

South Carolina General Assembly
123rd Session, 2019-2020

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S. 372

STATUS INFORMATION

General Bill

Sponsors: Senators Shealy, McLeod and Talley

Document Path: l:\s-res\ks\020pay .kmm.ks.docx

Companion/Similar bill(s): 3615

Introduced in the Senate on January 15, 2019

Currently residing in the Senate Committee on **Labor, Commerce and Industry**

Summary: Act to Establish Pay Equity

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/15/2019	Senate	Introduced and read first time (Senate Journal-page 3)
1/15/2019	Senate	Referred to Committee on Labor, Commerce and Industry (Senate Journal-page 3)

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VERSIONS OF THIS BILL

[1/15/2019](#)

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

A BILL

TO ENACT THE "ACT TO ESTABLISH PAY EQUITY"; TO AMEND TITLE 41 OF THE 1976 CODE, RELATING TO LABOR AND EMPLOYMENT, BY ADDING CHAPTER 11, TO PROVIDE THAT NO EMPLOYER SHALL PAY WAGES TO ANY EMPLOYEE AT A RATE LESS THAN THE RATE PAID TO EMPLOYEES OF ANOTHER RACE, RELIGION, COLOR, SEX, INCLUDING GENDER IDENTITY AND SEXUAL ORIENTATION, AGE, NATIONAL ORIGIN, OR DISABILITY STATUS FOR COMPARABLE WORK AND TO PROVIDE EXCEPTIONS, TO PROVIDE THAT CERTAIN EMPLOYMENT PRACTICES RELATING TO REQUESTS FOR THE DISCLOSURE OF WAGES ARE UNLAWFUL AND TO PROVIDE EXCEPTIONS, TO PROVIDE THAT A CIVIL ACTION ASSERTING A VIOLATION MAY BE MAINTAINED AGAINST ANY EMPLOYER IN ANY COURT OF COMPETENT JURISDICTION AND TO PROVIDE FOR THE RECOVERY OF UNPAID WAGES AND

DAMAGES, TO PROVIDE PENALTIES FOR AN EMPLOYER WHO VIOLATES THE ACT TO ESTABLISH PAY EQUITY, TO PROVIDE THAT THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION SHALL HAVE THE AUTHORITY TO INVESTIGATE VIOLATIONS AND TO BRING ACTION, TO PROVIDE THAT EVERY EMPLOYER SHALL POST CERTAIN INFORMATION IN A CONSPICUOUS PLACE, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the "Act to Establish Pay Equity".

SECTION 2. It is the intent of the General Assembly to ensure that all employees are paid fairly at work and that no employees take home a lower wage as a result of their race, religion, color, sex, age, national origin, or disability status. The General Assembly finds that pay equity is not just a woman's issue; it is also a family, community, and economic viability issue for South Carolina. Eradicating unequal pay practices would improve families' economic stability and mobility; help employers' bottom line by increasing employee loyalty, productivity, and performance; reduce public costs by helping move families out of poverty; and boost the South Carolina economy. The General Assembly finds that the practice of paying wages to any employee at a lesser rate than the rate paid to employees of another race, religion, color, sex, age, national origin, or disability status performing comparable work contributes to South Carolina having one of the largest pay gaps in the nation, especially for women of color. The General Assembly further finds that the practice of relying on job applicants' salary history in the hiring process also contributes to unequal pay by forcing women, people of color, and others who have historically faced barriers in the workplace to carry pay inequities and lower earnings, which do not reflect their qualifications, with them from job to job. The General Assembly finds that employer secrecy around pay allows pay inequities to grow undetected and makes it difficult for employees to work with their employer to resolve any unjustified disparities. It is therefore declared to be the public policy of the State of South Carolina to eliminate, as rapidly as possible, these wage practices.

SECTION 3. Title 41 of the 1976 Code is amended by adding:

"CHAPTER 11

The Act to Establish Pay Equity

Section [41-11-10](#). As used in this chapter:

- (1) 'Employer' means any person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.
- (2) 'Wages' means all amounts for which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis or by another method of calculation. Wages include vacation, holiday, and sick leave payments that are due to an employee under any employer policy or employment contract, and benefits.
- (3) 'Wage history' means the wages paid to an applicant for employment by the applicant's current employer or previous employer or employers.

