

H. B. 2499

(By Delegates Mahan, Fleischauer, Barker and
L. Phillips)

[Introduced January 14, 2011; referred to the
Committee on Government Organization then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-30-1, §5-30-2, §5-30-3, §5-30-4, §5-30-5, §5-30-6, §5-30-7 and §5-30-8, all relating to the establishment of an Equal Employment Opportunity Office within the Office of the Governor; providing public policy declarations; providing definitions; appointment of director; staffing; duties and responsibilities; investigations of noncompliant agencies; authority for proposal of rules; and requirement for annual reports.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-30-1, §5-30-2, §5-30-3, §5-30-4, §5-30-5, §5-30-6, §5-30-7 and §5-30-8, all to read as follows:

ARTICLE 30. WEST VIRGINIA EQUAL EMPLOYMENT OPPORTUNITY OFFICE.

1 §5-30-1. Public policy; equal employment opportunity.

2 (a) It is declared to be in the best interest of the State of
3 West Virginia to ensure that historic and emerging patterns of sex
4 and racial discrimination are eliminated and that each agency
5 pursue a course of action in all areas of its operation to ensure
6 that all citizens are provided with fair and equal opportunities
7 for employment and advancement with the State of West Virginia.
8 Such prohibited discrimination includes that of race, color,
9 religion, national origin, age, sex, gender, marital status,
10 veteran status, physical or mental disability or any other ground
11 prohibited pursuant to the provisions of article eleven, chapter
12 five of this code, as pertaining to state employees.

13 (b) Toward the achievement of these goals, equal employment
14 opportunity and affirmative action shall apply to:

15 (1) Hiring, placement, upgrading, transfer, or demotion of
16 state employees;

17 (2) Recruitment, advertising, or solicitation for employment;

18 (3) Treatment during employment;

19 (4) Wages, rates of pay or other forms of compensation;

20 (5) Selection for training;

21 (6) Layoff, termination, or reinstatement; and

22 (7) Any other terms or conditions of employment.

23 §5-30-2. Definitions.

24 As used in this article, unless the context otherwise

1 requires:

2 (1) "Director" means the Equal Employment Opportunity
3 Director;

4 (2) "Affirmative action" means a deliberate and sustained
5 effort to identify and eliminate barriers to employment and
6 advancement which may unlawfully discriminate on a ground
7 prohibited pursuant to the provisions of article five, chapter
8 eleven. The ultimate goal is to achieve, at all levels, a state
9 government workforce which is representative of the state working
10 population. The composition of the state working population shall
11 be determined annually through reports of the United States
12 Department of Labor. Such a goal is to be an integral part of every
13 aspect of personnel policy;

14 (3) "Agency" means any administrative unit of state government
15 or any political subdivision thereof, including any authority,
16 board, bureau, commission, committee, council, division, section or
17 office;

18 (4) "Appointing authority" means a person or group of persons
19 authorized by state law or within an agency to make appointments to
20 positions in the classified or classified-exempt service;

21 (5) "Equal employment opportunity" means the right of all
22 persons to work, to be compensated and to advance on the basis of
23 merit and ability without regard to race, color, religion, national
24 origin, age, sex, gender, marital status, veteran status, physical

1 or mental disability, or membership in any other organization , or
2 any other ground prohibited pursuant to the provisions of article
3 eleven, chapter five of this code, and to work in an environment
4 free from illegal hostility, discrimination, harassmt or
5 retaliation or any other unlawful adverse employment action;

6 (6) "Discrimination" means any direct or indirect act or
7 practice of exclusion, distinction, restriction, limitation,
8 refusal, denial or any other act or practice of differentiation or
9 preference in the treatment of a person or persons resulting from
10 their being members of a protected class based upon race, color,
11 religion, national origin, age, sex, gender, marital status,
12 veteran status, physical or mental disability, or any other ground
13 prohibited pursuant to the provisions of article eleven, chapter
14 five of this code;

15 (7) "Program" means the equal employment opportunity program
16 adopted by each state department, agency, authority, board, bureau,
17 commission; committee, council, division, section or office;

18 (8) "Office" means the Equal Employment Opportunity Office;

19 (9) "Plan" means the affirmative action plan prepared by the
20 individual agencies; and

21 (10) "State" means the State of West Virginia or any
22 political subdivision thereof.

23 **§5-30-3. Equal Employment Opportunity Office created; duties;**
24 **separation of duties and responsibilities.**

1 (a) There is hereby created the Equal Employment Opportunity
2 Office within the Office of the Governor. The Equal Employment
3 Opportunity Office is responsible for assuring compliance with the
4 requirements of all state and federal requirements for affirmative
5 action and equal employment opportunity, and shall provide
6 training, counseling and technical assistance as may be requested
7 by all state agencies as is necessary to comply with the intent of
8 this article.

9 (b) The Equal Employment Opportunity Office shall issue any
10 guidelines, directives or instructions that are necessary to
11 effectuate its responsibilities under this article, and is
12 authorized to investigate allegations of prohibited discrimination,
13 harassment or retaliation and direct corrective action to any such
14 action substantiated.

15 (c) Nothing in this article affects the jurisdiction or
16 authority of the West Virginia Human Rights Commission.

17 **§5-30-4. Equal Employment Opportunity Office Director; selection;**
18 **duties; authority to propose rules for promulgation;**
19 **staffing.**

20 (a) The Governor shall appoint the Equal Employment
21 Opportunity Director with advice and consent of the Senate, who
22 shall serve at the will and pleasure of the Governor.

