

By: Garcia

S.B. No. 1160

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 552, 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

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

3 (1) a seniority system;

4 (2) a merit system;

5 (3) a system that measures earnings by quantity or
6 quality of production; or

7 (4) a differential based on a bona fide factor other
8 than sex.

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

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

16 (1) is not based on or derived from a differential
17 based on sex in compensation;

18 (2) is related to the position in question; and

19 (3) is consistent with business necessity.

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

23 Sec. 24.004. OTHER PROHIBITED ACTS. (a) An employer
24 commits an unlawful employment practice in violation of this
25 chapter and Chapter 21 if the employer:

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

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

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

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

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

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

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

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

18 (c) An employer may prohibit a human resources employee
19 whose job responsibilities require access to the compensation
20 information of other employees from disclosing that information
21 without the written consent of the employee who is the subject of
22 the information. This subsection does not apply to compensation
23 information that is subject to disclosure under Chapter 552,
24 Government Code.

25 Sec. 24.005. NOTICE BY EMPLOYER REQUIRED. Each employer
26 shall post in conspicuous places on the premises of the employer
27 where notices to employees and applicants for employment are

1 customarily posted a notice, prepared or approved by the
2 commission, setting forth the pertinent provisions of this chapter
3 and information relating to the enforcement of this chapter.

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

8 (b) The commission shall enforce this chapter in accordance
9 with Chapter 21.

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

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

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

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

27 (c) This section does not require an employer to perform a

1 self-evaluation or subject an employer to any penalty for failing
2 to perform a self-evaluation.

3 Sec. 24.008. TASK FORCE. (a) The task force on wage
4 disparity is created and is composed of the following 15 members:

5 (1) the member of the commission who represents labor,
6 or the member's designee, to serve as presiding officer;

7 (2) the attorney general or the attorney general's
8 designee;

9 (3) three members of the house of representatives,
10 appointed by the speaker of the house of representatives;

11 (4) three members of the senate, appointed by the
12 lieutenant governor; and

13 (5) seven public members, appointed by the governor:

14 (A) one of whom represents employers;

15 (B) two of whom have experience in the field of
16 gender economics;

17 (C) one of whom represents organized labor; and

18 (D) three of whom represent women's advocacy
19 groups or associations.

20 (b) The task force shall investigate, analyze, and study the
21 factors, causes, and impact of wage disparity based on gender.

22 (c) Not later than January 1 of each odd-numbered year, the
23 task force shall submit to the legislature recommendations to
24 reduce wage disparity based on gender, including any proposed
25 legislation.

26 (d) Members of the task force serve without compensation and
27 may not be reimbursed for travel or other expenses incurred while

1 conducting the business of the task force.

2 (e) The commission shall provide administrative support to
3 the task force, including necessary staff and meeting facilities.

4 (f) The task force is abolished and this section expires
5 September 1, 2023.

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

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