

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2529

BY DELEGATES PUSHKIN, WALTERS, STORCH, WESTFALL,

MOORE, MILEY, WILLIAMS, HILL AND HIGGINBOTHAM

[Introduced February 17, 2017; Referred

to the Committee on Industry and Labor then the

Judiciary.]

1 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
 2 Code of West Virginia, 1931, as amended; and to amend and reenact §5-11A-3, §5-11A-
 3 5, §5-11A-6 and §5-11A-7 of said code, all relating to unlawful discriminatory practices in
 4 categories covered by the Human Rights Act and the Fair Housing Act; prohibiting
 5 discrimination based upon age or sexual orientation; and defining sexual orientation.

Be it enacted by the Legislature of West Virginia:

1 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
 2 Virginia, 1931, as amended, be amended and reenacted; and that §5-11A-3, §5-11A-5, §5-11A-
 3 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 provide all of its citizens' equal
 2 opportunity for employment, equal access to places of public accommodations, and equal
 3 opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real
 4 property. Equal opportunity in the areas of employment and public accommodations is hereby
 5 declared to be a human right or civil right of all persons without regard to race, religion, color,
 6 national origin, ancestry, sex, age, sexual orientation, blindness or disability. Equal opportunity
 7 in housing accommodations or real property is hereby declared to be a human right or civil right
 8 of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness,
 9 sexual orientation, disability or familial status.

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

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term “person” means one or more individuals, partnerships, associations,
3 organizations, corporations, labor organizations, cooperatives, legal representatives, trustees,
4 trustees in bankruptcy, receivers and other organized groups of persons;

5 (b) The term “commission” means the West Virginia Human Rights Commission;

6 (c) The term “director” means the executive director of the commission;

7 (d) The term “employer” means the state, or any political subdivision thereof, and any
8 person employing twelve or more persons within the state for twenty or more calendar weeks in
9 the calendar year in which the act of discrimination allegedly took place or the preceding calendar
10 year: Provided, That ~~such~~ the terms ~~shall~~ may not be taken, understood or construed to include
11 a private club: Provided, however, That this article, with regards to sexual orientation, does not
12 apply to a corporation, association, educational institution or institution of learning, or society that
13 is exempt from the religious discrimination provisions of title VII of the Civil Rights Act of 1964 (42
14 U.S.C. 2000e et seq.) pursuant to section 702(a) or 703(e)(2) of such Act (42 U.S.C. 2000e-1(a),
15 2000e-2(e)(2)), except in the operation of a program funded by the state;

16 (e) The term “employee” ~~shall~~ does not include any individual employed by his or her
17 parents, spouse or child;

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

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

25 (h) The term “discriminate” or “discrimination” means to exclude from, or fail or refuse to
26 extend to, a person equal opportunities because of race, religion, color, national origin, ancestry,
27 sex, age, sexual orientation, blindness, disability or familial status and includes to separate or

28 segregate;

29 (i) The term “unlawful discriminatory practices” includes only those practices specified in
30 section nine of this article;

31 (j) The term “place of public accommodations” means any establishment or person, as
32 defined herein, including the state, or any political or civil subdivision thereof, which offers its
33 services, goods, facilities or accommodations to the general public, but ~~shall~~ does not include any
34 accommodations which are in their nature private. To the extent that any ~~penitentiary~~, correctional
35 facility, detention center, regional jail or county jail is a place of public accommodation, the rights,
36 remedies and requirements provided by this article for any violation of subdivision (6), section
37 nine of this article ~~shall~~ do not apply to any person other than: (1) Any person employed at a
38 ~~penitentiary~~, correctional facility, detention center, regional jail or county jail; (2) any person
39 employed by a law-enforcement agency; or (3) any person visiting any such employee or visiting
40 any person detained in custody at ~~such~~ the facility;

41 (k) The term “age” means the age of forty or above;

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

47 (m) The term “disability” means:

48 (1) A mental or physical impairment which substantially limits one or more of ~~such~~ the
49 person’s major life activities. The term “major life activities” includes functions such as caring for
50 one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and
51 working;

52 (2) A record of such impairment; or

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

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

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

§5-11-4. Powers and objectives.

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

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

1 The commission is hereby authorized and empowered:

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

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

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

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

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

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

31 (3) Delegate to an administrative law judge who shall be an attorney, duly licensed to
32 practice law in West Virginia, the power and authority to hold and conduct hearings, as herein
33 provided, to determine all questions of fact and law presented during the hearing and to render a

34 final decision on the merits of the complaint, subject to the review of the commission as hereinafter
35 set forth.

