

RECEIVED
1992 MAR 12 11:03 AM
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

ENROLLED

Committee Substitute for
SENATE BILL NO. 162

(By Senators Burdette (and President)
and Boley, By Request of the EXECUTIVE)

PASSED March 5 1992
In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 162

(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,

BY REQUEST OF THE EXECUTIVE)

[Passed March 5, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact sections three and nine, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article eleven-a, all relating to enactment of a state analog to the federal fair housing act to ensure continued funding from the federal government and primary enforcement authority at the state rather than federal level; definitions; unlawful discriminatory practices; prohibiting discrimination in housing based on race, color, religion, sex, blindness, handicap, familial status, ancestry or national origin; prohibiting discrimination in residential real estate transactions; prohibiting discrimination in brokerage services; exempting certain religious organizations and private clubs; providing for the administration of the West Virginia fair housing act by the human rights commission; providing for administrative and civil enforcement of the anti-discrimination provisions; providing for subpoena and investigative authority to

the human rights commission; enforcement of subpoenas; election of remedies; administrative hearings; enforcement by private persons through civil actions; protection of bona fide purchasers; intervention and enforcement by attorney general in civil cases; enforcement by civil action against interference, coercion or intimidation; cooperation with local agencies; effect on state laws; and rules to implement the West Virginia fair housing act.

Be it enacted by the Legislature of West Virginia:

That sections three and nine, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article eleven-a, all to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-3. Definitions.

- 1 When used in this article:
- 2 (a) The term "person" means one or more individ-
3 uals, partnerships, associations, organizations, corpora-
4 tions, labor organizations, cooperatives, legal represen-
5 tatives, trustees, trustees in bankruptcy, receivers and
6 other 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 direc-
10 tor of the commission;
- 11 (d) The term "employer" means the state, or any
12 political subdivision thereof, and any person employ-
13 ing twelve or more persons within the state: *Provided,*
14 That such terms shall not be taken, understood or
15 construed to include a private club;
- 16 (e) The term "employee" shall not include any
17 individual employed by his parents, spouse or child, or
18 in the 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
23 of employment, or for other mutual aid or protection
24 in 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 newspa-
28 per engaged in the activity of advertising in the
29 normal course of its business shall not be deemed to be
30 an 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
39 of this article;

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

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

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

56 (m) The term "handicap" means a person who:

57 (1) Has a mental or physical impairment which

58 substantially limits one or more of such person's
59 major life activities; the term "major life activities"
60 includes functions such as caring for one's self,
61 performing manual tasks, walking, seeing, hearing,
62 speaking, breathing, learning and working;

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

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

65 For the purposes of this article, this term does not
66 include persons whose current use of or addiction to
67 alcohol or drugs prevents such individual from per-
68 forming the duties of the job in question or whose
69 employment, by reason of such current alcohol or
70 drug abuse, would constitute a direct threat to prop-
71 erty or the safety of others.

§5-11-9. Unlawful discriminatory practices.

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

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

18 (2) For any employer, employment agency or labor
19 organization, prior to the employment or admission to
20 membership, to: (A) Elicit any information or make or
21 keep a record of or use any form of application or
22 application blank containing questions or entries
23 concerning the race, religion, color, national origin,
24 ancestry, sex or age of any applicant for employment

25 or membership; (B) print or publish or cause to be
26 printed or published any notice or advertisement
27 relating to employment or membership indicating any
28 preference, limitation, specifications or discrimination
29 based upon race, religion, color, national origin,
30 ancestry, sex or age; or (C) deny or limit, through a
31 quota system, employment or membership because of
32 race, religion, color, national origin, ancestry, sex, age,
33 blindness or handicap;

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

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

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

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

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

58 (D) Print or circulate or cause to be printed or
59 circulated any statement, advertisement or publica-
60 tion, or to use any form of application for such
61 programs or to make any inquiry in connection with
62 such program which expresses, directly or indirectly,
63 discrimination or any intent to discriminate unless

64 based upon a bona fide occupational qualification;

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

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

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

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

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

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

102 (B) Willfully obstruct or prevent any person from

103 complying with the provisions of this article, or to
104 resist, prevent, impede or interfere with the commis-
105 sion or any of its members or representatives in the
106 performance of duty under this article; or

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

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-1. Short title.

1 This article may be cited as the “West Virginia Fair
2 Housing Act”.

§5-11A-2. Declaration of policy.

1 It is the policy of the state of West Virginia to
2 provide, within constitutional limitations, for fair
3 housing throughout the state.

§5-11A-3. Definitions.