Section [41-11-20](#). (A) No employer shall pay wages to any employee at a rate less than the rate paid to employees of another race; religion; color; sex, including gender identity and sexual orientation; age; national origin; or disability status for comparable work, when viewed as a composite of skill, effort, and responsibility and performed under similar working conditions, except if such payment is made pursuant to a bona fide:

- (1) seniority system, provided, however, that time spent on parental, family, and medical leave shall not reduce seniority;
- (2) merit system;
- (3) system that measures earnings by quantity or quality of production; or
- (4) factor other than religion; color; sex, including gender identity and sexual orientation; age; national origin; or disability status, such as education, training, or experience. The defense described in this item shall not apply if the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice. The defense described in this item shall apply only if the employer demonstrates that such factor:
 - (i) is not based upon or derived from a differential in compensation based on religion; color; sex, including gender identity and sexual orientation; age; national origin; or disability status;
 - (ii) is job-related with respect to the position in question;
 - (iii) is consistent with business necessity; and
 - (iv) accounts for the entire differential in compensation at issue. An individual's wage history cannot, by itself, justify an otherwise unlawful pay differential.

(B) An employer who is paying a wage rate differential in violation of this section shall not, in order to comply with the provisions of this section, reduce the wage rate of any employee.

(C) The agreement of an employee to work for less than the wage to which the employee is entitled under this chapter is not a defense to an action under this chapter.

Section [41-11-30](#). (A) It is an unlawful employment practice for an employer to:

- (1) require as a condition of employment that an employee refrain from inquiring about, discussing, or disclosing his wages or the wages of another employee;
- (2) require an employee to sign a waiver or other document that purports to deny an employee the right to disclose or discuss his wages;
- (3) discharge, formally discipline, or otherwise discriminate against an employee for inquiring about, discussing, or disclosing his wages or the wages of another employee;
- (4) rely on the wage history of an applicant for employment in considering the applicant for employment, including, but not limited to, requiring that the applicant's prior wages satisfy minimum or maximum criteria as a condition of being considered for employment, except as provided in subsection (B);

- (5) rely on the wage history of an applicant for employment in determining the wages that the applicant is to be paid by the employer upon hire, except as provided in subsection (B);
 - (6) seek from an applicant for employment or from his current or former employer the wage history of the applicant, except as provided in subsection (B);
 - (7) fail or refuse to provide an applicant for employment the wage range for the position for which the applicant is applying upon the earliest of the following: at the applicant's request; prior to or at the time of inquiring about the applicant's wage expectations; or prior to or at the time of providing the applicant an offer of compensation. For the purposes of this item, 'wage range' means the wage range that the employer anticipates relying on in setting wages for the position and may include reference to any applicable pay scale, a previously determined range of wages for the position, the actual range of wages for those currently holding comparable positions, or the budgeted amount for the position, as applicable; or
 - (8) fail or refuse to provide the wage range for an employee's job to the employee upon hire, at least annually thereafter, and upon the employee's request. For the purposes of this item, 'wage range' may include reference to any applicable pay scale, a previously determined range of wages for the position, or the range of wages for incumbents in equivalent positions, as applicable.
- (B)(1) After an employer makes an initial offer of employment, including an offer of compensation, to an applicant for employment, the employer may:
- (a) rely on wage history to support a wage higher than the wage offered by the employer, if the wage history is voluntarily provided by the applicant for employment without prompting from the employer; and
 - (b) seek to confirm the wage history of the applicant for employment to support a wage higher than the wage offered by the employer when relying on wage history as permitted in subsection (B)(1)(a).
- (2) An employer may rely on wage history in these circumstances to the extent that the higher wage does not create an unlawful pay differential based on a protected characteristic as set out in [Section 41-11-20](#).

