; services.**

22 The commission is hereby authorized and empowered:

23 (a) To cooperate and work with federal, state and local
24 government officers, units, activities and agencies in the

1 promotion and attainment of more harmonious understanding and
2 greater equality of rights between and among all racial, religious
3 and ethnic groups in this state;

4 (b) To enlist the cooperation of racial, religious and ethnic
5 units, community and civic organizations, industrial and labor
6 organizations and other identifiable groups of the state in
7 programs and campaigns devoted to the advancement of tolerance,
8 understanding and the equal protection of the laws of all groups
9 and peoples;

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

23 (d) To hold and conduct public and private hearings, in the
24 county where the respondent resides or transacts business or where

1 agreed to by the parties or where the acts complained of occurred,
2 on complaints, matters and questions before the commission and, in
3 connection therewith, relating to discrimination in employment or
4 places of public accommodations, housing accommodations or real
5 property and during the investigation of any formal complaint
6 before the commission relating to employment, places of public
7 accommodations, housing accommodations or real property to:

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

13 (2) Furnish copies of public hearing records to parties
14 involved therein upon their payment of the reasonable costs thereof
15 to the commission;

16 (3) Delegate to an administrative law judge who shall be an
17 attorney, duly licensed to practice law in West Virginia, the power
18 and authority to hold and conduct hearings, as herein provided, to
19 determine all questions of fact and law presented during the
20 hearing and to render a final decision on the merits of the
21 complaint, subject to the review of the commission as hereinafter
22 set forth.

23 Any respondent or complainant who shall feel aggrieved at any
24 final action of an administrative law judge shall file a written

1 notice of appeal with the commission by serving such notice on the
2 executive director and upon all other parties within thirty days
3 after receipt of the administrative law judge's decision. The
4 commission shall limit its review upon such appeals to whether the
5 administrative law judge's decision is:

6 (A) In conformity with the Constitution and the laws of the
7 state and the United States;

8 (B) Within the commission's statutory jurisdiction or
9 authority;

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

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

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

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

16 Each conciliation agreement shall include provisions requiring
17 the respondent to refrain from the commission of unlawful
18 discriminatory practices in the future and shall contain such
19 further provisions as may be agreed upon by the commission and the
20 respondent.

21 If the respondent and the commission agree upon conciliation
22 terms, the commission shall serve upon the complainant a copy of
23 the proposed conciliation agreement. If the complainant agrees to
24 the terms of the agreement or fails to object to such terms within

1 fifteen days after its service upon him or her, the commission
2 shall issue an order embodying such conciliation agreement. If the
3 complainant objects to the agreement, he or she shall serve a
4 specification of his or her objections upon the commission within
5 ~~such~~ this period. Unless such objections are met or withdrawn
6 within ten days after service thereof, the commission shall notice
7 the complaint for hearing.

8 Notwithstanding any other provisions of this section, the
9 commission may, where it finds the terms of the conciliation
10 agreement to be in the public interest, execute such agreement, and
11 limit the hearing to the objections of the complainant.

12 If a conciliation agreement is entered into, the commission
13 shall serve a copy of the order embodying such agreement upon all
14 parties to the proceeding.

15 Not later than one year from the date of a conciliation
16 agreement, the commission shall investigate whether the respondent
17 is complying with the terms of such agreement. Upon a finding of
18 noncompliance, the commission shall take appropriate action to
19 assure compliance;

20 (5) To apply to the circuit court of the county where the
21 respondent resides or transacts business for enforcement of any
22 conciliation agreement or consent order by seeking specific
23 performance of such agreement or consent order;

24 (6) To issue cease and desist orders against any person found,

1 after a public hearing, to have violated the provisions of this
2 article or the rules of the commission;

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

6 (e) To recommend to the Governor and Legislature policies,
7 procedures, practices and legislation in matters and questions
8 affecting human rights;

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

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

15 (h) To do all other acts and deeds necessary and proper to
16 carry out and accomplish effectively the objects, functions and
17 services contemplated by the provisions of this article, including
18 the promulgation of legislative rules in accordance with the
19 provisions of article three, chapter twenty-nine-a of this code,
20 implementing the powers and authority hereby vested in the
21 commission;

