

**HOUSE BILL NO. 1257**

Introduced by

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

Senators Heckaman, Nelson, Oban

1 A BILL for an Act to ~~create and enact a new section to chapter 34-06.1 of the North Dakota~~  
2 ~~Century Code, relating to unequal pay for men and women;~~ to amend and reenact sections  
3 34-06.1-03, 34-06.1-05, 34-06.1-06, and 34-06.1-07 of the North Dakota Century Code, relating  
4 to unequal pay for men and women; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 34-06.1-03 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **34-06.1-03. Prohibition of discrimination.**

9 1. ~~No~~An employer may not discriminate between employees in the same establishment  
10 on the basis of gender, by paying wages to any employee in any occupation in this  
11 state at a rate less than the rate at which the employer pays any employee of the  
12 opposite gender for comparable work on jobs ~~which~~that have comparable  
13 requirements relating to skill, effort, and responsibility. Differentials that are paid  
14 pursuant to established seniority systems, ~~job-descriptive~~ systems that measure  
15 earnings by quantity or quality of production, merit ~~increase~~ systems, or ~~executive~~  
16 ~~training programs~~a bona fide factor other than gender, such as education, training, or  
17 experience, and which do not discriminate on the basis of gender, are not within this  
18 prohibition.

19 2. An employer ~~wh~~that is paying a wage differential in violation of this chapter may not,  
20 in order to comply with this chapter, reduce the wage rates of any employee. ~~No~~

21 3. A person may not cause or attempt to cause an employer to discriminate against any  
22 employee in violation of this chapter. ~~No~~

1       4. An employer may not discharge or discriminate against anyan employee by reason of  
2       any action taken by the employee to invoke or assist in any manner the enforcement  
3       of this chapter, except when proven that the act of the employee is fraudulent.

4       5. An unlawful employment practice occurs under this section when a discriminatory  
5       compensation decision or other practice is adopted; when an individual becomes  
6       subject to a discriminatory compensation decision or other practice; or when an  
7       individual is affected by application of a discriminatory compensation decision or other  
8       practice, including each time wages, benefits, or other compensation is paid, resulting  
9       in whole or in part from such a decision or other practice.

10       **SECTION 2. AMENDMENT.** Section 34-06.1-05 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12       **34-06.1-05. Collection of unpaid wages and other relief - District court -**  
13 **Commissioner.**

14       1. ~~Any~~An employer ~~whethat~~ violates the provisions of section 34-06.1-03 is liable to the  
15 employee or employees affected in the amount of their unpaid wages, and in  
16 instances of willful violation in employee suits up to an additional equal amount as  
17 liquidated damages. ~~Action to recover such liability may be maintained in any court of~~  
18 ~~competent jurisdiction by any one or more employees for and in behalf of the~~  
19 ~~employee or group of employees and other employees similarly situated. The~~

20       2. ~~Any one or more individuals claiming to be aggrieved by a discriminatory practice~~  
21 ~~under section 34-06.1-03 may file a complaint of discriminatory practice with the~~  
22 ~~commissioner.~~

23       ~~3.~~ Any one or more individuals claiming to be aggrieved by an unlawful employment  
24 practice under section 34-06.1-03 may bring an action in the district court in the  
25 judicial district in which the unlawful employment practice is alleged to have been  
26 committed, in the district in which the records relevant to the alleged unlawful  
27 employment practice are maintained and administered, or in the district in which the  
28 individual would have worked or obtained credit were it not for the alleged unlawful  
29 employment practice. In an action brought under this chapter, the court in such action  
30 shall, in cases of violation in addition to any judgment awarded to the plaintiff or

1 plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of  
2 the action.

3 4.3. An agreement by ~~any such an~~ employee to work for less than the wage to which  
4 ~~such the~~ employee is entitled under this chapter ~~is does~~ not a bar ~~to any such an~~ action  
5 or ~~to a~~ voluntary wage restitution of the full amount due under this chapter.

6 5.4. At the written request of ~~any an~~ employee claiming to have been paid less than the  
7 wage to which the employee may be entitled under this chapter, the commissioner  
8 may bring any legal action necessary ~~in on~~ behalf of the employee to collect ~~such the~~  
9 claim for unpaid wages. The commissioner ~~may is~~ not be required to pay the filing fee,  
10 or other costs, in connection with ~~such an~~ action under this section. The commissioner  
11 ~~has the power to may~~ join various claims against the employer in one claim for relief. In  
12 proceedings under this section, the court may order other affirmative action as  
13 appropriate, including reinstatement of employees discharged in violation of this  
14 chapter. The commissioner ~~has the power to may~~ petition ~~any the~~ district court of  
15 competent jurisdiction to restrain violations of section 34-06.1-03, and for ~~such~~  
16 affirmative relief as the court may deem appropriate, including restoration of unpaid  
17 wages and reinstatement of employees, consistent with the purpose of this chapter.

18 6.5. If a person elects to bring an action in district court under this chapter, the  
19 commissioner shall dismiss any ~~administrative~~ action pending before the  
20 commissioner which is based on the same alleged unlawful employment practice.

21 ~~— SECTION 3. A new section to chapter 34-06.1 of the North Dakota Century Code is created~~  
22 ~~and enacted as follows:~~

23 ~~— **Prima facie case.**~~

24 ~~— If an employee claiming to be aggrieved by an unlawful employment practice under~~  
25 ~~subsection 1 of section 34-06.1-03 brings an action in district court and establishes a disparity~~  
26 ~~exists between wages received by at least two employees of different sexes when the~~  
27 ~~employees were performing comparable work on jobs that have comparable requirements, the~~  
28 ~~burden shifts to the employer to rebut this prima facie case.~~

29 **SECTION 3. AMENDMENT.** Section 34-06.1-06 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1       **34-06.1-06. Statute of limitations.**

2       Court action under this chapter may be commenced no later than two years after the claim-  
3       for relief occurs unlawful employment practice occurred. However, if a complaint of a  
4       discriminatory practice is first filed with the commissioner, this period of limitation for bringing an  
5       action in the district court is tolled until the commissioner ~~dismisses the complaint or issues a~~  
6       ~~written probable cause determination~~ completes an investigation or otherwise notifies the  
7       complainant the commissioner will be taking no further action on the complaint.

8       **SECTION 4. AMENDMENT.** Section 34-06.1-07 of the North Dakota Century Code is  
9       amended and reenacted as follows:

10       **34-06.1-07. Records and reporting.**

11       Every An employer subject to this chapter shall make, keep, and maintain ~~such~~ records of  
12       the wages and wage rates, job classifications, and other terms and conditions of employment of  
13       the ~~persons~~ individuals employed by the employer, ~~and~~; shall preserve such records for ~~such~~  
14       periods of time, as long as the employee is employed and two years thereafter; and shall make  
15       such reports ~~therefrom~~ from the records as the commissioner prescribes.