WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1992

ENROLLED
Committee Substitute for
SENATE BILL NO. 162

(By Senators Burdette (Chair, President) and Boyle, 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 BURDETT, 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 individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons;

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

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

5 (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;

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

7 (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 newspa-
er 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 “age” means the age of forty or above;

(l) 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; and

(m) 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.


(a) It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations 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 organization, prior to the employment or admission to membership, to: (A) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex or age of any applicant for employment
or membership; (B) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications or discrimination based upon race, religion, color, national origin, ancestry, sex or age; or (C) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap;

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

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

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

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

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

(7) 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; or

(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.

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.


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

§5-11A-2. Declaration of policy.

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


As used in this article:

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

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

(c) “Family” includes a single individual;

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

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

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

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

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

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

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

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

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

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

(i) “Complainant” means the person, including the commission, who files a complaint under section eleven of this article;

(j) "Familial status" means:

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

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

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

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

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

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

(m) "Respondent" means:

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

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

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

§5-11A-4. Application of article.

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

(1) Any single-family house sold or rented by an
owner: Provided, That such private individual owner
does not own more than three such single-family
houses at any one time: Provided, however, That in
the case of the sale of any such single-family house by
a private individual owner not residing in such house
at the time of such sale or who was not the most
recent resident of such house prior to such sale, the
exemption granted by this subsection shall apply only
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
personal residence, in providing sales or rental facili-
ties or sales or rental services in two or more transac-
tions 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in
§5-11A-6. Discrimination in residential real estate-related transactions.

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

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

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

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

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

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

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

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

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

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

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

(A) Provided under any state or federal program that the secretary of the United States department of housing and urban development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program; or

(B) Intended for, and solely occupied by, persons 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 practica-
ble, that such housing is necessary to provide important housing opportunities for older persons; (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 date of enactment of this act who do not meet the age requirements of subdivision (2)(B) or (C) of this subsection: Provided, That new occupants of such housing meet the age requirements of such subdivisions; or (B) unoccupied units: Provided, however, That such units are reserved for occupancy by persons who meet the age requirements of subdivision (2)(B) or (C) of this subsection.

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

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

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

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

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

The commission may:

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

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

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

(4) Administer the programs and activities relating to fair housing in a manner affirmatively to further the policies of this article.
§5-11A-10. Education and conciliation; conferences and consultations; reports.

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

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

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

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

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

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

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

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

(b) (1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the commission, the commission shall, to the extent feasible, engage in conciliation with respect to such complaint.
(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the commission.

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

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

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

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

(c) Whenever the commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the commission shall refer the matter to the attorney general with a recommendation that a civil action be filed under section fifteen of this article for the enforcement of such agreement.

(d) Nothing said or done in the course of conciliation under this article may be made public or used as evidence in a subsequent proceeding under this article without the written consent of the persons concerned, except the commission shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the commission's investigation, information derived from an investigation and any final investigative report relating to that
(e) (1) If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this article, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such authorization, the attorney general shall promptly commence and maintain such an action. Any temporary injunction or other order granting preliminary or temporary relief shall be issued in accordance with the West Virginia rules of civil procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section thirteen of this article.

(2) Whenever the commission has reason to believe that a basis may exist for the commencement of proceedings against any respondent under subsections (a) and (b), section fifteen of this article or for proceedings by any governmental licensing or supervisory authorities, the commission shall transmit the information upon which such belief is based to the attorney general, or to such authorities, as the case may be.

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

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

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

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

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

(g) After the commission issues a charge under this section, the commission shall cause a copy thereof, together with information as to how to make an election under subsection (a), section thirteen of this article and the effect of such an election, to be served: (1) On each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and (2) on each aggrieved person on whose behalf the complaint was filed.
§5-11A-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.

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

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

17 Enforcement of subpoenas may be had in the circuit courts of this state as set out in section one, article 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 this article, a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than twenty days after the receipt by the electing person of service under section eleven of this article or, in the case of the commission, not later than twenty days after such service. The person making such election shall give notice of doing so to the commission and to all other complainants and respondents to whom the charge relates.
(b) If an election is not made under subsection (a) of this section with respect to a charge filed under section eleven of this article, the commission shall provide an opportunity for a hearing on the record with respect to a charge issued under said section. The commission shall delegate the conduct of a hearing under this section to an administrative law judge who shall be a licensed attorney. The administrative law judge shall conduct the hearing at a place in the county in which the discriminatory housing practice is alleged to have occurred or is about to occur.

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

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

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

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

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

(f) An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after
the beginning of the trial of a civil action commenced
by the aggrieved party under an act of Congress or a
state law seeking relief with respect to that discrimi-
natory housing practice.

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

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

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

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

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

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

(7) If the administrative law judge finds that the
respondent has not engaged or is not about to engage
in a discriminatory housing practice, as the case may
be, such administrative law judge shall enter an order
dismissing the charge. The commission shall make
(h) (1) The commission may review any finding, conclusion or order issued under subsection (g) of this section. Such review shall be completed not later than thirty days after the finding, conclusion or order is so issued; otherwise the finding, conclusion or order becomes final.

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

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

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

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

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

(k) (1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may:
(A) Grant to the petitioner, or any other party, such temporary relief, injunction or other order as the court deems just and proper;

(B) Affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the parties have been prejudiced because the administrative findings, inferences, conclusions, decision or order are: (i) In violation of constitutional or statutory provisions; or (ii) in excess of the statutory authority or jurisdiction of the commission; or (iii) made upon unlawful procedures; or (iv) affected by other error of law; or (v) clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; and

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

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

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

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

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

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

(n) The judge of the circuit court in which a petition for enforcement is filed under subsection (l) or (m) of this section shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the commission, the respondent named in the petition and to any other parties to the proceeding before the administrative law judge. The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals pursuant to section one, article six, chapter twenty-nine-a of this code.

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

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

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

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

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

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

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

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

(b) Upon application by a person alleging a discrimi-

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

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

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

(e) Upon timely application, the attorney general
may intervene in such civil action, if the attorney
general certifies that the case is of general public
importance. Upon such intervention the attorney
general may obtain such relief as would be available
to the attorney general under subsection (d), section
fifteen of this article in a civil action to which such
section applies.

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

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

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

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

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

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

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

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

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

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

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

§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
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.

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

§5-11A-18. Effect on other laws.

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


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

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

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the day of , 1992.

Governor