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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2516

(By Mr. *Speaker M. Chambers & Del. R. Bump*)
[By Request of the Executive]

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Passed *April 8,* 1989

In Effect *July 1, 1989* ~~Page~~

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2516

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE R. BURK)
[By request of the Executive]

[Passed April 8, 1989; in effect July 1, 1989.]

AN ACT to amend and reenact sections two, three, four, eight, nine and eleven, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human rights commission; policy; powers; objects; functions; services; definitions; adding discrimination on the grounds of familial status as an unlawful discriminatory practice; exemptions; complaints; subpoenae and subpoenae duces tecum; hearings; delegation of authority to hearing examiners; commission review of hearing examiner's final decision; conciliation agreements; unlawful discriminatory practices generally, and appeal and enforcement of commission orders.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, eight, nine and eleven, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-2. Declaration of policy.

1 It is the public policy of the state of West Virginia to
2 provide all of its citizens equal opportunity for employ-
3 ment, equal access to places of public accommodations,
4 and equal opportunity in the sale, purchase, lease, rental
5 and financing of housing accommodations or real
6 property. Equal opportunity in the areas of employment
7 and public accommodations is hereby declared to be a
8 human right or civil right of all persons without regard
9 to race, religion, color, national origin, ancestry, sex,
10 age, blindness or handicap. Equal opportunity in
11 housing accommodations or real property is hereby
12 declared to be a human right or civil right of all persons
13 without regard to race, religion, color, national origin,
14 ancestry, sex, blindness, handicap, or familial status.

15 The denial of these rights to properly qualified
16 persons by reason of race, religion, color, national origin,
17 ancestry, sex, age, blindness, handicap, or familial
18 status is contrary to the principles of freedom and
19 equality of opportunity and is destructive to a free and
20 democratic society.

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term "person" means one or more individuals,
3 partnerships, associations, organizations, corporations,
4 labor organizations, cooperatives, legal representatives,
5 trustees, trustees in bankruptcy, receivers and other
6 organized groups of persons;

7 (b) The term "commission" means the West Virginia
8 human rights commission;

9 (c) The term "director" means the executive director
10 of the commission;

11 (d) The term "employer" means the state, or any
12 political subdivision thereof, and any person employing
13 twelve or more persons within the state: *Provided*, That
14 such terms shall not be taken, understood or construed
15 to include a private club;

16 (e) The term "employee" shall not include any individ-
17 ual employed by his parents, spouse or child, or in the

18 domestic service of any person;

19 (f) The term "labor organization" includes any
20 organization which exists for the purpose, in whole or
21 in part, for collective bargaining or for dealing with
22 employers concerning grievances, terms or conditions of
23 employment, or for other mutual aid or protection in
24 relation to employment;

25 (g) The term "employment agency" includes any
26 person undertaking with or without compensation to
27 procure, recruit, refer or place employees. A newspaper
28 engaged in the activity of advertising in the normal
29 course of its business shall not be deemed to be an
30 employment agency;

31 (h) The term "discriminate" or "discrimination"
32 means to exclude from, or fail or refuse to extend to,
33 a person equal opportunities because of race, religion,
34 color, national origin, ancestry, sex, age, blindness,
35 handicap, or familial status and includes to separate or
36 segregate;

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

40 (j) The term "place of public accommodations" means
41 any establishment or person, as defined herein, includ-
42 ing the state, or any political or civil subdivision thereof,
43 which offers its services, goods, facilities or accommo-
44 dations to the general public, but shall not include any
45 accommodations which are in their nature private;

46 (k) The term "housing accommodations" means any
47 building or portion thereof, which is used or intended
48 for use as the residence or sleeping place of one or more
49 persons. Nothing contained in this definition or this
50 article shall apply to the rental of a room or rooms in
51 a rooming house occupied by the owner as a place of
52 residence and containing no more than four rented
53 rooms, or rooms to be rented;

54 (l) The term "real property" includes real estate,
55 lands, leaseholds, commercial or industrial buildings
56 and any vacant land offered for sale or rent on which

