

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1090

SPONSOR: Senator Dawson

SUBJECT: Wage Discrimination

DATE: April 4, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Robinson Pierce</u>	<u>Maclure</u>	<u>CM</u>	<u>Unfavorable</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill creates the “Fair Pay Act” to provide that certain unlawful employment practices must be construed to include any discrimination by an employer against employees on the basis of sex, race, color, religion, national origin, age, handicap, or marital status by the payment of wages to employees at a rate less than the rate at which an employer pays wages to employees of the opposite sex, of a different race, color, religion, national origin, age, or marital status, or without handicap for equal work on jobs which require equal skill, effort, and responsibility, and which are performed under similar working conditions.

This bill additionally requires the Florida Commission on Human Relations to establish guidelines which specify criteria for determining whether particular jobs are dominated by employees of a particular sex, race, or national origin; and requires specified wage disclosure, recordkeeping, and reporting requirements of employers with administrative and civil remedies for violation of the requirements.

This bill amends the following sections of the Florida Statutes: 760.02, 760.06, 760.10, and 760.11; and creates section 760.105, Florida Statutes.

II. Present Situation:

Florida Civil Rights Act of 1992

The “Florida Civil Rights Act of 1992” consists of ss. 760.01-760.11 and 509.092, F.S. The purpose of the act is to “secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.” (s. 760.01(2), F.S.) Specifically, the act provides that it is an unlawful

employment practice for an employer¹ to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status. (s. 760.10(1)(a), F.S.)

Section 760.07, F.S., provides remedies for unlawful discrimination. Any unlawful discrimination because of race, color, religion, gender, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations, gives rise to a cause of action for all relief and damages described in s. 760.11(5), F.S., unless greater damages are expressly provided for.

Section 760.01, F.S., provides that the Florida Civil Rights Act of 1992 will be construed according to the fair import of its terms and be liberally construed to further the general purposes stated in this section and the special purposes of the particular provision involved. The Commission on Human Relations, assigned to Department of Management Services for administrative purposes, is authorized to receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice in both the public and private sector. (s. 760.06, F.S.)

Federal Employment Discrimination Provisions

The U.S. Equal Employment Opportunity Commission (EEOC) was established by Title VII of the Civil Rights Act of 1964 and began operating on July 2, 1965. The EEOC enforces the principal federal statutes prohibiting employment discrimination. Federal statutes governing employment discrimination include:

- Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. s. 2000e et al.), which prohibits employment discrimination based on race, color, religion, sex, and national origin.
- The Equal Pay Act of 1963 (EPA) (29 U.S.C. s. 206(d)), which is part of the Fair Labor Standards Act of 1938, as amended (FLSA), prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions. Under this act, employers may not reduce wages of either sex to equalize pay between men and women; a violation of the law may occur where a different wage is paid to a person who worked in the same job before or after an employee of the opposite sex; and a violation may also occur where a labor union causes the employer to violate the law. The EPA covers all employees who are covered by the FLSA, and virtually all employers are subject to the provisions of the FLSA.

The Civil Rights Act of 1991 made major changes in the federal laws against employment discrimination enforced by the EEOC. Enacted in part to reverse several Supreme Court decisions that limited the rights of persons protected by these laws, the act also provides additional

¹Within the meaning of the act, an employer is defined as any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person. s. 760.01(7), F.S.

protections, including the authorization of compensatory and punitive damages in cases of intentional discrimination, and providing for attorneys' fees and the possibility of jury trials. It also directs the EEOC to expand its technical assistance and outreach activities.

Federal Initiatives

The Equal Pay Initiative seeks to focus on ending pay discrimination, eliminating occupational segregation, and promoting pension equity. The U.S. President's budget proposal to Congress for fiscal year 2001 includes \$17 million for the U.S. Department of Labor (USDOL) may continue the initiative. Of this amount, the proposal dedicates \$7 million to help employers assess and improve their pay policies, increase nontraditional apprenticeships, and support public education efforts. (*See* Alexis M. Herman, Secretary of Labor, Statement before the Subcommittee on Labor, Health and Human Services, and Education, Committee on Appropriations, United States House of Representatives, March 22, 2000, http://www.icesa.org/articles/template.cfm?results_art_filename=secbudg.htm, site visited March 30, 2000.)

III. Effect of Proposed Changes:

This bill creates the "Fair Pay Act" to provide that unlawful employment practices with respect to compensation, terms, conditions, or privileges of employment must be construed to include any discrimination by an employer against employees on the basis of sex, race, color, religion, national origin, age, handicap, or marital status by the payment of wages to employees at a rate less than the rate at which an employer pays wages to employees of the opposite sex, of a different race, color, religion, national origin, age, or marital status, or without handicap for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

This bill requires the commission to establish guidelines that specify criteria for determining whether particular jobs are dominated by employees of a particular sex, race, or national origin.

Employers are required by this bill to:

- Upon commencement of an individual's employment, and at least annually thereafter, provide to each employee a written statement sufficient to inform the employee of his or her job title, wage rate, and the manner or method in which the wage is calculated; and
- Make, preserve, and report on records that document the wages paid to employees and that document and support the method, system, calculations, and other bases used to establish, adjust, and determine the wage rates paid to the employer's employees.

Rules must be adopted by the commission to provide for protection of the confidentiality of employees, and must expressly require that reports not include the names or other identifying information from which readers could discern the identities of employees. The rules may also identify circumstances that warrant a prohibition on disclosure of reports or information identifying the employer.

The Florida Commission on Human Relations (the commission) is authorized to use the information and data it collects from employers for statistical and research purposes, and may compile and publish such studies, analyses, reports, and surveys based on the information and data, as it may consider appropriate.

The bill clarifies that a violation by an employer of the wage disclosure, recordkeeping, or reporting requirements under the bill gives rise to a cause of action for all relief and damages, unless greater damages are expressly provided for up to 365 days after the alleged violation occurs. A complaint to the commission must be filed within this time. The commission then has up to five days after the complaint is filed to send a copy to the person who allegedly committed the violation. The bill requires the person who allegedly committed the violation to file an answer to the complaint within 25 days after the date the complaint was filed with the commission.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill requires the commission to promulgate rules to provide for protection of the confidentiality of employees. The rules may also include confidentiality for circumstances that warrant a prohibition on disclosure of reports or information identifying the employer.

Section 760.11, F.S., provides a public records exemption for all records and documents in the custody of the commission, which relate to and identify a particular person, including, but not limited to, a complainant, employer, employment agency, labor organization, or joint labor-management committee.

It appears the confidentiality provisions in the bill are supported by the current public records exemption for records in custody of the commission which identify an individual or employer.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The precise fiscal impact is indeterminate. Employers subject to the requirements of this bill may incur costs associated with the wage disclosure, recordkeeping, and reporting requirements of this bill. The extent to which an employer will experience such costs is unknown because the preservation and reporting requirements are to be determined by rule.

C. Government Sector Impact:

The Florida Commission on Human Relations may experience additional costs related to the development of rules required by this bill. Furthermore, depending on the degree to which the commission decides to utilize the employer data it receives, the commission may experience additional costs associated with the data collection for research and statistical purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
