# WEST VIRGINIA
# SECRETARY OF STATE
## NATALIE E. TENNANT
# ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In This Box

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[illegible]
STATE OF WEST VIRGINIA

## NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: West Virginia Human Rights Commission TITLE NUMBER: 77

CITE AUTHORITY: W.Va. Code 5-11-8(h), 5-11A-5, 5-11A-9, 5-11A-13, 5-11A-20 and 29A-3-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES ____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: ____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: Rules Regarding Housing Discrimination Against Persons With Disabilities Who Utilize Assistance Animals

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Michael J. Lewis SCP

Authorized Signature

Title 77
Legislative Rule
West Virginia Human Rights Commission
Series 9

# Rules Regarding Housing Discrimination Against Persons With Disabilities Who Utilize Assistance Animals

## Brief Summary of the Proposed Rule

This rule interprets and implements the anti-discrimination provisions of the West Virginia Fair Housing Act, W. Va. Code §5-11A-1 et seq. The rule defines what constitutes an assistance animal for the purposes of the West Virginia Fair Housing Act. The rule establishes that persons with disabilities who utilize the services of an assistance animal, as a reasonable accommodation, may seek modifications of rules, policies or practices regarding pets if such a modification would allow the person equal opportunity to use and enjoy a housing opportunity. The rule incorporates conditions upon which the modification of rules, policies or practices regarding pets can be lawfully refused and assesses liability for any damage caused by an assistance animal to the person who uses and keeps such animal.

Title 77
Legislative Rule
West Virginia Human Rights Commission
Series 9

# Rules Regarding Housing Discrimination Against Persons With Disabilities Who Utilize Assistance Animals

## Statement of Circumstances Which Require This Rule

The proposed rule is necessary to clarify the rights, obligations and duties of persons with disabilities who utilize, or seek to utilize, the services of assistance animals in their homes.

APPENDIX B

# *FISCAL NOTE FOR PROPOSED RULES*

Rule Title: Rules Regarding Housing Discrimination Against Persons With Disabilities Who Utilize Assistance Animals

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: West Virginia Human Rights Commission

Address: 1321 Plaza East, Room 108A
Charleston, WV 25301-1400

Phone Number: 304-558-2616 ext. 76206 Email: Phyllis.H.Carter@wv.gov

## Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule will have no impact on costs and revenues of state government.

## Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

| FISCAL YEAR | | | |
|---|---|---|---|
| Effect of Proposal | Current Increase/Decrease (use "-") | Next Increase/Decrease (use "-") | Fiscal Year (Upon Full Implementation) |
| **1.** Estimated Total Cost | 0.00 | 0.00 | 0.00 |
| Personal Services | 0.00 | 0.00 | 0.00 |
| Current Expenses | 0.00 | 0.00 | 0.00 |
| Repairs & Alterations | 0.00 | 0.00 | 0.00 |
| Assets | 0.00 | 0.00 | 0.00 |
| Other | 0.00 | 0.00 | 0.00 |
| **2.** Estimated Total Revenues | 0.00 | 0.00 | 0.00 |

Rule Title: Rules Regarding Housing Discrimination Against Persons With Disabilities Who Utilize Assistance Animals

Rule Title: Rules Regarding Housing Discrimination Against Persons With Disabilities Who Utilize Assistance Animals

**3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

There should be no fiscal impact as a result of this rule. These rules are being promulgated to interpret and implement the anti-discrimination provisions of the West Virginia Fair Housing Act, W.Va. Code 5-11A-1 et. seq., with regard to persons with disabilities who utilize assistance animals and will have no impact on costs and revenues of state government.

## MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: July 28, 2011

Signature of Agency Head or Authorized Representative

Michael J. Lewis SSP

# QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 28, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (*Agency Name, Address & Phone No.*) West Virginia Human Rights Commission
1321 Plaza East, Room 108A
Charleston, WV 25301-1400

Ph: 304-558-2616

LEGISLATIVE RULE TITLE:

Rules Regarding Housing Discrimination Against Persons With Disabilities Who Utilize Assistance Animals

1. Authorizing statute(s) citation

W.Va. Code 5-11-8(h), 5-11A-5, 5-11A-9, 5-11A13, 5-11A-20 and 29A-3-1 et. seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 29, 2011

b. What other notice, including advertising, did you give of the hearing?

Published on the Secretary of State's Register on-line meeting notices the Special Commission Meeting held on June 22, 2011 to take up and approve proposed rule Regarding Housing Discrimination Against Persons With Disabilities who Utilize Assistance Animals--Approved.

Published in the Secretary of State's Register Rule Monitor Noticed June 29, 2011 and Comment Period ending July 29, 2011.

c. Date of Public Hearing(s) ***or*** Public Comment Period ended:

July 29, 2011

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. **Name, title, address and <u>phone/fax/e-mail numbers</u>** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Phyllis H. Carter
Acting Executive Director
WV Human Rights Commission
1321 Plaza East, Room 108A
Charleston, WV 25301-1400
Ph: 304-558-2616 ext. 76206
Fax: 304-558-0085

g. **<u>IF DIFFERENT</u> FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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STATE OF WEST VIRGINIA

# TITLE 77
# LEGISLATIVE RULES
# WEST VIRGINIA HUMAN RIGHTS COMMISSION

## SERIES 9
## RULES REGARDING HOUSING DISCRIMINATION AGAINST PERSONS WITH DISABILITIES WHO UTILIZE ASSISTANCE ANIMALS

§77-9-1. General.

1.1. Scope. – The following legislative rules of the West Virginia Human Rights Commission set forth standards for compliance with the requirements of the West Virginia Fair Housing Act, W. Va. Code § 5-11A-1 et seq., regarding nondiscrimination against persons with disabilities who utilize assistance animals to perform major life activities or to ameliorate the effect of its master's disability.

In these rules, the word "handicap" and its derivations are replaced by the word "disability" and its derivations, in order to conform to a convention established by the Americans with Disabilities Act of 1990 and the West Virginia Human Rights Act, as amended, even though the Federal Fair Housing Act and the West Virginia Fair Housing Act use the term "handicap." For the purpose of these rules, "disability" is synonymous with "handicap."

1.2. Authority. – These rules are issued under authority of W. Va. Code §§ 5-11-8(h), 5-11A-5, 5-11A-9, 5-11A-13, 5-11A-20, and 29A-3-1 et seq.

1.3. Filing Date. – July 28, 2011.

1.4. Effective Date. – _____.

§77-9-2. Definitions.

2.1. "Assistance animal" means any service animal or emotional support animal, with or without specific training and/or certification, which is kept and used by a person with a disability, to perform or assist in performing one or more major life activities, or to ease or ameliorate the effects of its master's disability.

§77-9-3. Assistance Animals As An Accommodation To A Disability.

3.1. It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

3.2. Rules, policies, practices, or services regarding pets are subject to the reasonable accommodation requirements of subsection 3.1; provided, that in connection with a request for reasonable accommodation to such rules, policies, practices, or services, a person with a disability may be required to provide supporting material documenting the need for the assistance animal.

3.3. Where reasonable accommodation to rules, policies, practices, or services with regard to animals is required, it shall be unlawful to condition such accommodation on the payment of additional fees or deposits.

3.4. A person with a disability may be refused the accommodation of an assistance animal if there is credible evidence that such assistance animal would be a direct threat to the health or safety of others.

3.5. A person with a disability who keeps or uses an assistance animal shall be responsible for seeing that such assistance animal lives in the home of such person without disturbing the property or quiet enjoyment of the property owner or such person's neighbors and shall be liable for any damage caused by such assistance animal.