

SENATE BILL No. 327

April 25, 2017, Introduced by Senators YOUNG, WARREN, KNEZEK, HERTEL, HOOD, ANANICH, HOPGOOD, GREGORY, JOHNSON and BIEDA and referred to the Committee on Government Operations.

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~~**THIS** state ~~,~~**OR** a political
2 subdivision ~~,~~**OR** an agency ~~thereof~~**OF THIS STATE** is a party ~~shall~~
3 **MUST** contain a covenant by the contractor and his subcontractors
4 not to discriminate against an employee or applicant for employment
5 with 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 A POLITICAL SUBDIVISION OR AGENCY**

1 OF THIS STATE SHALL NOT ENTER INTO A CONTRACT DESCRIBED IN SECTION
2 209 FOR MORE THAN \$500,000.00 WITH A BUSINESS THAT HAD 40 OR MORE
3 FULL-TIME EMPLOYEES IN THIS STATE ON ANY DAY DURING THE PREVIOUS 12
4 MONTHS UNLESS THE BUSINESS SUBMITS AN EQUAL PAY CERTIFICATE OR
5 CERTIFIES IN WRITING THAT IT IS EXEMPT UNDER SUBSECTION (2).

6 (2) THIS SECTION DOES NOT APPLY TO A BUSINESS WITH RESPECT TO
7 A SPECIFIC CONTRACT IF THE STATE PURCHASING DIRECTOR OR THE
8 EQUIVALENT PURCHASING OFFICER FOR A LOCAL UNIT OF GOVERNMENT
9 DETERMINES THAT APPLICATION OF THIS SECTION WOULD CAUSE UNDUE
10 HARDSHIP TO THE CONTRACTING ENTITY. THIS SECTION DOES NOT APPLY TO
11 A CONTRACT FOR VOCATIONAL TRAINING OR A CONTRACT FOR GOODS OR
12 SERVICES PROVIDED BY A HEALTH INSURER REGULATED UNDER THE INSURANCE
13 CODE OF 1956, 1956 PA 218, MCL 500.100 TO 500.8302; BY AN INSURER
14 CREATED UNDER THE NONPROFIT HEALTH CARE CORPORATION REFORM ACT,
15 1980 PA 350, MCL 550.1101 TO 550.1704; BY A PROGRAM FOR MEDICAL
16 ASSISTANCE ESTABLISHED UNDER TITLE XIX OF THE SOCIAL SECURITY ACT,
17 42 USC 1396 TO 1396W-5; OR BY A NURSING HOME LICENSED UNDER ARTICLE
18 17 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20101 TO
19 333.22260.

20 (3) A BUSINESS MAY APPLY FOR AN EQUAL PAY CERTIFICATE BY
21 PAYING A \$150.00 FILING FEE AND SUBMITTING AN EQUAL PAY COMPLIANCE
22 STATEMENT TO THE DEPARTMENT. AN EQUAL PAY CERTIFICATE ISSUED BY THE
23 DEPARTMENT IS VALID FOR 4 YEARS. THE PROCEEDS FROM THE FEES
24 COLLECTED UNDER THIS SUBSECTION MUST 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 ISSUING EQUAL PAY CERTIFICATES. THE DEPARTMENT SHALL ISSUE AN EQUAL

1 PAY CERTIFICATE TO A BUSINESS THAT PAYS THE \$150.00 FILING FEE AND
2 SUBMITS AN EQUAL PAY COMPLIANCE STATEMENT SIGNED BY THE CHAIRPERSON
3 OF THE BOARD OR CHIEF EXECUTIVE OFFICER OF THE BUSINESS CERTIFYING
4 ALL OF THE FOLLOWING:

5 (A) THE BUSINESS IS IN COMPLIANCE WITH TITLE VII OF THE CIVIL
6 RIGHTS ACT OF 1964, 42 USC 2000E TO 2000E-17; THE EQUAL PAY ACT OF
7 1963, 29 USC 206(D); AND SECTION 556 OF THE MICHIGAN PENAL CODE,
8 1931 PA 328, MCL 750.556.

9 (B) THERE IS NOT AN APPRECIABLE DIFFERENCE BETWEEN THE AVERAGE
10 COMPENSATION OF ITS FEMALE AND MALE EMPLOYEES WITHIN EACH OF THE
11 MAJOR JOB CATEGORIES IN THE EEO-1 EMPLOYEE INFORMATION REPORT FOR
12 WHICH AN EMPLOYEE IS EXPECTED TO PERFORM WORK UNDER THE CONTRACT,
13 TAKING INTO ACCOUNT FACTORS SUCH AS LENGTH OF SERVICE, REQUIREMENTS
14 OF SPECIFIC JOBS, EXPERIENCE, SKILL, EFFORT, RESPONSIBILITY,
15 WORKING CONDITIONS OF THE JOB, OR OTHER 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. IF THE BUSINESS USES AN
6 ALTERNATIVE APPROACH, THE BUSINESS SHALL PROVIDE A DESCRIPTION OF
7 ITS APPROACH.

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

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

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

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

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

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

11 (A) THE NUMBER OF MALE EMPLOYEES.

12 (B) THE NUMBER OF FEMALE EMPLOYEES.

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

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