WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED
Committee Substitute for
SENATE BILL NO. 31

(By Senator White, GT MC)

PASSED March 12, 1998
In Effect Ninety Days From Passage
ENROLLED
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.

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

(b) The Legislature hereby further finds and declares that the existence of wage differentials between equivalent jobs segregated by gender depresses wages and living standards, prevents the maximum utilization of the available labor resources and constitutes an unfair method of competition.

(c) It is therefore the purpose of this article to provide state employees equal pay for work of comparable character, regardless of gender, to create a commission to study both the methodology and funding for the implementation of a gender discrimination prohibition and to establish a procedure to remedy complaints of the failure to provide equal pay for work of comparable character to state employees.


For the purposes of this article:

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

(2) "Employee" means any person hired for permanent employment, either full or part-time, or hired for temporary employment for more than six consecutive months, by...
any department, agency, commission or board of the state
created by an act of the Legislature, except any person
employed by the university of West Virginia board of
trustees, the board of directors of the state college system
or by any state institution of higher education, or a
member of the state police, an employee of any constitu-
tional officer who is not classified under the provisions of
article six, chapter twenty-nine of this code and any
employee of the Legislature. The definition of “employee”
does not include any patient or inmate employed in a state
institution;

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

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

(5) “Unpaid wages” means the difference between the
wages actually paid to an employee and the wages re-
quired to be paid to an employee pursuant to section three
of this article;

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

(7) “Wage gap” means the difference between the median
annual earnings of men and women.

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

(a) No employer shall:
(1) In any manner discriminate between the sexes in the payment of wages for work of comparable character, the performance of which requires comparable skills; or

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

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

(1) A bona fide seniority system;

(2) A merit system; or

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

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

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

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

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

(a) Any employee whose compensation is at a rate that is in violation of section three of this article has the right to file a grievance pursuant to the provisions of article six-
(b) No agreement for compensation at a rate of less than the rate to which the employee is entitled under this article is a defense to any action under this article.

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

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

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

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

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

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

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

(b) The commission shall seek input from and invite the commissioner of labor or his or her designee and the director of the personnel division of the department of administration or his or her designee to attend meetings of
(c) One of the members of the Senate and one of the members of the House of Delegates, as designated by the speaker and the president respectively, shall serve as cochair of the commission.

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

(e) Any member whose term has expired shall serve until his or her successor has been duly appointed. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment.

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

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


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

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

(2) A review of similar efforts to eliminate gender-based
wage differentials implemented by other governmental entities in this and other states.

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

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

(d) Notwithstanding any other provision of this article, if no legislative rules are approved for promulgation by the Legislature pursuant to this article prior to the first day of July, two thousand one, then the provisions of sections three and four of this article shall become effective on such date.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .................. approved this the ........................

day of ........................, 1998.

Governor