

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 280

BY SENATORS BOSO AND WELD

[Originating in the Committee on Government

Organization; reported on March 3, 2017]

1 A BILL to repeal §29-2A-3a of the Code of West Virginia, 1931, as amended; and to amend said
2 code by adding thereto a new article, designated §15-1K-1, §15-1K-2, §15-1K-3, §15-1K-
3 4, §15-1K-5, §15-1K-6, §15-1K-7, §15-1K-8 and §15-1K-9, all relating to the West Virginia
4 wing of the Civil Air Patrol; eliminating the State Aeronautics Commission's authority to
5 expend funds to support the West Virginia wing of the Civil Air Patrol; providing for
6 legislative findings and intent; defining terms; providing for the Adjutant General to
7 administer the West Virginia wing of the Civil Air Patrol; providing the Adjutant General the
8 authority to expend appropriated funds to provide certain support to the West Virginia wing
9 of the Civil Air Patrol; providing for unpaid Civil Air Patrol leave and the protection of
10 employees performing Civil Air Patrol missions; providing that employers may not
11 discriminate based on an employee's membership in the Civil Air Patrol; and providing
12 that an employee may bring a civil action to enforce the provisions of this article but shall
13 not recover monetary damages.

Be it enacted by the Legislature of West Virginia:

1 That §29-2A-3a of the Code of West Virginia, 1931, as amended, be repealed; and that
2 said code be amended by adding thereto a new article, designated §15-1K-1, §15-1K-2, §15-1K-
3 3, §15-1K-4, §15-1K-5, §15-1K-6, §15-1K-7, §15-1K-8 and §15-1K-9, all to read as follows:

ARTICLE 1K. CIVIL AIR PATROL.

§15-1K-1. Legislative findings and intent.

1 (a) The Legislature hereby makes the following findings:
2 (1) The Civil Air Patrol is the congressionally chartered official auxiliary of the United States
3 Air Force. It performs three congressionally assigned key missions: emergency services, which
4 includes search and rescue, by air and ground, and disaster relief operations; aerospace
5 education for youth and the general public; and cadet programs for teenage youth. In addition,
6 the Civil Air Patrol is tasked with homeland security and other missions.

7 (2) The Civil Air Patrol also performs nonauxiliary missions for various federal and state
8 governmental and private agencies, such as the West Virginia Army and Air National Guard, State
9 Division of Homeland Security and Emergency Management, the Division of Forestry, local law
10 enforcement, the Federal Emergency Management Agency and the American Red Cross.

11 (3) The West Virginia wing of the Civil Air Patrol, is organized, equipped, governed,
12 administered and trained in accordance with the rules and regulations of the United States Air
13 Force and the Civil Air Patrol.

14 (4) The West Virginia wing of the Civil Air Patrol has air and ground assets located
15 throughout the state, as well as highly trained aircrews, ground search crews and other mission
16 support personnel who perform, as unpaid professionals, valuable emergency services missions
17 for the citizens of West Virginia. Additionally, the West Virginia wing of the Civil Air Patrol, through
18 its missions of aerospace education and cadet programs, is instrumental in developing West
19 Virginia's youth to be the leaders of the future.

20 (b) In light of the invaluable services provided by the West Virginia wing of the Civil Air
21 Patrol to the state, it is the intent of the Legislature for the state and the Adjutant General to
22 provide administrative, financial and other support to the West Virginia wing of the Civil Air Patrol
23 so that it can continue to train and equip itself and its unpaid personnel to perform these valuable
24 missions for the citizens of the state.

25 (c) It is also the intent of the Legislature to create protections for employees who are
26 members of the Civil Air Patrol and who train for, and respond to, emergency services missions.

§15-1K-2. Definitions.

1 As used in this article:

2 (1) "Civil Air Patrol leave" means leave requested by an employee who:

3 (A) Is a volunteer member of the civilian auxiliary of the United States Air Force known as
4 the Civil Air Patrol; and

5 (B) Has been authorized by the United States Air Force, the Governor or a department,
6 division, agency or political subdivision of the state to respond to or train for an emergency
7 mission.

8 (2) "Emergency mission" means an Air Force assigned mission under which the West
9 Virginia wing of the Civil Air Patrol conducts operations.

10 (3) "Employee" means any individual who performs services for, or under the control of, a
11 provider of wages or remuneration.

12 (4) "Employee benefits" means all benefits other than wages given by an employer.

13 (5) "Employer" means any person or entity that employs more than fifteen employees.

§15-1K-3. Adjutant General administration; expenses of Civil Air Patrol.

1 (a) Due to the nature of its congressionally assigned key missions and nonassigned
2 missions, the West Virginia wing of the Civil Air Patrol shall be administered by the Adjutant
3 General and the Adjutant General's department in accordance with applicable state, federal and
4 Civil Air Patrol regulations.

