

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2538

BY DELEGATES PUSHKIN, YOUNG, HANSEN, ZUKOFF AND

ROWE

[Introduced February 16, 2021; Referred to the
Committee on Workforce Development then the
Judiciary]

1 A BILL to amend and reenact §5-11-2, §5-11-3, §5-11-4, §5-11-8, §5-11-9, and §5-11-13 of the
 2 Code of West Virginia, 1931, as amended; and to amend and reenact §5-11A-3, §5-11A-
 3 5, §5-11A-6, and §5-11A-7 of said code, all relating to unlawful discriminatory practices in
 4 categories covered by the Human Rights Act and the Fair Housing Act; prohibiting
 5 discrimination based upon age and sexual orientation, or gender identity; and defining
 6 “sexual orientation” and “gender identity”.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-2. Declaration of policy.

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

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

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term “person” means one or more individuals, partnerships, associations,

3 organizations, corporations, labor organizations, cooperatives, legal representatives, trustees,
4 trustees in bankruptcy, receivers, and other organized groups of persons;

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

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

7 (d) The term “employer” means the state, or any political subdivision thereof, and any
8 person employing 12 or more persons within the state for 20 or more calendar weeks in the
9 calendar year in which the act of discrimination allegedly took place or the preceding calendar
10 year: *Provided*, That ~~such~~ the terms ~~shall~~ may not be taken, understood, or construed to include
11 a private club;

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

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

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

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

25 (i) The term “unlawful discriminatory practices” includes only those practices specified in
26 §5-11-9 of this code;

27 (j) The term “place of public accommodations” means any establishment or person, as
28 defined herein, including the state, or any political or civil subdivision thereof, which offers its

29 services, goods, facilities, or accommodations to the general public, but ~~shall~~ does not include
30 any accommodations which are in their nature private. To the extent that any ~~penitentiary, state~~
31 correctional facility, detention center, regional jail, or ~~county~~ jail is a place of public
32 accommodation, the rights, remedies, and requirements provided by this article for any violation
33 of §5-11-9 (6) of this code ~~shall do~~ not apply to any person other than: (1) Any person employed
34 at a ~~penitentiary state~~ correctional facility, detention center, regional jail, or ~~county~~ jail; (2) any
35 person employed by a law-enforcement agency; or (3) any person visiting any such employee or
36 visiting any person detained in custody at ~~such~~ the facility;

37 (k) The term “age” means the age of 40 or above;

38 (l) For the purpose of this article, a person ~~shall be~~ is considered to be blind only if his or
39 her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his
40 or her visual acuity is greater than 20/200 but is occasioned by a limitation in the fields of vision
41 such that the widest diameter of the visual field subtends an angle no greater than 20 degrees;
42 and

43 (m) The term “disability” means:

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

48 (2) A record of such impairment; or

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

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

54 (n) The term “gender identity” means the actual or perceived gender-related identity,

55 expression, appearance, mannerisms, or other gender-related characteristics of an individual,
56 regardless of the individual’s designated sex at birth.

57 (o) The term “sexual orientation” means heterosexuality, bisexuality, homosexuality, or
58 gender identity or expression, whether actual or perceived.

§5-11-4. Powers and objectives.

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

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

1 The commission is ~~hereby authorized and empowered~~ may:
2 (a) ~~To~~ Cooperate and work with federal, state, and local government officers, units,
3 activities, and agencies in the promotion and attainment of more harmonious understanding and
4 greater equality of rights between and among all racial, religious, and ethnic groups in this state;
5 (b) ~~To~~ Enlist the cooperation of racial, religious, and ethnic units, community and civic
6 organizations, industrial and labor organizations, and other identifiable groups of the state in
7 programs and campaigns devoted to the advancement of tolerance, understanding, and the equal
8 protection of the laws of all groups and peoples;
9 (c) ~~To~~ Receive, investigate, and pass upon complaints alleging discrimination in
10 employment or places of public accommodations, because of race, religion, color, national origin,

