SLS 13RS-449 **ENGROSSED**

Regular Session, 2013

SENATE BILL NO. 153

BY SENATOR MURRAY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EMPLOYMENT. Creates the Equal Pay for Women Act. (gov sig)

AN ACT

To enact Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:661 through 668, relative to payment of wages; to provide for definitions; to provide for prohibited acts constituting unequal pay; to provide for a complaint procedure; to provide for damages; to limit actions of employees; to require certain records be kept by employers; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 6-A of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:661 through 668, is hereby enacted to read as follows:

CHAPTER 6-A. LOUISIANA EQUAL PAY FOR WOMEN ACT

§661. Short title; citation

This Chapter shall be known and may be cited as the "Louisiana Equal Pay for Women Act".

§662. Declaration of public policy

The public policy of this state is declared to be that the practice of paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs which have comparable

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requirements unjustly discriminates against the person receiving the lesser rate, leads to low worker morale, threatens the well-being of citizens of this state, and adversely affects the general welfare. It is therefore declared to be the policy of this state through the exercise of its police power to correct and, as rapidly as possible, to eliminate discriminatory wage practices based on sex.

§663. Definitions

As used in this Chapter, the following terms shall have the definitions ascribed in this Section unless the context indicates otherwise:

(1) "Commission" means the Louisiana Commission on Human Rights.

(2) "Employee" means any individual permitted to work by an employer.

(3) "Employer" means an individual, partnership, corporation, association, business, trust, person, labor organization as defined in this Section, or other entity employing fifteen or more employees within the state and includes the state, any state officer or agent, any state department or agency, and any unit of local government, and school district within the state.

(4) "Labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment, or any agent acting for such an organization.

§664. Prohibited acts

A. No employer may discriminate against an employee on the basis of sex by paying wages to an employee at a rate less than that paid in the same establishment to another employee of a different sex for the same or substantially similar work on jobs in which the employee's performance requires equal skill, effort, education, and responsibility and which are performed under similar working conditions including time worked in the position.

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B. No labor organization or its agent representing employees of an employer shall cause or attempt to cause an employer to discriminate against an employee in violation of this Chapter.

C. Nothing in Subsection A or B of this Section shall prohibit the payment of different wage rates to employees where such payment is made pursuant to any of the following:

(1) A seniority system.

(2) A merit system.

(3) A system that measures earnings by quantity or quality of production.

(4)(a) A differential based on a bona fide factor other than sex, such as education, training, or experience, provided that both:

(i) The employer demonstrates that such factor is related to the job position in question.

(ii) No alternative employment practice would serve the same legitimate business purpose, without producing such a differential.

(b) However, the employer may not claim such a differential serves a legitimate business purpose, if the employee demonstrates both:

(i) The existence of an alternative employment practice that would serve the same business purpose without producing such differential.

(ii) That the employer has refused to adopt such alternative practice.

D. An employer who is paying wages in violation of this Chapter may not, in order to comply with this Chapter, reduce the wages of any other employee.

E. It shall be unlawful for an employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, any right provided under this Chapter. It shall be unlawful for any employer to discriminate, retaliate, or take any adverse employment action, including but not limited to termination or in any other manner discriminate against any employee for inquiring about,

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disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, or aiding or encouraging any other employee to exercise his or her rights under this Chapter.

F. It shall be unlawful for an employer subject to this Chapter to discriminate, retaliate, or take any adverse employment action, including but not limited to termination against an employee because, in exercising or attempting to exercise the employee's rights under this Chapter, such employee:

(1) Has filed any complaint or has instituted or caused to be instituted any proceeding to enforce the employee's rights under this Chapter, or both.

(2) Has provided or will provide any information in connection with any inquiry or proceeding relating to any right afforded to an employee pursuant to this Chapter.

(3) Has testified or will testify in any inquiry or proceeding relating to any right afforded to an employee pursuant to this Chapter.

§665. Complaint procedure

A. An employee who in good faith believes that the employee's employer is in violation of this Chapter shall submit written notice of the alleged violation to the employer. An employer who receives such written notice from an employee shall have sixty days from receipt of the notice to investigate the matter and remedy any violation of this Chapter. If an employer remedies the violation in a manner that complies with the statute and within the time provided herein, the employee may not bring any action against the employer pursuant to this Chapter except as provided in Subsections B and C of this Section.

B. If an employer fails to resolve the dispute to the satisfaction of such employee within the time provided herein, the employee may file a complaint with the commission requesting an investigation of the complaint pursuant to R.S. 23:301.

C. If the commission finds evidence of discriminatory, retaliatory or

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other adverse employment action on the part of the employer in violation of this Chapter but is unable to resolve or mediate the dispute, or fails to render a decision as to the dispute, or issues a finding of no discrimination on the part of the employer, the employee may institute a civil suit in a district court of competent jurisdiction.

§666. Liquidated damages

A. An employer who violates the provisions of this Chapter shall be liable to the affected employees in the amount of the employee's unpaid wages, liquidated damages in an amount of one-half of such unpaid wages, and reasonable attorney fees and costs.

B. In addition to the relief provided for in Subsection A of this Section, an employer who violates the provisions of this Chapter may also be liable to the affected employees for reinstatement, promotion, any benefits lost, or any combination of these.

