WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 43

BY SENATOR HAMILTON

[Introduced February 10, 2021; referred

to the Committee on the Workforce; and then to the

Committee on the Judiciary]

1   A BILL to amend and reenact §5-11-9 of the Code of West Virginia, 1931, as amended, relating

2   to the Pay Transparency Act of 2021; making it unlawful for an employer to require, as a

3   condition of employment, that an employee refrain from disclosing information about his

4   or her wages, benefits, or other compensation, or sharing information about another

5   employee's wages, benefits, or other compensation; and making it unlawful for an

6   employer to prohibit employees from disclosing information about their wages, benefits,

7   or other compensation, or sharing information about another employee's wages, benefits,

8   or other compensation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. HUMAN RIGHTS ACT.

§5-11-9. Unlawful discriminatory practices.

1   (a) It shall be an unlawful discriminatory practice, unless based upon a bona fide

2   occupational qualification, or except where based upon applicable security regulations

3   established by the United States or the State of West Virginia or its agencies or political

4   subdivisions:

5   (1) For any employer to discriminate against an individual with respect to compensation,

6   hire, tenure, terms, conditions, or privileges of employment if the individual is able and competent

7   to perform the services required even if such individual is blind or disabled: *Provided,* That it shall

8   not be an unlawful discriminatory practice for an employer to observe the provisions of any bona

9   fide pension, retirement, group or employee insurance or welfare benefit plan or system not

10   adopted as a subterfuge to evade the provisions of this subdivision: *Provided, however,* That an

11   employer ~~my~~ may grant preference in hiring to a veteran or a disabled veteran in accordance with

12   the provisions of §5-11-9a of this code without violating the provisions of this article.

13   (2) For any employer, employment agency or labor organization, prior to the employment

14   or admission to membership, to: (A) Elicit any information or make or keep a record of or use any

15   form of application or application blank containing questions or entries concerning the race,

16   religion, color, national origin, ancestry, sex, or age of any applicant for employment or

17   membership; (B) print or publish or cause to be printed or published any notice or advertisement

18   relating to employment or membership indicating any preference, limitation, specifications or

19   discrimination based upon race, religion, color, national origin, ancestry, sex, disability, or age; or

20   (C) deny or limit, through a quota system, employment or membership because of race, religion,

21   color, national origin, ancestry, sex, age, blindness, or disability;

22   (3) For any labor organization because of race, religion, color, national origin, ancestry,

23   sex, age, blindness, or disability of any individual to deny full and equal membership rights to any

24   individual or otherwise to discriminate against such individual with respect to hire, tenure, terms,

25   conditions or privileges of employment or any other matter, directly or indirectly, related to

26   employment;

27   (4) For an employer, labor organization, employment agency or any joint labor-

28   management committee controlling apprentice training programs to:

29   (A) Select individuals for an apprentice training program registered with the State of West

30   Virginia on any basis other than their qualifications as determined by objective criteria which

31   permit review;

32   (B) Discriminate against any individual with respect to his or her right to be admitted to or

33   participate in a guidance program, an apprenticeship training program, on-the-job training

34   program or other occupational training or retraining program;

35   (C) Discriminate against any individual in his or her pursuit of such programs or to

36   discriminate against such a person in the terms, conditions or privileges of such programs;

37   (D) Print or circulate or cause to be printed or circulated any statement, advertisement or

38   publication, or to use any form of application for these programs or to make any inquiry in

39   connection with a program which expresses, directly or indirectly, discrimination or any intent to

40   discriminate unless based upon a bona fide occupational qualification;

41   (5) For any employment agency to fail or refuse to classify properly, refer for employment

42   or otherwise to discriminate against any individual because of his or her race, religion, color,

43   national origin, ancestry, sex, age, blindness, or disability;

44   (6) For any person being the owner, lessee, proprietor, manager, superintendent, agent,

45   or employee of any place of public accommodations to:

46   (A) Refuse, withhold from or deny to any individual because of his or her race, religion,

47   color, national origin, ancestry, sex, age, blindness, or disability, either directly or indirectly, any

48   of the accommodations, advantages, facilities, privileges, or services of the place of public

49   accommodations;

50   (B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written

51   or printed communication, notice or advertisement to the effect that any of the accommodations,

52   advantages, facilities, privileges, or services of any such place shall be refused, withheld from or

53   denied to any individual on account of race, religion, color, national origin, ancestry, sex, age,

54   blindness, or disability, or that the patronage or custom thereat of any individual, belonging to or

55   purporting to be of any particular race, religion, color, national origin, ancestry, sex, or age, or

56   who is blind or disabled, is unwelcome, objectionable, not acceptable, undesired or not solicited;

57   ~~or~~

58   (7) For any employer to:

59   (A) Require, as a condition of employment, that an employee refrains from disclosing,

60   discussing, or sharing information about the amount of his or her wages, benefits, or other

61   compensation, or from inquiring, discussing, or sharing information about any other employee's

62   wages, benefits, or other compensation; or

63   (B) Require an employee to sign a waiver or other document that denies the employee

64   the right to disclose the amount of his or her wages, benefits, or other compensation or to inquire

65   about, discuss, or share information about any other employee's wages, benefits, or other

66   compensation; or

67   ~~(7)~~ (8) For any person, employer, employment agency, labor organization, owner, real

68   estate broker, real estate salesman or financial institution to:

69   (A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with

70   others to commit acts or activities of any nature, the purpose of which is to harass, degrade,

71   embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any

72   person to engage in any of the unlawful discriminatory practices defined in this section;

73   (B) Willfully obstruct or prevent any person from complying with the provisions of this

74   article, or to resist, prevent, impede or interfere with the commission or any of its members or

75   representatives in the performance of a duty under this article; or

76   (C) Engage in any form of reprisal or otherwise discriminate against any person because

77   he or she has opposed any practices or acts forbidden under this article or because he or she

78   has filed a complaint, testified or assisted in any proceeding under this article.

79   (b) The amendments made during the 2021 Regular Session and contained in subdivision

80   (7) of this section shall be known as "The Pay Transparency Act of 2021".

NOTE: The bill is to be known as the "Pay Transparency Act of 2021". The bill makes it an unlawful discriminatory practice for an employer to make a condition of employment, or prohibit an employee from disclosing information about his or her wages, benefits, or other compensation, or sharing information regarding any other employee's wages, benefits, or other compensation.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.