

114TH CONGRESS  
2D SESSION

# S. 2773

To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 11, 2016

Ms. AYOTTE (for herself, Mrs. CAPITO, Mr. PORTMAN, Mr. BURR, and Mr. HELLER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Gender Advancement  
5 in Pay Act” or the “GAP Act”.

1 **SEC. 2. ENHANCED PROHIBITION ON WAGE DISCRIMINA-**  
2 **TION.**

3 Section 6(d) of the Fair Labor Standards Act of  
4 1938 (29 U.S.C. 206(d)) is amended—

5 (1) in paragraph (1)—

6 (A) in clause (iii), by striking “or” at the  
7 end;

8 (B) by redesignating clause (iv) as clause  
9 (vi);

10 (C) by inserting before clause (vi), as re-  
11 designated by subparagraph (B) of this para-  
12 graph, the following: “(iv) a differential based  
13 on expertise; (v) a shift differential; or”; and

14 (D) in clause (vi), as redesignated by sub-  
15 paragraph (B) of this paragraph, by striking  
16 “any other factor other than sex” and inserting  
17 “a business-related factor other than sex, in-  
18 cluding but not limited to education, training,  
19 or experience”;

20 (2) by redesignating paragraph (4) as para-  
21 graph (5); and

22 (3) by inserting after paragraph (3) the fol-  
23 lowing:

24 “(4) If a charge is filed by or on behalf of an em-  
25 ployee for a violation of title VII of the Civil Rights Act  
26 of 1964 (42 U.S.C. 2000e et seq.), and an action is

1 brought by or on behalf of the employee for a violation  
 2 of this subsection, with respect to the same practice, or  
 3 if an action is brought before the Equal Employment Op-  
 4 portunity Commission by or on behalf of the employee for  
 5 a violation of this subsection, the statute of limitations for  
 6 the action involved under section 6 of the Portal-to-Portal  
 7 Act of 1947 (29 U.S.C. 255) shall be tolled until the ear-  
 8 lier of—

9           “(A) the date on which the Equal Employment  
 10       Opportunity Commission or the Attorney General  
 11       brings an action or provides notification to the em-  
 12       ployee with respect to the charge under section  
 13       706(f)(1) of the Civil Rights Act of 1964 (42 U.S.C.  
 14       2000e-5(f)(1)); or

15           “(B) the date that is 270 days after the date  
 16       on which such charge is filed.”.

17 **SEC. 3. NONRETALIATION PROVISION.**

18       Section 15 of the Fair Labor Standards Act of 1938  
 19 (29 U.S.C. 215) is amended—

20           (1) in subsection (a)(3), by striking “employee  
 21       has filed” and all that follows and inserting “em-  
 22       ployee—

23           “(A) has made a charge or filed any com-  
 24       plaint or instituted or caused to be instituted  
 25       any investigation, proceeding, hearing, or action

1 under or related to this Act, including an inves-  
2 tigation conducted by the employer, or has tes-  
3 tified or is planning to testify or has assisted or  
4 participated in any manner in any such inves-  
5 tigation, proceeding, hearing, or action, or has  
6 served or is planning to serve on an industry  
7 committee; or

8 “(B) has inquired about, discussed, or dis-  
9 closed the wages of the employee or another  
10 employee, or has declined to discuss or disclose  
11 the wages of the employee;” and

12 (2) by adding at the end the following:

13 “(c)(1) Subsection (a)(3)(B) shall not apply to an in-  
14 stance in which an employee who has access to the wage  
15 information of other employees as a part of such employ-  
16 ee’s essential job functions discloses the wages of any of  
17 such other employees to an individual who does not other-  
18 wise have access to such information, unless such dislo-  
19 sure is in response to a charge or complaint or in further-  
20 ance of an investigation, proceeding, hearing, or action  
21 under or related to section 6(d), including an investigation  
22 conducted by the employer.

23 “(2) Any employer who requires an employee to sign  
24 a contract or waiver that would prohibit the employee from  
25 disclosing information about the employee’s wages shall be

1 considered to have committed an unlawful act under sub-  
2 section (a)(3)(B).

3 “(3) Nothing in this subsection shall be construed to  
4 limit the rights of an employee provided under any other  
5 provision of law.”.

6 **SEC. 4. CIVIL PENALTY.**

7 Section 16(e) of the Fair Labor Standards Act of  
8 1938 (29 U.S.C. 216(e)) is amended—

9 (1) in paragraph (2)—

10 (A) by striking “(2)” and inserting

11 “(2)(A)”; and

12 (B) by adding at the end the following:

13 “(B)(i) Any person who willfully violates section 6(d)  
14 shall be subject to—

15 “(I) a civil penalty in an amount described in  
16 clause (ii) for each employee affected (less the  
17 amount of any penalty the person has paid under  
18 State law for the wage differential involved); and

19 “(II) any penalty that may apply under sub-  
20 paragraph (A).