1 As used in this article:

2 (a) “Commission” means the West Virginia human
3 rights commission;

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

11 (c) “Family” includes a single individual;

12 (d) “Person” includes one or more individuals,
13 corporations, partnerships, associations, labor organiza-
14 tions, legal representatives, mutual companies, joint-
15 stock companies, trusts, unincorporated organizations,
16 trustees, trustees in cases under Title 11 of the United
17 States Code, receivers and fiduciaries;

18 (e) “To rent” includes to lease, to sublease, to let and

19 otherwise to grant for a consideration the right to
20 occupy premises not owned by the occupant;

21 (f) "Discriminatory housing practice" means an act
22 that is unlawful under section five, six, seven or
23 nineteen of this article;

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

25 (1) A physical or mental impairment which substan-
26 tially limits one or more of such person's major life
27 activities;

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

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

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

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

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

39 (i) "Complainant" means the person, including the
40 commission, who files a complaint under section
41 eleven of this article;

42 (j) "Familial status" means:

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

45 (A) A parent or another person having legal custody
46 of such individual or individuals; or

47 (B) The designee of such parent or other person
48 having such custody with the written permission of
49 such parent or other person; or

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

53 (k) "Conciliation" means the attempted resolution of

54 issues raised by a complaint or by the investigation of
55 such complaint through informal negotiations involv-
56 ing the aggrieved person, the respondent and the
57 commission;

58 (l) "Conciliation agreement" means a written agree-
59 ment setting forth the resolution of the issues in
60 conciliation;

61 (m) "Respondent" means:

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

64 (2) Any other person or entity identified in the
65 course of investigation and notified as required with
66 respect to respondents so identified under subsection
67 (a), section eleven of this article; and

68 (n) The term "rooming house" means a house or
69 building where there are one or more bedrooms which
70 the proprietor can spare for the purpose of giving
71 lodgings to such persons as he chooses to receive.

§5-11A-4. Application of article.

1 (a) The prohibitions against discrimination in the
2 sale or rental of housing set forth in section five of this
3 article shall apply to all dwellings except as hereinaf-
4 ter exempted. Nothing in section five of this article, ^{MK'DEH.}
5 other than subsection (b) of this section, shall apply to _{said}
6 the rental of a room or rooms in a rooming house
7 occupied by the owner as a place of residence and
8 containing no more than four rented rooms or rooms
9 to be rented. Solely for the purposes of familial status,
10 nothing in section five shall apply to:

11 (1) Any single-family house sold or rented by an
12 owner: *Provided*, That such private individual owner
13 does not own more than three such single-family
14 houses at any one time: *Provided, however*, That in
15 the case of the sale of any such single-family house by
16 a private individual owner not residing in such house
17 at the time of such sale or who was not the most
18 recent resident of such house prior to such sale, the
19 exemption granted by this subsection shall apply only

20 with respect to one such sale within any twenty-four
21 month period: *Provided further*, That such bona fide
22 private individual owner does not own any interest in,
23 nor is there owned or reserved on his behalf under
24 any express or voluntary agreement, title to or any
25 right to all or a portion of the proceeds from the sale
26 or rental of more than three such single-family houses
27 at any one time: *And provided further*, That the sale
28 or rental of any such single-family house shall be
29 excepted from the application of this article only if
30 such house is sold or rented:

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

38 (B) Without the publication, posting or mailing, after
39 notice, of any advertisement or written notice in
40 violation of ~~subsection (c), section five of this article;~~
41 but nothing in this proviso shall prohibit the use of
42 attorneys, escrow agents, abstractors, title companies
43 and other such professional assistance as necessary to
44 perfect or transfer the title; or

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

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

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

57 (2) He has within the preceding twelve months
58 participated as agent, other than in the sale of his own

DEH.
division

59 personal residence, in providing sales or rental facili-
60 ties or sales or rental services in two or more transac-
61 tions involving the sale or rental of any dwelling or
62 any interest therein; or

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

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

1 As made applicable by section four of this article and
2 except as exempted by sections four and eight of this
3 article, it shall be unlawful:

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

10 (b) To discriminate against any person in the terms,
11 conditions or privileges of sale or rental of a dwelling,
12 or in the provision of services or facilities in connec-
13 tion therewith, because of race, color, religion, ances-
14 try, sex, familial status, blindness, handicap or national
15 origin;

16 (c) To make, print or publish, or cause to be made,
17 printed or published any notice, statement or adver-
18 tisement, with respect to the sale or rental of a
19 dwelling that indicates any preference, limitation or
20 discrimination based on race, color, religion, sex,
21 blindness, handicap, familial status, ancestry or
22 national origin, or an intention to make any such
23 preference, limitation or discrimination;

24 (d) To represent to any person because of race, color,
25 religion, sex, blindness, handicap, familial status,
26 ancestry or national origin that any dwelling is not
27 available for inspection, sale or rental when such
28 dwelling is in fact so available;

29 (e) For profit, to induce or attempt to induce any

30 person to sell or rent any dwelling by representations
31 regarding the entry or prospective entry into the
32 neighborhood of a person or persons of a particular
33 race, color, religion, sex, blindness, handicap, familial
34 status, ancestry or national origin; or

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

42 (2) To discriminate against any person in the terms,
43 conditions or privileges of sale or rental of a dwelling,
44 or in the provision of services or facilities in connec-
45 tion with such dwelling, because of a handicap of: (A)
46 That person; (B) a person residing in or intending to
47 reside in that dwelling after it is so sold, rented or
48 made available; or (C) any person associated with that
49 person.

