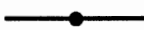


SB 31

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



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COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 31

(By Senator WHITE, ET AL)



PASSED MARCH 12, 1998
In Effect NINETY DAYS FROM Passage

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SENATE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 31

(SENATORS WHITE, HUNTER, WALKER, JACKSON, DEEM,
PLYMALE AND WOOTON, *original sponsors*)

[Passed March 12, 1998; in effect ninety days from passage.]

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-e, relating to requiring equal pay for equal work for state employees; setting forth legislative findings and purpose; defining terms; prohibiting the state from discriminating on the basis of gender in payment of wages for work of comparable character; creating right of action; establishing the equal pay commission; providing for the appointment of members and the expiration of commission; setting forth duties of the commission; authorizing commission to promulgate legislative rules; and establishing operative date.

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-e, to read as follows:

ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.

§21-5E-1. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that it is
2 the public policy of this state to provide all citizens equal
3 opportunity for employment without regard to gender and
4 that gender discrimination in hiring and promotion has
5 played a role in maintaining a segregated workforce in
6 this state.

7 (b) The Legislature hereby further finds and declares
8 that the existence of wage differentials between equiva-
9 lent jobs segregated by gender depresses wages and living
10 standards, prevents the maximum utilization of the
11 available labor resources and constitutes an unfair method
12 of competition.

13 (c) It is therefore the purpose of this article to provide
14 state employees equal pay for work of comparable charac-
15 ter, regardless of gender, to create a commission to study
16 both the methodology and funding for the implementation
17 of a gender discrimination prohibition and to establish a
18 procedure to remedy complaints of the failure to provide
19 equal pay for work of comparable character to state
20 employees.

§21-5E-2. Definitions.

1 For the purposes of this article:

2 (1) "Employer" means the state of West Virginia;

3 (2) "Employee" means any person hired for permanent
4 employment, either full or part-time, or hired for tempo-
5 rary employment for more than six consecutive months, by

6 any department, agency, commission or board of the state
7 created by an act of the Legislature, except any person
8 employed by the university of West Virginia board of
9 trustees, the board of directors of the state college system
10 or by any state institution of higher education, or a
11 member of the state police, an employee of any constitu-
12 tional officer who is not classified under the provisions of
13 article six, chapter twenty-nine of this code and any
14 employee of the Legislature. The definition of "employee"
15 does not include any patient or inmate employed in a state
16 institution;

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

21 (4) "Rate" with reference to wages means the basis of
22 compensation for services by an employee for an employer
23 and includes compensation based on the time spent in the
24 performance of those services, or on the number of
25 operations accomplished, or on the quantity produced or
26 handled;

27 (5) "Unpaid wages" means the difference between the
28 wages actually paid to an employee and the wages re-
29 quired to be paid to an employee pursuant to section three
30 of this article;

31 (6) "Work of comparable character" means work that
32 may be dissimilar, but whose requirements are compara-
33 ble or equivalent when viewed as a composite of levels of
34 skill, effort, responsibility and working conditions; and

35 (7) "Wage gap" means the difference between the median
36 annual earnings of men and women.

**§21-5E-3. Discrimination between sexes in payment of wages
for work of comparable character prohibited.**

1 (a) No employer shall:

2 (1) In any manner discriminate between the sexes in the
3 payment of wages for work of comparable character, the
4 performance of which requires comparable skills; or

5 (2) Pay wages to any employee at a rate less than the
6 rate other employees of the opposite sex are paid for work
7 of comparable character, the performance of which
8 requires comparable skills.

9 (b) Nothing in subsection (a) of this section prohibits the
10 payment of different wages to employees where the
11 payment is made pursuant to:

12 (1) A bona fide seniority system;

13 (2) A merit system; or

14 (3) A system that measures earnings by quantity or
15 quality of production.

16 (c) No employee shall be reduced in wages in order to
17 eliminate an existing, past or future wage discrimination
18 or to effectuate wage equalization.

19 (d) No employer shall in any manner discriminate in the
20 payment of wages to any employee because the employee
21 has filed a complaint in a proceeding under this article, or
22 has testified, or is about to testify, or because the em-
23 ployer believes that the employee may testify, in any
24 investigation or proceeding pursuant to this article.

25 (e) Except as otherwise provided in subsection (d),
26 section six of this article, the provisions of this section
27 shall not become effective until the Legislature approves
28 for promulgation the rules proposed by the equal pay
29 commission under the provisions of subsection (c) of said
30 section.

§21-5E-4. Employee's right of action against employer.

1 (a) Any employee whose compensation is at a rate that
2 is in violation of section three of this article has the right
3 to file a grievance pursuant to the provisions of article six-

4 a, chapter twenty-nine of this code.

