

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965



ENROLLED

HOUSE BILL No. 659

(By Mr. Speaker, Mr. White)



PASSED March 17, 1965

In Effect ninety days from Passage



FILED IN THE OFFICE OF  
JOE E. CROST  
SECRETARY OF STATE  
THIS DATE 3-19-65

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**ENROLLED**  
**House Bill No. 659**  
(By MR. SPEAKER, MR. WHITE)

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[Passed March 12, 1965; in effect ninety days from passage.]

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AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-b, relating to the abolishment of discriminatory wage rates based on sex, and providing penalties.

*Be it enacted by the Legislature of West Virginia:*

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-b, to read as follows:

**Article 5-b. Equal Pay for Equal Work.**

**Section 1. Definitions.**—(1) “Employer” means any

2 person, partnership, firm or corporation employing one  
3 or more employees, but does not include the state, or any  
4 municipal corporation or political subdivision of the state  
5 having in force a civil service system based on merit:  
6 *Provided*, That the term employer shall not include any  
7 individual, corporation, business trust, or similar unit  
8 whose operations are subject to any federal act relating  
9 to equal wages for equal work, regardless of sex.

10 (2) "Employee" means any individual who, otherwise  
11 than as a co-partner of the employer or as an independent  
12 contractor, renders personal services wholly or partly in  
13 this state to an employer who pay<sup>s</sup> or agrees to pay such  
14 individual at a fixed rate: *Provided, however*, That where  
15 services are rendered only partly in this state, an individ-  
16 ual is not an employee unless his contract of employment  
17 has been entered into, or payments thereunder are ordi-  
18 narily made or are to be made, within this state.

19 (3) "Wages" means all compensation for performance  
20 of service by an employee for an employer whether paid  
21 by the employer or another person, including cash value  
22 of all compensation paid in any medium other than cash.

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23 (4) "Rate" with reference to wages means the basis  
24 of compensation for services by an employee for an em-  
25 ployer and includes compensation based on the time spent  
26 in the performance of such services, or on the number  
27 of operations accomplished, or on the quality <sup>put</sup> produced  
28 or handled.

29 (5) "Unpaid wages" means the difference between  
30 the wages actually paid to an employee and the wages  
31 required under section three of this article, to be paid to  
32 such employee.

**Sec. 2. State Commissioner of Labor.**—The state com-  
2 missioner of labor shall have the power and it shall be  
3 his duty to carry out and enforce the provisions of this  
4 article.

**Sec. 3. Payment of Wages for Work of Comparable**  
2 **Character; Exceptions.**—(1) No employer shall: (a) In  
3 any manner discriminate between the sexes in the pay-  
4 ment of wages for work of comparable character, the  
5 performance of which requires comparable skills; (b)  
6 Pay wages to any employee at a rate less than that at  
7 which he pays wages to his employees of the opposite

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8 sex for work of comparable character, the performance  
9 of which requires comparable skills.

10 (2) Subsection (1) of this section does not apply  
11 where: (a) Payment is made pursuant to a seniority or  
12 merit system which does not discriminate on the basis of  
13 sex. (b) A differential in wages between employees is  
14 based in good faith on factors other than sex. No  
15 employee shall be reduced in wages in order to eliminate  
16 an existing, past or future wage discrimination or to  
17 effectuate wage equalization.

18 (3) No employer shall in any manner discriminate  
19 in the payment of wages against any employee because  
20 the employee has filed a complaint in a proceeding under  
21 this article, or has testified, or is about to testify, or be-  
22 cause the employer believes that the employee may  
23 testify, in any investigation or proceedings pursuant to  
24 this article or in a criminal action pursuant to this article.

**Sec. 4. Employee's Right of Action against His Em-**  
2 **ployer.**—(1) Any employee whose compensation is at a  
3 rate that is in violation of section three of this article  
4 shall have a right of action against his employer for

5 the recovery of (a) the amount of the unpaid wages  
6 to which the employee is entitled for the on<sup>e</sup>-year period  
7 preceding the commencement of the action, and (b) an  
8 additional amount as liquidated damages equal to the  
9 amount referred to in paragraph (a) of this subsection.

10 (2) In addition to any judgment awarded to the  
11 plaintiff, the court shall allow reasonable attorney's fees  
12 to be taxed as costs in any judgment recovered.

13 (3) The action for the unpaid wages and liquidated  
14 damages may be maintained by one or more employees  
15 on behalf of themselves or other employees similarly  
16 situated.

17 (4) No agreement for compensation at a rate of less  
18 than the rate to which such employee is entitled under  
19 this article is a defense to any action under this article.

**Sec. 5. Offenses; Penalties.**—In addition to the civil  
2 damages recoverable under section four of this article,  
3 any employer who violates any of the provisions of this  
4 article shall, upon conviction thereof, be guilty of a mis-  
5 demeanor and shall be fined not less than twenty-five  
6 dollars nor more than one hundred dollars.

*Ed. B. ...*  
*...*

**Sec. 6. Severability.**—If any provision of this article  
2 or the application thereof to any person or circum-  
3 stances shall be held invalid, such invalidity shall not  
4 affect the provisions or application of this article which  
5 can be given effect without the invalid provisions or  
6 application, and to this end the provisions of this article  
7 are declared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*A. Ray Parker*  
Chairman Senate Committee

*James W. Loop*  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

*Howard Meyer*  
Clerk of the Senate

*A. Blankenship*  
Clerk of the House of Delegates

*Howard Hanson*  
President of the Senate

*H. Sabau White*  
Speaker House of Delegates

The within *approved* this the *19*  
day of *March*, 1965.

*Street C. Smith*  
Governor