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

52 (A) A refusal to permit, at the expense of the
53 handicapped person, reasonable modifications of
54 existing premises occupied or to be occupied by such
55 person if such modifications may be necessary to
56 afford such person full enjoyment of the premises,
57 except that, in the case of a rental, the landlord may
58 where it is reasonable to do so condition permission
59 for a modification on the renter agreeing to restore the
60 interior of the premises to the condition that existed
61 before the modification, reasonable wear and tear
62 excepted;

63 (B) A refusal to make reasonable accommodations in
64 rules, policies, practices or services when such accom-
65 modations may be necessary to afford such person
66 equal opportunity to use and enjoy a dwelling; or

67 (C) In connection with the design and construction
68 of covered multifamily dwellings for first occupancy

69 after the date that is thirty months after the date of
70 enactment of the West Virginia fair housing act, a
71 failure to design and construct those dwellings in such
72 a manner that:

73 (i) The public use and common use portions of such
74 dwellings are readily accessible to and usable by
75 handicapped persons;

76 (ii) All the doors designed to allow passage into and
77 within all premises within such dwellings are suffi-
78 ciently wide to allow passage by handicapped persons
79 in wheelchairs; and

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

89 (4) Compliance with the appropriate requirements of
90 the American national standard for buildings and
91 facilities providing accessibility and usability for
92 physically handicapped people, commonly cited as
93 ANSI A117.1, suffices to satisfy the requirements of
94 subparagraph (3)(C)(iii) of this subdivision.

95 (5)(A) If a unit of general local government has
96 incorporated into its laws the requirements set forth
97 in subparagraph (3)(C) of this subdivision, compliance
98 with such laws shall be deemed to satisfy the require-
99 ments of that subparagraph.

100 (B) The commission or unit of general local govern-
101 ment may review and approve newly constructed
102 covered multifamily dwellings for the purpose of
103 making determinations as to whether the design and
104 construction requirements of subparagraph (3)(C) of
105 this subdivision are met.

106 (C) The commission shall encourage, but may not
107 require, units of local government to include in their

108 existing procedures for the review and approval of
109 newly constructed covered multifamily dwellings,
110 determinations as to whether the design and construc-
111 tion of such dwellings are consistent with subpara-
112 graph (3)(C) of this subdivision, and may provide
113 technical assistance to units of local government and
114 other persons to implement the requirements of such
115 subparagraph.

116 (D) Nothing in this article shall be construed to
117 require the commission to review or approve the
118 plans, designs or construction of all covered multifam-
119 ily dwellings to determine whether the design and
120 construction of such dwellings are consistent with the
121 requirements of subparagraph (3)(C) of this
122 subdivision.

123 (6) (A) Nothing in paragraph (5) of this subdivision
124 shall be construed to affect the authority and respon-
125 sibility of the commission or a local public agency to
126 receive and process complaints or otherwise engage in
127 enforcement activities under this article.

128 (B) Determinations by a unit of general local gov-
129 ernment under subparagraphs (5)(A) and (B) of this
130 subdivision shall not be conclusive in enforcement
131 proceedings under this article.

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

137 (8) Nothing in this article shall be construed to
138 invalidate or limit any law of this state or any political
139 subdivision hereof that requires dwellings to be
140 designed and constructed in a manner that affords
141 handicapped persons greater access than is required
142 by this article.

143 (9) Nothing in this section requires that a dwelling
144 be made available to an individual whose tenancy
145 would constitute a direct threat to the health or safety
146 of other individuals or whose tenancy would result in

147 substantial physical damage to the property of others.
148 The burden of proving such threat to health or safety
149 or the likelihood of such damage shall be upon the
150 respondent.

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

1 (a) It shall be unlawful for any person or other
2 entity whose business includes engaging in residential
3 real estate-related transactions to discriminate against
4 any person in making available such a transaction or
5 in the terms or conditions of such a transaction
6 because of race, color, religion, sex, blindness, handi-
7 cap, familial status, ancestry or national origin.

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

10 (1) The making or purchasing of loans or providing
11 other financial assistance: (A) For purchasing, con-
12 structing, improving, repairing or maintaining a
13 dwelling; or (B) secured by residential real estate; or

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

16 (c) Nothing in this article prohibits a person engaged
17 in the business of furnishing appraisals of real prop-
18 erty to take into consideration factors other than race,
19 color, religion, national origin, ancestry, sex, blindness,
20 handicap or familial status.

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

1 It shall be unlawful to deny any person access to or
2 membership or participation in any multiple listing
3 service, real estate broker’s organization or other
4 service, organization or facility relating to the business
5 of selling or renting dwellings, or to discriminate
6 against him or her in the terms or conditions of such
7 access, membership or participation on account of
8 race, color, religion, sex, blindness, handicap, familial
9 status, ancestry or national origin.

§5-11A-8. Religious organization or private club exemption.