57 the construction of a housing accommodation, commer-
58 cial or industrial building is intended, and any land
59 operated as a trailer camp or rented or leased for the
60 use, parking or storage of mobile homes or house
61 trailers;

62 (m) The term "real estate broker" includes any
63 person, firm or corporation who, for a fee, commission
64 or other valuable consideration, or by reason of a
65 promise or reasonable expectation thereof, lists for sale,
66 sells, exchanges, buys or rents, or offers or attempts to
67 negotiate a sale, exchange, purchase, or rental of real
68 estate or an interest therein, or collects or offers or
69 attempts to collect rent for the use of real estate or
70 solicits for a prospective purchaser or assists or directs
71 in the procuring of prospects or the negotiation or
72 closing of any transaction which does or is contemplated
73 to result in the sale, exchange, leasing, renting or
74 auctioning of any real estate or negotiates, offers or
75 attempts or agrees to negotiate a loan secured or to be
76 secured by mortgage or other encumbrance upon
77 transfer of any real estate for others, or any person who,
78 for pecuniary gain or expectation of pecuniary gain,
79 conducts a public or private competitive sale of lands or
80 any interest in lands. In the sale of lots, the term "real
81 estate broker" shall also include any person, partner-
82 ship, association or corporation employed by or on behalf
83 of the owner or owners of lots or other parcels of real
84 estate, at a stated salary, or upon a commission, or upon
85 a salary and commission, or otherwise to sell such real
86 estate, or any parts thereof, in lots or other parcels, and
87 who shall sell or exchange, or offer or attempt or agree
88 to negotiate the sale or exchange, of any such lot or
89 parcel of real estate. A newspaper engaged in the
90 activity of advertising in the normal course of its
91 business shall not be deemed to be a real estate broker;

92 (n) The term "real estate salesman" includes any
93 person who, for compensation, valuable consideration or
94 commission, or other thing of value, or by reason of a
95 promise or reasonable expectation thereof, is employed
96 by and operates under the supervision of a real estate
97 broker to sell, buy or offer to buy or negotiate the

98 purchase, sale or exchange of real estate, offers or
 99 attempts to negotiate a loan secured or to be secured by
 100 a mortgage or other encumbrance upon or transfer of
 101 real estate for others, or to collect rents for the use of
 102 real estate, or to solicit for prospective purchasers or
 103 lessees of real estate, or who is employed by a licensed
 104 real estate broker to sell or offer to sell lots or other
 105 parcels of real estate, at a stated salary, or upon a
 106 commission, or upon a salary and commission, or
 107 otherwise to sell real estate, or any parts thereof, in lots
 108 or other parcels;

109 (o) The term "purchaser" includes any occupant,
 110 prospective occupant, lessee, prospective lessee, renter,
 111 prospective renter, buyer or prospective buyer;

112 (p) The term "owner" shall include the owner, lessee,
 113 sublessee, assignee, manager, agents, or other person,
 114 firm or corporation having the right to sell, rent or lease
 115 any housing accommodation or real property within the
 116 state of West Virginia or any agent of any of these;

117 (q) The term "age" means the age of forty or above;

118 (r) The term "rooming house" means a house or
 119 building where there are one or more bedrooms which
 120 the proprietor can spare for the purpose of giving
 121 lodgings to such persons as he chooses to receive;

122 (s) For the purpose of this article, a person shall be
 123 considered to be blind only if his central visual acuity
 124 does not exceed twenty/two hundred in the better eye
 125 with correcting lenses, or if his visual acuity is greater
 126 than twenty/two hundred but is occasioned by a
 127 limitation in the fields of vision such that the widest
 128 diameter of the visual field subtends an angle no greater
 129 than twenty degrees;

130 (t) The term "handicap" means a person who:

131 (1) Has a mental or physical impairment which
 132 substantially limits one or more of such person's major
 133 life activities; the term "major life activities" includes
 134 functions such as caring for one's self, performing
 135 manual tasks, walking, seeing, hearing, speaking,
 136 breathing, learning, and working.

137 (2) Has a record of such impairment; or

138 (3) Is regarded as having such an impairment.