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

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

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

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

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

37 Any respondent or complainant who ~~shall~~ feels aggrieved at any final action of an
38 administrative law judge shall file a written notice of appeal with the commission by serving ~~such~~
39 the notice on the executive director and upon all other parties within 30 days after receipt of the
40 administrative law judge's decision. The commission shall limit its review upon such appeals to
41 whether the administrative law judge's decision is:

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

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

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

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

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

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

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

53 If the respondent and the commission agree upon conciliation terms, the commission shall
54 serve upon the complainant a copy of the proposed conciliation agreement. If the complainant
55 agrees to the terms of the agreement or fails to object to ~~such~~ the terms within 15 days after its
56 service upon him or her, the commission shall issue an order embodying such conciliation
57 agreement. If the complainant objects to the agreement, he or she shall serve a specification of
58 his or her objections upon the commission within ~~such~~ this period. Unless ~~such~~ the objections are
59 met or withdrawn within 10 days after service thereof, the commission shall notice the complaint
60 for hearing.

61 Notwithstanding any other provisions of this section, the commission may, where it finds
62 the terms of the conciliation agreement to be in the public interest, execute ~~such~~ the agreement,

63 and limit the hearing to the objections of the complainant.

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

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

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

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

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

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

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

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

82 (h) To do all other acts and deeds necessary and proper to carry out and accomplish
83 effectively the objects, functions, and services contemplated by the provisions of this article,
84 including the promulgation of legislative rules in accordance with ~~the provisions of~~ §29A-3-1 *et*
85 *seq.* of this code, implementing the powers and authority hereby vested in the commission;

86 (i) To create such advisory agencies and conciliation councils, local, regional, or statewide,
87 as in its judgment will aid in effectuating the purposes of this article, to study the problems of
88 discrimination in all or specific fields or instances of discrimination because of race, religion, color,

89 national origin, ancestry, sex, age, sexual orientation, gender identity, blindness, disability, or
 90 familial status; to foster, through community effort or otherwise, goodwill, cooperation, and
 91 conciliation among the groups and elements of the population of this state, and to make
 92 recommendations to the commission for the development of policies and procedures, and for
 93 programs of formal and informal education, which the commission may recommend to the
 94 appropriate state agency. ~~Such~~ The advisory agencies and conciliation councils shall be
 95 composed of representative citizens serving without pay. The commission may itself make the
 96 studies and perform the acts authorized by this subdivision. It may, by voluntary conferences with
 97 parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the
 98 stated fields and to foster goodwill and cooperation among all elements of the population of the
 99 state;

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

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

§5-11-9. Unlawful discriminatory practices.

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

5 (1) For any employer to discriminate against an individual with respect to compensation,
 6 hire, tenure, terms, conditions, or privileges of employment if the individual is able and competent
 7 to perform the services required even if ~~such~~ the individual is blind, or disabled: *Provided*, That it
 8 ~~shall~~ is not ~~be~~ an unlawful discriminatory practice for an employer to observe the provisions of

9 any bona fide pension, retirement, group or employee insurance, or welfare benefit plan or system
10 not adopted as a subterfuge to evade the provisions of this subdivision;

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

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

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

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

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

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

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

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

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

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

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

60 (7) For any person, employer, employment agency, labor organization, owner, real estate

61 broker, real estate salesman, or financial institution to:

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

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

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

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

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

14 (b) Notwithstanding the provisions of subsection (a) of this section, a complainant may
15 institute an action against a respondent in the county wherein the respondent resides or transacts
16 business at any time within 90 days after the complainant is given notice of a right to sue pursuant
17 to this subsection or, if the statute of limitations on the claim has not expired at the end of ~~such~~
18 the 90-day period, then at any time during which ~~such~~ the statute of limitations has not expired.
19 If a suit is filed under this section, the proceedings pending before the commission shall be
20 ~~deemed~~ considered concluded.

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

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

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

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

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-3. Definitions.