C. The award of monetary relief shall be limited to those violations which have occurred within a thirty-six-month period prior to the employee's written notice to the employer, as required in R.S. 23:665(A).

D. In cases where suit is filed in the district court, no monetary relief may be awarded the employee for losses incurred between the date that the district court rendered its final judgment and the date upon which all appeals of that judgment have been exhausted.

E. Interim earnings by the employee discriminated against shall operate to reduce the monetary relief otherwise allowable under this Chapter.

F. Nothing in this Chapter prevents the settlement of a claim by agreement of the employer and employee for a lesser amount than the employee alleges the employee is due.

G. An employee found by a court to have brought a frivolous claim under this Chapter shall be held liable to the employer or any agent of the employer who was named a defendant in the suit, or both, for reasonable

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damages, reasonable attorney fees, and court costs incurred as a result of the claim.

§667. Limitation of actions

A. Any action filed in a district court to recover unpaid wages, liquidated damages, or any other form of relief for a violation of this Chapter shall be commenced within one year of the date that an employee is aware or should have been aware that the employee's employer is in violation of this Chapter.

B. This one-year prescriptive period shall be suspended during the sixty-day period allowed the employer by this Chapter to respond to the employee's written notice, during the pendency of any administrative review or investigation of the employee's claim by the commission or the United States Department of Labor, or both.

§668. Records to be kept by employers

An employer subject to this Chapter shall create and preserve records reflecting the name, address, and occupation of each employee, and all wages paid to each employee. These records shall be preserved for a period of not less than three years from the employee's last date of employment with the employer.

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Tim Prather.

DIGEST

Murray (SB 153)

Proposed law provides that the public policy of this state is declared to be that paying unequal wages based on sex unjustly discriminates against the person receiving the lesser rate, leads to low morale, threatens the well-being of the citizens of this state, and adversely affects the general welfare.

Proposed law defines certain terms used within proposed law, including "employee" and "labor organization".

Proposed law makes it unlawful for an employer who employs 15 or more employees to pay wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work in the same establishment.

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Proposed law makes it unlawful for a labor organization or its agent to cause or attempt to cause an employer to pay wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work.

Proposed law allows exceptions for instances where pay is made under a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on a factor other than sex as long as such system is job related or furthers a legitimate business purpose.

Proposed law provides that the legitimate business purpose may serve as an exception unless the employee can show that some alternative business practice could have been utilized without producing such a differential and the employer refused to adopt such alternative practice.

Proposed law prohibits an employer from reducing an employee's pay in order to comply with proposed law. Proposed law declares it unlawful for a person to discharge or discriminate against an individual who has filed any charges, given any information, or testified in any inquiry relating to any right provided under proposed law.

Proposed law provides that it shall be unlawful for an employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, any right provided under proposed law. It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, or aiding or encouraging any person to exercise his or her rights under proposed law.

Proposed law provides that an employee who believes that his employer has violated a provision of proposed law may provide written notice to the employer of the violation. Proposed law provides that an employer who receives written notice of a violation shall have 60 days to remedy the violation. Proposed law further provides that if the employer remedies the violation within the 60 days, the employee may not bring an action against the employer with the Human Rights Commission.

Proposed law provides that if the commission finds evidence of discriminatory action on the part of the employer but fails to resolve the dispute, or fails to render a decision on the dispute within 120 days, the employee may institute a civil suit in a district court of competent jurisdiction.

Proposed law provides that an employer in violation of the provisions of proposed law may be liable for damages inclusive of unpaid wages, an amount of ½ of unpaid wages in liquidated damages, reasonable attorney fees, costs, employment, reinstatement, promotion, and any benefits lost.

Proposed law provides that monetary relief for a violation of proposed law is limited to a 36-month period prior to the employee's written notice. Proposed law provides that said monetary relief cannot be awarded for losses incurred between the time of the district court's final decision and the final determination of any higher appellate court, as the case may be.

Proposed law provides that interim earnings by the employee shall reduce the amount of damages. Proposed law provides that the employer and employee may settle for a lesser amount of damages.

Proposed law provides an employer with reasonable damages, attorney fees, and court costs when an employee is found by a court to have brought a frivolous claim.

Proposed law provides for a one-year prescriptive period in bringing any action to recover from the time the employee knows about the violation. Proposed law provides for a

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suspension of this period during the 90-day period in which the employer has to respond to the employee's written notice and during the pendency of any administrative review or investigation by the commission or the U.S. Dept. of Labor.

Proposed law requires employers to make and preserve records that document names, addresses, occupations of employees, and their wages. The records shall be preserved for not less than three years.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 23:661-668)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Senate and Governmental Affairs to the original bill

1. Makes it unlawful for an employer who employs 15 or more employees to pay wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work in the same establishment.

2. Provides that if the commission finds evidence of discriminatory action on the part of the employer but fails to resolve the dispute, or fails to render a decision on the dispute within 120 days, the employee may institute a civil suit in a district court of competent jurisdiction.

3. Deletes provisions relative to the inclusion of a copy of the written notice in such suit.

4. Suspends the one year prescriptive period during the 90-day period in which the employer has to respond to the employee's written notice and during the pendency of any administrative review or investigation by the commission or the U.S. Dept. of Labor.

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