22 (i) To create such advisory agencies and conciliation
23 councils, local, regional or statewide, as in its judgment will aid
24 in effectuating the purposes of this article, to study the problems

1 of discrimination in all or specific fields or instances of
2 discrimination because of race, religion, color, national origin,
3 ancestry, sex, age, sexual orientation, blindness, disability or
4 familial status; to foster, through community effort or otherwise,
5 goodwill, cooperation and conciliation among the groups and
6 elements of the population of this state, and to make
7 recommendations to the commission for the development of policies
8 and procedures, and for programs of formal and informal education,
9 which the commission may recommend to the appropriate state agency.
10 Such advisory agencies and conciliation councils shall be composed
11 of representative citizens serving without pay. The commission may
12 itself make the studies and perform the acts authorized by this
13 subdivision. It may, by voluntary conferences with parties in
14 interest, endeavor by conciliation and persuasion to eliminate
15 discrimination in all the stated fields and to foster goodwill and
16 cooperation among all elements of the population of the state;

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

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

1 **§5-11-9. Unlawful discriminatory practices.**

2 It shall be an unlawful discriminatory practice, unless based
3 upon a bona fide occupational qualification, or except where based
4 upon applicable security regulations established by the United
5 States or the State of West Virginia or its agencies or political
6 subdivisions:

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

16 (2) For any employer, employment agency or labor organization,
17 prior to the employment or admission to membership, to: (A) Elicit
18 any information or make or keep a record of or use any form of
19 application or application blank containing questions or entries
20 concerning the race, religion, color, national origin, ancestry,
21 sex, sexual orientation or age of any applicant for employment or
22 membership; (B) print or publish or cause to be printed or
23 published any notice or advertisement relating to employment or
24 membership indicating any preference, limitation, specifications or

1 discrimination based upon race, religion, color, national origin,
2 ancestry, sex, sexual orientation, disability or age; or (C) deny
3 or limit, through a quota system, employment or membership because
4 of race, religion, color, national origin, ancestry, sex, age,
5 sexual orientation, blindness or disability;

6 (3) For any labor organization because of race, religion,
7 color, national origin, ancestry, sex, age, sexual orientaiton,
8 blindness or disability of any individual to deny full and equal
9 membership rights to any individual or otherwise to discriminate
10 against such individual with respect to hire, tenure, terms,
11 conditions or privileges of employment or any other matter,
12 directly or indirectly, related to employment;

13 (4) For an employer, labor organization, employment agency or
14 any joint labor-management committee controlling apprentice
15 training programs to:

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

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

24 (C) Discriminate against any individual in his or her pursuit

1 of ~~such~~ these programs or to discriminate against such a person in
2 the terms, conditions or privileges of such programs;

3 (D) Print or circulate or cause to be printed or circulated
4 any statement, advertisement or publication, or to use any form of
5 application for these programs or to make any inquiry in connection
6 with a program which expresses, directly or indirectly,
7 discrimination or any intent to discriminate unless based upon a
8 bona fide occupational qualification;

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

14 (6) For any person being the owner, lessee, proprietor,
15 manager, superintendent, agent or employee of any place of public
16 accommodations to:

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

22 (B) Publish, circulate, issue, display, post or mail, either
23 directly or indirectly, any written or printed communication,
24 notice or advertisement to the effect that any of the

1 accommodations, advantages, facilities, privileges or services of
2 any such place shall be refused, withheld from or denied to any
3 individual on account of race, religion, color, national origin,
4 ancestry, sex, age, sexual orientation, blindness or disability, or
5 that the patronage or custom thereat of any individual, belonging
6 to or purporting to be of any particular race, religion, color,
7 national origin, ancestry, sex, sexual orientation or age, or who
8 is blind or disabled, is unwelcome, objectionable, not acceptable,
9 undesired or not solicited; or

10 (7) For any person, employer, employment agency, labor
11 organization, owner, real estate broker, real estate salesman or
12 financial institution to:

