

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2387**

4

5 (By Delegates Marshall and Moore)

6 (Originating in the Committee on the Judiciary)

7

8 [January 23, 2014]

9

10 A BILL to amend and reenact §5-11A-3, §5-11A-5, §5-11A-6 and
11 §5-11A-7 of the Code of West Virginia, 1931, as amended, all
12 relating to reasonable accommodations under the West Virginia
13 Fair Housing Act for persons with disabilities who need
14 assistive animals; providing for the submission of
15 documentation of the disability related need for the assistive
16 animal; providing for the sufficiency of the requested
17 documentation; prohibiting a request for access to medical
18 records or providers; providing for the denial of a request
19 for an accommodation of an assistance animal; requiring a
20 determination of a direct threat or substantial physical
21 damage to be based on individualized assessment; prohibiting
22 an unreasonable denial of accommodation; and replacing the
23 term "handicapped" with the term "disability".

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

25 That §5-11A-3, §5-11A-5, §5-11A-6 and §5-11A-7 of the Code of

1 West Virginia, 1931, as amended, be amended and reenacted, all to
2 read as follows:

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

4 **§5-11A-3. Definitions.**

5 As used in this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (j) "Familial status" means:

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

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

21 (B) The designee of ~~such~~ the parent or other person having
22 ~~such~~ custody of the individual with the written permission of ~~such~~
23 the parent or other person; or

24 (2) Any person who is pregnant or is in the process of
25 securing legal custody of any individual who has not attained the

1 age of eighteen years;

2 (k) "Conciliation" means the attempted resolution of issues
3 raised by a complaint or by the investigation of ~~such~~ the complaint
4 through informal negotiations involving the aggrieved person, the
5 respondent and the commission;

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

8 (m) "Respondent" means:

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

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

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

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

22 (p) "Assistance animal" means any service, therapy or support
23 animal, weighing less than one hundred fifty pounds, with or
24 without specific training or certification, that works, provides
25 assistance, or performs tasks for the benefit of a person with a

1 disability, or provides emotional support that alleviate one or
2 more identified symptoms or effects of a person's disability.

3 **§5-11A-5. Discrimination in sale or rental of housing and other**
4 **prohibited practices.**

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

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

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

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

25 (d) To represent to any person because of race, color,

1 religion, sex, blindness, ~~handicap~~ disability, familial status,
2 ancestry or national origin that any dwelling is not available for
3 inspection, sale or rental when ~~such~~ the dwelling is in fact ~~so~~
4 available;

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

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

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

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

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

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

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

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

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

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

23 (iii) All premises within ~~such~~ the dwellings contain the
24 following features of adaptive design: (I) An accessible route
25 into and through the dwelling; (II) light switches, electrical

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

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

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

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

20 (C) The commission shall encourage, but may not require, units
21 of local government to include in their existing procedures for the
22 review and approval of newly constructed covered multifamily
23 dwellings, determinations as to whether the design and construction
24 of such dwellings are consistent with subparagraph (3) (C) of this
25 subdivision, and may provide technical assistance to units of local

1 government and other persons to implement the requirements of ~~such~~
2 that subparagraph.

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

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

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

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

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

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

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

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

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

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

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

25 (i) The assistance animal poses a direct threat to the health

1 or safety of others that cannot be eliminated by another reasonable
2 accommodation; or

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

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

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

15 **§5-11A-6. Discrimination in residential real estate-related**
16 **transactions.**

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

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

25 (1) The making or purchasing of loans or providing other

1 financial assistance: (A) For purchasing, constructing, improving,
2 repairing or maintaining a dwelling; or (B) secured by residential
3 real estate; or

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

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

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

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