

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4507

(BY DELEGATES UPSON, NELSON, J., COOPER, BLAIR,

TRECOST, HOUSEHOLDER, ESPINOSA AND FRICH)

[Introduced February 11, 2016; Referred to the

Committee on Veterans' Affairs and Homeland

Security then the Judiciary.]

1 A BILL to amend and reenact §5-11-9 of the Code of West Virginia, 1931, as amended, and to
2 amend said code by adding thereto a new section, designated §5-11-9a, all relating to
3 granting preference in hiring to a veteran or disabled veteran; establishing that an
4 employer granting preference in hiring a veteran or disabled veteran does not violate the
5 state Human Rights Act under certain circumstances; providing that an employer may
6 grant preference in hiring to a veteran or disabled veteran who has been honorably
7 discharged from the United States Armed Services when the veteran or disabled veteran
8 meets all of the knowledge, skills, and eligibility requirements of the job if granting said
9 preference does not violate any state equal employment opportunity law; and defining the
10 term “veteran”.

Be it enacted by the Legislature of West Virginia:

1 That §5-11-9 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that said code be amended by adding thereto a new section, designated §5-11-
3 9a, all to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-9. Unlawful discriminatory practices.

1 It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational
2 qualification, or except where based upon applicable security regulations established by the
3 United States or the State of West Virginia or its agencies or political subdivisions:

4 (1) For any employer to discriminate against an individual with respect to compensation,
5 hire, tenure, terms, conditions or privileges of employment if the individual is able and competent
6 to perform the services required even if such individual is blind or disabled: *Provided*, That it shall
7 not be an unlawful discriminatory practice for an employer to observe the provisions of any bona
8 fide pension, retirement, group or employee insurance or welfare benefit plan or system not
9 adopted as a subterfuge to evade the provisions of this subdivision: *Provided, however, That an*
10 *employer may grant preference in hiring to a veteran or a disabled veteran in accordance with the*
11 *provisions of section nine-a of this article without violating the provisions of this article.*

12 (2) For any employer, employment agency or labor organization, prior to the employment
13 or admission to membership, to: (A) Elicit any information or make or keep a record of or use any
14 form of application or application blank containing questions or entries concerning the race,
15 religion, color, national origin, ancestry, sex or age of any applicant for employment or
16 membership; (B) print or publish or cause to be printed or published any notice or advertisement
17 relating to employment or membership indicating any preference, limitation, specifications or
18 discrimination based upon race, religion, color, national origin, ancestry, sex, disability or age; or
19 (C) deny or limit, through a quota system, employment or membership because of race, religion,
20 color, national origin, ancestry, sex, age, blindness or disability;

21 (3) For any labor organization because of race, religion, color, national origin, ancestry,
22 sex, age, blindness or disability of any individual to deny full and equal membership rights to any
23 individual or otherwise to discriminate against such individual with respect to hire, tenure, terms,
24 conditions or privileges of employment or any other matter, directly or indirectly, related to
25 employment;

26 (4) For an employer, labor organization, employment agency or any joint labor-
27 management committee controlling apprentice training programs to:

28 (A) Select individuals for an apprentice training program registered with the State of West
29 Virginia on any basis other than their qualifications as determined by objective criteria which
30 permit review;

31 (B) Discriminate against any individual with respect to his or her right to be admitted to or
32 participate in a guidance program, an apprenticeship training program, on-the-job training
33 program or other occupational training or retraining program;

34 (C) Discriminate against any individual in his or her pursuit of such programs or to
35 discriminate against such a person in the terms, conditions or privileges of such programs;

36 (D) Print or circulate or cause to be printed or circulated any statement, advertisement or
37 publication, or to use any form of application for these programs or to make any inquiry in

38 connection with a program which expresses, directly or indirectly, discrimination or any intent to
39 discriminate unless based upon a bona fide occupational qualification;

40 (5) For any employment agency to fail or refuse to classify properly, refer for employment
41 or otherwise to discriminate against any individual because of his or her race, religion, color,
42 national origin, ancestry, sex, age, blindness or disability;

43 (6) For any person being the owner, lessee, proprietor, manager, superintendent, agent
44 or employee of any place of public accommodations to:

45 (A) Refuse, withhold from or deny to any individual because of his or her race, religion,
46 color, national origin, ancestry, sex, age, blindness or disability, either directly or indirectly, any of
47 the accommodations, advantages, facilities, privileges or services of the place of public
48 accommodations;

49 (B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written
50 or printed communication, notice or advertisement to the effect that any of the accommodations,
51 advantages, facilities, privileges or services of any such place shall be refused, withheld from or
52 denied to any individual on account of race, religion, color, national origin, ancestry, sex, age,
53 blindness or disability, or that the patronage or custom thereof of any individual, belonging to or
54 purporting to be of any particular race, religion, color, national origin, ancestry, sex or age, or who
55 is blind or disabled, is unwelcome, objectionable, not acceptable, undesired or not solicited; or

56 (7) For any person, employer, employment agency, labor organization, owner, real estate
57 broker, real estate salesman or financial institution to:

58 (A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with
59 others to commit acts or activities of any nature, the purpose of which is to harass, degrade,
60 embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any
61 person to engage in any of the unlawful discriminatory practices defined in this section;

62 (B) Willfully obstruct or prevent any person from complying with the provisions of this
63 article, or to resist, prevent, impede or interfere with the commission or any of its members or
64 representatives in the performance of a duty under this article; or

65 (C) Engage in any form of reprisal or otherwise discriminate against any person because
66 he or she has opposed any practices or acts forbidden under this article or because he or she
67 has filed a complaint, testified or assisted in any proceeding under this article.

§5-11-9a. Veterans preference not a violation of equal employment opportunity under certain circumstances.

68 An employer may grant preference in hiring to a veteran or disabled veteran who has been
69 honorably discharged from the United States Armed Services: *Provided*, That the veteran or
70 disabled veteran meets all of the knowledge, skills, and eligibility requirements of the job, and
71 provided further that, granting the preference does not violate any state equal employment
72 opportunity law. For purposes of this section, the term “veteran” means any person who has
73 received an honorable discharge and: (a) Has provided more than one hundred eighty
74 consecutive days of full-time, active-duty service in the United States Armed Services or Reserve
75 components thereof, including the National Guard; or (b) has a service-connected disability rating
76 fixed by the United States Department of Veterans Affairs.

NOTE: The purpose of this bill is to provide an employer may grant preference in hiring to a veteran or disabled veteran without violating the state Human Rights Act. The bill defines the term “veteran” for purposes of the allowable preference in hiring.

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