

Senate Bill No. 90

(By Senators Palumbo, Foster, Plymale, McCabe and Klempa)

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

**Interim
Bill**

**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
25 requires:

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

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

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

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

20 (5) "Equal employment opportunity" means the right of all
21 persons to work, to be compensated and to advance on the basis of
22 merit and ability without regard to race, color, religion, national
23 origin, age, sex, gender, marital status, veteran status, physical
24 or mental disability, or membership in any other organization , or
25 any other ground prohibited pursuant to the provisions of article

1 eleven, chapter five of this code, and to work in an environment
2 free from illegal hostility, discrimination, harassment or
3 retaliation or any other unlawful adverse employment action;

4 (6) "Discrimination" means any direct or indirect act or
5 practice of exclusion, distinction, restriction, limitation,
6 refusal, denial or any other act or practice of differentiation or
7 preference in the treatment of a person or persons resulting from
8 their being members of a protected class based upon 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;

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

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

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

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

21 **§5-30-3. Equal Employment Opportunity Office created; duties;**
22 **separation of duties and responsibilities.**

23 (a) There is hereby created the Equal Employment Opportunity
24 Office within the Office of the Governor. The Equal Employment
25 Opportunity Office is responsible for assuring compliance with the

1 requirements of all state and federal requirements for affirmative
2 action and equal employment opportunity, and shall provide
3 training, counseling and technical assistance as may be requested
4 by all state agencies as is necessary to comply with the intent of
5 this article.

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

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

14 **§5-30-4. Equal Employment Opportunity Office Director; selection;**
15 **duties; authority to propose rules for promulgation;**
16 **staffing.**

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

20 (b) The director shall be a qualified administrator as
21 reasonably determined by the Governor, and shall be a member in
22 good standing of the West Virginia State Bar.

23 (c) The director shall be given all necessary cooperation to
24 ensure that there is compliance with all state agency equal
25 employment opportunity programs, and shall be provided with

1 resources commensurate with the responsibilities of the office.

2 (d) The director shall:

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

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

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

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

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

15 (6) Establish and review the annual affirmative action reports
16 of the agencies;

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

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

21 (9) Serve as liaison between the state and federal compliance
22 agencies;

23 (10) Plan, coordinate and conduct training in equal employment
24 opportunity topics, including, but not limited to, workplace
25 discrimination, harassment and retaliation for all segments of the

1 state government workforce;

2 (11) Coordinate the activities of the designated affirmative
3 action and equal employment opportunity representative or
4 representatives in each agency;

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

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

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

16 (15) Act as a repository for all agency equal employment
17 opportunity discrimination, harassment or retaliation claims,
18 investigations and reports;

19 (16) Perform statutory duties expressly outlined in the
20 provisions of article five-e, chapter twenty-one of this code
21 regarding equal pay and prohibited gender discrimination;

22 (17) Perform any other statutory duties expressly set forth by
23 the Legislature;

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

1 and

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

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

6 **§5-30-5. Agency duties; submission and updating of affirmative
7 action plans.**

8 Each agency shall submit an affirmative action plan for that
9 agency to the office for review, and shall work with the director
10 to ensure the effectiveness of the plan. Each agency shall update
11 its plan annually based on guidelines developed by the director.

12 **§5-30-6. Agency Equal Employment Opportunity representative;
13 designation.**

14 Each agency shall have one or more individuals who are
15 designated as agency equal employment opportunity representatives
16 for the agency who shall act as officers, coordinators or
17 counselors to direct and coordinate equal employment opportunity
18 and affirmative action efforts.

19 **§5-30-7. Authorization by director to initiate investigations
20 against noncompliant agencies; report of such action
21 to the Governor; establishment of timelines for
22 compliance; notice of employee rights.**

23 (a) The director is authorized to initiate investigations
24 against any agencies, directors, or employees of any department or

1 division within state government, excluding the legislative branch,
2 who or which fail to comply with the requirements of this article
3 or who or which fail to meet the standards of good faith effort,
4 reasonable basis, or reasonable action, as defined in guidelines
5 promulgated by the Equal Employment Opportunity Commission as set
6 forth in 29 C.F.R. §1607.

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

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

16 **§5-30-8. Employment policies for state employees.**

17 (a) Each appointing authority shall review the recruitment,
18 appointment, assignment, upgrading, and promotion policies and
19 activities for state employees without regard to race, color,
20 religion, sex, gender, age, national origin, marital status,
21 veteran status, physical or mental disability, or any other ground
22 prohibited pursuant to the provisions of article eleven, chapter
23 five of this code;

24 (b) Special attention shall be given to the parity of classes
25 of employees doing similar work and the training of supervisory

1 personnel with regard to equal employment opportunity and
2 affirmative action principles and procedures;

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

7 (d) Each appointing authority shall make an annual report to
8 the Equal Employment Opportunity Office on persons in the protected
9 classes enumerated herein hired, disciplined, terminated, promoted,
10 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.

This article is new; therefore, strike-throughs and
underscoring have been omitted.

This bill was recommended for introduction and passage during
the 2011 Regular Session of the Legislative Oversight Committee.