1 (a) Nothing in this article shall prohibit a religious
2 organization, association or society, or any nonprofit

3 institution or organization operated, supervised or
4 controlled by or in conjunction with a religious
5 organization, association or society, from limiting the
6 sale, rental or occupancy of dwellings which it owns or
7 operates for other than a commercial purpose to
8 persons of the same religion, or from giving prefer-
9 ence to such persons, unless membership in such
10 religion is restricted on account of race, color or
11 national origin. Nor shall anything in this article
12 prohibit a private club not in fact open to the public,
13 which as an incident to its primary purpose or pur-
14 poses provides lodgings which it owns or operates for
15 other than a commercial purpose, from limiting the
16 rental or occupancy of such lodgings to its members or
17 from giving preference to its members.

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

24 (2) As used in this section "housing for older per-
25 sons" means housing:

26 (A) Provided under any state or federal program
27 that the secretary of the United States department of
28 housing and urban development determines is specif-
29 ically designed and operated to assist elderly persons,
30 as defined in the state or federal program; or

31 (B) Intended for, and solely occupied by, persons
32 sixty-two years of age or older; or

33 (C) Intended and operated for occupancy by at least
34 one person fifty-five years of age or older per unit. In
35 determining whether housing qualifies as housing for
36 older persons under this subsection, the commission
37 shall develop regulations which require at least the
38 following factors: (i) The existence of significant
39 facilities and services specifically designed to meet the
40 physical or social needs of older persons, or if the
41 provision of such facilities and services is not practica-

42 ble, that such housing is necessary to provide impor-
43 tant housing opportunities for older persons; (ii) that
44 at least eighty percent of the units are occupied by at
45 least one person fifty-five years of age or older per
46 unit; and (iii) the publication of, and adherence to,
47 policies and procedures which demonstrate an intent
48 by the owner or manager to provide housing for
49 persons fifty-five years of age or older.

50 (3) Housing shall not fail to meet the requirements
51 for housing for older persons by reason of: (A) Persons
52 residing in such housing as of the date of enactment of
53 this act who do not meet the age requirements of
54 subdivision (2)(B) or (C) of this subsection: *Provided*,
55 That new occupants of such housing meet the age
56 requirements of such subdivisions; or (B) unoccupied
57 units: *Provided, however*, That such units are reserved
58 for occupancy by persons who meet the age require-
59 ments of subdivision (2)(B) or (C) of this subsection.

60 (4) Nothing in this article prohibits conduct against
61 a person because such person has been convicted by
62 any court of competent jurisdiction of the illegal
63 manufacture or distribution of a controlled substance
64 as defined in Section 102 of the Controlled Substances
65 Act, Title 21, United States Code, Section 802.

**§5-11A-9. Administration; authority and responsibility;
delegation of authority; appointment of
administrative law judges; location of concil-
iation meetings; administrative review; coop-
eration of the commission and executive
departments and agencies to further fair
housing purposes; functions of the
commission.**

1 The authority and responsibility for administering
2 this article shall be in the West Virginia human rights
3 commission.

4 The commission may delegate any of its functions,
5 duties and powers to employees of the human rights
6 commission, including functions, duties and powers
7 with respect to investigating, conciliating, hearing,
8 determining, ordering, certifying, reporting or other-

9 wise acting as to any work, business or matter under
10 this article. The person to whom such delegations are
11 made with respect to hearing functions, duties and
12 powers shall be a licensed attorney. Insofar as possible,
13 conciliation meetings shall be held in the county
14 where the discriminatory housing practices allegedly
15 occurred. The commission shall by rule prescribe such
16 rights of appeal from the decisions of its administra-
17 tive law judges to other administrative law judges or
18 to other officers in the commission, to boards of
19 officers or to itself, as shall be appropriate and in
20 accordance with law.

21 All executive departments and agencies shall admin-
22 ister their programs and activities relating to housing,
23 including any agency having regulatory or supervisory
24 authority over financial institutions, in a manner
25 affirmatively to further the purposes of this article
26 and shall cooperate with the commission to further
27 such purposes.

28 The commission may:

29 (1) Make studies with respect to the nature and
30 extent of discriminatory housing practices in represen-
31 tative communities, urban, suburban and rural,
32 throughout the state;

33 (2) Publish and disseminate reports, recommenda-
34 tions and information derived from such studies,
35 including reports to the Legislature specifying the
36 nature and extent of progress made statewide in
37 eliminating discriminatory housing practices and
38 furthering the purposes of this article, obstacles
39 remaining to achieving equal housing opportunity and
40 recommendations for further legislative or executive
41 action;

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

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

§5-11A-10. Education and conciliation; conferences and consultations; reports.

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

§5-11A-11. Administrative enforcement; preliminary matters; complaints and answers; service; conciliation; injunctions; reasonable cause determinations; issuance of charge.

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

12 (B) Upon the filing of such complaint: (i) The
13 commission shall serve notice upon the aggrieved
14 person acknowledging such filing and advising the
15 aggrieved person of the time limits and choice of

16 forums provided under this article; (ii) the commission
17 shall, not later than ten days after such filing or the
18 identification of an additional respondent under
19 paragraph (2) of this subsection, serve on the respon-
20 dent a notice identifying the alleged discriminatory
21 housing practice and advising such respondent of the
22 procedural rights and obligations of respondents under
23 this article, together with a copy of the original
24 complaint; (iii) each respondent may file, not later
25 than ten days after receipt of notice from the commis-
26 sion, an answer to such complaint; and (iv) unless it is
27 impracticable to do so, the commission shall make an
28 investigation of the alleged discriminatory housing
29 practice and complete such investigation within one
30 hundred days after the filing of the complaint.