139 For the purposes of this article, this term does not
140 include persons whose current use of or addiction to
141 alcohol or drugs prevents such individual from perform-
142 ing the duties of the job in question or whose employ-
143 ment, by reason of such current alcohol or drug abuse,
144 would constitute a direct threat to property or the safety
145 of others.

146 (u) The term "familial status" means one or more
147 individuals (who have not attained the age of eighteen
148 years) being domiciled with:

149 (1) A parent or another person having legal custody
150 of such individual or individuals; or

151 (2) The designee of such parent or other person
152 having such custody, with the written permission of
153 such parent or other person. The protections afforded
154 against discrimination on the basis of familial status
155 shall apply to any person who is pregnant or is in the
156 process of securing legal custody of any individual who
157 has not attained the age of eighteen years. Nothing in
158 this definition restricts advertisements of dwellings
159 which are intended and operated for occupancy by older
160 persons and which constitute housing for older persons.

**§5-11-4. Human rights commission continued; status,
powers and objects.**

1 The West Virginia human rights commission, hereto-
2 fore created, is hereby continued. The commission shall
3 have the power and authority and shall perform the
4 functions and services as in this article prescribed and
5 as otherwise provided by law. The commission shall
6 encourage and endeavor to bring about mutual under-
7 standing and respect among all racial, religious and
8 ethnic groups within the state and shall strive to
9 eliminate all discrimination in employment and places
10 of public accommodations by virtue of race, religion,
11 color, national origin, ancestry, sex, age, blindness or
12 handicap and shall strive to eliminate all discrimination
13 in the sale, purchase, lease, rental or financing of

14 housing and other real property by virtue of race,
15 religion, color, national origin, ancestry, sex, blindness,
16 handicap, or familial status.

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

1 The commission is hereby authorized and empowered:

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

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

14 (c) To receive, investigate and pass upon complaints
15 alleging discrimination in employment or places of
16 public accommodations, because of race, religion, color,
17 national origin, ancestry, sex, age, blindness or han-
18 dicap, and complaints alleging discrimination in the
19 sale, purchase, lease, rental and financing of housing
20 accommodations or real property because of race,
21 religion, color, national origin, ancestry, sex, blindness,
22 handicap, or familial status, and to initiate its own
23 consideration of any situations, circumstances or
24 problems, including therein any racial, religious or
25 ethnic group tensions, prejudice, disorder or discrimina-
26 tion reported or existing within the state relating to
27 employment, places of public accommodations, housing
28 accommodations and real property;

29 (d) To hold and conduct public and private hearings
30 in the county where the respondent resides or transacts
31 business or where agreed to by the parties or where the
32 acts complained of occurred, on complaints, matters and
33 questions before the commission and, in connection
34 therewith, relating to discrimination in employment, or
35 places of public accommodations, housing accommoda-

36 tions or real property and during the investigation of
37 any formal complaint before the commission relating to
38 employment, places of public accommodations, housing
39 accommodations or real property to:

40 (1) Issue subpoenas and subpoenas duces tecum upon
41 the approval of the executive director or the chairperson
42 of the commission; administer oaths; take the testimony
43 of any person under oath; and make reimbursement for
44 travel and other reasonable and necessary expenses in
45 connection with such attendance;

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

49 (3) Delegate to a hearing examiner who shall be an
50 attorney, duly licensed to practice law in West Virginia,
51 the power and authority to hold and conduct hearings,
52 as herein provided, to determine all questions of fact and
53 law presented during the hearing and to render a final
54 decision on the merits of the complaint, subject to the
55 review of the commission as hereinafter set forth.

56 Any respondent or complainant who shall feel ag-
57 grieved at any final action of a hearing examiner shall
58 file a written notice of appeal with the commission by
59 serving such notice on the executive director and upon
60 all other parties within thirty days after receipt of the
61 hearing examiner's decision. The commission shall limit
62 its review upon such appeals to whether the hearing
63 examiner's decision is:

64 (a) In conformity with the constitution and the laws
65 of the state and the United States;

66 (b) Within the commission's statutory jurisdiction or
67 authority;

68 (c) Made in accordance with procedures required by
69 law or established by appropriate rules or regulations
70 of the commission;

71 (d) Supported by substantial evidence on the whole
72 record; or

73 (e) Not arbitrary, capricious or characterized by

74 abuse of discretion or clearly unwarranted exercise of
75 discretion.

