

HOUSE BILL NO. 378

INTRODUCED BY F. WILMER

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING PROCESSES AND CONDITIONS TO ENSURE EQUAL PAY FOR EQUIVALENT SERVICE; REVISING PENALTIES; REQUIRING RESTITUTION; PROVIDING GUIDELINES FOR DETERMINING EQUIVALENT SERVICE; AND AMENDING SECTION 39-3-104, MCA."

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

Section 1. Section 39-3-104, MCA, is amended to read:

"39-3-104. Equal pay for women for equivalent service -- penalties -- restitution -- definition. (1)

It is unlawful for the state government or any county government, municipal entity, school district, public or private corporation, person, or firm to employ ~~women~~ a person of one gender in any occupation within the state for compensation less than that paid to ~~men~~ a person of another gender for equivalent service as described in [section 2] or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.

(2) A complaint filed under this section must be filed first under Title 49, chapter 2, and may subsequently be filed in a district court as provided in 49-2-511.

~~(2) If the state or any county, municipal entity, school district, public or private corporation, person, or firm violates~~

(3) A violation of any of the provisions of subsection (1); it is guilty of a misdemeanor and upon conviction thereof is subject to a civil penalty. In addition to the actions provided in 49-2-506, upon a finding of a violation, the state government, county government, municipal entity, school district, public or private corporation, person, or firm:

(a) shall be fined not less than \$25 or more than \$500 \$250 for each offense. The fines must be deposited in the general fund.

(b) is liable for restitution to the person filing the complaint to compensate for the difference between wages paid and the amount to which the person was legally entitled along with interest on the pay differential for each pay period dating back to the first pay period in which the inequity occurred.

(4) For the purposes of this section, "state government" means any branch of government or department,

1 board, commission, office, bureau, institution, or unit recognized in the state budget."

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3 **NEW SECTION. Section 2. Equivalent service guidelines -- exceptions.** (1) Except as provided in
4 subsection (2), a determination of equivalent service for the purposes of 39-3-104 includes:

5 (a) equal skills, effort, and responsibility; and

6 (b) performance under similar working conditions.

7 (2) An employer may differentiate on wages paid for equivalent service only on the basis of:

8 (a) a seniority system;

9 (b) a merit system that has no gender-based measures;

10 (c) a system that measures earnings by quantity or quality of production;

11 (d) a written policy describing a differential that is based on a factor other than gender, including but not
12 limited to working conditions, exposure to risks and hazards, and differences between establishments operated
13 by the same employer but located in geographically distinct areas; or

14 (e) nongender-based factors included in salary negotiations at the time of hire that reflect then-current
15 prevailing market considerations.

16 (3) An employer correcting a wage rate differential that violates this section may not reduce the wage
17 rate of any employee.

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19 **NEW SECTION. Section 3. Codification instruction.** [Section 2] is intended to be codified as an
20 integral part of Title 39, chapter 3, part 1, and the provisions of Title 39, chapter 3, part 1, apply to [section 2].

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