31 (C) If the commission is unable to complete the
32 investigation within one hundred days after the filing
33 of the complaint, the commission shall notify the
34 complainant and respondent in writing of the reasons
35 for not doing so.

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

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

45 (B) Such notice, in addition to meeting the require-
46 ments of paragraph (1) of this subsection, shall explain
47 the basis for the commission's belief that the person to
48 whom the notice is addressed is properly joined as a
49 respondent.

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

55 (2) A conciliation agreement arising out of such
56 conciliation shall be an agreement between the
57 respondent and the complainant and shall be subject
58 to approval by the commission.

59 (3) A conciliation agreement may provide for bind-
60 ing arbitration of the dispute arising from the com-
61 plaint. Any such arbitration that results from a
62 conciliation agreement may award appropriate relief,
63 including monetary relief.

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

68 (5) (A) At the end of each investigation under this
69 section, the commission shall prepare a final investig-
70 ative report containing: (i) The names and dates of
71 contacts with witnesses; (ii) a summary and the dates
72 of correspondence and other contacts with the
73 aggrieved person and the respondent; (iii) a summary
74 description of other pertinent records; (iv) a summary
75 of witness statements; and (v) answers to
76 interrogatories.

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

79 (c) Whenever the commission has reasonable cause
80 to believe that a respondent has breached a concilia-
81 tion agreement, the commission shall refer the matter
82 to the attorney general with a recommendation that a
83 civil action be filed under section fifteen of this article
84 for the enforcement of such agreement.

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

94 investigation.

95 (e) (1) If the commission concludes at any time
96 following the filing of a complaint that prompt judicial
97 action is necessary to carry out the purposes of this
98 article, the commission may authorize a civil action for
99 appropriate temporary or preliminary relief pending
100 final disposition of the complaint under this section.
101 Upon receipt of such authorization, the attorney
102 general shall promptly commence and maintain such
103 an action. Any temporary injunction or other order
104 granting preliminary or temporary relief shall be
105 issued in accordance with the West Virginia rules of
106 civil procedure. The commencement of a civil action
107 under this subsection does not affect the initiation or
108 continuation of administrative proceedings under this
109 section and section thirteen of this article.

110 (2) Whenever the commission has reason to believe
111 that a basis may exist for the commencement of
112 proceedings against any respondent under subsections
113 (a) and (b), section fifteen of this article or for
114 proceedings by any governmental licensing or supervi-
115 sory authorities, the commission shall transmit the
116 information upon which such belief is based to the
117 attorney general, or to such authorities, as the case
118 may be.

119 (f) (1) The commission shall within one hundred
120 days after the filing of the complaint determine, based
121 on the facts, whether reasonable cause exists to
122 believe that a discriminatory housing practice has
123 occurred or is about to occur, unless it is impracticable
124 to do so, or unless the commission has approved a
125 conciliation agreement with respect to the complaint.
126 If the commission is unable to make the determination
127 within one hundred days after the filing of the
128 complaint, the commission shall notify the complain-
129 ant and respondent in writing of the reasons for not
130 doing so.

131 (2) (A) If the commission determines that reasonable
132 cause exists to believe that a discriminatory housing
133 practice has occurred or is about to occur, the commis-

134 sion shall, except as provided in subparagraph (C),
135 immediately issue a charge on behalf of the aggrieved
136 person, for further proceedings under section thirteen
137 of this article.

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

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

152 (3) If the commission determines that no reasonable
153 cause exists to believe that a discriminatory housing
154 practice has occurred or is about to occur, the commis-
155 sion shall promptly dismiss the complaint. The com-
156 mission shall make public disclosure of each such
157 dismissal.

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

164 (g) After the commission issues a charge under this
165 section, the commission shall cause a copy thereof,
166 together with information as to how to make an
167 election under subsection (a), section thirteen of this
168 article and the effect of such an election, to be served:
169 (1) On each respondent named in such charge,
170 together with a notice of opportunity for a hearing at
171 a time and place specified in the notice, unless that
172 election is made; and (2) on each aggrieved person on
173 whose behalf the complaint was filed.

§5-11A-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.

1 The commission may, in accordance with this sub-
2 section, issue subpoenas and order discovery in aid of
3 investigations and hearings under this article. Such
4 subpoenas and discovery may be ordered to the same
5 extent and subject to the same limitations as would
6 apply if the subpoenas or discovery were ordered or
7 served in aid of a civil action in the circuit courts of
8 this state.

9 Witnesses summoned by a subpoena under this
10 article shall be entitled to the same witness and
11 mileage fees as witnesses in proceedings in the circuit
12 courts of this state. Fees payable to a witness sum-
13 moned by a subpoena shall be paid by the commission,
14 the complainant or the respondent in accordance with
15 section one, article five, chapter twenty-nine-a of this
16 code.