5 (b) No agreement for compensation at a rate of less than
6 the rate to which the employee is entitled under this
7 article is a defense to any action under this article.

8 (c) The rights and procedures provided under this
9 section shall be subject to the provisions of the rules
10 promulgated by the equal pay commission in accordance
11 with section six of this article.

12 (d) Except as otherwise provided in subsection (d),
13 section six of this article, the provisions of this section
14 shall not become effective until the Legislature approves
15 for promulgation the rules proposed by the equal pay
16 commission under the provisions of subsection (c) of said
17 section.

**§21-5E-5. Establishment of the equal pay commission; ap-
pointment of members; and expiration date.**

1 (a) The equal pay commission is hereby established. The
2 commission shall be composed of seven members, as
3 follows:

4 (1) Two members of the House of Delegates, appointed
5 by the speaker;

6 (2) Two members of the Senate, appointed by the
7 president; and

8 (3) Three state employee representatives, including one
9 labor union member representing state employees, as
10 agreed to by the speaker and president; the director of the
11 women's commission, or his or her designee; and the
12 director of the office of equal employment opportunity, or
13 his or her designee.

14 (b) The commission shall seek input from and invite the
15 commissioner of labor or his or her designee and the
16 director of the personnel division of the department of
17 administration or his or her designee to attend meetings of

18 the commission.

19 (c) One of the members of the Senate and one of the
20 members of the House of Delegates, as designated by the
21 speaker and the president respectively, shall serve as
22 cochair of the commission.

23 (d) The members of the House of Delegates, the members
24 of the Senate and the state employee representative
25 members initially appointed shall serve until the thirty-
26 first day of December, one thousand nine hundred ninety-
27 eight. Those members shall thereafter be appointed to
28 serve two-year terms beginning the first day of January,
29 one thousand nine hundred ninety-nine.

30 (e) Any member whose term has expired shall serve until
31 his or her successor has been duly appointed. Any person
32 appointed to fill a vacancy shall serve only for the unex-
33 pired term. Any member shall be eligible for reappoint-
34 ment.

35 (f) Any vacancies occurring in the membership of the
36 commission shall be filled in the same manner as the
37 original appointment for the position being vacated. The
38 vacancy shall not affect the power of the remaining
39 members to execute the duties of the commission.

40 (g) The commission expires on the first day of July, two
41 thousand three.

§21-5E-6. Commission's duties; promulgation of rules.

1 (a) The equal pay commission shall study both the
2 methodology and funding for the implementation of a
3 gender discrimination prohibition and shall prepare
4 reports for submission to the Legislature which include:

5 (1) An analysis of state job descriptions which measures
6 the inherent skill, effort, responsibility and working
7 conditions of various jobs and classifications; and

8 (2) A review of similar efforts to eliminate gender-based

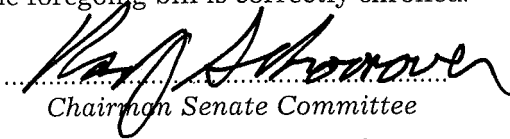
9 wage differentials implemented by other governmental
10 entities in this and other states.

11 (b) The commission shall submit an initial report with
12 recommendations for implementation of a gender discrim-
13 ination prohibition to the joint committee on government
14 and finance not later than the first day of July, two
15 thousand, and shall submit status reports annually
16 thereafter.

17 (c) Based upon the findings and recommendations in its
18 report, the commission may propose legislative rules for
19 promulgation in accordance with article three, chapter
20 twenty-nine-a of this code to implement the provisions of
21 this article.

22 (d) Notwithstanding any other provision of this article,
23 if no legislative rules are approved for promulgation by
24 the Legislature pursuant to this article prior to the first
25 day of July, two thousand one, then the provisions of
26 sections three and four of this article shall become effec-
27 tive on such date.

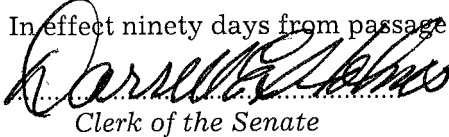
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee

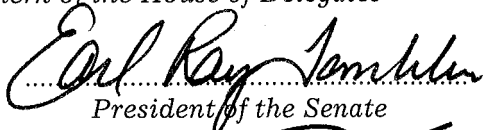

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

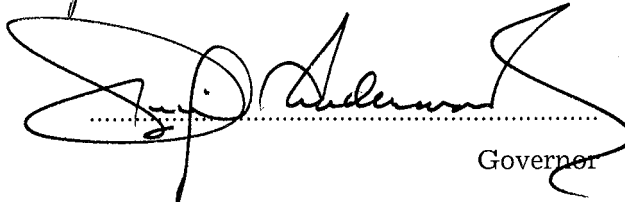

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within approved this the 1st
day of April, 1998.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/30/98

Time

9:20am