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

78 Each conciliation agreement shall include provisions
79 requiring the respondent to refrain from the commission
80 of unlawful discriminatory practices in the future and
81 shall contain such further provisions as may be agreed
82 upon by the commission and the respondent.

83 If the respondent and the commission agree upon
84 conciliation terms, the commission shall serve upon the
85 complainant a copy of the proposed conciliation agree-
86 ment. If the complainant agrees to the terms of the
87 agreement or fails to object to such terms within fifteen
88 days after its service upon him, the commission shall
89 issue an order embodying such conciliation agreement.
90 If the complainant objects to the agreement, he shall
91 serve a specification of his objections upon the commis-
92 sion within such period. Unless such objections are met
93 or withdrawn within ten days after service thereof, the
94 commission shall notice the complaint for hearing.

95 Notwithstanding any other provisions of this section,
96 the commission may, where it finds the terms of
97 conciliation agreement to be in the public interest,
98 execute such agreement, and limit the hearing to the
99 objections of the complainant.

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

103 Not later than one year from the date of a conciliation
104 agreement, the commission shall investigate whether
105 the respondent is complying with the terms of such
106 agreement. Upon a finding of noncompliance, the
107 commission shall take appropriate action to assure
108 compliance;

109 (5) To apply to the circuit court of the county where
110 the respondent resides or transacts business for enforce-
111 ment of any conciliation agreement or consent order by
112 seeking specific performance of such agreement or

113 consent order;

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

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

122 (e) To recommend to the governor and Legislature
123 policies, procedures, practices and legislation in matters
124 and questions affecting human rights;

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

129 (g) To prepare a written report on its work, functions
130 and services for each year ending on the thirtieth day
131 of June and to deliver copies thereof to the governor on
132 or before the first day of December next thereafter;

133 (h) To do all other acts and deeds necessary and
134 proper to carry out and accomplish effectively the
135 objects, functions and services contemplated by the
136 provisions of this article, including the promulgation of
137 legislative rules in accordance with the provisions of
138 article three, chapter twenty-nine-a of this code,
139 implementing the powers and authority hereby vested
140 in the commission;

141 (i) To create such advisory agencies and conciliation
142 councils, local, regional or statewide, as in its judgment
143 will aid in effectuating the purposes of this article, to
144 study the problems of discrimination in all or specific
145 fields or instances of discrimination because of race,
146 religion, color, national origin, ancestry, sex, age,
147 blindness, handicap, or familial status; to foster, through
148 community effort or otherwise, goodwill, cooperation
149 and conciliation among the groups and elements of the
150 population of this state, and to make recommendations
151 to the commission for the development of policies and

152 procedures, and for programs of formal and informal
 153 education, which the commission may recommend to the
 154 appropriate state agency. Such advisory agencies and
 155 conciliation councils shall be composed of representative
 156 citizens serving without pay. The commission may itself
 157 make the studies and perform the acts authorized by
 158 this subdivision. It may, by voluntary conferences with
 159 parties in interest, endeavor by conciliation and persua-
 160 sion to eliminate discrimination in all the stated fields
 161 and to foster goodwill and cooperation among all
 162 elements of the population of the state;

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

168 (k) To issue such publications and such results of
 169 investigation and research as in its judgment will tend
 170 to promote goodwill and minimize or eliminate discrim-
 171 ination: *Provided*, That the identity of the parties
 172 involved shall not be disclosed.

§5-11-9. Unlawful discriminatory practices.