17 Enforcement of subpoenas may be had in the circuit
18 courts of this state as set out in section one, article
19 five, chapter twenty-nine-a of this code.

§5-11A-13. Election of remedies; administrative hearings and discovery; exclusivity of remedies; final orders; review by commission; judicial review; remedies; attorney fees.

1 (a) When a charge is filed under section eleven of
2 this article, a complainant, a respondent or an
3 aggrieved person on whose behalf the complaint was
4 filed, may elect to have the claims asserted in that
5 charge decided in a civil action under subsection (o) of
6 this section in lieu of a hearing under subsection (b) of
7 this section. The election must be made not later than
8 twenty days after the receipt by the electing person of
9 service under section eleven of this article or, in the
10 case of the commission, not later than twenty days
11 after such service. The person making such election
12 shall give notice of doing so to the commission and to
13 all other complainants and respondents to whom the
14 charge relates.

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

26 (c) At a hearing under this section, each party may
27 appear in person, be represented by counsel, present
28 evidence, cross-examine witnesses and obtain the
29 issuance of subpoenas under section twelve of this
30 article. Any aggrieved person may intervene as a
31 party in the proceeding. The rules of evidence apply to
32 the presentation of evidence in such hearing as they
33 would in a civil action in the circuit courts of this
34 state. The case in support of the complaint shall be
35 presented before the administrative law judge by the
36 attorney general.

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

41 (2) A hearing under this section shall be conducted
42 as expeditiously and inexpensively as possible, consis-
43 tent with the needs and rights of the parties to obtain
44 a fair hearing and a complete record.

45 (3) The commission shall, not later than one hun-
46 dred eighty days after the date of enactment of this
47 subsection, issue rules to implement this subsection.

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

51 (f) An administrative law judge may not continue
52 administrative proceedings under this section regard-
53 ing any alleged discriminatory housing practice after

54 the beginning of the trial of a civil action commenced
55 by the aggrieved party under an act of Congress or a
56 state law seeking relief with respect to that discrimi-
57 natory housing practice.

58 (g) (1) The administrative law judge shall commence
59 the hearing under this section no later than one
60 hundred twenty days following the issuance of the
61 charge, unless it is impracticable to do so. If the
62 administrative law judge is unable to commence the
63 hearing within one hundred twenty days after the
64 issuance of the charge, the administrative law judge
65 shall notify the commission, the aggrieved person on
66 whose behalf the charge was filed and the respondent
67 in writing of the reasons for not doing so.

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

78 (3) If the administrative law judge finds that a
79 respondent has engaged or is about to engage in a
80 discriminatory housing practice, such administrative
81 law judge shall promptly issue an order for such relief
82 as may be appropriate, which may include actual
83 damages suffered by the aggrieved person and injunc-
84 tive or other equitable relief. Such order may, to
85 vindicate the public interest, assess a civil penalty
86 against the respondent: (A) In an amount not exceed-
87 ing ten thousand dollars if the respondent has not
88 been adjudged to have committed any prior discrimi-
89 natory housing practice; (B) in an amount not exceed-
90 ing twenty-five thousand dollars if the respondent has
91 been adjudged to have committed one other discrim-
92 inatory housing practice during the five-year period
93 ending on the date of the filing of this charge; and (C)
94 in an amount not exceeding fifty-thousand dollars if

95 the respondent has been adjudged to have committed
96 two or more discriminatory housing practices during
97 the seven-year period ending on the date of the filing
98 of this charge; except that if the acts constituting the
99 discriminatory housing practice that are the object of
100 the charge are committed by the same natural person
101 who has been previously adjudged to have committed
102 acts constituting a discriminatory housing practice,
103 then the civil penalties set forth in subparagraphs (B)
104 and (C) may be imposed without regard to the period
105 of time within which any subsequent discriminatory
106 housing practice occurred.

107 (4) No such order shall affect any contract, sale,
108 encumbrance or lease consummated before the issu-
109 ance of such order and involving a bona fide pur-
110 chaser, encumbrancer or tenant without actual notice
111 of the charge filed under this article.

112 (5) In the case of an order with respect to a discrim-
113 inatory housing practice that occurred in the course of
114 a business subject to licensing or regulation by a
115 governmental agency, the commission shall, not later
116 than thirty days after the date of the issuance of such
117 order or, if such order is judicially reviewed, thirty
118 days after such order is in substance affirmed upon
119 such review: (A) Send copies of the findings of fact,
120 conclusions of law and the order to that governmental
121 agency; and (B) recommend to that governmental
122 agency appropriate disciplinary action, including,
123 where appropriate, the suspension or revocation of the
124 license of the respondent.

125 (6) In the case of an order against a respondent
126 against whom another order was issued within the
127 preceding five years under this section, the commis-
128 sion shall send a copy of each such order to the
129 attorney general.

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

135 public disclosure of each such dismissal.

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

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

147 (i) (1) Any party aggrieved by a final order for relief
148 under this section granting or denying, in whole or in
149 part, the relief sought may obtain a review of such
150 order under section four, article five, chapter twenty-
151 nine-a of this code.

