Sixty-fourth Legislative Assembly of North Dakota

#### HOUSE BILL NO. 1293

Introduced by

Representatives Oversen, Haak, Mooney, Muscha, Schneider, Wallman

Senators Heckaman, Nelson, Oban

- 1 A BILL for an Act to create and enact chapter 34-06.2 of the North Dakota Century Code,
- 2 relating to equal pay certificates; to provide for a report to legislative management; and to
- 3 provide a continuing appropriation.

# 4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 **SECTION 1.** Chapter 34-06.2 of the North Dakota Century Code is created and enacted as

6 follows:

# 7 <u>34-06.2-01. Definitions.</u>

- 8 In this chapter, unless the context or subject matter otherwise requires:
- 9 <u>1.</u> <u>"Commissioner" means the labor commissioner.</u>
- 10 2. "Employee" means any individual employed by an employer, including an individual
  11 employed by the state or any of the state's political subdivisions, including public
- 12 <u>bodies.</u>
- <u>13</u> <u>3.</u> "Employer" means any person acting directly or indirectly in the interest of a business
  in relation to one or more employees of each sex.
- 15 <u>4.</u> "State" means a department or agency of the state of North Dakota.

16 <u>34-06.2-02. State contracts - Equal pay certificate required.</u>

- 17 <u>1.</u> <u>The state may not execute a contract or agreement in excess of five hundred</u>
- 18 thousand dollars with a business that on any single day during the past twelve months
- 19 had forty or more full-time employees in this state, or a state where the business has
- 20 its primary place of business, unless the business has an equal pay certificate or has
- 21 <u>certified in writing the business is exempt under this chapter.</u>
- 22 <u>2.</u> This section does not apply to a business with respect to a specific contract if the
- 23 <u>commissioner determines application of this section would cause undue hardship to</u>

Sixty-fourth Legislative Assembly

1		<u>the</u>	ousiness.	This chapter does not apply to a contract to provide goods and services		
2		to individuals.				
3	<u>34-0</u>	06.2-03. Equal pay certificate - Application - Continuing appropriation.				
4	<u>1.</u>	<u>In o</u>	der to qu	alify for an equal pay certificate, a business shall submit to the		
5		commissioner a one hundred fifty dollar filing fee and an equal pay compliance				
6		statement. The commissioner shall deposit the fees collected under this subsection in				
7		an equal pay certificate special revenue account in the state treasury. Money in the				
8		account is appropriated to the commissioner on a continuing basis for the purposes of				
9		funding the administration of this chapter. The commissioner shall issue an equal pay				
10		certificate as provided under this chapter. The equal pay compliance statement must				
11		be signed by the chairperson of the board, chief executive officer, or owner of the				
12		business and must provide:				
13		<u>a.</u>	The bus	iness is in compliance with Title VII of the Civil Rights Act of 1964		
14			[Pub. L.	88-352; 42 U.S.C. 2000e et seq.], and the Equal Pay Act of 1963		
15			[Pub. L.	<u>88-38; 29 U.S.C. 206];</u>		
16		<u>b.</u>	The ave	rage compensation for the business's female employees is not		
17			<u>consiste</u>	ently below the average compensation for the business's male employees		
18			<u>within th</u>	e same classification under the contract, taking into account factors such		
19			<u>as lengt</u>	h of service, requirements of specific jobs, experience, skill, effort,		
20			respons	ibility, working conditions of the job, or other mitigating factors;		
21		<u>C.</u>	The bus	iness does not restrict employees of one sex to certain job classifications		
22			and mal	kes retention and promotion decisions without regard to sex;		
23		<u>d.</u>	Wage a	nd benefit disparities are corrected when identified to ensure compliance		
24			with this	<u>chapter;</u>		
25		<u>e.</u>	How ofte	en wages and benefits are evaluated to ensure compliance with this		
26			chapter;			
27		<u>f.</u>	Whethe	r the business, in setting compensation and benefits, utilizes:		
28			<u>(1)</u> <u>Ar</u>	narket pricing approach;		
29			<u>(2)</u> <u>Sta</u>	ate prevailing wage or union contract requirements;		
30			<u>(3)</u> <u>A</u> p	performance pay system;		
31			<u>(4) An</u>	internal analysis; or		

1		(5) An alternative approach to determine what level of wages and benefits to				
2		pay the business's employees. If the business uses an alternative approach,				
3		the business shall include a description of the business's approach in the				
4		equal pay compliance statement.				
5	<u>2.</u>	Receipt of an equal pay compliance statement by the commissioner does not establish				
6		compliance with this section.				
7	34-06.2-04. Issuance or rejection of certificate.					
8	Within fifteen days of receipt of the application, the commissioner shall issue an equal pay					
9	certificate or a statement of why the application was rejected. Failure to comply with this chapter					
10	is the sole basis for which the commissioner may reject an application. An equal pay certificate					
11	issued under this chapter is valid for four years.					
12	34-06.2-05. Revocation of certificate.					
13	The commissioner may suspend or revoke an equal pay certificate if the business fails to					
14	make a good-faith effort to comply with this chapter or has multiple violations of this chapter.					
15	The commissioner shall attempt to resolve any discrepancy with the business regarding wages					
16	and benefits due before suspending or revoking an equal pay certificate.					
17	34-06.2-06. Revocation of contract.					
18	<u>1.</u>	If a contract or agreement is entered in violation of section 34-06.2-02 or is otherwise				
19		not in compliance with this chapter, the commissioner may void the contract on behalf				
20		of the state. The commissioner shall notify the parties to the contract agreement at				
21		least thirty days before taking action under this subsection to void the contract.				
22	<u>2.</u>	The state may terminate or abridge a contract or agreement upon notice the				
23		commissioner suspended or revoked the business's equal pay certificate. The state				
24		shall provide notice to the parties to the contract at least thirty days before taking				
25		action under this subsection.				
26	34-06.2-07. Administrative review.					
27	<u>1.</u>	A business may obtain an administrative hearing pursuant to chapter 28-32 before the				
28		suspension or revocation of the business's certificate under 34-06.2-06 is effective by				
29		filing a written request for hearing within twenty days after service of notice by the				
30		commissioner.				

Sixty-fourth Legislative Assembly

- 1 <u>2.</u> <u>A business may obtain an administrative hearing pursuant to chapter 28-32 before the</u>
- 2 <u>state's abridgment or termination of a contract under 34-06.2-06 is effective by filing a</u>
- 3 written request for a hearing within twenty days after service of notice by the state.

### 4 <u>34-06.2-08. Access to data.</u>

- 5 Data submitted to the commissioner related to equal pay certificates are exempt records
- 6 and not subject to section 44-04-18. A record of the commissioner's decision is a public record.

### 7 <u>34-06.2-09. Report to legislative management.</u>

- 8 The commissioner shall report to the legislative management by July 1 of every
- 9 even-numbered year. The report must indicate the number of equal pay certificates issued and
- 10 the processes used by businesses to ensure compliance with the chapter.