1 (a) It shall be an unlawful discriminatory practice,
 2 unless based upon a bona fide occupational qualification,
 3 or except where based upon applicable security regula-
 4 tions established by the United States or the state of
 5 West Virginia or its agencies or political subdivisions:

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

17 (2) For any employer, employment agency or labor

18 organization, prior to the employment or admission to
19 membership, to (A) elicit any information or make or
20 keep a record of or use any form of application or
21 application blank containing questions or entries
22 concerning the race, religion, color, national origin,
23 ancestry, sex or age of any applicant for employment or
24 membership; (B) print or publish or cause to be printed
25 or published any notice or advertisement relating to
26 employment or membership indicating any preference,
27 limitation, specifications or discrimination based upon
28 race, religion, color, national origin, ancestry, sex or
29 age; or (C) deny or limit, through a quota system,
30 employment or membership because of race, religion,
31 color, national origin, ancestry, sex, age, blindness or
32 handicap;

33 (3) For any labor organization because of race,
34 religion, color, national origin, ancestry, sex, age,
35 blindness or handicap of any individual to deny full and
36 equal membership rights to any individual or otherwise
37 to discriminate against such individual with respect to
38 hire, tenure, terms, conditions or privileges of employ-
39 ment or any other matter, directly or indirectly, related
40 to employment;

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

44 (A) Select individuals for an apprentice training
45 program registered with the state of West Virginia on
46 any basis other than their qualifications as determined
47 by objective criteria which permit review;

48 (B) Discriminate against any individual with respect
49 to his right to be admitted to or participate in a
50 guidance program, an apprenticeship training program,
51 on-the-job training program, or other occupational
52 training or retraining program;

53 (C) Discriminate against any individual in his pursuit
54 of such programs or to discriminate against such a
55 person in the terms, conditions or privileges of such
56 programs;

57 (D) Print or circulate or cause to be printed or
58 circulated any statement, advertisement or publication,
59 or to use any form of application for such programs or
60 to make any inquiry in connection with such program
61 which expresses, directly or indirectly, discrimination
62 or any intent to discriminate, unless based upon a bona
63 fide occupational qualification;

64 (5) For any employment agency to fail or refuse to
65 classify properly, refer for employment or otherwise to
66 discriminate against any individual because of his race,
67 religion, color, national origin, ancestry, sex, age,
68 blindness or handicap;

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

72 (A) Refuse, withhold from or deny to any individual
73 because of his race, religion, color, national origin,
74 ancestry, sex, age, blindness or handicap, either directly
75 or indirectly, any of the accommodations, advantages,
76 facilities, privileges or services of such place of public
77 accommodations;

78 (B) Publish, circulate, issue, display, post or mail,
79 either directly or indirectly, any written or printed
80 communication, notice or advertisement to the effect
81 that any of the accommodations, advantages, facilities,
82 privileges or services of any such place shall be refused,
83 withheld from or denied to any individual on account of
84 race, religion, color, national origin, ancestry, sex, age,
85 blindness or handicap, or that the patronage or custom
86 thereat of any individual, belonging to or purporting to
87 be of any particular race, religion, color, national origin,
88 ancestry, sex or age or who is blind or handicapped, is
89 unwelcome, objectionable, not acceptable, undesired or
90 not solicited;

91 (7) For the owner, lessee, sublessee, assignee or
92 managing agent of, or other person having the right of
93 ownership or possession of or the right to sell, rent,
94 lease, assign or sublease any housing accommodations or
95 real property or part or portion thereof, or any agent,
96 or employee of any of them; or for any real estate broker,

97 real estate salesman, or employee or agent thereof:

98 (A) To refuse to sell, rent, lease, assign or sublease or
99 otherwise to deny to or withhold from any person or
100 group of persons any housing accommodations or real
101 property, or part or portion thereof, because of race,
102 religion, color, national origin, ancestry, sex, blindness,
103 handicap or familial status of such person or group of
104 persons: *Provided*, That this provision shall not require
105 any person named herein to rent, lease, assign or
106 sublease any housing accommodations or real property,
107 or any portion thereof to both sexes where the facilities
108 of such housing accommodations or real property, or any
109 portion thereof, are suitable for only one sex;

