

Senate Bill No. 125

(By Senators Kessler, Beach and Snyder)

[Introduced January 14, 2015; referred to the Committee on Labor; and then to the Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-2. Declaration of policy.

It is the public policy of the State of West Virginia to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations, and equal

1 opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real
2 property. Equal opportunity in the areas of employment and public accommodations is hereby
3 declared to be a human right or civil right of all persons without regard to race, religion, color,
4 national origin, ancestry, sex, age, sexual orientation, blindness or disability. Equal opportunity in
5 housing accommodations or real property is hereby declared to be a human right or civil right of all
6 persons without regard to race, religion, color, national origin, ancestry, sex, blindness, sexual
7 orientation, disability or familial status.

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

12 **§5-11-3. Definitions.**

13 When used in this article:

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

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

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

19 (d) The term “employer” means the state, or any political subdivision thereof, and any person
20 employing twelve or more persons within the state for twenty or more calendar weeks in the calendar
21 year in which the act of discrimination allegedly took place or the preceding calendar year:

22 *Provided*, That ~~such terms shall~~ the term does not be taken, understood or construed to include a

1 private club: Provided, however, That this article, with regards to sexual orientation, does not apply
2 to a corporation, association, educational institution or institution of learning, or society that is
3 exempt from the religious discrimination provisions of title VII of the Civil Rights Act of 1964 (42
4 U.S.C. 2000e et seq.) pursuant to section 702(a) or 703(e)(2) of that Act (42 U.S.C. 2000e-1(a),
5 2000e-2(e)(2)), except in the operation of a program funded by the state;

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

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

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

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

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

20 (j) The term “place of public accommodations” means any establishment or person, as
21 defined herein, including the state, or any political or civil subdivision thereof, which offers its
22 services, goods, facilities or accommodations to the general public, but ~~shall~~ does not include any

1 accommodations which are in their nature private. To the extent that any penitentiary, correctional
2 facility, detention center, regional jail or county jail is a place of public accommodation, the rights,
3 remedies and requirements provided by this article for any violation of subdivision (6), section nine
4 of this article ~~shall do~~ not apply to any person other than: (1) Any person employed at a penitentiary,
5 correctional facility, detention center, regional jail or county jail; (2) any person employed by a law-
6 enforcement agency; or (3) any person visiting ~~any such~~ the employee or visiting any person detained
7 in custody at ~~such~~ the facility;

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

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

14 (m) The term “disability” means:

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

19 (2) A record of ~~such~~ the impairment; or

20 (3) Being regarded as having ~~such an~~ the impairment.

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

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

3 (n) The term “sexual orientation” means heterosexuality, bisexuality, homosexuality or
 4 gender identity or expression, whether actual or perceived.

5 **§5-11-4. Powers and objectives.**

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

15 **§5-11-8. Commission powers; functions; services.**

16 The commission is hereby authorized and empowered:

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

20 (b) To enlist the cooperation of racial, religious and ethnic units, community and civic
 21 organizations, industrial and labor organizations and other identifiable groups of the state in
 22 programs and campaigns devoted to the advancement of tolerance, understanding and the equal

1 protection of the laws of all groups and peoples;

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

11 (d) To hold and conduct public and private hearings, in the county where the respondent
12 resides or transacts business or where agreed to by the parties or where the acts complained of
13 occurred, on complaints, matters and questions before the commission and, in connection therewith,
14 relating to discrimination in employment or places of public accommodations, housing
15 accommodations or real property and during the investigation of any formal complaint before the
16 commission relating to employment, places of public accommodations, housing accommodations
17 or real property to:

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

22 (2) Furnish copies of public hearing records to parties involved therein upon their payment

1 of the reasonable costs thereof to the commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 eliminate discrimination in all the stated fields and to foster goodwill and cooperation among all
2 elements of the population of the state;

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

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

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

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

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

19 (2) For any employer, employment agency or labor organization, prior to the employment or
20 admission to membership, to: (A) Elicit any information or make or keep a record of or use any
21 form of application or application blank containing questions or entries concerning the race, religion,
22 color, national origin, ancestry, sex, sexual orientation or age of any applicant for employment or

