WEST VIRGINIA CODE CHAPTER 16b ARTICLE 18

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§16B-18-1. Short title.

This article may be cited as the "West Virginia Fair Housing Act."

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§16B-18-2. Declaration of policy.

It is the policy of the State of West Virginia to provide, within Constitutional limitations, for fair housing throughout the state.

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§16B-18-3. Definitions.

As used in this article:

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

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

(c) "Family" includes a single individual;

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

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

(f) "Discriminatory housing practice" means an act that is unlawful under §16B-18-5, §16B-18-6, §16B-18-7, or §16B-18-19 of this article;

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

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

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

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

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

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

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

(i) "Complainant" means the person, including the commission, who files a complaint under §16B-18-11;

(j) "Familial status" means:

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

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

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

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

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

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

(m) "Respondent" means:

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

(2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents identified under §16B-18-11(a);

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

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

(p) "Assistance animal" means any service, therapy or support animal, weighing less than 150 pounds, with or without specific training or certification, that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviate one or more identified symptoms or effects of a person's disability.

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§16B-18-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, and architects; immunity from civil liability.

Any person, including a worker, contractor, engineer or architect, who in good faith provides services or materials, without remuneration, to build or install basic universal design features as set forth in §30-42-10 of this code may not be liable for any civil damages as the result of any act or omission in providing such services or materials: *Provided*, That the basic universal design feature or features shall be built or constructed in accordance with applicable state and federal laws and applicable building codes.

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§16B-18-4. Application of article.

(a) The prohibitions against discrimination in the sale or rental of housing set forth in §16B-18-5 of this code shall apply to all dwellings except as hereinafter exempted. Nothing in section five of this article, other than subsection (b) of this section, shall apply to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms or rooms to be rented. Solely for the purposes of familial status, nothing in section five shall apply to:

(1) Any single-family house sold or rented by an owner: *Provided,* That such private individual owner does not own more than three such single-family houses at any one time: *Provided, however,* That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24 month period: *Provided further,* That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his or her behalf under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time: *And provided further,* That the sale or rental of any such single-family house shall be excepted from the application of this article only if such house is sold or rented:

(A) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman or person; and

(B) Without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of subsection (c), §16B-18-5 of this code; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title; or

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(b) For the purposes of subsection (a) of this section, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) The person has within the preceding 12 months participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) The person has within the preceding 12 months participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any

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interest therein; or

(3) The person is the owner of any dwelling designed or intended for occupancy by or occupied by five or more families.

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§16B-18-5. Discrimination in sale or rental of housing and other prohibited practices.

As made applicable by section four of this article and except as exempted by §16B-18-4 and §16B-18-8 of this code, it is unlawful:

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

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

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

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

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

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

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

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

(A) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises, except that, in the case of a

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rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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§16B-18-6. Discrimination in residential real estate-related transactions.

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

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

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

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

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

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§16B-18-7. Discrimination in provision of brokerage services.

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

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§16B-18-8. Religious organization or private club exemption.

(a) Nothing in this article shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color or national origin. Nor shall anything in this article prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b) (1) Nothing in this article limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this article regarding familial status apply with respect to housing for older persons.

(2) As used in this section, "housing for older persons" means housing:

(A) Provided under any state or federal program that the secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program; or

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the commission shall develop regulations which require at least the following factors: (i) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; (ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and (iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of: (A) Persons residing in such housing as of the date of enactment of this article who do not meet the age requirements of subdivision (2)(B) or (C) of this subsection: *Provided,* That new occupants of such housing meet the age requirements of such subdivisions; or (B) unoccupied units: *Provided, however,* That such units are reserved for occupancy by persons who meet the age requirements of subdivision (2)(B) or (C) of this subsection.

(4) Nothing in this article prohibits conduct against a person because such person has been

convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act, Title 21, United States Code, Section 802.

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§16B-18-9. Administration; authority and responsibility; delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review; cooperation of the commission and executive departments and agencies to further fair housing purposes; functions of the commission.

The authority and responsibility for administering this article shall be in the West Virginia Human Rights Commission.

The commission may delegate any of its functions, duties and powers to employees of the Human Rights Commission, including functions, duties and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter under this article. The person to whom such delegations are made with respect to hearing functions, duties and powers shall be a licensed attorney. Insofar as possible, conciliation meetings shall be held in the county where the discriminatory housing practices allegedly occurred. The commission shall by rule prescribe such rights of appeal from the decisions of its administrative law judges to other administrative law judges or to other officers in the commission, to boards of officers or to itself, as shall be appropriate and in accordance with law.