110 (B) To discriminate against any person or group of
111 persons because of the race, religion, color, national
112 origin, ancestry, sex, blindness, handicap, or familial
113 status of such person or group of persons in the terms,
114 conditions or privileges of the sale, rental or lease of any
115 housing accommodations or real property, or part or
116 portion thereof, or in the furnishing of facilities or
117 services in connection therewith;

118 (C) To print, publish, circulate, issue, display, post or
119 mail, or cause to be printed, published, circulated,
120 issued, displayed, posted or mailed any statement,
121 advertisement, publication, or sign or to use any form
122 of application for the purchase, rental, lease, assignment
123 or sublease of any housing accommodations or real
124 property, or part or portion thereof, or to make any
125 record or inquiry in connection with the prospective
126 purchase, rental, lease, assignment or sublease of any
127 housing accommodations or real property or part or
128 portion thereof, which expresses, directly or indirectly,
129 any discrimination as to race, religion, color, national
130 origin, ancestry, sex, blindness, handicap, or familial
131 status or any intent to make any such discrimination
132 and the production of any statement, advertisement,
133 publicity, sign, form of application, record or inquiry
134 purporting to be made by any such person shall be
135 prima facie evidence in any action that the same was
136 authorized by such person: *Provided*, That with respect
137 to sex discrimination, this provision shall not apply to

138 any person named herein whose housing accommoda-
 139 tions or real property, or any portion thereof, have
 140 facilities which are suitable for only one sex;

141 (8) For any person or financial institution or lender
 142 to whom application is made for financial assistance for
 143 the purchase, acquisition, construction, rehabilitation,
 144 repair or maintenance of any housing accommodations
 145 or real property, or part or portion thereof, or any agent
 146 or employee thereof to:

147 (A) Discriminate against any person or group of
 148 persons because of race, religion, color, national origin,
 149 ancestry, sex, blindness, handicap, or familial status of
 150 such person or group of persons or of the prospective
 151 occupants or tenants of such housing accommodations or
 152 real property, or part or portion thereof, in the granting,
 153 withholding, extending, modifying or renewing, or in
 154 the fixing of the rates, terms, conditions or provisions
 155 of any such financial assistance or in the extension of
 156 services in connection therewith;

157 (B) Use any form of application for such financial
 158 assistance or to make any record of inquiry in connec-
 159 tion with applications for such financial assistance
 160 which expresses, directly or indirectly, any discrimina-
 161 tion as to race, religion, color, national origin, ancestry,
 162 sex, blindness, handicap, or familial status or any intent
 163 to make any such discrimination;

164 (9) For any person, employer, employment agency,
 165 labor organization, owner, real estate broker, real estate
 166 salesman or financial institution to:

167 (A) Engage in any form of threats or reprisal, or to
 168 engage in, or hire, or conspire with others to commit
 169 acts or activities of any nature, the purpose of which is
 170 to harass, degrade, embarrass, or cause physical harm
 171 or economic loss or to aid, abet, incite, compel or coerce
 172 any person to engage in any of the unlawful discrimi-
 173 natory practices defined in this section;

174 (B) Willfully obstruct or prevent any person from
 175 complying with the provisions of this article, or to resist,
 176 prevent, impede or interfere with the commission or any

177 of its members or representatives in the performance of
178 duty under this article;

179 (C) Engage in any form of reprisal or otherwise
180 discriminate against any person because he has opposed
181 any practices or acts forbidden under this article or
182 because he has filed a complaint, testified or assisted in
183 any proceeding under this article;

184 (D) Induce or attempt to induce for profit any person
185 to sell or rent or to not sell or rent any housing
186 accommodations or real property by representations
187 regarding the entry or prospective entry into the
188 neighborhood of a person or persons who are blind or
189 handicapped or who are of a particular race, religion,
190 color, national origin, ancestry or sex, or a person or
191 persons against whom discrimination on the basis of
192 familial status is prohibited by this article: *Provided*,
193 That for the purposes of this article it shall not be an
194 unlawful discriminatory practice for any person,
195 employer or owner to refuse to make any unreasonable
196 capital expenditure to accommodate the physical or
197 mental impairment of any handicapped person.