21 “(ii) The amount referred to in clause (i)(I) shall  
22 be—

23 “(I) for an employer with not more than 100  
24 employees, the lesser of the amount of the liquidated

1 damages available under subsection (b) or (c), or  
2 \$2,500;

3 “(II) for an employer with not less than 101  
4 and not more than 200 employees, the lesser of the  
5 amount of the liquidated damages available under  
6 subsection (b) or (c), or \$5,000;

7 “(III) for an employer with not less than 201  
8 and not more than 500 employees, the lesser of the  
9 amount of the liquidated damages available under  
10 subsection (b) or (c), or \$10,000; and

11 “(IV) for an employer with not less than 501  
12 employees, the lesser of the amount of the liquidated  
13 damages available under subsection (b) or (c), or  
14 \$15,000.”;

15 (2) in paragraph (3), in the first sentence, by  
16 striking “this subsection” and inserting “this sub-  
17 section (other than paragraph (2)(B)); and

18 (3) in paragraph (5)—

19 (A) in the first sentence, by striking “vio-  
20 lations of section 12” and inserting “violations  
21 of section 6(d) or section 12”; and

22 (B) by inserting after the first sentence  
23 the following: “Civil penalties collected for viola-  
24 tions of section 6(d) shall be deposited in the

1 account created under section 5(d) of the GAP  
2 Act.”.

3 **SEC. 5. STUDY ON HIGH-WAGE, HIGH-DEMAND OCCUPA-**  
4 **TIONS AND EQUIVALENT PAY.**

5 (a) **JOINT STUDY.**—Using funds from the account  
6 created under subsection (d), the Secretary of Labor, to-  
7 gether with the Secretary of Education, shall conduct a  
8 multistate study, through a grant to a nonprofit research  
9 institution, that includes strategies to increase the partici-  
10 pation of women in—

- 11 (1) high-wage, high-demand occupations; and  
12 (2) industries in which women are underrep-  
13 resented.

14 (b) **COMPTROLLER GENERAL STUDY.**—Using funds  
15 from the account created under subsection (d), the Comp-  
16 troller General of the United States shall conduct a  
17 multistate study to develop strategies described in sub-  
18 section (a).

19 (c) **REPORTS.**—Not later than 2 years after the date  
20 of enactment of this Act—

- 21 (1) the Secretary of Labor and the Secretary of  
22 Education shall submit to Congress a report con-  
23 taining—

24 (A) a statement of the findings and conclu-  
25 sions of the study under subsection (a); and

1 (B) any recommendations the Secretary of  
2 Labor and the Secretary of Education consider  
3 appropriate based on their conclusions;

4 (2) the Comptroller General shall submit to  
5 Congress a report containing—

6 (A) a statement of the findings and conclu-  
7 sions of the study under subsection (b); and

8 (B) any recommendations the Comptroller  
9 General considers appropriate based on its con-  
10 clusions; and

11 (3) the Secretary of Labor, the Secretary of  
12 Education, and the Comptroller General shall make  
13 available to the public the reports described in this  
14 subsection.

15 (d) ACCOUNTS.—

16 (1) IN GENERAL.—The Secretary of Labor shall  
17 create an account to manage the funds required to  
18 conduct the studies under subsections (a) and (b)  
19 and to complete the reports under subsection (c).

20 The account shall contain the civil penalties collected  
21 under section 16(e)(2) of the Fair Labor Standards  
22 Act of 1938 (29 U.S.C. 216(e)(2)).

23 (2) WITHDRAWAL OF FUNDS.—The Secretary  
24 of Labor is authorized to withdraw funds from the



1 account created under subsection (d) to carry out  
2 the joint study under subsection (a).

3 (3) TRANSFER OF FUNDS.—At the request of  
4 the Comptroller General, the Secretary of Labor  
5 shall transfer to the Comptroller General the funds  
6 required to carry out the study under subsection (b).

7 **SEC. 6. SMALL BUSINESS ASSISTANCE.**

8 (a) EFFECTIVE DATE.—This Act and the amend-  
9 ments made by this Act shall take effect on the date that  
10 is 6 months after the date of enactment of this Act.

11 (b) TECHNICAL ASSISTANCE MATERIALS.—The Sec-  
12 retary of Labor and the Equal Employment Opportunity  
13 Commission shall jointly develop technical assistance ma-  
14 terials to assist small businesses in complying with the re-  
15 quirements of this Act and the amendments made by this  
16 Act.

17 (c) SMALL BUSINESSES.—A small business shall be  
18 exempt from the provisions of this Act, and the amend-  
19 ments made by this Act, to the same extent that such busi-  
20 ness is exempt from the requirements of the Fair Labor  
21 Standards Act of 1938 pursuant to clauses (i) and (ii)  
22 of section 3(s)(1)(A) of such Act (29 U.S.C.  
23 203(s)(1)(A)).

1 **SEC. 7. RULE OF CONSTRUCTION.**

2       Nothing in this Act, or in any amendment made by  
3 this Act, shall affect the obligation of employers and em-  
4 ployees to fully comply with all applicable immigration  
5 laws, including any penalties, fines, or other sanctions.

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