

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **for**

4 **H. B. 2387**

5  
6 (By Delegates Marshall and Moore)

7  
8 [Passed March 8, 2014; in effect ninety days from passage.]

9  
10 AN ACT 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 reasonable accommodations under the West Virginia  
13 Fair Housing Act for persons with disabilities who need  
14 assistance animals; defining terms; requiring rules, policies,  
15 practices and services related to animals to be subject to  
16 reasonable accommodation; providing for the submission of  
17 documentation of the disability related need for the  
18 assistance animal; providing for the sufficiency of the  
19 requested documentation; prohibiting a request for access to  
20 medical records or providers; providing for the denial of a  
21 request for an accommodation of an assistance animal under  
22 certain circumstances; requiring a determination of a direct  
23 threat or substantial physical damage to be based on  
24 individualized assessment; prohibiting an unreasonable denial

1 of accommodation; and replacing the term "handicapped" with  
2 the term "disability" throughout the article.

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

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

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

8 **§5-11A-3. Definitions.**

9 As used in this article:

10 (a) "Commission" means the West Virginia Human Rights  
11 Commission;

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

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

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

24 (e) "To rent" includes to lease, to sublease, to let and  
25 otherwise to grant for a consideration the right to occupy premises

1 not owned by the occupant;

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

5 (g) "Disability" means, with respect to a person:

6 (1) A physical or mental impairment which substantially limits  
7 one or more of the person's major life activities;

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

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

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

14 (1) Claims to have been injured by a discriminatory housing  
15 practice; or

16 (2) Believes that the person will be injured by a  
17 discriminatory housing practice that is about to occur;

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

20 (j) "Familial status" means:

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

23 (A) A parent or another person having legal custody of the  
24 individual or individuals; or

25 (B) The designee of the parent or other person having custody

1 of the individual with the written permission of the parent or  
2 other person; or

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

6 (k) "Conciliation" means the attempted resolution of issues  
7 raised by a complaint or by the investigation of the complaint  
8 through informal negotiations involving the aggrieved person, the  
9 respondent and the commission;

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

12 (m) "Respondent" means:

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

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

18 (n) The term "rooming house" means a house or building where  
19 there are one or more bedrooms which the proprietor can spare for  
20 the purpose of giving lodgings to persons he or she chooses to  
21 receive; and

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

1 (p) "Assistance animal" means any service, therapy or support  
2 animal, weighing less than one hundred fifty pounds, with or  
3 without specific training or certification, that works, provides  
4 assistance, or performs tasks for the benefit of a person with a  
5 disability, or provides emotional support that alleviate one or  
6 more identified symptoms or effects of a person's disability.

7 **§5-11A-5. Discrimination in sale or rental of housing and other**  
8 **prohibited practices.**

9 As made applicable by section four of this article and except  
10 as exempted by sections four and eight of this article, it is  
11 unlawful:

12 (a) To refuse to sell or rent after the making of a bona fide  
13 offer, or to refuse to negotiate for the sale or rental of, or  
14 otherwise make unavailable or deny, a dwelling to any person  
15 because of race, color, religion, ancestry, sex, familial status,  
16 blindness, disability or national origin;

17 (b) To discriminate against any person in the terms,  
18 conditions or privileges of sale or rental of a dwelling, or in the  
19 provision of services or facilities in connection therewith,  
20 because of race, color, religion, ancestry, sex, familial status,  
21 blindness, disability or national origin;

22 (c) To make, print or publish, or cause to be made, printed or  
23 published any notice, statement or advertisement, with respect to  
24 the sale or rental of a dwelling that indicates any preference,  
25 limitation or discrimination based on race, color, religion, sex,

1 blindness, disability, familial status, ancestry or national  
2 origin, or an intention to make any such preference, limitation or  
3 discrimination;

4 (d) To represent to any person because of race, color,  
5 religion, sex, blindness, disability, familial status, ancestry or  
6 national origin that any dwelling is not available for inspection,  
7 sale or rental when the dwelling is in fact available;

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

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

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

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

2 (A) A refusal to permit, at the expense of the disabled  
3 person, reasonable modifications of existing premises occupied or  
4 to be occupied by the person if the modifications may be necessary  
5 to afford the person full enjoyment of the premises, except that,  
6 in the case of a rental, the landlord may where it is reasonable to  
7 do so condition permission for a modification on the renter  
8 agreeing to restore the interior of the premises to the condition  
9 that existed before the modification, reasonable wear and tear  
10 excepted;

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

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

20 (i) The public use and common use portions of the dwellings  
21 are readily accessible to and usable by disabled persons;