23 (b) The director shall be a qualified administrator as
24 reasonably determined by the Governor, and shall be a member in

1 good standing of the West Virginia State Bar.

2 (c) The director shall be given all necessary cooperation to
3 ensure that there is compliance with all state agency equal
4 employment opportunity programs, and shall be provided with
5 resources commensurate with the responsibilities of the office.

6 (d) The director shall:

7 (1) Coordinate, direct, and implement the agencies' equal
8 employment opportunity programs;

9 (2) Propose legislative rules for legislative approval in
10 accordance with article three, chapter twenty-nine-a of this code
11 in order to carry out the provisions of this article;

12 (3) Provide training, counseling and technical assistance to
13 the agencies on equal employment opportunity matters and in the
14 development of their affirmative action plans;

15 (4) Review agency programs and plans and direct modification
16 to ensure the effectiveness of the programs and the plans;

17 (5) Monitor the progress of agency programs and plans by
18 establishing reporting forms;

19 (6) Establish and review the annual affirmative action reports
20 of the agencies;

21 (7) Monitor the progress of the agency programs and include
22 such progress in an annual report to the Governor;

23 (8) Recommend legislation, when necessary, in order to make
24 changes in the program;

1 (9) Serve as liaison between the state and federal compliance
2 agencies;

3 (10) Plan, coordinate, and conduct training in equal
4 employment opportunity topics, including, but not limited to,
5 workplace discrimination, harassment and retaliation for all
6 segments of the state government workforce;

7 (11) Coordinate the activities of the designated affirmative
8 action and equal employment opportunity representative or
9 representatives in each agency;

10 (12) When requested by an employee or an agency, investigate
11 any complaints involving unfair treatment, terms and conditions of
12 employment, or perceived acts or policies involving discrimination,
13 harassment or retaliation;

14 (13) Conduct contract compliance reviews on all vendors,
15 grantees, and contractors doing business with the state who have
16 programs or projects which are funded ,in whole or in part, by
17 state or federal funds;

18 (14) Coordinate duties and responsibilities with the State
19 Americans with Disabilities Coordinator, the Women's Commission and
20 the Equal Pay Commission;

21 (15) Act as a repository for all agency equal employment
22 opportunity discrimination, harassment or retaliation claims,
23 investigations and reports;

24 (16) Perform statutory duties expressly outlined in the

1 provisions of article five-e, chapter twenty-one of this code
2 regarding equal pay and prohibited gender discrimination;

3 (17) Perform any other statutory duties expressly set forth by
4 the Legislature;

5 (18) Submit an annual report to the Governor, the Joint
6 Committee on Government and Finance and the Equal Pay Commission;
7 and

8 (19) Have such other authority and perform such duties as may
9 be required or necessary to effectuate this article.

10 (e) The director shall receive an annual salary, as provided
11 by the Governor.

12 **§5-30-5. Agency duties; submission and updating of affirmative**
13 **action plans.**

14 Each agency shall submit an affirmative action plan for that
15 agency to the office for review, and shall work with the director
16 to ensure the effectiveness of the plan. Each agency shall update
17 its plan annually based on guidelines developed by the director.

18 **§5-30-6. Agency Equal Employment Opportunity representative;**
19 **designation.**

20 Each agency shall have one or more individuals who are
21 designated as agency equal employment opportunity representatives
22 for the agency who shall act as officers, coordinators or
23 counselors to direct and coordinate equal employment opportunity
24 and affirmative action efforts.

1 §5-30-7. Authorization by director to initiate investigations
2 against noncompliant agencies; report of such action
3 to the Governor; establishment of timelines for
4 compliance; notice of employee rights.

5 (a) The director is authorized to initiate investigations
6 against any agencies, directors, or employees of any department or
7 division within state government, excluding the legislative branch,
8 who or which fail to comply with the requirements of this article
9 or who or which fail to meet the standards of good faith effort,
10 reasonable basis, or reasonable action, as defined in guidelines
11 promulgated by the Equal Employment Opportunity Commission as set
12 forth in 29 C.F.R. §1607.

13 (b) Whenever the director initiates an investigation, he or
14 she shall cause to be issued and served in the name of the Equal
15 Employment Opportunity Office, a written notice, together with a
16 copy of the alleged noncompliance, requiring that the agency,
17 director, agent, or employee respond to the director and to the
18 Governor, and setting forth the time frames for correction of the
19 failure to comply.

20 (c) The director must give notice to all state employees of
21 their rights pursuant to applicable sections of this code.

22 §5-30-8. Employment policies for state employees.

23 (a) Each appointing authority shall review the recruitment,
24 appointment, assignment, upgrading, and promotion policies and

1 activities for state employees without regard to race, color,
2 religion, sex, gender, age, national origin, marital status,
3 veteran status, physical or mental disability, or any other ground
4 prohibited pursuant to the provisions of article eleven, chapter
5 five of this code;

6 (b) Special attention shall be given to the parity of classes
7 of employees doing similar work and the training of supervisory
8 personnel with regard to equal employment opportunity and
9 affirmative action principles and procedures;

10 (c) Annually, each appointing authority shall include in its
11 expenditure schedules any necessary programs, goals and objectives
12 that shall improve the equal employment opportunity and affirmative
13 action aspects of the agency's employment policies; and

14 (d) Each appointing authority shall make an annual report to
15 the Equal Employment Opportunity Office on persons in the protected
16 classes enumerated herein hired, disciplined, terminated, promoted,
17 transferred, and vacancies occurring within their department.

NOTE: The purpose of this bill is to establish an Equal Employment Opportunity Office within the Office of the Governor.

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