13 (A) Engage in any form of threats or reprisal, or to engage
14 in, or hire, or conspire with others to commit acts or activities
15 of any nature, the purpose of which is to harass, degrade,
16 embarrass or cause physical harm or economic loss or to aid, abet,
17 incite, compel or coerce any person to engage in any of the
18 unlawful discriminatory practices defined in this section;

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

23 (C) Engage in any form of reprisal or otherwise discriminate
24 against any person because he or she has opposed any practices or

1 acts forbidden under this article or because he or she has filed a
2 complaint, testified or assisted in any proceeding under this
3 article.

4 **§5-11-13. Exclusiveness of remedy; exceptions.**

5 (a) Except as provided in subsection (b), nothing contained in
6 this article shall be ~~deemed~~ considered to repeal or supersede any
7 of the provisions of any existing or hereafter adopted municipal
8 ordinance, municipal charter or of any law of this state relating
9 to discrimination because of race, religion, color, national
10 origin, ancestry, sex, age, sexual orientation, blindness or
11 disability, but as to acts declared unlawful by section nine of
12 this article the procedure herein provided shall, when invoked, be
13 exclusive and the final determination therein shall exclude any
14 other action, civil or criminal, based on the same grievance of the
15 complainant concerned. If such complainant institutes any action
16 based on such grievance without resorting to the procedure provided
17 in this article, he or she may not subsequently resort to the
18 procedure herein. In the event of a conflict between the
19 interpretation of a provision of this article and the
20 interpretation of a similar provision contained in any municipal
21 ordinance authorized by charter, the interpretation of the
22 provision in this article shall apply to such municipal ordinance.

23 (b) Notwithstanding the provisions of subsection (a) of this
24 section, a complainant may institute an action against a respondent

1 in the county wherein the respondent resides or transacts business
2 at any time within ninety days after the complainant is given
3 notice of a right to sue pursuant to this subsection or, if the
4 statute of limitations on the claim has not expired at the end of
5 such ninety-day period, then at any time during which such statute
6 of limitations has not expired. If a suit is filed under this
7 section the proceedings pending before the commission shall be
8 deemed concluded.

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

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

1 (c) In any action filed under this section, if the court finds
2 that the respondent has engaged in or is engaging in an unlawful
3 discriminatory practice charged in the complaint, the court shall
4 enjoin the respondent from engaging in such unlawful discriminatory
5 practice and order affirmative action which may include, but is not
6 limited to, reinstatement or hiring of employees, granting of back
7 pay or any other legal or equitable relief as the court deems
8 appropriate. In actions brought under this section, the court in
9 its discretion may award all or a portion of the costs of
10 litigation, including reasonable attorney fees and witness fees, to
11 the complainant.

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

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

17 **§5-11A-3. Definitions.**

18 As used in this article:

19 (a) "Commission" means the West Virginia Human Rights
20 Commission;

21 (b) "Dwelling" means any building, structure or portion
22 thereof which is occupied as, or designed or intended for occupancy
23 as, a residence or sleeping place by one or more persons or
24 families and any vacant land which is offered for sale or lease for

1 the construction or location thereon of any such building,
2 structure or portion thereof;

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

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

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

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

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

16 (1) A physical or mental impairment which substantially limits
17 one or more of such person's major life activities;

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

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

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

24 (1) Claims to have been injured by a discriminatory housing

1 practice; or

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

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

6 (j) "Familial status" means:

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

9 (A) A parent or another person having legal custody of such
10 individual or individuals; or

11 (B) The designee of such parent or other person having such
12 custody with the written permission of such parent or other person;
13 or

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

17 (k) "Conciliation" means the attempted resolution of issues
18 raised by a complaint or by the investigation of such complaint
19 through informal negotiations involving the aggrieved person, the
20 respondent and the commission;

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

23 (m) "Sexual orientation" is defined as heterosexuality,
24 bisexuality, homosexuality or gender identity or expression,

1 whether actual or perceived;

