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**HOUSE BILL No. 2895**

By Representatives Barnes, Crow, Findley, Flaharty, Garner, Kirk,  
Kuether, Loganbill, McClure, Reardon, Ruff, Storm and Winn

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10 AN ACT concerning employment; prohibiting unfair wage discrimina-  
11 tion, establishing the equal pay commission.

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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) The term “employ” shall mean to permit to work.

15 (b) The term “employee” shall mean any person employed by an  
16 employer as a permanent employee, whether working full-time or part-  
17 time, and any temporary employee employed by an employer for a period  
18 of at least three months. “Employee” shall not include any individual  
19 employed by the employee’s parents, spouse or child.

20 (c) The term “employer” shall mean any person who employs three  
21 or more persons and includes the state and all political subdivisions  
22 thereof.

23 (d) The term “person” shall mean one or more individuals, partner-  
24 ships, associations, corporations, limited liability companies, legal repre-  
25 sentatives, trustees, trustees in bankruptcy, receivers and the state and all  
26 political subdivisions and agencies thereof.

27 (e) The term “labor organization” shall mean any organization that  
28 exists for the purpose, in whole or in part, of collective bargaining or of  
29 dealing with employers concerning grievances, terms of conditions of em-  
30 ployment, or of other mutual aid or protection in connection with  
31 employment.

32 (f) The term “market rates” shall mean the rates that employers  
33 within a prescribed geographic area actually pay, or are reported to pay  
34 for specific jobs, as determined by formal or informal surveys, wage stud-  
35 ies, or other means.

36 (g) The term “wages” and wage “rates” shall mean all compensation  
37 in any form that an employer provides to an employee in payment for  
38 work done or services rendered, including but not limited to base pay,  
39 bonuses, commissions, awards, tips, or various forms of nonmonetary  
40 compensation if provided in lieu of or in addition to monetary compen-  
41 sation and that have economic value to an employee.

42 Sec. 2. It shall be an unlawful employment practice in violation of  
43 this act for an employer to discriminate between employees on the basis

1 of sex, race or national origin by:

2 (a) Paying wages to an employee at a rate less than the rate paid to  
3 employees of the opposite sex or of a different race or national origin for  
4 work in equivalent jobs; or

5 (b) paying wages to an employee in a job that is dominated by em-  
6 ployees of a particular sex, race or national origin at a rate less than the  
7 rate at which such employer pays to employees in another job that is  
8 dominated by employees of the opposite sex or of a different race or  
9 national origin, for work on equivalent jobs.

10 (b) Notwithstanding paragraph (a) above, it shall not be an unlawful  
11 employment practice for an employer to pay different wage rates to em-  
12 ployees, where such payments are made pursuant to:

13 (1) A bona fide seniority or merit system;

14 (2) a system that measures earnings by quantity or quality of produc-  
15 tion; or

16 (3) any bona fide factor other than sex, race or national origin, pro-  
17 vided, however, that wage differentials based on varying market rates for  
18 equivalent jobs or the differing economic benefits to the employer of  
19 equivalent jobs shall not be considered differentials based on bona fide  
20 factors other than sex, race or national origin.

21 (c) An employer who is paying wages in violation of this section shall  
22 not, in order to comply with the provisions of this section, reduce the  
23 wage of any employee.

24 (d) No labor organization or its agents representing employees of an  
25 employer having employees subject to any provision of this act shall cause  
26 or attempt to cause such an employer to discriminate against an employee  
27 in violation of paragraph (a) of this section.

28 (e) The secretary of human resources shall promulgate rules and reg-  
29 ulations specifying the criteria for determining whether a job is dominated  
30 by employees of a particular sex, race or national origin. Criteria shall  
31 include, but not be limited to, factors such as whether the job has ever  
32 been formally classified as or traditionally considered to be a "male" or  
33 "female" or "white" or "minority" job; whether there is a history of dis-  
34 crimination against women or people of color with regard to wages, as-  
35 signment or access to jobs, or other terms and conditions of employment;  
36 and the demographic composition of the work force in equivalent jobs.  
37 The rules and regulations shall not include a list of jobs.

38 Sec. 3. It shall be an unlawful employment practice in violation of  
39 this act for an employer:

40 (a) To take adverse actions or otherwise discriminate against any in-  
41 dividual because such individual has opposed any act or practice made  
42 unlawful by this act, has sought to enforce rights protected under this act,  
43 or has testified, assisted, or participated in any manner in an investigation,

1 hearing or other proceeding to enforce this act; or

2 (b) to discharge or in any other manner discriminate against, coerce,  
3 intimidate, threaten or interfere with any employee or any other person  
4 because the employee inquired about, disclosed, compared or otherwise  
5 discussed the employee's wages or the wages of any other employee, or  
6 because the employee exercised, enjoyed, aided or encouraged any other  
7 person to exercise or enjoy any right granted or protected by this act.

8 Sec. 4. (a) Upon commencement of an individual's employment and  
9 at least annually thereafter, every employer subject to this act shall pro-  
10 vide to each employee a written statement sufficient to inform the em-  
11 ployee of the employee's job title, wage rate and how the wage is calcu-  
12 lated. This notice shall be supplemented whenever an employee is  
13 promoted or reassigned to a different position with the employer, pro-  
14 vided, however, that the employer is not required to issue supplemental  
15 notifications for temporary reassignments that are no greater than three  
16 months in duration.