198 (b) Solely for purposes of familial status, nothing in
199 subdivision (7) of subsection (a) (other than subsection
200 (c)) of this section shall apply to:

201 (1) Any single-family house sold or rented by an
202 owner: *Provided*, That such private individual owner
203 does not own more than three such single-family houses
204 at any one time: *Provided, however*, That in the case of
205 the sale of any such single-family house by a private
206 individual owner not residing in such house at the time
207 of such sale or who was not the most recent resident of
208 such house prior to such sale, the exemption granted by
209 this subsection shall apply only with respect to one such
210 sale within any twenty-four month period: *Provided*
211 *further*, That such bona fide private individual owner
212 does not own any interest in, nor is there owned or
213 reserved on his behalf, under any express or voluntary
214 agreement, title to or any right to all or a portion of the
215 proceeds from the sale or rental of, more than three such
216 single-family houses at any one time: *And provided*

217 *further*, That the sale or rental of any such single-family
 218 house shall be excepted from the application of this
 219 subchapter only if such house is sold or rented
 220 (A) without the use in any manner of the sales or rental
 221 facilities or the sales or rental services of any real estate
 222 broker, agent, or salesman, or of such facilities or
 223 services of any person in the business of selling or
 224 renting dwellings, or of any employee or agent of any
 225 such broker, agent, salesman, or person and (B) without
 226 the publication, posting or mailing, after notice of any
 227 advertisement or written notice in violation of para-
 228 graph (C), subdivision (7), subsection (a) of this section;
 229 but nothing in this proviso shall prohibit the use of
 230 attorneys, escrow agents, abstractors, title companies,
 231 and other such professional assistance as necessary to
 232 perfect or transfer the title, or

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

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

241 (1) He has, within the preceding twelve months,
 242 participated as principal in three or more transactions
 243 involving the sale or rental of any dwelling or any
 244 interest therein, or

245 (2) He has, within the preceding twelve months,
 246 participated as agent, other than in the sale of his own
 247 personal residence in providing sales or rental facilities
 248 or sales or rental services in two or more transactions
 249 involving the sale or rental of any dwelling or any
 250 interest therein, or

251 (3) He is the owner of any dwelling designed or
 252 intended for occupancy by, or occupied by, five or more
 253 families.

254 (d) (1) Nothing in this article limits the applicability
 255 of any reasonable local, state, or federal restrictions

256 regarding the maximum number of occupants permit-
257 ted to occupy a dwelling. Nor does any provision in this
258 article regarding familial status apply with respect to
259 housing for older persons.

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

262 (A) provided under any state or federal program that
263 is specifically designed and operated to assist elderly
264 persons (as defined in the state or federal program); or

265 (B) intended for, and solely occupied by, persons
266 sixty-two years of age or older; or

267 (C) intended and operated for occupancy by at least
268 one person fifty-five years of age or older per unit. In
269 determining whether housing qualifies as housing for
270 older persons under this subsection, the commission
271 shall develop regulations which require at least the
272 following factors:

273 (i) the existence of significant facilities and services
274 specifically designed to meet the physical or social needs
275 of older persons, or if the provision of such facilities and
276 services is not practicable, that such housing is neces-
277 sary to provide important housing opportunities for
278 older persons; and

279 (ii) that at least eighty percent of the units are
280 occupied by at least one person fifty-five years of age
281 or older per unit; and

282 (iii) the publication of, and adherence to, policies and
283 procedures which demonstrate an intent by the owner
284 or manager to provide housing for persons fifty-five
285 years of age or older.

286 (3) Housing shall not fail to meet the requirements for
287 housing for older persons by reason of:

288 (A) persons residing in such housing as of the first
289 day of July, one thousand nine hundred eighty-nine, who
290 do not meet the age requirements of paragraphs (B) or
291 (C), subdivision (2) of this subsection: *Provided*, That
292 new occupants of such housing meet the age require-
293 ments of paragraph (B) or (C), subdivision (2) of this

294 subsection; or

295 (B) unoccupied units: *Provided*, That such units are
296 reserved for occupancy by persons who meet the age
297 requirements of paragraphs (B) or (C), subdivision
298 (2) of this subsection.