36 Any respondent or complainant who shall feel aggrieved at any final action of an
37 administrative law judge shall file a written notice of appeal with the commission by serving such
38 notice on the executive director and upon all other parties within thirty days after receipt of the
39 administrative law judge's decision. The commission shall limit its review upon such appeals to
40 whether the administrative law judge's decision is:

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

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

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

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

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

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

49 Each conciliation agreement shall include provisions requiring the respondent to refrain
50 from the commission of unlawful discriminatory practices in the future and shall contain such
51 further provisions as may be agreed upon by the commission and the respondent.

52 If the respondent and the commission agree upon conciliation terms, the commission shall
53 serve upon the complainant a copy of the proposed conciliation agreement. If the complainant
54 agrees to the terms of the agreement or fails to object to such terms within fifteen days after its
55 service upon him or her, the commission shall issue an order embodying such conciliation
56 agreement. If the complainant objects to the agreement, he or she shall serve a specification of
57 his or her objections upon the commission within ~~such~~ this period. Unless ~~such~~ the objections
58 are met or withdrawn within ten days after service thereof, the commission shall notice the
59 complaint for hearing.

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

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

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

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

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

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

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

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

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

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

86 (i) To create such advisory agencies and conciliation councils, local, regional or statewide,
87 as in its judgment will aid in effectuating the purposes of this article, to study the problems of
88 discrimination in all or specific fields or instances of discrimination because of race, religion, color,
89 national origin, ancestry, sex, age, sexual orientation, blindness, disability or familial status; to
90 foster, through community effort or otherwise, goodwill, cooperation and conciliation among the
91 groups and elements of the population of this state, and to make recommendations to the
92 commission for the development of policies and procedures, and for programs of formal and
93 informal education, which the commission may recommend to the appropriate state agency. Such
94 advisory agencies and conciliation councils shall be composed of representative citizens serving
95 without pay. The commission may itself make the studies and perform the acts authorized by this
96 subdivision. It may, by voluntary conferences with parties in interest, endeavor by conciliation
97 and persuasion to eliminate discrimination in all the stated fields and to foster goodwill and
98 cooperation among all elements of the population of the state;

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

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

§5-11-9. Unlawful discriminatory practices.

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

5 (1) For any employer to discriminate against an individual with respect to compensation,
6 hire, tenure, terms, conditions or privileges of employment if the individual is able and competent

7 to perform the services required even if ~~such~~ the individual is blind or disabled: Provided, That it
8 ~~shall~~ is not be an unlawful discriminatory practice for an employer to observe the provisions of
9 any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system
10 not adopted as a subterfuge to evade the provisions of this subdivision;

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

21 (3) For any labor organization because of race, religion, color, national origin, ancestry,
22 sex, age, sexual orientation, blindness or disability of any individual to deny full and equal
23 membership rights to any individual or otherwise to discriminate against ~~such~~ the individual with
24 respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly
25 or indirectly, related to employment;

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

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

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

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

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

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

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

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

49 (B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written
50 or printed communication, notice or advertisement to the effect that any of the accommodations,
51 advantages, facilities, privileges or services of any such place shall be refused, withheld from or
52 denied to any individual on account of race, religion, color, national origin, ancestry, sex, age,
53 sexual orientation, blindness or disability, or that the patronage or custom thereof of any
54 individual, belonging to or purporting to be of any particular race, religion, color, national origin,
55 ancestry, sex, sexual orientation or age, or who is blind or disabled, is unwelcome, objectionable,
56 not acceptable, undesired or not solicited; or

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

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

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

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

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

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

13 (b) Notwithstanding the provisions of subsection (a) of this section, a complainant may
14 institute an action against a respondent in the county wherein the respondent resides or transacts
15 business at any time within ninety days after the complainant is given notice of a right to sue
16 pursuant to this subsection or, if the statute of limitations on the claim has not expired at the end
17 of ~~such~~ the ninety-day period, then at any time during which ~~such~~ the statute of limitations has
18 not expired. If a suit is filed under this section, the proceedings pending before the commission
19 shall be ~~deemed~~ considered concluded.

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

26 Notice of right to sue shall be given immediately upon complainant being entitled thereto,
27 by personal service or certified mail, return receipt requested, which notice shall inform the
28 complainant in plain terms of his or her right to institute a civil action as provided in this section
29 within ninety days of the giving of ~~such~~ the notice. Service of the notice ~~shall be~~ is complete upon
30 mailing.

31 (c) In any action filed under this section, if the court finds that the respondent has engaged
32 in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall
33 enjoin the respondent from engaging in ~~such~~ the unlawful discriminatory practice and order
34 affirmative action which may include, but is not limited to, reinstatement or hiring of employees,
35 granting of back pay or any other legal or equitable relief as the court deems appropriate. In
36 actions brought under this section, the court ~~in its discretion~~ may award all or a portion of the
37 costs of litigation, including reasonable attorney fees and witness fees, to the complainant.

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

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-3. Definitions.

