

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 2266

FISCAL  
NOTE

By Delegate Pushkin

[Introduced January 11, 2023; 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-5,  
 3 §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 origin,  
 9 ancestry, sex, age, sexual orientation, gender identity, blindness, disability or familial status.

10 The denial of these rights to properly qualified persons by reason of race, religion, color,  
 11 national origin, ancestry, sex, age, sexual orientation, gender identity, blindness, disability or  
 12 familial status is contrary to the principles of freedom and equality of opportunity and is destructive  
 13 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~~ these 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, in  
15 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 not be deemed to be~~ is not an employment  
20 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 to  
24 separate or segregate;

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

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 not include any

30 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 accommodation,  
32 the rights, remedies and requirements provided by this article for any violation of §5-11-9 (6) of this  
33 code ~~shall~~ do not apply to any person other than: (1) Any person employed at a penitentiary,  
34 correctional facility, detention center, or regional jail ~~or county jail~~; (2) any person employed by a  
35 law-enforcement agency; or (3) any person visiting any such employee or visiting any person  
36 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 her  
39 central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his or her  
40 visual acuity is greater than 20/200 but is occasioned by a limitation in the fields of vision such that  
41 the widest diameter of the visual field subtends an angle no greater than 20 degrees; and

42 (m) The term "disability" means:

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

47 (2) A record of such impairment; or

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

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

53 (n) The term "gender identity" means the actual or perceived gender-related identity,  
54 expression, appearance, mannerisms, or other gender-related characteristics of an individual,  
55 regardless of the individual's designated sex at birth.

56           (o) The term "sexual orientation" means heterosexuality, bisexuality, homosexuality, or  
 57 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 financing  
 8 of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex,  
 9 sexual orientation, gender identity, blindness, ~~handicap~~ disability, or familial status.

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

1           The commission is ~~hereby authorized and empowered~~ may:

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

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

10           (c) ~~To receive~~ Receive, investigate, and pass upon complaints alleging discrimination in  
 11 employment or places of public accommodations, because of race, religion, color, national origin,  
 12 ancestry, sex, age, sexual orientation, gender identity, blindness, ~~or disability~~, or familial status,  
 13 and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing

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

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

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

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

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

38 Any respondent or complainant who ~~shall feel~~ feels aggrieved at any final action of an  
39 administrative law judge shall file a written notice of appeal with the commission by serving such

40 the notice on the executive director and upon all other parties within 30 days after receipt of the  
41 administrative law judge's decision. The commission shall limit its review upon such appeals to  
42 whether the administrative law judge's decision is:

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

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

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

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

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

50 (4) ~~To enter~~ Enter into conciliation agreements and consent orders.

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

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

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

65 If a conciliation agreement is entered into, the commission shall serve a copy of the order

66 embodying ~~such~~ the agreement upon all parties to the proceeding.

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

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

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

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

78 (e) ~~To recommend~~ Recommend to the Governor and Legislature policies, procedures,  
79 practices and legislation in matters and questions affecting human rights;

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

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

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

89 (i) ~~To create~~ Create such advisory agencies and conciliation councils, local, regional or  
90 statewide, as in its judgment will aid in effectuating the purposes of this article, to study the  
91 problems of discrimination in all or specific fields or instances of discrimination because of race,



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

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

106 (k) ~~To issue~~ Issue such publications and such results of investigation and research as in its  
 107 judgment will tend to promote goodwill and minimize or eliminate discrimination: *Provided*, That  
 108 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 not be~~ is not 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: *Provided, however,* That  
11 an employer ~~my~~ may grant preference in hiring to a veteran or a disabled veteran in accordance  
12 with the provisions of §5-11-9A of this code without violating the provisions of this article.

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

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

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

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

34 (B) Discriminate against any individual with respect to his or her right to be admitted to or

35 participate in a guidance program, an apprenticeship training program, on-the-job training  
36 program or other occupational training or retraining program;

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

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

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

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

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

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

61 solicited; or

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

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

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

71 (C) Engage in any form of reprisal or otherwise discriminate against any person because  
72 he or she has opposed any practices or acts forbidden under this article or because he or she has  
73 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 ~~exclude~~ excludes any other action, civil or  
8 criminal, based on the same grievance of the complainant concerned. If ~~such~~ the complainant  
9 institutes any action based on ~~such~~ the grievance without resorting to the procedure provided in  
10 this article, he or she may not subsequently resort to the procedure herein. ~~In the event of~~ If there  
11 is a conflict between the interpretation of a provision of this article and the interpretation of a similar  
12 provision contained in any municipal ordinance authorized by charter, the interpretation of the

13 provision in this article ~~shall apply to such~~ applies to 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~~ the  
18 90-day period, then at any time during which ~~such~~ the statute of limitations has not expired. If a suit  
19 is filed under this section, the proceedings pending before the commission shall be ~~deemed~~  
20 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 90 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 appropriate. In  
37 actions brought under this section, the court ~~in its discretion~~ may award all or a portion of the costs  
38 of litigation, including reasonable attorney fees and witness fees, to the complainant.

39 (d) The provisions of this section shall be are available to all complainants whose active  
40 cases are pending before the Human Rights Commission as well as those complainants who file  
41 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 Code,  
11 receivers, and fiduciaries;

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

14 (f) "Discriminatory housing practice" means an act that is unlawful under §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.

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 §5-  
2 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 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, 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 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, gender identity, familial status, blindness,  
10 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 orientation,  
17 gender identity, blindness, disability, familial status, ancestry or national origin that any dwelling is  
18 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, blindness, disability, familial status, ancestry or  
22 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 (C)  
26 any person associated with that buyer or renter.

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

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

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

38 (B) A refusal to make reasonable accommodations in rules, policies, practices or services

39 when the accommodations may be necessary to afford the person equal opportunity to use and  
40 enjoy a dwelling; or

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

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

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

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

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

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

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

63 (C) The commission shall encourage, but may not require, units of local government to  
64 include in their existing procedures for the review and approval of newly constructed covered

65 multifamily dwellings, determinations as to whether the design and construction of such dwellings  
66 are consistent with subparagraph (3)(C) of this subdivision, and may provide technical assistance  
67 to units of local government and other persons to implement the requirements of that  
68 subparagraph.

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

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

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

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

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

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

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

91 paragraph (3) of this subdivision and the following provisions:

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

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

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

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

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

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

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

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

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

1 (a) It is unlawful for any person or other entity whose business includes engaging in  
2 residential real estate-related transactions to discriminate against any person in making available  
3 such a transaction or in the terms or conditions of such a transaction because of race, color,

4 religion, sex, age, sexual orientation, gender identity, blindness, disability, familial status, ancestry  
5 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 to  
3 the business of selling or renting dwellings, or to discriminate against him or her in the terms or  
4 conditions of such access, membership or participation on account of race, color, religion, sex,  
5 age, sexual orientation, 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.