

HOUSE BILL No. 4488

April 21, 2015, Introduced by Reps. Driskell, Sarah Roberts, Derek Miller, Liberati, Darany, Faris, Chang, Plawecki, Pagan, Smiley, Greig, Chirkun, Durhal, Hovey-Wright, Gay-Dagnogo, Banks, Love, Geiss, Moss, Irwin, Cochran, Townsend, Zemke, Brinks, Hoadley, Brunner, Dillon, LaVoy, Garrett, Wittenberg, Guerra and Singh and referred to the Committee on Commerce and Trade.

A bill to amend 1976 PA 453, entitled
 "Elliott-Larsen civil rights act,"
 by amending section 209 (MCL 37.2209) and by adding section 209a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 209. A contract to which the state, a political
 2 subdivision, or an agency thereof is a party shall contain a
 3 covenant by the contractor and his subcontractors not to
 4 discriminate against an employee or applicant for employment with
 5 respect to hire, tenure, terms, conditions, or privileges of
 6 employment, or a matter directly or indirectly related to
 7 employment, because of race, color, religion, national origin, age,
 8 sex, height, weight, or marital status. Breach of this covenant OR
 9 **FAILURE TO COMPLY WITH SECTION 209A** may be regarded as a material
 10 breach of the contract.

11 **SEC. 209A. (1) THIS STATE OR AN AGENCY OF THIS STATE SHALL NOT**

1 ENTER INTO A CONTRACT DESCRIBED IN SECTION 209 FOR MORE THAN
2 \$500,000.00 WITH A BUSINESS THAT HAD 40 OR MORE FULL-TIME EMPLOYEES
3 IN THIS STATE ON ANY DAY DURING THE PREVIOUS 12 MONTHS UNLESS THE
4 BUSINESS SUBMITS AN EQUAL PAY CERTIFICATE OR CERTIFIES IN WRITING
5 THAT IT IS EXEMPT. AN EQUAL PAY CERTIFICATE ISSUED BY THE
6 DEPARTMENT IS VALID FOR 4 YEARS.

7 (2) THIS SECTION DOES NOT APPLY TO A BUSINESS WITH RESPECT TO
8 A SPECIFIC CONTRACT IF THE STATE PURCHASING DIRECTOR OR THE
9 EQUIVALENT PURCHASING OFFICER FOR A LOCAL UNIT OF GOVERNMENT
10 DETERMINES THAT APPLICATION OF THIS SECTION WOULD CAUSE UNDUE
11 HARDSHIP TO THE CONTRACTING ENTITY. THIS SECTION DOES NOT APPLY TO
12 A CONTRACT FOR VOCATIONAL TRAINING OR A CONTRACT FOR GOODS OR
13 SERVICES PROVIDED BY A HEALTH INSURER REGULATED UNDER THE INSURANCE
14 CODE OF 1956, 1956 PA 218, MCL 500.100 TO 500.8302; BY AN INSURER
15 CREATED UNDER THE NONPROFIT HEALTH CARE CORPORATION ACT, 1980 PA
16 350, MCL 550.1101 TO 550.1704; BY A PROGRAM FOR MEDICAL ASSISTANCE
17 ESTABLISHED UNDER TITLE XIX OF THE SOCIAL SECURITY ACT, CHAPTER
18 531, 49 STAT 620, 42 USC 1396 TO 1396F, 1396G-1 TO 1396R-6, AND
19 1396R-8 TO 1396V; OR BY A NURSING HOME LICENSED UNDER ARTICLE 17 OF
20 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20101 TO 333.22260.

21 (3) A BUSINESS MAY APPLY FOR AN EQUAL PAY CERTIFICATE BY
22 PAYING A \$150.00 FILING FEE AND SUBMITTING AN EQUAL PAY COMPLIANCE
23 STATEMENT TO THE DEPARTMENT. THE PROCEEDS FROM THE FEES COLLECTED
24 UNDER THIS SUBSECTION SHALL BE DEPOSITED IN AN EQUAL PAY
25 CERTIFICATE SPECIAL REVENUE ACCOUNT IN THE STATE TREASURY. MONEY IN
26 THE ACCOUNT IS APPROPRIATED TO THE DEPARTMENT FOR THE PURPOSES OF
27 THIS SECTION. THE DEPARTMENT SHALL ISSUE AN EQUAL PAY CERTIFICATE