1 As used in this article:

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

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

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

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

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

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

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

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

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

20 (3) Being regarded as having such an impairment, but the term does not include current,
 21 illegal use of or addiction to a 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 practice; or

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

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

29 (j) "Familial status" means:

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

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

33 (B) The designee of the parent or other person having custody of the individual with the
34 written permission of the parent or other person; or

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

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

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

42 (m) "Respondent" means:

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

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

46 (n) The term “rooming house” means a house or building where there are one or more
47 bedrooms which the proprietor can spare for the purpose of giving lodgings to persons he or she
48 chooses to receive; ~~and~~

49 (o) “Sexual orientation” means heterosexuality, bisexuality, homosexuality or gender
50 identity or expression, whether actual or perceived;

51 ~~(p)~~ (p) The term “basic universal design” means the design of products and environments
52 to be useable by all people, to the greatest extent possible, without the need for adaptation or
53 specialization; and

54 ~~(q)~~ (q) “Assistance animal” means any service, therapy or support animal, weighing less
55 than one hundred fifty pounds, with or without specific training or certification, that works, provides
56 assistance, or performs tasks for the benefit of a person with a disability, or provides emotional
57 support that alleviate one or more identified symptoms or effects of a person’s disability.

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

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

3 (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate
4 for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because
5 of race, color, religion, ancestry, sex, age, sexual orientation, familial status, blindness, disability
6 or national origin;

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

11 (c) To make, print or publish, or cause to be made, printed or published any notice,
12 statement or advertisement, with respect to the sale or rental of a dwelling that indicates any
13 preference, limitation or discrimination based on race, color, religion, sex, age, sexual orientation,

14 blindness, disability, familial status, ancestry or national origin, or an intention to make any such
15 preference, limitation or discrimination;

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

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

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

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

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

32 (A) A refusal to permit, at the expense of the disabled person, reasonable modifications
33 of existing premises occupied or to be occupied by the person if the modifications may be
34 necessary to afford the person full enjoyment of the premises, except that, in the case of a rental,
35 the landlord may where it is reasonable to do so condition permission for a modification on the
36 renter agreeing to restore the interior of the premises to the condition that existed before the
37 modification, reasonable wear and tear excepted;

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

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

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

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

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

53 (4) Compliance with the appropriate requirements of the American National Standard for
54 Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People,
55 commonly cited as ANSI A117.1, suffices to satisfy the requirements of subparagraph (3)(C)(iii)
56 of this subdivision.

57 (5) (A) If a unit of general local government has incorporated into its laws the requirements
58 set forth in subparagraph (3)(C) of this subdivision, compliance with those laws satisfy the
59 requirements of that subparagraph.

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

63 (C) The commission shall encourage, but may not require, units of local government to
64 include in their existing procedures for the review and approval of newly constructed covered
65 multifamily dwellings, determinations as to whether the design and construction of such dwellings
66 are consistent with subparagraph (3)(C) of this subdivision, and may provide technical assistance
67 to units of local government and other persons to implement the requirements of that
68 subparagraph.

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

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

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

78 (7) As used in this section, the term “covered multifamily dwellings” means: (A) Buildings
79 consisting of four or more units if the buildings have one or more elevators; and (B) ground floor
80 units in other buildings consisting of four or more units.

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

84 (9) This section does not require that a dwelling be made available to an individual whose
85 tenancy would constitute a direct threat to the health or safety of other individuals or whose
86 tenancy would result in substantial physical damage to the property of others. The burden of
87 proving ~~such~~ the threat to health or safety or the likelihood of ~~such~~ damage is upon the
88 respondent.

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

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

95 (i) ~~Such~~ Documentation is sufficient if it establishes that the assistance animal will provide
96 some type of disability-related assistance or emotional support.

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

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

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

104 (ii) The assistance animal would cause substantial physical damage to the property of
105 other that cannot be reduced or eliminated by another reasonable accommodation.

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

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

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

1 (a) It is unlawful for any person or other entity whose business includes engaging in

2 residential real estate-related transactions to discriminate against any person in making available
3 ~~such~~ a transaction or in the terms or conditions of ~~such~~ a transaction because of race, color,
4 religion, sex, age, sexual orientation, blindness, disability, familial status, ancestry or national
5 origin.

6 (b) As used in this section, the term “residential real estate-related transaction” means any
7 of the following:

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

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

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

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

1 It is unlawful to deny any person access to or membership or participation in any multiple
2 listing service, real estate broker's organization or other service, organization or facility relating to
3 the business of selling or renting dwellings, or to discriminate against him or her in the terms or
4 conditions of such access, membership or participation on account of race, color, religion, sex,
5 age, sexual orientation, blindness, 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. The bill adds “age” and “sexual orientation” to the categories covered by the Fair Housing Act prohibiting discrimination in housing. The bill defines “sexual orientation”.

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