

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 344

(By Senators Trump, Carmichael and Blair)

[Originating in the Committee on the Judiciary;
reported February 17, 2015.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7E-1, §55-7E-2 and §55-7E-3, all relating to setting adequate and reasonable amounts of compensatory damages available to an employee in statutory and common law wrongful or retaliatory discharge causes of action and other employment law claims; setting forth definitions; setting forth legislative findings and declaration of public policy; placing duty to mitigate damages on plaintiffs in employment-related lawsuits and causes of action; and requiring a judge to make a finding on the appropriateness of

remedy versus reinstatement before front pay damages are to be considered by a jury.

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 §55-7E-1, §55-7E-2 and §55-7E-3, all to read as follows:

**ARTICLE 7E. LIMITATIONS ON BACK AND FRONT PAY AND
PUNITIVE DAMAGES IN EMPLOYMENT
CLAIMS.**

§55-7E-1. Definitions.

1 In this article:

2 (a) “Back pay” means the wages that an employee would
3 have earned, had the employee not suffered from an adverse
4 employment action, from the time of the adverse employment
5 action through the time of trial.

6 (b) “Front pay” means the wages that an employee would
7 have earned, had the employee not suffered from an adverse
8 employment action, from the time of trial through a future
9 date.

§55-7E-2. Legislative findings and declaration of purpose.

1 (a) The Legislature finds that:

2 (1) Employees of this state are entitled to be free from
3 unlawful discrimination, wrongful discharge and unlawful
4 retaliation in the workplace. Employers are often
5 confronted with difficult choices in the hiring, discipline,
6 promotion, layoff and discharge of employees.

7 (2) The citizens and employers of this state are entitled
8 to a legal system that provides adequate and reasonable
9 compensation to those persons who have been subjected to
10 unlawful employment actions, a legal system that is fair,
11 predictable in its outcomes, and a legal system that
12 functions within the mainstream of American jurisprudence.

13 (3) The goal of compensation remedies in employment
14 law cases is to make the victim of unlawful workplace
15 actions whole, including back pay; reinstatement or some
16 amount of front pay in lieu of reinstatement; and under
17 certain statutes, attorney's fees for the successful plaintiff.

18 (4) In West Virginia, the amount of damages recently
19 awarded in statutory and common law employment cases
20 have been inconsistent with established federal law and the
21 law of surrounding states. This lack of uniformity in the law
22 puts our state and its businesses at a competitive
23 disadvantage.

24 (b) The purpose of this article is to provide a framework
25 for adequate and reasonable compensation to those persons
26 who have been subjected to an unlawful employment action,
27 but to ensure that compensation does not far exceed the goal
28 of making a wronged employee whole.

**§55-7E-3. Statutory or common law employment claims ; duty to mitigate
back pay and front pay damages; limits on punitive damages.**

1 (a) In any employment law cause of action against a
2 current or former employer, regardless of whether the cause
3 of action arises from a statutory right created by the
4 Legislature or a cause of action arising under the common
5 law of West Virginia, the plaintiff has an affirmative duty to

6 mitigate past and future lost wages, regardless of whether the
7 plaintiff can prove the defendant employer acted with malice
8 or malicious intent, or in willful disregard of the plaintiff's
9 rights. The malice exception to the duty to mitigate damages
10 is abolished. Unmitigated or flat back pay and front pay
11 awards are not an available remedy. Any award of back pay
12 or front pay by a commission, court or jury shall be reduced
13 by the amount of interim earnings or the amount earnable
14 with reasonable diligence by the plaintiff. It is the
15 defendant's burden to prove the lack of reasonable diligence.

1 (b) In any employment law claim or cause of action, the
2 trial court shall make a preliminary ruling on the
3 appropriateness of the remedy of reinstatement versus front
4 pay if such remedies are sought by the plaintiff. If front pay
5 is determined to be the appropriate remedy, the amount of
6 front pay, if any, to be awarded shall be an issue for the trial
7 judge to decide.

(NOTE: The purpose of this bill is to establish adequate and reasonable amounts of compensatory and punitive damages that may be awarded in statutory and common law wrongful or retaliatory discharge and other employment law claims or causes of action.

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