1 OF COMPLIANCE TO A BUSINESS THAT SUBMITS A STATEMENT SIGNED BY THE
2 CHAIRPERSON OF THE BOARD OR CHIEF EXECUTIVE OFFICER OF THE BUSINESS
3 CERTIFYING ALL OF THE FOLLOWING:

4 (A) THE BUSINESS IS IN COMPLIANCE WITH TITLE VII OF THE CIVIL
5 RIGHTS ACT OF 1964, 42 USC 2000E TO 2000E-17; THE EQUAL PAY ACT OF
6 1963, 29 USC 206(D); AND SECTION 556 OF THE MICHIGAN PENAL CODE,
7 1931 PA 328, MCL 750.556.

8 (B) THE AVERAGE COMPENSATION FOR ITS FEMALE EMPLOYEES IS NOT
9 CONSISTENTLY BELOW THE AVERAGE COMPENSATION FOR ITS MALE EMPLOYEES
10 WITHIN EACH OF THE MAJOR JOB CATEGORIES IN THE EEO-1 EMPLOYEE
11 INFORMATION REPORT FOR WHICH AN EMPLOYEE IS EXPECTED TO PERFORM
12 WORK UNDER THE CONTRACT, TAKING INTO ACCOUNT FACTORS SUCH AS LENGTH
13 OF SERVICE, REQUIREMENTS OF SPECIFIC JOBS, EXPERIENCE, SKILL,
14 EFFORT, RESPONSIBILITY, WORKING CONDITIONS OF THE JOB, OR OTHER
15 MITIGATING FACTORS.

16 (C) THE BUSINESS DOES NOT RESTRICT EMPLOYEES OF 1 SEX TO
17 CERTAIN JOB CLASSIFICATIONS AND MAKES RETENTION AND PROMOTION
18 DECISIONS WITHOUT REGARD TO SEX.

19 (D) WAGE AND BENEFIT DISPARITIES ARE CORRECTED WHEN IDENTIFIED
20 TO ENSURE COMPLIANCE WITH THE LAWS CITED IN SUBDIVISION (A) AND
21 WITH SUBDIVISION (B).

22 (E) THE INTERVAL AT WHICH THE BUSINESS EVALUATES WAGES AND
23 BENEFITS TO ENSURE COMPLIANCE WITH THE LAWS CITED IN SUBDIVISION
24 (A) AND WITH SUBDIVISION (B).

25 (4) THE EQUAL PAY COMPLIANCE STATEMENT MUST ALSO INDICATE
26 WHICH OF THE FOLLOWING THE BUSINESS UTILIZES IN SETTING
27 COMPENSATION AND BENEFITS:

1 (A) A MARKET PRICING APPROACH.

2 (B) STATE PREVAILING WAGE OR UNION CONTRACT REQUIREMENTS.

3 (C) A PERFORMANCE PAY SYSTEM.

4 (D) AN INTERNAL ANALYSIS.

5 (E) AN ALTERNATIVE APPROACH TO DETERMINE WHAT LEVEL OF WAGES
6 AND BENEFITS TO PAY ITS EMPLOYEES. IF THE BUSINESS USES AN
7 ALTERNATIVE APPROACH, THE BUSINESS SHALL PROVIDE A DESCRIPTION OF
8 ITS APPROACH.

9 (5) THE DEPARTMENT'S RECEIPT OF THE EQUAL PAY COMPLIANCE
10 STATEMENT DOES NOT ESTABLISH COMPLIANCE WITH THE LAWS SET FORTH IN
11 SUBSECTION (3) (A).

12 (6) THE DEPARTMENT SHALL ISSUE AN EQUAL PAY CERTIFICATE, OR A
13 STATEMENT OF WHY THE APPLICATION WAS REJECTED, WITHIN 15 DAYS OF
14 RECEIPT OF THE APPLICATION. AN APPLICATION MAY BE REJECTED ONLY IF
15 IT DOES NOT COMPLY WITH SUBSECTION (3).