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

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

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

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

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

16 **§5-11A-5. Discrimination in sale or rental of housing and other**
17 **prohibited practices.**

18 As made applicable by section four of this article and except
19 as exempted by sections four and eight of this article, it ~~shall be~~
20 is unlawful:

21 (a) To refuse to sell or rent after the making of a bona fide
22 offer, or to refuse to negotiate for the sale or rental of, or
23 otherwise make unavailable or deny, a dwelling to any person
24 because of race, color, religion, ancestry, sex, age, sexual

1 orientation, familial status, blindness, ~~handicap~~ disability or
2 national origin;

3 (b) To discriminate against any person in the terms,
4 conditions or privileges of sale or rental of a dwelling, or in the
5 provision of services or facilities in connection therewith,
6 because of race, color, religion, ancestry, sex, age, sexual
7 orientation, familial status, blindness, ~~handicap~~ disability or
8 national origin;

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

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

21 (e) For profit, to induce or attempt to induce any person to
22 sell or rent any dwelling by representations regarding the entry or
23 prospective entry into the neighborhood of a person or persons of
24 a particular race, color, religion, sex, age, sexual orientation,

1 blindness, ~~handicap~~ disability, familial status, ancestry or
2 national origin; or

3 (f) (1) To discriminate in the sale or rental, or to otherwise
4 make unavailable or deny, a dwelling to any buyer or renter because
5 of a handicap of: (A) That buyer or renter; (B) a person residing
6 in or intending to reside in that dwelling after it is so sold,
7 rented or made available; or (C) any person associated with that
8 buyer or renter.

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

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

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

1 tear excepted;

2 (B) A refusal to make reasonable accommodations in rules,
3 policies, practices or services when such accommodations may be
4 necessary to afford such person equal opportunity to use and enjoy
5 a dwelling; or

6 (C) In connection with the design and construction of covered
7 multifamily dwellings for first occupancy after the date that is
8 thirty months after the date of enactment of the West Virginia fair
9 housing act, a failure to design and construct those dwellings in
10 such a manner that:

11 (i) The public use and common use portions of such dwellings
12 are readily accessible to and usable by handicapped persons;

13 (ii) All the doors designed to allow passage into and within
14 all premises within such dwellings are sufficiently wide to allow
15 passage by handicapped persons in wheelchairs; and

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

24 (4) Compliance with the appropriate requirements of the

1 American national standard for buildings and facilities providing
2 accessibility and usability for physically handicapped people,
3 commonly cited as ANSI A117.1, suffices to satisfy the requirements
4 of subparagraph (3) (C) (iii) of this subdivision.

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

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

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

22 (D) Nothing in this article ~~shall be construed to require~~
23 requires the commission to review or approve the plans, designs or
24 construction of all covered multifamily dwellings to determine

1 whether the design and construction of ~~such~~ the dwellings are
2 consistent with the requirements of subparagraph (3)(C) of this
3 subdivision.

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

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

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

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

21 (9) Nothing in this section requires that a dwelling be made
22 available to an individual whose tenancy would constitute a direct
23 threat to the health or safety of other individuals or whose
24 tenancy would result in substantial physical damage to the property

1 of others. The burden of proving such threat to health or safety
2 or the likelihood of such damage shall be upon the respondent.

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

5 (a) It shall be unlawful for any person or other entity whose
6 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, age, sexual
10 orientation, blindness, ~~handicap~~ disability, familial status,
11 ancestry or national origin.

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

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

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

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

1 **§5-11A-7. Discrimination in provision of brokerage services.**

2 It ~~shall be~~ is unlawful to deny any person access to or
3 membership or participation in any multiple listing service, real
4 estate broker's organization or other service, organization or
5 facility relating to the business of selling or renting dwellings,
6 or to discriminate against him or her in the terms or conditions of
7 ~~such~~ the access, membership or participation on account of race,
8 color, religion, sex, age, sexual orientation, blindness, ~~handicap~~
9 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 accommodation;
add "age" and "sexual orientation" to the categories covered by the
Fair Housing Act prohibiting discrimination in housing; and define
"sexual orientation".

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