All executive departments and agencies shall administer their programs and activities relating to housing, including any agency having regulatory or supervisory authority over financial institutions, in a manner affirmatively to further the purposes of this article and shall cooperate with the commission to further such purposes.

The commission may:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban and rural, throughout the state;

(2) Publish and disseminate reports, recommendations and information derived from such studies, including reports to the Legislature specifying the nature and extent of progress made statewide in eliminating discriminatory housing practices and furthering the purposes of this article, obstacles remaining to achieving equal housing opportunity and recommendations for further legislative or executive action;

(3) Cooperate with and execute such cooperative agreements with federal agencies as are necessary to carry out the provisions of this article; and

(4) Administer the programs and activities relating to fair housing in a manner affirmatively to further the policies of this article.

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§16B-18-10. Education and conciliation; conferences and consultations; reports.

Immediately upon the effective date of this article, the commission shall commence such educational and conciliatory activities as in its judgment will further the purposes of this article. It may call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this article and its suggested means of implementing it, and may endeavor with their advice to work out programs of voluntary compliance and of enforcement. It may pay per diem, travel and transportation expenses for persons attending such conferences as permitted by law. It may consult with local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their locality, and whether and how local enforcement programs might be utilized to combat such discrimination in connection with the commission's enforcement of this article. The commission shall issue reports on such conferences and consultations as it deems appropriate.

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§16B-18-11. Administrative enforcement; preliminary matters; complaints and answers; service; conciliation; injunctions; reasonable cause determinations; issuance of charge.

(a) (1) (A) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the commission alleging a discriminatory housing practice. The commission, on the commission's own initiative, may also file such a complaint. Such complaint shall be in writing and shall contain such information and be in such form as the commission requires. The commission may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such complaint: (i) The commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this article; (ii) the commission shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2) of this subsection, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this article, together with a copy of the original complaint; (iii) each respondent may file, not later than ten days after receipt of notice from the commission, an answer to such complaint; and (iv) unless it is impracticable to do so, the commission shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint.

(C) If the commission is unable to complete the investigation within 100 days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation and may be reasonably and fairly amended at any time.

(2) (A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1) of this subsection, to such person, from the commission.

(B) Such notice, in addition to meeting the requirements of paragraph (1) of this subsection, shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) (1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the commission, the commission shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between

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the respondent and the complainant and shall be subject to approval by the commission.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this article.

(5) (A) At the end of each investigation under this section, the commission shall prepare a final investigative report containing: (i) The names and dates of contacts with witnesses; (ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent; (iii) a summary description of other pertinent records; (iv) a summary of witness statements; and (v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Whenever the commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the commission shall refer the matter to the Attorney General with a recommendation that a civil action be filed under §16B-18-15 of this code for the enforcement of such agreement.

(d) Nothing said or done in the course of conciliation under this article may be made public or used as evidence in a subsequent proceeding under this article without the written consent of the persons concerned, except the commission shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the commission's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) (1) If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this article, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary injunction or other order granting preliminary or temporary relief shall be issued in accordance with the West Virginia rules of civil procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and §16B-18-13 of this code.

(2) Whenever the commission has reason to believe that a basis may exist for the commencement of proceedings against any respondent under subsections (a) and (b), §16B-18-15 of this code or for proceedings by any governmental licensing or supervisory authorities, the commission shall transmit the information upon which such belief is based to

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the Attorney General, or to such authorities, as the case may be.

(f) (1) The commission shall within 100 days after the filing of the complaint determine, based on the facts, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the commission has approved a conciliation agreement with respect to the complaint. If the commission is unable to make the determination within 100 days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(2) (A) If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section thirteen of this article.

(B) Such charge: (i) Shall consist of a short and plain statement of the facts upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur; (ii) shall be based on the final investigative report; and (iii) need not be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

(C) If the commission determines that the matter involves the legality of any state or local zoning or other land use law or ordinance, the commission shall immediately refer the matter to the Attorney General for appropriate action under section fifteen of this article, instead of issuing such charge.

(3) If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each such dismissal.

(4) The commission may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

(g) After the commission issues a charge under this section, the commission shall cause a copy thereof, together with information as to how to make an election under subsection (a), §16B-18-13 of this code and the effect of such an election, to be served: (1) On each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and (2) on each aggrieved person on whose behalf the complaint was filed.

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§16B-18-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.