16 (7) THE DEPARTMENT MAY SUSPEND OR REVOKE AN EQUAL PAY
17 CERTIFICATE FOR A BUSINESS IF THE BUSINESS FAILS TO MAKE A GOOD-
18 FAITH EFFORT TO COMPLY WITH THE LAWS IDENTIFIED IN SUBSECTION
19 (3) (A), FAILS TO MAKE A GOOD-FAITH EFFORT TO COMPLY WITH THIS
20 SECTION, OR HAS MULTIPLE VIOLATIONS OF THIS SECTION OR THE LAWS
21 IDENTIFIED IN SUBSECTION (3) (A). PROCEEDINGS FOR SUSPENDING OR
22 REVOKING A CERTIFICATE ARE SUBJECT TO THE ADMINISTRATIVE PROCEDURES
23 ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. BEFORE SUSPENDING
24 OR REVOKING A CERTIFICATE, THE DEPARTMENT SHALL ALSO SEEK TO
25 CONCILIATE WITH THE BUSINESS REGARDING WAGES AND BENEFITS DUE TO
26 EMPLOYEES. UPON NOTICE THAT THE DEPARTMENT HAS SUSPENDED OR REVOKED
27 THE CERTIFICATE OF A BUSINESS THAT HOLDS A CONTRACT SUBJECT TO THIS

1 SECTION OR IF THE CONTRACTING PUBLIC ENTITY LEARNS THAT A CONTRACT
2 WAS AWARDED TO A BUSINESS THAT IS NOT IN COMPLIANCE WITH THIS
3 SECTION, THE CONTRACTING PUBLIC ENTITY MAY VOID, ABRIDGE, OR
4 TERMINATE THE CONTRACT.

5 (8) UPON REQUEST, THE DEPARTMENT SHALL PROVIDE TECHNICAL
6 ASSISTANCE TO A BUSINESS IN COMPLYING WITH THIS SECTION.

7 (9) UPON A REQUEST FROM THE DEPARTMENT TO ENABLE IT TO FULFILL
8 ITS DUTIES UNDER THIS SECTION, A BUSINESS SHALL PROVIDE ALL OF THE
9 FOLLOWING INFORMATION WITH RESPECT TO EMPLOYEES EXPECTED TO PERFORM
10 WORK UNDER A CONTRACT DESCRIBED IN SECTION 209 IN EACH OF THE MAJOR
11 JOB CATEGORIES IN THE EEO-1 EMPLOYEE INFORMATION REPORT:

12 (A) THE NUMBER OF MALE EMPLOYEES.

13 (B) THE NUMBER OF FEMALE EMPLOYEES.

14 (C) THE AVERAGE ANNUALIZED SALARIES PAID TO MALE EMPLOYEES AND
15 TO FEMALE EMPLOYEES, IN THE MANNER MOST CONSISTENT WITH THE
16 EMPLOYER'S COMPENSATION SYSTEM, WITHIN EACH MAJOR JOB CATEGORY.

17 (D) PERFORMANCE PAYMENTS, BENEFITS, OR OTHER ELEMENTS OF
18 COMPENSATION, IN THE MANNER MOST CONSISTENT WITH THE EMPLOYER'S
19 COMPENSATION SYSTEM, IF REQUESTED BY THE DEPARTMENT IN DETERMINING
20 WHETHER COMPENSATION IS DIFFERENT FOR MALE AND FEMALE EMPLOYEES.

21 (E) AVERAGE LENGTH OF SERVICE FOR MALE AND FEMALE EMPLOYEES IN
22 EACH MAJOR JOB CATEGORY.

23 (F) OTHER INFORMATION IDENTIFIED BY THE BUSINESS OR BY THE
24 DEPARTMENT, AS NEEDED, TO DETERMINE COMPLIANCE WITH ITEMS SPECIFIED
25 IN SUBSECTION (3).

26 (10) DATA SUBMITTED TO THE DEPARTMENT RELATED TO EQUAL PAY
27 CERTIFICATES ARE CONFIDENTIAL AND ARE EXEMPT FROM DISCLOSURE UNDER

1 THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246,
2 TO PERSONS OTHER THAN DEPARTMENT EMPLOYEES. THE DEPARTMENT'S
3 DECISION TO ISSUE, NOT ISSUE, REVOKE, OR SUSPEND AN EQUAL PAY
4 CERTIFICATE IS NOT CONFIDENTIAL OR EXEMPT FROM DISCLOSURE.

5 Enacting section 1. This amendatory act takes effect 90 days
6 after the date it is enacted into law and applies to any
7 solicitation or contract executed after it takes effect.