1 membership; (B) print or publish or cause to be printed or published any notice or advertisement
2 relating to employment or membership indicating any preference, limitation, specifications or
3 discrimination based upon race, religion, color, national origin, ancestry, sex, sexual orientation,
4 disability or age; or (C) deny or limit, through a quota system, employment or membership because
5 of race, religion, color, national origin, ancestry, sex, age, sexual orientation, blindness or disability;

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

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

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

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

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

21 (D) Print or circulate or cause to be printed or circulated any statement, advertisement or
22 publication, or to use any form of application for these programs or to make any inquiry in

1 connection with a program which expresses, directly or indirectly, discrimination or any intent to
2 discriminate unless based upon a bona fide occupational qualification;

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

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

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

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

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

22 (A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others

1 to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or
2 cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage
3 in any of the unlawful discriminatory practices defined in this section;

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

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

10 **§5-11-13. Exclusiveness of remedy; exceptions.**

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

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

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

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

19 (c) In any action filed under this section, if the court finds that the respondent has engaged
20 in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall
21 enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative
22 action which may include, but is not limited to, reinstatement or hiring of employees, granting of

1 back pay or any other legal or equitable relief as the court deems appropriate. In actions brought
2 under this section, the court in its discretion may award all or a portion of the costs of litigation,
3 including reasonable attorney fees and witness fees, to the complainant.

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

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

8 **§5-11A-3. Definitions.**

9 As used in this article:

10 (a) “Commission” means the West Virginia Human Rights Commission;

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

15 (c) “Family” includes a single individual;

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

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

22 (f) “Discriminatory housing practice” means an act that is unlawful under section five, six,

1 seven or nineteen of this article;

2 (g) “Disability” means, with respect to a person:

3 (1) A physical or mental impairment which substantially limits one or more of the person’s
4 major life activities;

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

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

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

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

15 (j) “Familial status” means:

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

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

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

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

1 (k) “Conciliation” means the attempted resolution of issues raised by a complaint or by the
2 investigation of the complaint through informal negotiations involving the aggrieved person, the
3 respondent and the commission;

4 (l) “Conciliation agreement” means a written agreement setting forth the resolution of the
5 issues in conciliation;

6 (m) “Respondent” means:

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

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

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

13 (o) ~~The term~~ “Basic universal design” means the design of products and environments to be
14 useable by all people, to the greatest extent possible, without the need for adaptation or
15 specialization;

16 (p) “Assistance animal” means any service, therapy or support animal, weighing less than one
17 hundred fifty pounds, with or without specific training or certification, that works, provides
18 assistance, or performs tasks for the benefit of a person with a disability, or provides emotional
19 support that alleviate one or more identified symptoms or effects of a person’s disability;and

20 (q) “Sexual orientation” is defined as heterosexuality, bisexuality, homosexuality or gender
21 identity or expression, whether actual or perceived;

22 **§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 for
4 the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of
5 race, color, religion, ancestry, sex, age, sexual orientation, familial status, blindness, disability or
6 national origin;

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

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

16 (d) To represent to any person because of race, color, religion, sex, age, sexual orientation,
17 blindness, disability, familial status, ancestry or national origin that any dwelling is not available for
18 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 persons
21 of a particular race, color, religion, sex, age, sexual orientation, blindness, disability, familial status,
22 ancestry or national origin; or

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

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

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

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

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

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

22 (i) The public use and common use portions of the dwellings are readily accessible to and

1 usable by disabled persons;

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

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

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

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

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

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

1 to units of local government and other persons to implement the requirements of that subparagraph.

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

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

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

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

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

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

21 (10) For the purposes of this subdivision, rules, policies, practices or services regarding
22 animals are subject to the reasonable accommodation requirements of subparagraph (B), paragraph

1 (3) of this subdivision and the following provisions:

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

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

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

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

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

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

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

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

22 **§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, religion,
4 sex, age, sexual orientation, blindness, disability, familial status, ancestry or national origin.

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

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

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

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

14 **§5-11A-7. Discrimination in provision of brokerage services.**

15 It is unlawful to deny any person access to or membership or participation in any multiple
16 listing service, real estate broker's organization or other service, organization or facility relating to
17 the business of selling or renting dwellings, or to discriminate against him or her in the terms or
18 conditions of such access, membership or participation on account of race, color, religion, sex, age,
19 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; add “age” and “sexual orientation” to the categories covered by the Fair Housing Act prohibiting discrimination in housing; and define “sexual orientation”.

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