

HOUSE BILL NO. 1293

Introduced by

Representatives Oversen, Haak, Mooney, Muscha, Schneider, Wallman

Senators Heckaman, Nelson, Oban

1 A BILL for an Act to create and enact chapter 34-06.2 of the North Dakota Century Code,
2 relating to equal pay certificates; to provide for a report to legislative management; and to
3 provide a continuing appropriation.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 34-06.2 of the North Dakota Century Code is created and enacted as
6 follows:

7 **34-06.2-01. Definitions.**

8 In this chapter, unless the context or subject matter otherwise requires:

- 9 1. "Commissioner" means the labor commissioner.
- 10 2. "Employee" means any individual employed by an employer, including an individual
11 employed by the state or any of the state's political subdivisions, including public
12 bodies.
- 13 3. "Employer" means any person acting directly or indirectly in the interest of a business
14 in relation to one or more employees of each sex.
- 15 4. "State" means a department or agency of the state of North Dakota.

16 **34-06.2-02. State contracts - Equal pay certificate required.**

- 17 1. The state may not execute a contract or agreement in excess of five hundred
18 thousand dollars with a business that on any single day during the past twelve months
19 had forty or more full-time employees in this state, or a state where the business has
20 its primary place of business, unless the business has an equal pay certificate or has
21 certified in writing the business is exempt under this chapter.
- 22 2. This section does not apply to a business with respect to a specific contract if the
23 commissioner determines application of this section would cause undue hardship to

1 the business. This chapter does not apply to a contract to provide goods and services
2 to individuals.

3 **34-06.2-03. Equal pay certificate - Application - Continuing appropriation.**

4 1. In order to qualify for an equal pay certificate, a business shall submit to the
5 commissioner a one hundred fifty dollar filing fee and an equal pay compliance
6 statement. The commissioner shall deposit the fees collected under this subsection in
7 an equal pay certificate special revenue account in the state treasury. Money in the
8 account is appropriated to the commissioner on a continuing basis for the purposes of
9 funding the administration of this chapter. The commissioner shall issue an equal pay
10 certificate as provided under this chapter. The equal pay compliance statement must
11 be signed by the chairperson of the board, chief executive officer, or owner of the
12 business and must provide:

13 a. The business is in compliance with Title VII of the Civil Rights Act of 1964
14 [Pub. L. 88-352; 42 U.S.C. 2000e et seq.], and the Equal Pay Act of 1963
15 [Pub. L. 88-38; 29 U.S.C. 206];

16 b. The average compensation for the business's female employees is not
17 consistently below the average compensation for the business's male employees
18 within the same classification under the contract, taking into account factors such
19 as length of service, requirements of specific jobs, experience, skill, effort,
20 responsibility, working conditions of the job, or other mitigating factors;

21 c. The business does not restrict employees of one sex to certain job classifications
22 and makes retention and promotion decisions without regard to sex;

23 d. Wage and benefit disparities are corrected when identified to ensure compliance
24 with this chapter;

25 e. How often wages and benefits are evaluated to ensure compliance with this
26 chapter;

27 f. Whether the business, in setting compensation and benefits, utilizes:

28 (1) A market pricing approach;

29 (2) State prevailing wage or union contract requirements;

30 (3) A performance pay system;

31 (4) An internal analysis; or

1 (5) An alternative approach to determine what level of wages and benefits to
2 pay the business's employees. If the business uses an alternative approach,
3 the business shall include a description of the business's approach in the
4 equal pay compliance statement.

5 2. Receipt of an equal pay compliance statement by the commissioner does not establish
6 compliance with this section.

7 **34-06.2-04. Issuance or rejection of certificate.**

8 Within fifteen days of receipt of the application, the commissioner shall issue an equal pay
9 certificate or a statement of why the application was rejected. Failure to comply with this chapter
10 is the sole basis for which the commissioner may reject an application. An equal pay certificate
11 issued under this chapter is valid for four years.

12 **34-06.2-05. Revocation of certificate.**

13 The commissioner may suspend or revoke an equal pay certificate if the business fails to
14 make a good-faith effort to comply with this chapter or has multiple violations of this chapter.
15 The commissioner shall attempt to resolve any discrepancy with the business regarding wages
16 and benefits due before suspending or revoking an equal pay certificate.

17 **34-06.2-06. Revocation of contract.**

18 1. If a contract or agreement is entered in violation of section 34-06.2-02 or is otherwise
19 not in compliance with this chapter, the commissioner may void the contract on behalf
20 of the state. The commissioner shall notify the parties to the contract agreement at
21 least thirty days before taking action under this subsection to void the contract.

22 2. The state may terminate or abridge a contract or agreement upon notice the
23 commissioner suspended or revoked the business's equal pay certificate. The state
24 shall provide notice to the parties to the contract at least thirty days before taking
25 action under this subsection.

26 **34-06.2-07. Administrative review.**

27 1. A business may obtain an administrative hearing pursuant to chapter 28-32 before the
28 suspension or revocation of the business's certificate under 34-06.2-06 is effective by
29 filing a written request for hearing within twenty days after service of notice by the
30 commissioner.

1 2. A business may obtain an administrative hearing pursuant to chapter 28-32 before the
2 state's abridgment or termination of a contract under 34-06.2-06 is effective by filing a
3 written request for a hearing within twenty days after service of notice by the state.

4 **34-06.2-08. Access to data.**

5 Data submitted to the commissioner related to equal pay certificates are exempt records
6 and not subject to section 44-04-18. A record of the commissioner's decision is a public record.

7 **34-06.2-09. Report to legislative management.**

8 The commissioner shall report to the legislative management by July 1 of every
9 even-numbered year. The report must indicate the number of equal pay certificates issued and
10 the processes used by businesses to ensure compliance with the chapter.