

Senate Bill No. 226

(By Senators McCabe, Snyder, Wells, Klempa and Kessler (Acting
President))

[Introduced January 20, 2011; referred to the Committee on the
Judiciary; then to the Committee on Finance.]

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; to amend said code by adding thereto a new section,
designated §5-11-9a; 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 generally; prohibiting
discrimination based upon age or sexual orientation in
housing; defining "sexual orientation" and "age"; correcting
internal citations; exempting religious institutions from
the sexual orientation proscriptions of this bill when such
employment comports with specific criteria; and defining
"religious institutions".

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; that said code be amended by adding thereto a new
section, designated §5-11-9a; and that §5-11A-3, §5-11A-5, §5-

1 11A-6 and §5-11A-7 of said code be amended and reenacted, all to
2 read as follows:

3 **ARTICLE 11. HUMAN RIGHTS COMMISSION.**

4 **§5-11-2. Declaration of policy.**

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

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

24 **§5-11-3. Definitions.**

1 When used in this article:

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

7 (b) The term "commission" means the West Virginia Human
8 Rights Commission;

9 (c) The term "director" means the executive director of the
10 commission;

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

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

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

25 (g) The term "employment agency" includes any person

1 undertaking, with or without compensation, to procure, recruit,
2 refer or place employees. A newspaper engaged in the activity of
3 advertising in the normal course of its business ~~shall~~ is not be
4 ~~deemed to be~~ an employment agency;

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

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

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

1 any person detained in custody at ~~such~~ the facility;

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

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

10 (m) The term "disability" means:

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

16 (2) A record of such impairment; or

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

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

24 (n) The term "sexual orientation" means heterosexuality,
25 bisexuality, homosexuality or gender identity, whether actual or

1 perceived; and

2 (o) The term "religious institutions" means a church or
 3 convention or association of churches, or an organization which
 4 is operated primarily for religious purposes and which is
 5 operated, supervised, controlled, or principally supported by a
 6 church or convention or association of churches.

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
 11 shall encourage and endeavor to bring about mutual understanding
 12 and respect among all racial, religious and ethnic groups within
 13 the 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
 19 race, religion, color, national origin, ancestry, sex, age,
 20 sexual 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
 25 promotion and attainment of more harmonious understanding and

1 greater equality of rights between and among all racial,
2 religious and ethnic groups in this state;

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

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

1 occurred, on complaints, matters and questions before the
2 commission and, in connection therewith, relating to
3 discrimination in employment or places of public accommodations,
4 housing accommodations or real property and during the
5 investigation of any formal complaint before the commission
6 relating to employment, places of public accommodations, housing
7 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
12 reasonable 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
15 thereof 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
18 power and authority to hold and conduct hearings, as herein
19 provided, to determine all questions of fact and law presented
20 during the hearing and to render a final decision on the merits
21 of the complaint, subject to the review of the commission as
22 hereinafter set forth.

23 Any respondent or complainant who ~~shall feel~~ is aggrieved at
24 any final action of an administrative law judge ~~shall~~ may file a
25 written notice of appeal with the commission by serving such

1 notice on the executive director and upon all other parties
2 within thirty days after receipt of the administrative law
3 judge's decision. The commission shall limit its review upon
4 ~~such~~ these appeals to whether the administrative law judge's
5 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 authority;

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

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

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

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

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

20 If the respondent and the commission agree upon conciliation
21 terms, the commission shall serve upon the complainant a copy of
22 the proposed conciliation agreement. If the complainant agrees
23 to the terms of the agreement or fails to object to ~~such~~ the
24 terms within fifteen days after its service upon him or her, the
25 commission shall issue an order embodying ~~such~~ the conciliation

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

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

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

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

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

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

25 (7) To apply to the circuit court of the county where the

1 respondent resides or transacts business for an order enforcing
2 any lawful cease and desist order issued by the commission;

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

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

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

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

19 (i) To create ~~such~~ the advisory agencies and conciliation
20 councils, local, regional or statewide, as in its judgment will
21 aid in effectuating the purposes of this article, to study the
22 problems of discrimination in all or specific fields or instances
23 of discrimination because of race, religion, color, national
24 origin, ancestry, sex, age, sexual orientation, blindness,
25 disability or familial status; to foster, through community

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

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

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

24 **§5-11-9. Unlawful discriminatory practices.**

25 It ~~shall be~~ is an unlawful discriminatory practice, unless

1 based upon a bona fide occupational qualification, or except
2 where based upon applicable security regulations established by
3 the United States or the State of West Virginia or its agencies
4 or political subdivisions:

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

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

1 quota system, employment or membership because of race, religion,
2 color, national origin, ancestry, sex, age, sexual orientation,
3 blindness or disability;

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

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

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

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

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

25 (D) Print or circulate or cause to be printed or circulated

1 any statement, advertisement or publication, or to use any form
2 of application for these programs or to make any inquiry in
3 connection with a program which expresses, directly or
4 indirectly, discrimination or any intent to discriminate unless
5 based upon a bona fide occupational qualification;

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

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

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

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

1 or that the patronage or custom thereat of any individual,
2 belonging to or purporting to be of any particular race,
3 religion, color, national origin, ancestry, sexual orientation,
4 sex or age, or who is blind or disabled, is unwelcome,
5 objectionable, not acceptable, undesired or not solicited; or

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

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

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

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

24 **§5-11-9a. Exemption of religious institutions from prohibition**
25 **of discriminating against certain employees due to**

1 **sexual orientation.**

2 Religious organizations shall be exempt from the provisions
3 of section nine of this article as pertaining to sexual
4 orientation discrimination in respect to the employment of: A
5 duly ordained, commissioned or licensed minister of a church in
6 the exercise of his or her ministry; or by a member of a
7 religious order in the exercise of duties required by the order.