17 (b) Every employer subject to this act shall make and preserve re-  
18 cords that document the wages paid to employees and that document and  
19 support the method, system, calculations, and other bases used to estab-  
20 lish, adjust and determine the wage rates paid to the employer's employ-  
21 ees. Every employer subject to this act shall preserve such records for  
22 such periods of time and shall make such reports from the records as  
23 shall be prescribed by rules and regulations or order by the secretary of  
24 human resources.

25 (c) The rules and regulations promulgated under this act, relating to  
26 the form of reports required by paragraph (b), shall provide for protection  
27 of the confidentiality of employees, and shall expressly require that re-  
28 ports shall not include the names or other identifying information from  
29 which readers could discern the identities of employees. The rules and  
30 regulations may also identify circumstances that warrant a prohibition on  
31 disclosure of reports or information identifying the employer.

32 (d) The secretary of human resources may use the information and  
33 data it collects pursuant to paragraph (b) for statistical and research pur-  
34 poses, and may compile and publish such studies, analyses, reports and  
35 surveys based on the information and data, as the secretary of human  
36 resources may consider appropriate.

37 Sec. 5. (a) Any proceeding by one of more employees to assert any  
38 claim under this act may be brought in any court of competent  
39 jurisdiction.

40 (b) The following remedies are available pursuant to this act:

41 (1) In any action in which a court or jury finds that an employer has  
42 engaged in acts that violate section 2, 3 or 4, and amendments thereto,  
43 the court or jury shall award to any affected employee or employees mon-

1 etary relief, including back pay in an amount equal to the difference  
2 between the employees' actual earnings and what each employee would  
3 have earned but for the employer's unlawful practices; and an additional  
4 amount in compensatory and punitive damages, as appropriate;

5 (2) in any action in which a court or jury finds that an employer has  
6 engaged in acts that violate section 2, 3 or 4, and amendments thereto,  
7 the court shall enjoin the employer from continuing to discriminate  
8 against affected employees and shall direct the employer to comply with  
9 the provisions of this act; and may order the employer to take such ad-  
10 ditional affirmative steps as are necessary, including reinstatement or re-  
11 classification of affected workers, to ensure an end to unlawful  
12 discrimination;

13 (3) in any action in which an affected employee or employees prevail  
14 in such employee's claims against an employer, the court shall, in addition  
15 to any judgment awarded to a plaintiff, allow reasonable attorney fees,  
16 reasonable expert witness fees, and other costs of the action to be paid  
17 by the employer.

18 (c) The rights provided under this act shall be enforced in accordance  
19 with the provisions of the Kansas acts against discrimination.

20 Sec. 6. (a) There is hereby created an equal pay commission com-  
21 posed of nine members appointed by the secretary of human resources.  
22 Members of the commission shall be appointed as follows:

23 (1) Two members shall be representatives of the business  
24 community.

25 (2) Two members shall be representatives of labor organizations in  
26 the state. For the purposes of this subsection, a state labor federation is  
27 an organization that is chartered by a federation of national or interna-  
28 tional unions; admits to membership in local unions and exists primarily  
29 to carry on educational, legislative and coordinating activities.

30 (3) Two members shall be representatives of organizations whose ob-  
31 jectives include the elimination of pay disparities between men and  
32 women, minorities and non-minorities, or both, and who have undertaken  
33 advocacy, educational or legislative initiatives in pursuit of that objective.

34 (4) Three persons shall be representatives from higher education or  
35 research institutions who have experience and expertise in the collection  
36 and analysis of data concerning such pay disparities and whose research  
37 has already been used in efforts to promote the elimination of those  
38 disparities,

39 (b) The commission shall be appointed by the secretary of human  
40 resources within 90 days of the effective date of this act.

41 (c) Members of the commission shall be reimbursed for actual and  
42 necessary expenses incurred in the performance of their official duties in  
43 amounts provided for in subsection (e) of K.S.A. 75-3223, and amend-

1 ments thereto.

2 (d) The commission shall make a complete study of:

3 (1) The extent of wage disparities, both in the public and private  
4 sector between men and women and between minorities and non-  
5 minorities;

6 (2) the factors which cause or tend to cause such disparities, including  
7 segregation between men and women and between minorities and non-  
8 minorities across and within occupations; payment of lower wages for  
9 female-dominated occupations; child-rearing responsibilities; and edu-  
10 cation and training;

11 (3) the consequences of such disparities on the economy and families  
12 affected; and

13 (4) the actions, including proposed legislation, that are likely to lead  
14 to the elimination and prevention of such disparities.

15 (d) The commission shall make a report to the secretary of human  
16 resources concerning the results of its study as well as its recommenda-  
17 tions, legislative and otherwise, for the elimination and prevention of dis-  
18 parities in wages between men and women and minorities and non-mi-  
19 norities by September 30, 2003. The secretary shall report the results of  
20 the study to the governor and the legislature in January of the 2004 leg-  
21 islative session.

22 Sec. 7. This act shall take effect and be in force from and after its  
23 publication in the statute book.

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