152 (2) Notwithstanding chapter twenty-nine-a of this
153 code, venue of the proceeding shall be in the judicial
154 circuit in which the discriminatory housing practice is
155 alleged to have occurred and filing of the petition for
156 review shall be not later than thirty days after the
157 order is entered.

158 (j) (1) The commission may petition the circuit court
159 in the circuit in which the discriminatory housing
160 practice is alleged to have occurred or in which any
161 respondent resides or transacts business for the
162 enforcement of the order of the administrative law
163 judge and for appropriate temporary relief or injunc-
164 tive relief by filing in such court a written petition
165 praying that such order be enforced and for appropri-
166 ate temporary relief or injunctive relief.

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

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

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

177 (B) Affirm the order or decision of the administra-
178 tive law judge or remand the case for further proceed-
179 ings. It shall reverse, vacate or modify the order or
180 decision of the administrative law judge if the substan-
181 tial rights of the parties have been prejudiced because
182 the administrative findings, inferences, conclusions,
183 decision or order are: (i) In violation of constitutional
184 or statutory provisions; or (ii) in excess of the statutory
185 authority or jurisdiction of the commission; or (iii)
186 made upon unlawful procedures; or (iv) affected by
187 other error of law; or (v) clearly wrong in view of the
188 reliable, probative and substantial evidence on the
189 whole record; or (vi) arbitrary or capricious or charac-
190 terized by abuse of discretion or clearly unwarranted
191 exercise of discretion; and

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

194 (2) Any party to the proceeding before the adminis-
195 trative law judge may intervene in the circuit court.

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

200 (4) The judgment of the circuit court shall be final
201 unless reversed, vacated or modified on appeal to the
202 supreme court of appeals of this state in accordance
203 with the provisions of section one, article six, chapter
204 twenty-nine-a of this code.

205 (1) If no petition for review is filed under subsection
206 (i) of this section before the expiration of forty-five
207 days after the date the administrative law judge's
208 order is entered, the administrative law judge's
209 findings of fact and order shall be conclusive in
210 connection with any petition for enforcement: (1)
211 Which is filed by the commission under subsection (j)
212 of this section after the end of such day; or (2) under

213 subsection (m) of this section.

214 (m) If before the expiration of sixty days after the
215 date the administrative law judge's order is entered,
216 no petition for review has been filed under subsection
217 (i) of this section, and the commission has not sought
218 enforcement of the order under subsection (j) of this
219 section, any person entitled to relief under the order
220 may petition for a decree enforcing the order in the
221 circuit court for the circuit in which the discrimina-
222 tory housing practice is alleged to have occurred.

223 (n) The judge of the circuit court in which a petition
224 for enforcement is filed under subsection (l) or (m) of
225 this section shall forthwith enter a decree enforcing
226 the order and shall transmit a copy of such decree to
227 the commission, the respondent named in the petition
228 and to any other parties to the proceeding before the
229 administrative law judge. The judgment of the circuit
230 court shall be final unless reversed, vacated or modi-
231 fied on appeal to the supreme court of appeals pursu-
232 ant to section one, article six, chapter twenty-nine-a of
233 this code.

234 (o) (1) If an election is made under subsection (a) of
235 this section, the commission shall authorize, and not
236 later than thirty days after the election is made the
237 attorney general shall commence and maintain, a civil
238 action on behalf of the aggrieved person in the
239 appropriate circuit court seeking relief under this
240 subsection. Venue for such civil action shall be in the
241 circuit court in the county in which the alleged
242 discriminatory housing practice occurred.

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

246 (3) In a civil action under this subsection, if the
247 court finds that a discriminatory housing practice has
248 occurred or is about to occur, the court may grant as
249 relief any relief which a court could grant with respect
250 to such discriminatory housing practice in a civil
251 action under section fourteen of this article. Any relief
252 so granted that would accrue to an aggrieved person in

253 a civil action commenced by that aggrieved person
 254 under said section shall also accrue to that aggrieved
 255 person in a civil action under this subsection. If
 256 monetary relief is sought for the benefit of an
 257 aggrieved person who does not intervene in the civil
 258 action, the court shall not award such relief if that
 259 aggrieved person has not complied with discovery
 260 orders entered by the court.

261 (p) In any administrative proceeding brought under
 262 this section, or any court proceeding arising there-
 263 from, or any civil action under section fourteen of this
 264 article, the administrative law judge or the court, as
 265 the case may be, in its discretion, may allow a prevail-
 266 ing complainant a reasonable attorney's fee and costs.

**§5-11A-14. Enforcement by private persons; civil actions;
 appointed attorneys; remedies; bona fide
 purchasers; intervention by attorney general.**

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

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

16 (2) An aggrieved person may commence a civil
 17 action under this subsection whether or not a com-
 18 plaint has been filed under subsection (a), section
 19 eleven of this article and without regard to the status
 20 of any such complaint, but if the commission has
 21 obtained a conciliation agreement with the consent of
 22 an aggrieved person, no action may be filed under this
 23 subsection by such aggrieved person with respect to

24 the alleged discriminatory housing practice which
25 forms the basis for such complaint except for the
26 purpose of enforcing the terms of such an agreement.