8 **§5-11-13. Exclusiveness of remedy; exceptions.**

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

1 interpretation of the provision in this article shall apply to
2 ~~such~~ the municipal ordinance.

3 (b) Notwithstanding the provisions of subsection (a) of this
4 section, a complainant may institute an action against a
5 respondent in the county wherein the respondent resides or
6 transacts business at any time within ninety days after the
7 complainant is given notice of a right to sue pursuant to this
8 subsection or, if the statute of limitations on the claim has not
9 expired at the end of such ninety-day period, then at any time
10 during which ~~such~~ the statute of limitations has not expired. If
11 a suit is filed under this section the proceedings pending before
12 the commission ~~shall be deemed~~ are considered concluded.

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

23 Notice of right-to-sue shall be given immediately upon
24 complainant being entitled thereto, by personal service or
25 certified mail, return receipt requested, which notice shall

1 inform the complainant in plain terms of his or her right to
 2 institute a civil action as provided in this section within
 3 ninety days of the giving of ~~such~~ the notice. Service of the
 4 notice shall be complete upon mailing.

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

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

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

21 **§5-11A-3. Definitions.**

22 As used in this article:

23 (a) "Age" means the age of forty or above;

24 ~~(a)~~ (b) "Commission" means the West Virginia Human Rights Commission;

25 ~~(b)~~ (c) "Dwelling" means any building, structure or portion

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

6 ~~(c)~~ (d) "Family" includes a single individual;

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

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

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

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

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

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

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

25 ~~(h)~~ (i) "Aggrieved person" includes any person who:

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

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

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

7 ~~(j)~~ (k) "Familial status" means:

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

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

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

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

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

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

24 (n) "Sexual orientation" is defined as heterosexuality,
25 bisexuality, homosexuality or gender identity, whether actual or perceived;

1 ~~(m)~~ (o) "Respondent" means:

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

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

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

12 ~~(o)~~ (q) The term "basic universal design" means the design
13 of 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
19 except as exempted by sections four and eight of this article, it
20 shall be unlawful:

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

1 national origin;

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

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

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

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

1 (f) (1) To discriminate in the sale or rental, or to
2 otherwise make unavailable or deny, a dwelling to any buyer or
3 renter because of a ~~handicap~~ disability of:

4 (A) That buyer or renter;

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

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

8 (2) To discriminate against any person in the terms,
9 conditions or privileges of sale or rental of a dwelling, or in
10 the provision of services or facilities in connection with ~~such~~

11 the dwelling, because of a ~~handicap~~ disability of: (A) That
12 person; (B) a person residing in or intending to reside in that
13 dwelling after it is so sold, rented or made available; or (C)
14 any person associated with that person.

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

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

25 (B) A refusal to make reasonable accommodations in rules,

1 policies, practices or services when ~~such~~ the accommodations may
2 be necessary to afford ~~such~~ the person equal opportunity to use
3 and enjoy a dwelling; or

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

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

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

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

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

1 requirements of ~~subparagraph (3) (C) (iii) of this subdivision~~
2 clause (iii), subparagraph (C), paragraph (3) of this
3 subdivision.

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

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

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

25 (D) Nothing in this article ~~shall~~ may be construed to

1 require the commission to review or approve the plans, designs or
2 construction of all covered multifamily dwellings to determine
3 whether the design and construction of ~~such~~ the dwellings are
4 consistent with the requirements of ~~subparagraph~~ paragraph (3) of
5 this subdivision.

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

11 (B) Determinations by a unit of general local government
12 under ~~paragraphs (A) and (B), subdivision (5) of this subsection~~
13 subparagraphs (A) and (B), paragraph (5) of this subdivision
14 ~~shall not be~~ are not conclusive in enforcement proceedings under
15 this article.

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

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

25 (9) Nothing in this section requires that a dwelling be made

1 available to an individual whose tenancy would constitute a
 2 direct threat to the health or safety of other individuals or
 3 whose tenancy would result in substantial physical damage to the
 4 property of others. The burden of proving ~~such a~~ threat to
 5 health or safety or the likelihood of ~~such~~ damage ~~shall be~~ is
 6 upon the respondent.

7 **§5-11A-6. Discrimination in residential real estate-related**
 8 **transactions.**

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

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

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

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

24 (c) Nothing in this article prohibits a person engaged in
 25 the business of furnishing appraisals of real property to take

1 into consideration factors other than race, color, religion,
 2 national origin, ancestry, sex, age, sexual orientation,
 3 blindness, ~~handicap~~ disability or familial status.

4 **§5-11A-7. Discrimination in provision of brokerage services.**

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

NOTE: The purpose of this bill is to add "sexual orientation" to the categories covered by the Human Rights Act prohibiting discrimination in employment and places of public accommodations. This bill also provides clarification as to an exemption from the "sexual orientation" employment-based proscriptions of this bill for "religious institutions" and offers, for the purposes of this article, a definition thereof. This bill also adds "age" and "sexual orientation" to the categories covered by the Fair Housing Act prohibiting discrimination in housing. It defines "sexual orientation" as "heterosexuality, bisexuality, homosexuality or gender identity, whether actual or perceived."

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

§5-11-9a is new; therefore, strike-throughs and underscoring have been omitted.