The commission may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this article. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the circuit courts of this state.

Witnesses summoned by a subpoena under this article shall be entitled to the same witness and mileage fees as witnesses in proceedings in the circuit courts of this state. Fees payable to a witness summoned by a subpoena shall be paid by the commission, the complainant or the respondent in accordance with §29A-5-1 *et seq*. of this code.

Enforcement of subpoenas may be had in the circuit courts of this state as set out in §29A-5-1 *et seq*. of this code.

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§16B-18-13. Election of remedies; administrative hearings and discovery; exclusivity of remedies; final orders; review by commission; judicial review; remedies; attorney fees.

(a) When a charge is filed under §16B-18-11 of this code a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under section eleven of this article or, in the case of the commission, not later than 20 days after such service. The person making such election shall give notice of doing so to the commission and to all other complainants and respondents to whom the charge relates.

(b) If an election is not made under subsection (a) of this section with respect to a charge filed under section eleven of this article, the commission shall provide an opportunity for a hearing on the record with respect to a charge issued under said section. The commission shall delegate the conduct of a hearing under this section to an administrative law judge who shall be a licensed attorney. The administrative law judge shall conduct the hearing at a place in the county in which the discriminatory housing practice is alleged to have occurred or is about to occur.

(c) At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses and obtain the issuance of subpoenas under §16B-18-12 of this code. Any aggrieved person may intervene as a party in the proceeding. The rules of evidence apply to the presentation of evidence in such hearing as they would in a civil action in the circuit courts of this state. The case in support of the complaint shall be presented before the administrative law judge by the Attorney General.

(d) (1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The commission shall, not later than 180 days after the date of enactment of this subsection, issue rules to implement this subsection.

(e) Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an act of Congress or a state law

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seeking relief with respect to that discriminatory housing practice.

(g) (1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the commission, the aggrieved person on whose behalf the charge was filed and the respondent in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the commission, the aggrieved person on whose behalf the charge was filed and the respondent in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent: (A) In an amount not exceeding $10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice; (B) in an amount not exceeding $25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of this charge; and (C) in an amount not exceeding $50,000 if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of this charge; except that if the acts constituting the discriminatory housing practice that are the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the charge filed under this article.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, not later than thirty days after the date of the issuance of such order or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review: (A) Send copies of the findings of fact, conclusions of law and the order to that governmental agency; and (B) recommend to that governmental agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license

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of the respondent.

(6) In the case of an order against a respondent against whom another order was issued within the preceding five years under this section, the commission shall send a copy of each such order to the Attorney General.

(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The commission shall make public disclosure of each such dismissal.

(h) (1) The commission may review any finding, conclusion or order issued under subsection (g) of this section. Such review shall be completed not later than 30 days after the finding, conclusion or order is so issued; otherwise the finding, conclusion or order becomes final.

(2) The commission shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) (1) Any party aggrieved by a final order for relief under this section granting or denying, in whole or in part, the relief sought may obtain a review of such order under §29A-5-4 of this code.

(2) Notwithstanding §29A-1-1 *et seq*. of this code, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred and filing of the petition for review shall be not later than 30 days after the order is entered.

(j) (1) The commission may petition the circuit court in the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or injunctive relief by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or injunctive relief.

(2) The commission shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k) (1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may:

(A) Grant to the petitioner, or any other party, such temporary relief, injunction or other order as the court deems just and proper;

(B) Affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the parties have been prejudiced

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because the administrative findings, inferences, conclusions, decision or order are: (i) In violation of Constitutional or statutory provisions; or (ii) in excess of the statutory authority or jurisdiction of the commission; or (iii) made upon unlawful procedures; or (iv) affected by other error of law; or (v) clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; and

(C) Enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the administrative law judge may intervene in the circuit court.

(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(4) The judgment of the circuit court shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of §29A-6-1 of this code.

(l) If no petition for review is filed under subsection (i) of this section before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement: (1) Which is filed by the commission under subsection (j) of this section after the end of such day; or (2) under subsection (m) of this section.

(m) If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i) of this section, and the commission has not sought enforcement of the order under subsection (j) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the circuit court for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) The judge of the circuit court in which a petition for enforcement is filed under subsection (l) or (m) of this section shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the commission, the respondent named in the petition and to any other parties to the proceeding before the administrative law judge. The judgment of the circuit court shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals pursuant to §29A-6-1 of this code.

(o) (1) If an election is made under subsection (a) of this section, the commission shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in the appropriate circuit court seeking relief under this subsection. Venue for such civil action shall be in the circuit court in the county in which the alleged discriminatory housing practice occurred.