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

33 (b) Upon application by a person alleging a discrim-
34 inatory housing practice, the court may: (1) Appoint an
35 attorney for such person; or (2) authorize the com-
36 mencement or continuation of a civil action under
37 subsection (a) of this section without the payment of
38 fees, costs or security, if in the opinion of the court
39 such person is financially unable to bear the costs of
40 such action.

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

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

55 (d) Relief granted under this section shall not affect
56 any contract, sale, encumbrance or lease consummated
57 before the granting of such relief and involving a bona
58 fide purchaser, encumbrancer or tenant without
59 actual notice of the filing of a complaint with the
60 commission or civil action under this section.

61 (e) Upon timely application, the attorney general
62 may intervene in such civil action, if the attorney

63 general certifies that the case is of general public
 64 importance. Upon such intervention the attorney
 65 general may obtain such relief as would be available
 66 to the attorney general under subsection (d), section
 67 fifteen of this article in a civil action to which such
 68 section applies.

**§5-11A-15. Enforcement by attorney general; pattern or
 practice cases; subpoena enforcement; remedies; intervention.**

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

10 (b) (1) The attorney general may commence a civil
 11 action in any appropriate circuit court for appropriate
 12 relief with respect to a discriminatory housing practice
 13 referred to the attorney general by the commission
 14 under subsection (f), section eleven of this article. A
 15 civil action under this paragraph may be commenced
 16 not later than the expiration of eighteen months after
 17 the date of the occurrence or the termination of the
 18 alleged discriminatory housing practice.

19 (2) The attorney general may commence a civil
 20 action in any appropriate circuit court for appropriate
 21 relief with respect to breach of a conciliation agree-
 22 ment referred to the attorney general by the commis-
 23 sion under subsection (c), section eleven of this article.
 24 A civil action may be commenced under this para-
 25 graph not later than the expiration of ninety days
 26 after the referral of the alleged breach under subsec-
 27 tion (c), section eleven of this article.

28 (c) The attorney general, on behalf of the commis-
 29 sion or other party at whose request a subpoena is
 30 issued under this article, may enforce such subpoena
 31 in appropriate proceedings in the circuit court for the

32 circuit in which the person to whom the subpoena was
33 addressed resides, was served or transacts business.

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

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

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

44 (C) May, to vindicate the public interest, assess a
45 civil penalty against the respondent: (i) In an amount
46 not exceeding fifty thousand dollars for a first viola-
47 tion; and (ii) in an amount not exceeding one hundred
48 thousand dollars for any subsequent violation.

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

52 (e) Upon timely application, any person may inter-
53 vene in a civil action commenced by the attorney
54 general under subsection (a) or (b) of this section
55 which involves an alleged discriminatory housing
56 practice with respect to which such person is an
57 aggrieved person or a conciliation agreement to which
58 such person is a party. The court may grant such
59 appropriate relief to any such intervening party as is
60 authorized to be granted to a complainant in a civil
61 action under section fourteen of this article.

**§5-11A-16. Interference, coercion or intimidation; enforce-
ment by civil action.**

1 It shall be unlawful to coerce, intimidate, threaten
2 or interfere with any person in the exercise or
3 enjoyment of, or on account of his having exercised or
4 enjoyed, or on account of his having aided or encour-
5 aged any other person in the exercise or enjoyment of,
6 any right granted or protected by section four, five, six

7 or seven of this article.

§5-11A-17. Cooperation with local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in state register.

1 The commission may cooperate with local agencies
2 charged with the administration of local fair housing
3 laws and, with the consent of such agencies, utilize the
4 services of such agencies and their employees and, to
5 the extent permitted by law, may reimburse such
6 agencies and their employees for services rendered to
7 assist it in carrying out this article. In furtherance of
8 such cooperative efforts, the commission may enter
9 into written agreements with such local agencies. All
10 agreements and terminations thereof shall be pub-
11 lished in the state register.

§5-11A-18. Effect on other laws.

1 Nothing in this article shall be construed to invali-
2 date or limit any law of this state or of any political
3 subdivision of this state, that grants, guarantees or
4 protects the same rights as are granted by this article;
5 but any law of this state or any political subdivision
6 hereof that purports to require or permit any action
7 that would be a discriminatory housing practice under
8 this article shall to that extent be invalid.

§5-11A-19. Severability of provisions.

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

§5-11A-20. Rules to implement article.

1 In consultation with other appropriate agencies, the
2 commission shall, not later than the one hundred
3 eightieth day after the date of the enactment of this
4 article, issue rules to implement it. Such rules may
5 include provision for the collection, maintenance and
6 analysis of appropriate data to carry out this article.

7 The commission shall comply with article three,
8 chapter twenty-nine-a of this code when promulgating
9 rules.

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

Thomas Teer
.....
Chairman Senate Committee

Ermest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Harrell Holmes
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Bill Buckette
.....
President of the Senate

B. B. A. C.
.....
Speaker House of Delegates

The within is approved this the *17th*
day of *March*, 1992.

Mark Capen
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/10/92

Time 3:35 pm