§5-11-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an
2 application for review may be prosecuted by either
3 party to the supreme court of appeals within thirty days
4 from the receipt thereof by the filing of a petition
5 therefor to such court against the commission and the
6 adverse party as respondents, and the clerk of such
7 court shall notify each of the respondents and the
8 commission of the filing of such petition. The commis-
9 sion shall, within ten days after receipt of such notice,
10 file with the clerk of the court the record of the
11 proceedings had before it, including all the evidence.
12 The court or any judge thereof in vacation may
13 thereupon determine whether or not a review shall be
14 granted. And if granted to a nonresident of this state,
15 he shall be required to execute and file with the clerk
16 before such order or review shall become effective, a
17 bond, with security to be approved by the clerk,
18 conditioned to perform any judgment which may be
19 awarded against him thereon. The commission may
20 certify to the court and request its decision of any
21 question of law arising upon the record, and withhold
22 its further proceeding in the case, pending the decision
23 of court on the certified question, or until notice that the
24 court has declined to docket the same. If a review be
25 granted or the certified question be docketed for
26 hearing, the clerk shall notify the board and the parties
27 litigant or their attorneys and the commission of the fact
28 by mail. If a review be granted or the certified question
29 docketed, the case shall be heard by the court in the
30 manner provided for other cases: *Provided*, That in the
31 following cases the appellant may prosecute the appeal
32 in the circuit court of Kanawha County pursuant to
33 section four, article five, chapter twenty-nine-a of this
34 code: (1) cases in which the commission awards dam-
35 ages other than back pay exceeding five thousand

36 dollars; (2) cases in which the commission awards back
37 pay exceeding thirty thousand dollars; and (3) cases in
38 which the parties agree that the appeal should be
39 prosecuted in circuit court. In such cases the appellee
40 shall respond within thirty days of filing and the court
41 shall make a determination within the following thirty
42 days: *Provided further*, That appeals filed erroneously in
43 the circuit court after the first day of April, one
44 thousand nine hundred eighty-seven, and prior to the
45 first day of July, one thousand nine hundred eighty-nine,
46 may be prosecuted in the supreme court of appeals
47 without regard to the time limits specified herein:
48 *Provided, however*, That any party adversely affected by
49 the final judgment of the circuit court of Kanawha
50 County may seek review thereof by appeal to the
51 supreme court of appeals pursuant to section one, article
52 six, chapter twenty-nine-a of this code filed within thirty
53 days of entry of the final order of the circuit court.

54 The appeal procedure contained in this subsection
55 shall be the exclusive means of review, notwithstanding
56 the provisions of chapter twenty-nine-a of this code:
57 *Provided*, That such exclusive means of review shall not
58 apply to any case wherein an appeal or a petition for
59 enforcement of a cease and desist order has been filed
60 with a circuit court of this state prior to the first day
61 of April, one thousand nine hundred eighty-seven.

62 (b) In the event that any person shall fail to obey a
63 final order of the commission within thirty days after
64 receipt of the same, or, if applicable, within thirty days
65 after a final order of the circuit court or the supreme
66 court of appeals, a party or the commission may seek
67 an order from the circuit court for its enforcement. Such
68 proceedings shall be initiated by filing of a petition in
69 said court, and served upon the respondent in the
70 manner provided by law for the service of summons in
71 civil actions; a hearing shall be held on such petition
72 within sixty days of the date of service. The court may
73 grant appropriate temporary relief, and shall make and
74 enter upon the pleadings, testimony and proceedings
75 such order as is necessary to enforce the order of the
76 commission or supreme court of appeals.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederic L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

Sam C. Mullis
Clerk of the Senate

Donald L. Vogg
Clerk of the House of Delegates

Sam P. Funchess
President of the Senate

Boyd R. Stall
Speaker of the House of Delegates

The within *is approved* this the *26th*
day of *April*, 1989.
Easton Caperton
Governor

PRESENTED TO THE
GOVERNOR

Date 4/21/89

Time 2:47 *g/c*