1 As used in this article:

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

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

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

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

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

14 (f) "Discriminatory housing practice" means an act that is unlawful under §5-11A-5, §5-
15 11A-6, §5-11A-7, or §5-11A-19 of this code;

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

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

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

20 (3) Being regarded as having such an impairment, but the term does not include current,
21 illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled

22 Substances Act, Title 21, United States Code, Section 802;

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

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

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

27 (i) "Complainant" means the person, including the commission, who files a complaint
28 under §11A-5-11 of this code;

29 (j) "Familial status" means:

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

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

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

35 (2) Any person who is pregnant or is in the process of securing legal custody of any
36 individual who has not attained the age of 18 years;

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

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

42 (m) "Respondent" means:

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

44 (2) Any other person or entity identified in the course of investigation and notified as
45 required with respect to respondents identified under §5-11A-11(a) of this code;

46 (n) The term "rooming house" means a house or building where there are one or more
47 bedrooms which the proprietor can spare for the purpose of giving lodgings to persons he or she

48 chooses to receive; ~~and~~

49 (o) The term “gender identity” means the actual or perceived gender-related identity,
 50 expression, appearance, mannerisms, or other gender-related characteristics of an individual,
 51 regardless of the individual’s designated sex at birth.

52 (p) “Sexual orientation” means heterosexuality, bisexuality, homosexuality, or gender
 53 identity or expression, whether actual or perceived;

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

57 ~~(r)~~ (r) “Assistance animal” means any service, therapy, or support animal, weighing less
 58 than 150 pounds, with or without specific training or certification, that works, provides assistance,
 59 or performs tasks for the benefit of a person with a disability, or provides emotional support that
 60 alleviate one or more identified symptoms or effects of a person’s disability.

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

1 As made applicable by §5-11A-4 of this code and except as exempted by §5-11A-4 and
 2 §5-11A-8 of this code, it is unlawful:

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

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

11 (c) To make, print, or publish, or cause to be made, printed, or published any notice,
 12 statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any

13 preference, limitation, or discrimination based on race, color, religion, sex, age, sexual orientation,
14 gender identity, blindness, disability, familial status, ancestry, or national origin, or an intention to
15 make any such preference, limitation, or discrimination;

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

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

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

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

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

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

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

42 (C) In connection with the design and construction of covered multifamily dwellings for first
43 occupancy after the date that is 30 months after the date of enactment of the West Virginia Fair
44 Housing Act, a failure to design and construct those dwellings in a manner that:

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

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

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

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

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

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

64 (C) The commission shall encourage, but may not require, units of local government to

65 include in their existing procedures for the review and approval of newly constructed covered
66 multifamily dwellings, determinations as to whether the design and construction of such dwellings
67 are consistent with subparagraph (3)(C) of this subdivision, and may provide technical assistance
68 to units of local government and other persons to implement the requirements of that
69 subparagraph.

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

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

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

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

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

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

90 (10) For the purposes of this subdivision, rules, policies, practices, or services regarding

91 animals are subject to the reasonable accommodation requirements of subparagraph (B),
92 paragraph (3) of this subdivision and the following provisions:

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

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

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

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

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

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

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

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

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

1 (a) It is unlawful for any person or other entity whose business includes engaging in
2 residential real estate-related transactions to discriminate against any person in making available

3 ~~such~~ a transaction or in the terms or conditions of ~~such~~ a transaction because of race, color,
 4 religion, sex, age, sexual orientation, gender identity, blindness, disability, familial status,
 5 ancestry, or national origin.

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

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

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

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

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

1 It is unlawful to deny any person access to or membership or participation in any multiple
 2 listing service, real estate broker's organization, or other service, organization, or facility relating
 3 to the business of selling or renting dwellings, or to discriminate against him or her in the terms
 4 or conditions of such access, membership, or participation on account of race, color, religion, sex,
 5 age, sexual orientation, gender identity, blindness, disability, familial status, ancestry, or national
 6 origin.

NOTE: The purpose of this bill is to add “sexual orientation” and “gender identity” to the categories covered by the Human Rights Act, prohibiting discrimination in employment and places of public accommodation. The bill adds “age”, “sexual orientation” and “gender identity” to the categories covered by the Fair Housing Act prohibiting discrimination in housing. The bill defines “sexual orientation” and “gender identity”.

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