WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

Com. Sub. for

HOUSE BILL No. 2516

(By Mr. Speaker of the House)

[By Request of the Executive]

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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; subpoenas and subpoenas 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.
It is the public policy of the state of West Virginia to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness or handicap. Equal opportunity in housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness, handicap, or familial status. The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, or familial status is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

§5-11-3. Definitions.

When used in this article:

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

(b) The term “commission” means the West Virginia human rights commission;

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

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

(e) The term “employee” shall not include any individual employed by his parents, spouse or child, or in the
domestic service of any person;

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

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

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

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

(j) The term “place of public accommodations” means any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but shall not include any accommodations which are in their nature private;

(k) The term “housing accommodations” means any building or portion thereof, which is used or intended for use as the residence or sleeping place of one or more persons. Nothing contained in this definition or this article 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;

(l) The term “real property” includes real estate, lands, leaseholds, commercial or industrial buildings and any vacant land offered for sale or rent on which
the construction of a housing accommodation, commercial or industrial building is intended, and any land operated as a trailer camp or rented or leased for the use, parking or storage of mobile homes or house trailers;

(m) The term “real estate broker” includes any person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for a prospective purchaser or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate or negotiates, offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term “real estate broker” shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker;

(n) The term “real estate salesman” includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a real estate broker to sell, buy or offer to buy or negotiate the
purchase, sale or exchange of real estate, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels;

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

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

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

(r) 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 such persons as he chooses to receive;

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

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

(1) Has a mental or physical impairment which substantially limits one or more of such person's major life activities; the term "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
(2) Has a record of such impairment; or
(3) Is regarded as having such an impairment.

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

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

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

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

The West Virginia human rights commission, herefore created, is hereby continued. The commission shall have the power and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of
housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, blindness, 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 local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If the respondent and the commission agree upon conciliation terms, the commission shall serve upon the complainant a copy of the proposed conciliation agreement. If the complainant agrees to the terms of the agreement or fails to object to such terms within fifteen days after its service upon him, the commission shall issue an order embodying such conciliation agreement.

If the complainant objects to the agreement, he shall serve a specification of his objections upon the commission within such period. Unless such objections are met or withdrawn within ten days after service thereof, the commission shall notice the complaint for hearing.

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

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

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

(5) To apply to the circuit court of the county where the respondent resides or transacts business for enforcement of any conciliation agreement or consent order by seeking specific performance of such agreement or
(6) To issue cease and desist orders against any person found, after a public hearing, to have violated the provisions of this article or the rules and regulations of the commission;

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

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

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

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

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

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

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

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


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

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

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

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

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

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

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

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

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

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

(C) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication, or sign or to use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodations or real property, or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment or sublease of any housing accommodations or real property or part or portion thereof, which expresses, directly or indirectly, any discrimination as to race, religion, color, national origin, ancestry, sex, blindness, handicap, or familial status or any intent to make any such discrimination and the production of any statement, advertisement, publicity, sign, form of application, record or inquiry purporting to be made by any such person shall be prima facie evidence in any action that the same was authorized by such person: Provided, That with respect to sex discrimination, this provision shall not apply to
For any person named herein whose housing accommodations or real property, or any portion thereof, have facilities which are suitable for only one sex;

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

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

(B) Use any form of application for such financial assistance or to make any record of inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any discrimination as to race, religion, color, national origin, ancestry, sex, blindness, handicap, or familial status or any intent to make any such discrimination;

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

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

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

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

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

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 twenty-four 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 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 subchapter 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 paragraph (C), subdivision (7), subsection (a) of this section; 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.

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

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

(2) He has, within the preceding twelve months, participated as agent, other than in the sale of his 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 interest therein, or

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

(d) (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 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 sixty-two years of age or older; or

(C) intended and operated for occupancy by at least one person fifty-five 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; and

(ii) that at least eighty percent of the units are occupied by at least one person fifty-five 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 fifty-five 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 first day of July, one thousand nine hundred eighty-nine, who do not meet the age requirements of paragraphs (B) or (C), subdivision (2) of this subsection: Provided, That

new occupants of such housing meet the age requirements of paragraph (B) or (C), subdivision (2) of this
subsection; or

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

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

(a) From any final order of the commission, an application for review may be prosecuted by either party to the supreme court of appeals within thirty days from the receipt thereof by the filing of a petition therefor to such court against the commission and the adverse party as respondents, and the clerk of such court shall notify each of the respondents and the commission of the filing of such petition. The commission shall, within ten days after receipt of such notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. And if granted to a nonresident of this state, he shall be required to execute and file with the clerk before such order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him thereon. The commission may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review be granted or the certified question be docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the commission of the fact by mail. If a review be granted or the certified question docketed, the case shall be heard by the court in the manner provided for other cases: *Provided, That* in the following cases the appellant may prosecute the appeal in the circuit court of Kanawha County pursuant to section four, article five, chapter twenty-nine-a of this code: (1) cases in which the commission awards damages other than back pay exceeding five thousand
dollars; (2) cases in which the commission awards back pay exceeding thirty thousand dollars; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. In such cases the appellee shall respond within thirty days of filing and the court shall make a determination within the following thirty days: \textit{Provided further}, That appeals filed erroneously in the circuit court after the first day of April, one thousand nine hundred eighty-seven, and prior to the first day of July, one thousand nine hundred eighty-nine, may be prosecuted in the supreme court of appeals without regard to the time limits specified herein: \textit{Provided, however}, That any party adversely affected by the final judgment of the circuit court of Kanawha County may seek review thereof by appeal to the supreme court of appeals pursuant to section one, article six, chapter twenty-nine-a of this code filed within thirty days of entry of the final order of the circuit court.

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

(b) In the event that any person shall fail to obey a final order of the commission within thirty days after receipt of the same, or, if applicable, within thirty days after a final order of the circuit court or the supreme court of appeals, a party or the commission may seek an order from the circuit court for its enforcement. Such proceedings shall be initiated by filing of a petition in said court, and served upon the respondent in the manner provided by law for the service of summons in civil actions; a hearing shall be held on such petition within sixty days of the date of service. The court may grant appropriate temporary relief, and shall make and enter upon the pleadings, testimony and proceedings such order as is necessary to enforce the order of the commission or supreme court of appeals.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 26th day of April, 1989.

[Signature]
Governor