

By: Johnson of Dallas

H.B. No. 290

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition on sex discrimination in compensation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 21, Labor Code, is amended by adding Section 21.1061 to read as follows:

Sec. 21.1061. SEX DISCRIMINATION IN COMPENSATION. For purposes of this chapter, a violation of Chapter 24 is considered to be discrimination on the basis of sex.

SECTION 2. Subtitle A, Title 2, Labor Code, is amended by adding Chapter 24 to read as follows:

CHAPTER 24. EMPLOYMENT DISCRIMINATION REGARDING COMPENSATION

Sec. 24.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person who has made an oral or written application with an employer, or has sent a resume or other correspondence to an employer, indicating an interest in employment.

(2) "Commission" means the Texas Workforce Commission.

(3) "Employee" and "employer" have the meanings assigned by Section 21.002.

(4) "Wages" has the meaning assigned by Section 61.001.

Sec. 24.002. EMPLOYER INQUIRIES INTO AND CONSIDERATION OF WAGE HISTORY INFORMATION. (a) An employer may not:

1           (1) include a question regarding an applicant's wage  
2 history information on an employment application form;

3           (2) inquire into or consider an applicant's wage  
4 history information; or

5           (3) obtain an applicant's wage history information  
6 from a previous employer of the applicant, unless the wages in that  
7 previous employment position are subject to disclosure under  
8 Chapter 522, Government Code.

9           (b) Notwithstanding Subsection (a), an applicant may  
10 provide written authorization to a prospective employer to confirm  
11 the applicant's wage history, including benefits or other  
12 compensation, only after the prospective employer has made a  
13 written offer of employment to the applicant that includes the  
14 applicant's wage and benefit information for the position.

15           Sec. 24.003. PROHIBITION AGAINST DISCRIMINATION IN WAGES.

16           (a) For purposes of this section, "business necessity" means an  
17 overriding legitimate business purpose such that the factor relied  
18 upon in determining wage differential effectively fulfills the  
19 business purpose the factor is intended to serve.

20           (b) An employer commits an unlawful employment practice in  
21 violation of this chapter and Chapter 21 if the employer  
22 discriminates among employees on the basis of sex by paying wages to  
23 an employee at a rate less than the rate at which the employer pays  
24 wages to another employee of the opposite sex for the same or  
25 substantially similar work on jobs, the performance of which  
26 requires equal or substantially similar skill, effort, and  
27 responsibility, and which are performed under similar working

conditions, except where the payment is made under one of the following factors:

- (1) a seniority system;
- (2) a merit system;
- (3) a system that measures earnings by quantity or quality of production; or
- (4) a differential based on a bona fide factor other than sex.

(c) A seniority system described by Subsection (b)(1) may not deduct from the employee's service time any leave that the employee took under the Family and Medical Leave Act (29 U.S.C. Section 2601 et seq.) or other applicable family or medical leave to which the employee is entitled.

(d) The exception provided by Subsection (b)(4) applies only if the employer demonstrates that the factor:

- (1) is not based on or derived from a differential based on sex in compensation;
- (2) is related to the position in question; and
- (3) is consistent with business necessity.

(e) Notwithstanding Subsection (d), the exception provided by Subsection (b)(4) does not apply if the employee demonstrates that an alternative business practice exists that would serve the same business purpose without producing a wage differential.

(f) An employer may not enter into an agreement with an employee that provides that the employer may pay the employee a wage at a rate that is in violation of this section.

Sec. 24.004. OTHER PROHIBITED ACTS. (a) An employer

commits an unlawful employment practice in violation of this chapter and Chapter 21 if the employer:

(1) takes an adverse action or otherwise discriminates against a person because the person has:

(A) opposed an act or practice made unlawful by this chapter;

(B) sought to enforce rights protected under this chapter; or

(C) testified, assisted, or participated in any manner in an investigation, hearing, or other proceeding to enforce this chapter; or

(2) discharges or in any other manner discriminates against, coerces, intimidates, threatens, or interferes with an employee or other person because the person:

(A) inquired about, disclosed, compared, or otherwise discussed an employee's wages; or

(B) exercised or enjoyed, or aided or encouraged another person to exercise or enjoy, any right granted or protected by this chapter.

(b) This section does not require an employee to disclose the employee's wages.

Sec. 24.005. NOTICE BY EMPLOYER REQUIRED. Each employer shall post in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted a notice, prepared or approved by the commission, setting forth the pertinent provisions of this chapter and information relating to the enforcement of this chapter.

1       Sec. 24.006. COMPLAINT; ENFORCEMENT. (a) A person  
2 aggrieved by an unlawful employment practice under this chapter may  
3 file a complaint with the commission. A complaint filed under this  
4 section is subject to Subchapters E and F, Chapter 21.

5       (b) The commission shall enforce this chapter in accordance  
6 with Chapter 21.

7       Sec. 24.007. EMPLOYER SELF-EVALUATION; AFFIRMATIVE  
8 DEFENSE. (a) An employer is encouraged to periodically perform a  
9 self-evaluation of the employer's business practices and  
10 compensation to ensure that the employer is in compliance with this  
11 chapter.

12       (b) In a civil action filed under Subchapter F, Chapter 21,  
13 by a person aggrieved by an unlawful employment practice under this  
14 chapter, it is an affirmative defense to liability for compensatory  
15 or punitive damages under Section 21.2585 that:

16               (1) the employer performed a self-evaluation of the  
17 employer's business practices and compensation in the three-year  
18 period preceding the date of the conduct that is the basis of the  
19 complaint; and

20               (2) the employer has in good faith demonstrated that,  
21 following the date of the evaluation under Subdivision (1), the  
22 employer has made reasonable progress toward eliminating  
23 compensation differentials based on sex.

24       (c) This section does not require an employer to perform a  
25 self-evaluation or subject an employer to any penalty for failing  
26 to perform a self-evaluation.

27       Sec. 24.008. WAGE RECORDS REQUIREMENT. Each employer shall

1 compile and maintain for a period of at least three years records  
2 that contain:

3 (1) the wage paid to each employee; and

4 (2) the method, system, computations, and other  
5 factors used to establish, adjust, and determine the wage rates  
6 paid to the employee.

7 SECTION 3. The changes in law made by this Act apply only to  
8 an unlawful employment practice with regard to discrimination in  
9 payment of compensation that occurs on or after January 1, 2018.

10 SECTION 4. This Act takes effect January 1, 2018.