

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 412

SENATORS BEACH AND HAMILTON, *original sponsors*

[Originating in the Committee on the Judiciary;

Reported on February 23, 2019]

1 A BILL to amend and reenact §5-11-3 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §5-11-9b, all relating to the
3 Katherine Johnson Fair Pay Act of 2019; honoring Katherine Coleman Johnson; amending
4 definition of “unlawful discriminatory practices”; making it unlawful for an employer to
5 require, as a condition of employment, that an employee refrain from disclosing
6 information about their wages, benefits, or other compensation; and making it unlawful for
7 an employer to require a waiver of employee’s rights to disclose information about their
8 wages, benefits, or other compensation.

Be it enacted by the Legislature of West Virginia:

PREAMBLE: Born in White Sulphur Springs, Katherine Coleman Johnson’s brilliance with numbers landed her on the campus of historically black West Virginia State College - at age 13. In 1939, she was one of three black students chosen to help integrate the graduate program at West Virginia University. Although her complex analyses were used in America’s first human space flight and landing on the moon, she and the black female crew with whom she worked were degraded by having to use a segregated bathroom a long distance from their worksite. The women in her unit suffered economically as well, by being paid far less than the white male engineers at Langley who performed similar work. This legislation is intended to prevent future wage discrimination like that endured by Ms. Johnson and her black female coworkers, by providing greater transparency about pay rates and banning practices that may perpetuate the effects of past wage discrimination.

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,
3 organizations, corporations, labor organizations, cooperatives, legal representatives, trustees,
4 trustees in bankruptcy, receivers, and other organized groups of persons;

5 (b) The term “commission” means the West Virginia Human Rights Commission;

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

7 (d) The term “employer” means the state, or any political subdivision thereof, and any
8 person employing 12 or more persons within the state for 20 or more calendar weeks in the
9 calendar year in which the act of discrimination allegedly took place or the preceding calendar
10 year: *Provided*, That such terms shall not be taken, understood, or construed to include a private
11 club;

12 (e) The term “employee” shall not include any individual employed by his or her parents,
13 spouse, or child;

14 (f) The term “labor organization” includes any organization which exists for the purpose,
15 in whole or in part, of collective bargaining or of dealing with employers concerning grievances,
16 terms, or conditions of employment or for other mutual aid or protection in relation to employment;

17 (g) The term “employment agency” includes any person undertaking, with or without
18 compensation, to procure, recruit, refer, or place employees. A newspaper engaged in the activity
19 of advertising in the normal course of its business shall not be deemed to be an employment
20 agency;

21 (h) The term “discriminate” or “discrimination” means to exclude from, or fail or refuse to
22 extend to, a person equal opportunities because of race, religion, color, national origin, ancestry,
23 sex, age, blindness, disability, or familial status and includes to separate or segregate;

24 (i) The term “unlawful discriminatory practices” includes ~~only~~ those practices specified in
25 §5-11-9 and §5-11-9b of this code;

26 (j) The term “place of public accommodations” means any establishment or person, as
27 defined herein, including the state, or any political or civil subdivision thereof, which offers its
28 services, goods, facilities, or accommodations to the general public, but shall not include any
29 accommodations which are in their nature private. To the extent that any penitentiary, correctional
30 facility, detention center, regional jail, or county jail is a place of public accommodation, the rights,

31 remedies, and requirements provided by this article for any violation of §5-11-9(6) of this code
32 shall not apply to any person other than: (1) Any person employed at a penitentiary, correctional
33 facility, detention center, regional jail, or county jail; (2) any person employed by a law-
34 enforcement agency; or (3) any person visiting any such employee or visiting any person detained
35 in custody at such facility;

36 (k) The term “age” means the age of 40 or above;

37 (l) For the purpose of this article, a person shall be considered to be blind only if his central
38 visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity
39 is greater than 20/200 but is occasioned by a limitation in the fields of vision such that the widest
40 diameter of the visual field subtends an angle no greater than 20 degrees; and

41 (m) The term “disability” means:

42 (1) A mental or physical impairment which substantially limits one or more of such person’s
43 major life activities. The term “major life activities” includes functions such as caring for one’s self,
44 performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

45 (2) A record of such impairment; or

46 (3) Being regarded as having such an impairment.

47 For the purposes of this article, this term does not include persons whose current use of
48 or addiction to alcohol or drugs prevents such persons from performing the duties of the job in
49 question or whose employment, by reason of such current alcohol or drug abuse, would constitute
50 a direct threat to property or the safety of others.

§5-11-9b. The Katherine Johnson Fair Pay Act of 2019.

1 (a) This section may be cited as the Katherine Johnson Fair Pay Act of 2019, in honor of
2 Katherine Coleman Johnson, an African-American mathematician born and educated in West
3 Virginia, and later awarded the Presidential Medal of Freedom, America’s highest civilian honor.

4 (b) It is an unlawful discriminatory practice, unless based on a bona fide occupational
5 qualification, or except where based on applicable security regulations established by the United
6 States or the State of West Virginia or its agencies or political subdivisions, for any employer to:

7 (1) Require, as a condition of employment, that an employee refrain from disclosing,
8 discussing, or sharing information about the amount of his or her wages, benefits, or other
9 compensation; or

10 (2) Require an employee to sign a waiver or other document that denies the employee the
11 right to disclose the amount of his or her wages, benefits, or other compensation.