Section [41-11-40](#). It is an unlawful employment practice for an employer to retaliate or in any other manner discriminate against an employee or applicant for employment because the individual:

- (1) has opposed a practice made unlawful by this chapter;
- (2) did not provide his wage history;
- (3) requested the wage range for a position in accordance with [41-11-30\(A\)\(7\)](#) or (8);
- (4) has made a charge, filed a complaint, instituted, or caused to be instituted any investigation, proceeding, hearing, or action under or related to this chapter, including an investigation conducted by the employer; or
- (5) has testified, is planning to testify, has assisted, or has participated in any manner in any such investigation, proceeding, or hearing under this chapter.

Section [41-11-50](#). (A) A civil action asserting a violation of this chapter may be maintained against any employer in any court of competent jurisdiction by any one or more employees or applicants for employment for and in behalf of himself or themselves and other employees or applicants similarly situated. Any such action shall be commenced no later than three years after the practice declared unlawful by Sections [41-11-20](#), [41-11-30](#), and [41-11-40](#) occurs. An unlawful practice occurs when an unlawful compensation decision or other practice is adopted, when an individual becomes subject to an unlawful compensation decision or other practice, or when an individual is affected by application of an unlawful compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) If an employer is found in violation of Section [41-11-20](#), [41-11-30\(A\)\(1\)](#), [41-11-30\(A\)\(2\)](#), [41-11-30\(A\)\(3\)](#), or [41-11-40](#), then an employee shall recover in a civil action the amount of unpaid wages plus interest; liquidated damages; compensatory damages; punitive damages as may be appropriate, if the employee demonstrates that the employer acted with malice or reckless indifference; other equitable relief as may be appropriate; and the costs of the action and reasonable attorney's fees.

(C) If an employer is found in violation of Section [41-11-30\(A\)\(4\)](#), [41-11-30\(A\)\(5\)](#), [41-11-30\(A\)\(6\)](#), [41-11-30\(A\)\(7\)](#), or [41-11-30\(A\)\(8\)](#), then an employee or applicant for employment shall recover in a civil action any damages incurred or special damages not to exceed ten thousand dollars, whichever is greater; other equitable relief as may be appropriate; and the costs of the action and reasonable attorney's fees.

(D) Any employer who violates or fails to comply with any requirement of this chapter or any regulation published thereunder shall be deemed in violation of this chapter and shall be subject to a civil penalty of not less than one thousand dollars nor more than five thousand dollars for each such violation for each employee or applicant affected.

(E) The Department of Labor, Licensing, and Regulation is authorized to supervise the payment of the unpaid wages or damages under subsection (B) or (C) and may bring any civil action necessary to recover the amount of unpaid wages, damages, civil penalties, and equitable relief, and the employer shall be required to pay the costs. Any sums recovered by the Department of Labor, Licensing, and Regulation on behalf of an employee or applicant for employment under this subsection shall be paid to the employee or applicant for employment affected.

(F) The Department of Labor, Licensing, and Regulation shall have the authority to investigate violations of this chapter and to bring an action to collect damages, civil penalties, and equitable relief.

(G) A complaint asserting a violation of this chapter may be filed with the Department of Labor, Licensing, and Regulation by any one or more employees or applicants for employment for and in behalf of himself or themselves and other employees or applicants similarly situated. Any such complaint shall be filed no later than three years after the practice declared unlawful by Sections [41-11-20](#), [41-11-30](#), and [41-11-40](#) occurs. An unlawful practice occurs when an unlawful compensation decision or other practice is adopted, when an individual becomes subject to an unlawful compensation decision or other practice, or when an individual is affected by application of an unlawful compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice. An employer found by the Department of Labor, Licensing, and Regulation to be in violation of this

chapter shall be subject to the same damages, civil penalties, and equitable relief provided for in subsections (B), (C), and (D).

Section [41-11-60](#). Every employer shall keep posted in a conspicuous place a printed notice stating the provisions of this chapter. The Department of Labor, Licensing, and Regulation shall furnish the printed form of such notice upon request."

SECTION 4. This act takes effect upon approval by the Governor.

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