

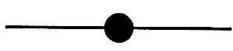
HB 2387

FILED

2014 MAR 24 P 4: 04

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2014



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2387**

(By Delegates Marshall and Moore)



Passed March 8, 2014

In effect ninety days from passage.

**FILED**

2014 MAR 24 P 4: 04

**E N R O L L E D**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

COMMITTEE SUBSTITUTE

for

**H. B. 2387**

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(BY DELEGATES MARSHALL AND MOORE)

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[Passed March 8, 2014; in effect ninety days from passage.]

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AN ACT to amend and reenact §5-11A-3, §5-11A-5, §5-11A-6 and §5-11A-7 of the Code of West Virginia, 1931, as amended, all relating to reasonable accommodations under the West Virginia Fair Housing Act for persons with disabilities who need assistance animals; defining terms; requiring rules, policies, practices and services related to animals to be subject to reasonable accommodation; providing for the submission of documentation of the disability related need for the assistance animal; providing for the sufficiency of the requested documentation; prohibiting a request for access to medical records or providers; providing for the denial of a request for an accommodation of an assistance animal under certain circumstances; requiring a determination of a direct threat or substantial physical damage to be based on individualized assessment; prohibiting an unreasonable denial of accommodation; and replacing the term “handicapped” with the term “disability” throughout the article.

FILED

Enr. Com. Sub. For H. B. No. 2387] 2

NO # 9  
Be it enacted by the Legislature of West Virginia:

That §5-11A-3, §5-11A-5, §5-11A-6 and §5-11A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.**

**§5-11A-3. Definitions.**

1 As used in this article:

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

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

10 (c) "Family" includes a single individual;

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

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

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

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

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

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

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

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

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

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

34 (i) "Complainant" means the person, including the  
35 commission, who files a complaint under section eleven of this  
36 article;

37 (j) "Familial status" means:

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

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

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

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

48 (k) "Conciliation" means the attempted resolution of issues  
49 raised by a complaint or by the investigation of the complaint

50 through informal negotiations involving the aggrieved person,  
51 the respondent and the commission;

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

54 (m) "Respondent" means:

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

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

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

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

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

**§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 except  
2 as exempted by sections four and eight of this article, it is  
3 unlawful:

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

97 (D) Nothing in this article requires the commission to review  
98 or approve the plans, designs or construction of all covered



99 multifamily dwellings to determine whether the design and  
100 construction of the dwellings are consistent with the  
101 requirements of subparagraph (3)(C) of this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Danny Wells*

Chairman, House Committee

*Rocky Filsum*

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

*Suzanne B. Spivey*

Clerk of the House of Delegates

*Joseph M. Minard*

Clerk of the Senate

*Robert M. Bell*

Speaker of the House of Delegates

*Jeffrey K. Cook*

President of the Senate

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2014 MAR 24 P 4: 04

FILED

The within is approved this the 24th  
day of March, 2014.

*Earl Ray Tomblin*  
Governor

PRESENTED TO THE GOVERNOR

MAR 20 2014

Time 11:05 am