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(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under §16B-18-12 of this code. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under said section shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under section fourteen of this article, the administrative law judge or the court, as the case may be, in its discretion, may allow a prevailing complainant a reasonable attorney's fee and costs.

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§16B-18-14. Enforcement by private persons; civil actions; appointed attorneys; remedies; bona fide purchasers; intervention by Attorney General.

(a) (1) (A) An aggrieved person may commence a civil action in an appropriate circuit court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this article, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such two-year period shall not include any time during which an administrative proceeding under this article was pending with respect to a complaint or charge under this article based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under subsection (a), §16B-18-11 of this code and without regard to the status of any such complaint, but if the commission has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the commission if an administrative law judge has commenced a hearing on the record under this article with respect to such charge.

(b) Upon application by a person alleging a discriminatory housing practice, the court may: (1) Appoint an attorney for such person; or (2) authorize the commencement or continuation of a civil action under subsection (a) of this section without the payment of fees, costs or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) (1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the complainant actual and punitive damages, and subject to subsection (d) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction or other order, including an order enjoining the respondent from engaging in such practice or ordering such affirmative action as may be appropriate.

(2) In a civil action under subsection (a) of this section, the court, in its discretion, may allow a prevailing complainant a reasonable attorney's fee and costs.

(d) Relief granted under this section shall not affect any contract, sale, encumbrance or lease consummated before the granting of such relief and involving a bona fide purchaser,

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encumbrancer or tenant without actual notice of the filing of a complaint with the commission or civil action under this section.

(e) Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under subsection (d), §16B-18-15 of this code in a civil action to which such section applies.

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§16B-18-15. Enforcement by Attorney General; pattern or practice cases; subpoena enforcement; remedies; intervention.

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this article, or that any group of persons has been denied any of the rights granted by this article and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate circuit court.

(b) (1) The Attorney General may commence a civil action in any appropriate circuit court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the commission under subsection (f), §16B-18-11 of this code. A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2) The Attorney General may commence a civil action in any appropriate circuit court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the commission under subsection (c), §16B-18-12 of this code. A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under subsection (c), section eleven of this article.

(c) The Attorney General, on behalf of the commission or other party at whose request a subpoena is issued under this article, may enforce such subpoena in appropriate proceedings in the circuit court for the circuit in which the person to whom the subpoena was addressed resides, was served or transacts business.

(d) (1) In a civil action under subsection (a) or (b) of this section, the court:

(A) May award such preventive relief, including a permanent or temporary injunction or other order against the person responsible for a violation of this article as is necessary to assure the full enjoyment of the rights granted by this article;

(B) May award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) May, to vindicate the public interest, assess a civil penalty against the respondent: (i) In an amount not exceeding $50,000 for a first violation; and (ii) in an amount not exceeding $100,000 for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow a prevailing complainant a reasonable attorney's fee and costs.

(e) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such

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appropriate relief to any such intervening party as is authorized to be granted to a complainant in a civil action under section fourteen of this article.

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§16B-18-16. Interference, coercion, or intimidation; enforcement by civil action.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section §16B-18-4 of this code, §16B-18-5 of this code, §16B-18-6, of this code or §16B-18-7 of this code of this article.

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§16B-18-17. Cooperation with local agencies administering fairhousing laws; utilization of services and personnel; reimbursement; written agreements; publication instate register.

The commission may cooperate with local agencies charged with the administration of local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, to the extent permitted by law, may reimburse such agencies and their employees for services rendered to assist it in carrying out this article. In furtherance of such cooperative efforts, the commission may enter into written agreements with such local agencies. All agreements and terminations thereof shall be published in the state register.

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§16B-18-18. Effect on other laws.

Nothing in this article shall be construed to invalidate or limit any law of this state or of any political subdivision of this state, that grants, guarantees or protects the same rights as are granted by this article; but any law of this state or any political subdivision hereof that purports to require or permit any action that would be a discriminatory housing practice under this article shall to that extent be invalid.

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§16B-18-19. Severability of provisions.

If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of the article and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

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§16B-18-20. Rules to implement article.

In consultation with other appropriate agencies, the commission shall, not later than the one hundred eightieth day after the date of the enactment of this article, issue rules to implement it. Such rules may include provision for the collection, maintenance, and analysis of appropriate data to carry out this article. The commission shall comply with §29A-3-1 *et seq*. of this code when promulgating rules.

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