

HOUSE BILL 2539

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 4;  
Title 8 and Title 50, relative to sex discrimination.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 50, is amended by adding the following as a new part:

**8-50-1301.**

As used in this part, unless the context otherwise requires:

- (1) "Commissioner" means the commissioner of labor and workforce development;
- (2) "Employ" includes to suffer or permit to work;
- (3) "Employee" means an individual employed by an employer within this state, but does not include an individual who is entitled to the equal pay provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.);
- (4) "Employer" means the state, but does not include a political subdivision of the state; and
- (5) "Wage rate" means all compensation for employment, including payments in kind and amounts paid by employers for employee benefits as defined by the commissioner in rules promulgated under this part.

**8-50-1302.**

(a) An employer shall not discriminate between employees on the basis of sex by paying any employee a wage rate less than the wage rates the employer pays to any employee of the opposite sex for comparable work on jobs the performance of which

require comparable skill, effort, and responsibility, and which are performed under similar working conditions. Nothing in this part prohibits wage rate differentials based on:

- (1) A seniority system;
- (2) A merit system;
- (3) A system that measures earnings by quality or quantity of production;

or

(4) A bona fide factor other than sex, including education, training, or experience. An employer may apply a wage rate differential based on a bona fide factor only if the employer demonstrates that:

(A) The factor:

(i) Is job-related with respect to the position in question; or

(ii) Furthers a legitimate business purpose, unless an employee demonstrates that an alternative employment practice exists that would serve the same business purpose without requiring the wage differential, and that the employer has refused to adopt the alternative practice; and

(B) The factor was applied and used reasonably in light of the asserted justification.

(b) An employer shall not reduce the wages of an employee for the purpose of complying with this section.

(c) An employer shall not discharge or discriminate against an employee who:

(1) Takes any action to invoke or assist in the enforcement of this part, including:

(A) Filing a complaint with the employer, the commissioner, or any other person;

(B) Instituting or causing to be instituted any proceeding under this part; and

(C) Testifying or preparing to testify in any proceeding instituted under this part; or

(2) Inquires about, discusses, or discloses the wages of the employee or another employee.

(d) This section applies to an applicant for employment if the applicant, upon employment by an employer, would be entitled to the protections afforded to employees under this part.

**8-50-1303.**

(a) The commissioner shall administer this part and promulgate rules to carry out this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The commissioner shall endeavor to eliminate wage practices that are unlawful under this part by informal methods of conference, conciliation, and persuasion, and shall supervise the payment of wages owed to an employee under this part.

(c) The commissioner shall develop guidelines to enable employers to evaluate job categories based on objective criteria, including requirements for education, skills, independence, working conditions, and responsibility, including decision-making responsibility and de facto supervisory responsibility.

(d) The guidelines developed pursuant to subsection (c) shall be designed to enable employers to compare wages paid for different jobs to determine if the pay scales adequately and fairly reflect the requirements for education, skills, independence, working conditions, and responsibility for each job, with the goal of eliminating unfair wage disparities in occupations traditionally dominated by men or women.

(e) The commissioner shall submit a copy of the guidelines developed pursuant to subsection (c) to the governor, the speaker of the senate, and the speaker of the house of representatives no later than September 1, 2016.

**8-50-1304.**

(a) An employer who violates § 8-50-1302:

(1) For the first violation, shall be liable to each affected employee in an amount equal to the employee's unpaid wages, and if the employer knowingly violated § 8-50-1302(b), the employer shall be liable to each affected employee for an additional amount, as liquidated damages, not to exceed the employee's unpaid wages;

(2) For the second violation established in a new judicial proceeding, shall be liable to each affected employee in an amount equal to the employee's unpaid wages, and if the employer knowingly violated § 8-50-1302(b), the employer shall be liable to each affected employee for an additional amount, as liquidated damages, not to exceed two (2) times the employee's unpaid wages; and

(3) For the third and any subsequent violation established in a new judicial proceeding, shall be liable to each affected employee in an amount equal to the employee's unpaid wages, and if the employer knowingly violated § 8-50-1302(b), the employer shall be liable to each affected employee for an additional amount, as liquidated damages, not to exceed three (3) times the employee's unpaid wages.

(b) An action to recover wages may be maintained in any court of competent jurisdiction by one (1) or more employees. A court shall, in addition to any judgment awarded to a plaintiff employee, award the plaintiff reasonable attorney's fees and costs.

(c) An agreement executed between an employee and an employer to work for wages less than the wages to which the employee is entitled under this part shall not bar an action under this section.

(d) At the written request of an employee claiming to have been paid less than the wage to which the employee is entitled under this part, the commissioner may bring any legal action necessary on behalf of the employee to collect unpaid wages. The commissioner shall not be required to pay any filing fee or other cost in connection with the action and may join two (2) or more claims against an employer into one (1) cause of action.

(e) An action brought to enforce any provision of this part may be maintained as a class action as provided by the Tennessee Rules of Civil Procedure.

**8-50-1305.**

An action brought under this part shall be commenced no later than two (2) years after the cause of action accrues. An action shall be deemed to have commenced:

(1) In the case of an individual claimant, on the date when the complaint is filed if the claimant is specifically named as a party plaintiff in the complaint, or if the claimant's name did not so appear, on the date on which the claimant's name is added as a party plaintiff in the action; or

(2) In the case of a class action, on the date on which the individual becomes a party plaintiff to the class action.

**8-50-1306.**

(a) As funds become available, the economic council on women, created by § 4-50-101, may:

(1) Conduct research to determine:

(A) The wage disparities that exist between men, women, and minorities assigned to the same job classifications;

(B) The factors that cause, or that tend to cause, wage disparities, including segregation of women, men, and minorities within the same job classifications;

(C) The impact of wage disparities on the economy of this state and on affected families; and

(D) Recommendations that are likely to lead to the elimination of the disparities; and

(2) Provide training to:

(A) Employees and affected individuals and entities on matters involving discrimination in the payment of wages; and

(B) Women on how to develop negotiation skills.

(b) The council's research may include the results of its findings as well as recommendations, including recommendations for legislation, for the elimination and prevention of disparities in wages between men, women, and minorities.

(c) The council shall report its findings and recommendations to the commissioner, the governor, the speaker of the senate, and the speaker of the house of representatives no later than January 15 of each odd-numbered year.

SECTION 2. Tennessee Code Annotated, Section 50-2-201(4), is amended by deleting the subdivision and by substituting instead the following language:

(4) "Employer" includes any person acting in the interest of any employer, directly or indirectly, but does not include the state or a political subdivision of the state.

SECTION 3. For the purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2016, the public welfare requiring it.