5 (b) The Adjutant General, in addition to all other powers and functions authorized by law,
6 may expend state funds:

7 (1) For operational missions or other objectives related to national security, homeland
8 security, emergency response, disaster relief or other similar missions;

9 (2) For educational and training purposes of the Civil Air Patrol, including, but not limited
10 to, the purchase of Civil Air Patrol aviation, homeland security and emergency services education
11 training aid books, materials and equipment;

12 (3) To defray maintenance, repair and replacement costs of Civil Air Patrol aircraft, motor
13 vehicles and other homeland security and emergency services equipment;

14 (4) To purchase and obtain supplies and equipment for the Civil Air Patrol; and

15 (5) To maintain the communications network for the Civil Air Patrol and to integrate it with
16 other state communications networks.

17 (c) Funds specifically appropriated by the Legislature for the purposes specified in
18 subsection (b) of this section may be expended by the Adjutant General and shall be expended
19 for no other purposes.

§15-1K-4. Nondiscrimination by employer against Civil Air Patrol members.

1 (a) An employer may not discriminate against or discharge from employment an employee
2 who has been employed for a minimum of ninety days and is a member of the Civil Air Patrol
3 because of membership in the Civil Air Patrol.

4 (b) An employer may not hinder or prevent an employee who has been employed for a
5 minimum of ninety days from performing service as part of the West Virginia wing of the Civil Air
6 Patrol during an emergency mission or training if the member is entitled to leave under this article.

§15-1K-5. Employer to provide leave.

1 (a) An employer shall provide up to a maximum of ten days per calendar year of unpaid
2 Civil Air Patrol leave to an employee training for an emergency mission of the West Virginia wing
3 of the Civil Air Patrol.

4 (b) An employer shall provide up to a maximum of thirty days per calendar year of unpaid
5 Civil Air Patrol leave to an employee responding to an emergency mission of the West Virginia
6 wing of the Civil Air Patrol.

7 (c) An employee shall give the employer:

8 (1) At least fourteen days' notice of the intended dates of the beginning and end of leave
9 together with an estimate of the amount of time needed to complete training; and

10 (2) As much notice as possible of the intended dates of the beginning and end of leave
11 together with an estimate of the amount of time needed to complete an emergency mission.

12 (d) The employee shall report to the employer necessary changes in the time required to
13 complete the training or mission.

14 (e) The employer may require verification of the eligibility of the employee for the Civil Air
15 Patrol leave requested or taken.

16 (f) If the employee fails to provide the required verification, the employer may deny the
17 Civil Air Patrol leave.

18 (g) An employee taking leave under this article is not required to exhaust all available
19 leave or time-off benefits before using Civil Air Patrol leave.

20 (h) This article shall not prevent an employer from providing an employee paid leave.

§15-1K-6. Return to work by employee.

1 (a) When the employee returns to work, the employer shall restore the employee to the
2 position held when the leave began or to a position with equivalent seniority status, benefits, pay
3 and conditions of employment.

4 (b) An employer may decline to restore an employee as required in this article because of
5 circumstances unrelated to the provisions of this article.

6 (c) An employer and an employee may negotiate for the employer to pay for the benefits
7 of the employee during the leave, but the employer is not required to continue or maintain
8 employee benefits for any employee eligible for leave under this article where the employee would
9 not be otherwise eligible for any benefit under the policies of the employer or the content of any
10 employee benefit plan which regulates eligibility for benefits.

§15-1K-7. Accrued benefits not lost; leave not to be used with other leave; rights and
obligations under collective bargaining or other agreements.

1 (a) The use of Civil Air Patrol leave under this article may not result in the loss of an
2 employee benefit accrued before the first date of leave.

3 (b) An employee using leave under any other provision of state or federal law may not
4 concurrently use leave granted under this article.

5 (c) This article does not affect the obligation of an employer to comply with a collective
6 bargaining agreement or an employee benefit plan that provides greater leave rights to employees
7 than the rights provided under this article.

8 (d) The grant of leave under this article may not be diminished by a collective bargaining
9 agreement or an employee benefit plan entered into on or after July 1, 2017.

10 (e) This article does not affect or diminish the contract rights or seniority status of an
11 employee not entitled to Civil Air Patrol leave.

§15-1K-8. Certain actions by employer prohibited.

1 (a) An employer may not interfere with the use of Civil Air Patrol leave allowed under this
2 article.

3 (b) An employer may not discharge, fine, suspend, expel, discipline or in any other manner
4 discriminate against an employee who is a member of the Civil Air Patrol because that employee
5 complies with the provisions of this article or opposes a practice not in compliance with this article.

§15-1K-9. Action to enforce article authorized.

1 (a) An employee may bring a civil action in the appropriate circuit court to enforce this
2 article.

3 (b) The court may enjoin an act or practice that violates this article and may order equitable
4 relief to redress the violation or to enforce this article, including the recovery of lost wages incurred
5 as a result of any violation under this article. No other monetary damages may be awarded or
6 recovered.

NOTE: The purpose of this bill is to move the association of the Civil Air Patrol from the Aeronautics Commission and realign it under the Military Forces of the state because one of the Civil Air Patrol's primary missions is the provision of emergency services, including aerial and ground search and rescue operations, homeland security operations and disaster relief operations, and to provide protections to employees training for and performing Civil Air Patrol missions.

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