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.
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.
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.


1 As used in this article:

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

3 (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;

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

5 (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;

6 (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;

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

8 (g) "Disability" means, with respect to a person:
(1) A physical or mental impairment which substantially limits one or more of the person's major life activities;

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

(3) Being regarded as having such an impairment, but the 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 the 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 the individual or individuals; or

(B) The designee of the parent or other person having custody of the individual with the written permission of the 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 the complaint
through informal negotiations involving the aggrieved person,  
the respondent and the commission;

(l) "Conciliation agreement" means a written agreement  
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  
identified under subsection (a), section eleven of this article;

(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 persons he or she  
chooses to receive; and

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

(p) "Assistance animal" means any service, therapy or  
support animal, weighing less than one hundred fifty pounds,  
with or without specific training or certification, that works,  
provides assistance, or performs tasks for the benefit of a person  
with a disability, or provides emotional support that alleviate one  
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.

As made applicable by section four of this article and except  
as exempted by sections four and eight of this article, it is  
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, disability 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 connection therewith, because of race, color, religion, ancestry, sex, familial status, blindness, disability or national origin;

(c) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, blindness, disability, 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, disability, familial status, ancestry or national origin that any dwelling is not available for inspection, sale or rental when the dwelling is in fact 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, disability, 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 disability 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 the dwelling, because of a disability 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 disabled person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the 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 the accommodations may be necessary to afford the 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 a manner that:

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

(ii) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and
(iii) All premises within the 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 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 those laws 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 that subparagraph.

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

(6) (A) Nothing in paragraph (5) of this subdivision affects
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 are not
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 the 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 invalidates or limits any law of
this state or any political subdivision of this state that requires
dwellings to be designed and constructed in a manner that
affords disabled persons greater access than is required by this
article.

(9) This section does not require 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 substantial physical damage to the
property of others. The burden of proving such threat to health
or safety or the likelihood of such damage is upon the
respondent.

(10) For the purposes of this subdivision, rules, policies,
practices or services regarding animals are subject to the
reasonable accommodation requirements of subparagraph (B),
paragraph (3) of this subdivision and the following provisions:
(A) In connection with a request for reasonable accommodation to the rules, policies or services, a person with a disability may be required to submit documentation, from a professional treatment provider, of the disability related need for the assistance animal.

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

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

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

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

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

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

(D) A request for a reasonable accommodation may not be unreasonably denied, conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed.
§5-11A-6. Discrimination in residential real estate-related transactions.

(a) It is 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, disability, 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, disability or familial status.

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

It is 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, disability, familial status, ancestry or national origin.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

\[\text{Chairman, House Committee}\]

\[\text{Chairman, Senate Committee}\]

Originating in the House.

In effect ninety days from passage.

\[\text{Clerk of the House of Delegates}\]

\[\text{Clerk of the Senate}\]

\[\text{Speaker of the House of Delegates}\]

\[\text{President of the Senate}\]

The within is approved this the 24th day of \[\text{March}\], 2014.

\[\text{Governor}\]
PRESENTED TO THE GOVERNOR

MAR 20 2014

Time 11:05 am