

1 HB368
2 190560-1
3 By Representatives Clarke, Lawrence, Drummond, Forte,
4 Chestnut, Hollis, Daniels, Scott, Warren, Beech, Hall,
5 Coleman, Moore (M), Bracy, Rowe, Weaver, Boyd, Givan,
6 Nordgren, Collins, Knight, McClammy, McCampbell, Buskey,
7 Howard, Black and Grimsley
8 RFD: State Government
9 First Read: 01-FEB-18

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8 SYNOPSIS: Existing federal law requires employers to
9 pay men and women equally for doing the same work.

10 This bill would prohibit an employer from
11 paying any of its employees at wage rates less than
12 those paid to employees of the opposite sex for
13 substantially similar work when viewed as a
14 composite of skill, effort, and responsibility, as
15 specified.

16 This bill would allow the employer to
17 affirmatively demonstrate that a wage differential
18 is based upon one or more specified factors,
19 including a seniority system, a merit system, a
20 system that measures earnings by quantity or
21 quality of production, or a bona fide factor other
22 than sex, as specified.

23 This bill would also require the employer to
24 demonstrate that each factor relied upon is applied
25 reasonably and that the one or more factors relied
26 upon account for the entire differential.

1 This bill would prohibit an employer from
2 discharging, or in any manner discriminating or
3 retaliating against, any employee by reason of any
4 action taken by the employee to invoke or assist in
5 any manner the enforcement of these provisions.

6 This bill would allow an employee who has
7 been discharged, discriminated against, or
8 retaliated against because of wage inequality to
9 file a complaint with the Alabama Department of
10 Labor and to provide the procedure for an
11 investigation of the complaint.

12 This bill would require the department to
13 enforce its provisions.

14 This bill would provide that an employer may
15 not prohibit an employee from disclosing the
16 employee's own wages, discussing the wages of
17 others, inquiring about another employee's wages,
18 or aiding or encouraging any other employee to
19 exercise his or her rights under these provisions.

20 This bill would require an employer to
21 maintain a record of wages paid to his or her
22 employee for a certain amount of time.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to wages; to prohibit an employer from
2 paying any of its employees at wage rates less than those paid
3 to employees of the opposite sex for substantially similar
4 work; to require an employer to affirmatively demonstrate that
5 a wage differential is based upon one or more specified
6 factors; to prohibit an employer from discharging or in any
7 manner discriminating against or retaliating against an
8 employee for the enforcement of these provisions; to provide
9 for enforcement of the bill; to provide that an employer may
10 not prohibit an employee from disclosing the employee's own
11 wages, discussing the wages of others, inquiring about another
12 employee's wages, or aiding or encouraging any other employee
13 to exercise his or her rights under these provisions; and to
14 require an employer to maintain a record of wages paid to his
15 or her employee for a certain amount of time.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. (a) An employer may not pay any of its
18 employees at wage rates less than the rates paid to employees
19 of the opposite sex for substantially similar work, when
20 viewed as a composite of skill, effort, and responsibility,
21 and performed under similar working conditions, except where
22 the employer demonstrates:

23 (1) The wage differential is based upon one or more
24 of the following factors:

- 25 a. A seniority system.
- 26 b. A merit system.

1 c. A system that measures earnings by quantity or
2 quality of production.

3 d. A bona fide factor other than sex, such as
4 education, training, or experience. This factor shall apply
5 only if the employer demonstrates that the factor is not based
6 on or derived from a sex-based differential in compensation,
7 is job-related with respect to the position in question, and
8 is consistent with a business necessity. For purposes of this
9 subparagraph, "business necessity" means an overriding
10 legitimate business purpose such that the factor relied upon
11 effectively fulfills the business purpose it is supposed to
12 serve. This defense shall not apply if the employee
13 demonstrates that an alternative business practice exists that
14 would serve the same business purpose without producing the
15 wage differential.

16 (2) Each factor relied upon is applied reasonably.

17 (3) The one or more factors relied upon account for
18 the entire wage differential.

19 (b) Any employer who violates subsection (a) is
20 liable to the employee affected in the amount of the wages,
21 and interest thereon, of which the employee is deprived by
22 reason of the violation, and an additional equal amount as
23 liquidated damages.

24 (c) The Alabama Department of Labor shall administer
25 and enforce this section. If the department finds that an
26 employer has violated this section, it may supervise the

1 payment of wages, interest, and damages found to be due and
2 unpaid to employees under this section.

3 (d) Every employer shall maintain records of the
4 wages and wage rates, job classifications, and other terms and
5 conditions of employment of the persons employed by the
6 employer. All of the records shall be kept on file for a
7 period of three years.

8 (e) If an employee recovers amounts due the employee
9 under subsection (b), and also files a complaint or brings an
10 action under subsection (d) of Section 206 of Title 29 of the
11 United States Code which results in an additional recovery
12 under federal law for the same violation, the employee shall
13 return to the employer the amounts recovered under subsection
14 (b), or the amounts recovered under federal law, whichever is
15 less.

16 (f) (1) An employer may not discharge, or in any
17 manner discriminate against or retaliate against, any employee
18 by reason of any action taken by the employee to invoke or
19 assist in any manner the enforcement of this section. An
20 employer may not prohibit an employee from disclosing the
21 employee's own wages, discussing the wages of others,
22 inquiring about another employee's wages, or aiding or
23 encouraging any other employee to exercise his or her rights
24 under this section. Nothing in this section creates an
25 obligation to disclose wages.

26 (2) Any employee who has been discharged,
27 discriminated against or retaliated against, in the terms and

1 conditions of his or her employment because the employee
2 engaged in any conduct delineated in this section may recover
3 in a civil action reinstatement and reimbursement for lost
4 wages and work benefits caused by the acts of the employer,
5 including interest thereon, as well as appropriate equitable
6 relief.

7 (3) A civil action brought under this subsection may
8 be commenced no later than one year after the cause of action
9 occurs.

10 Section 2. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.