22 (ii) All the doors designed to allow passage into and within  
23 all premises within the dwellings are sufficiently wide to allow  
24 passage by disabled persons in wheelchairs; and

25 (iii) All premises within the dwellings contain the following

1 features of adaptive design: (I) An accessible route into and  
2 through the dwelling; (II) light switches, electrical outlets,  
3 thermostats and other environmental controls in accessible  
4 locations; (III) reinforcements in bathroom walls to allow later  
5 installation of grab bars; and (IV) usable kitchens and bathrooms  
6 that an individual in a wheelchair can maneuver about the 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 those laws satisfy the  
15 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  
25 of such dwellings are consistent with subparagraph (3)(C) of this



1 subdivision, and may provide technical assistance to units of local  
2 government and other persons to implement the requirements of that  
3 subparagraph.

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

9 (6) (A) Nothing in paragraph (5) of this subdivision affects  
10 the authority and responsibility of the commission or a local  
11 public agency to receive and process complaints or otherwise engage  
12 in enforcement activities under this article.

13 (B) Determinations by a unit of general local government under  
14 subparagraphs (5) (A) and (B) of this subdivision are not conclusive  
15 in enforcement proceedings under this article.

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

20 (8) Nothing in this article invalidates or limits any law of  
21 this state or any political subdivision of this state that requires  
22 dwellings to be designed and constructed in a manner that affords  
23 disabled persons greater access than is required by this article.

24 (9) This section does not require that a dwelling be made  
25 available to an individual whose tenancy would constitute a direct

1 threat to the health or safety of other individuals or whose  
2 tenancy would result in substantial physical damage to the property  
3 of others. The burden of proving such threat to health or safety  
4 or the likelihood of such damage is upon the respondent.

5 (10) For the purposes of this subdivision, rules, policies,  
6 practices or services regarding animals are subject to the  
7 reasonable accommodation requirements of subparagraph (B), paragraph  
8 (3) of this subdivision and the following provisions:

9 (A) In connection with a request for reasonable accommodation  
10 to the rules, policies or services, a person with a disability may  
11 be required to submit documentation, from a professional treatment  
12 provider, of the disability related need for the assistance animal.

13 (i) Such documentation is sufficient if it establishes that  
14 the assistive animal will provide some type of disability-related  
15 assistance or emotional support.

16 (ii) A person with a disability may not be required to submit  
17 or provide access to medical records or medical providers, or to  
18 provide detailed or extensive information or documentation of a  
19 person's physical or mental impairments.

20 (B) A person with a disability may be denied the accommodation  
21 of an assistance animal if there is credible evidence that:

22 (i) The assistance animal poses a direct threat to the health  
23 or safety of others that cannot be eliminated by another reasonable  
24 accommodation; or

25 (ii) The assistance animal would cause substantial physical

1 damage to the property of other that cannot be reduced or  
2 eliminated by another reasonable accommodation.

3 (C) A determination that an assistance animal poses a direct  
4 threat of harm to others or would cause substantial physical damage  
5 to the property of others must be based on an individualized  
6 assessment that relies on objective evidence about the specific  
7 animal's actual conduct.

8 (D) A request for a reasonable accommodation may not be  
9 unreasonably denied, conditioned on payment of a fee or deposit or  
10 other terms and conditions applied to applicants or residents with  
11 pets, and a response may not be unreasonably delayed.

12 **§5-11A-6. Discrimination in residential real estate-related**  
13 **transactions.**

14 (a) It is unlawful for any person or other entity whose  
15 business includes engaging in residential real estate-related  
16 transactions to discriminate against any person in making available  
17 such a transaction or in the terms or conditions of such a  
18 transaction because of race, color, religion, sex, blindness,  
19 disability, familial status, ancestry or national origin.

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

22 (1) The making or purchasing of loans or providing other  
23 financial assistance: (A) For purchasing, constructing, improving,  
24 repairing or maintaining a dwelling; or (B) secured by residential  
25 real estate; or

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

3           (c) Nothing in this article prohibits a person engaged in the  
4 business of furnishing appraisals of real property to take into  
5 consideration factors other than race, color, religion, national  
6 origin, ancestry, sex, blindness, disability or familial status.

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

8           It is unlawful to deny any person access to or membership or  
9 participation in any multiple listing service, real estate broker's  
10 organization or other service, organization or facility relating to  
11 the business of selling or renting dwellings, or to discriminate  
12 against him or her in the terms or conditions of such access,  
13 membership or participation on account of race, color, religion,  
14 sex, blindness, disability, familial status, ancestry or national  
15 origin.