CHAPTER 34-06.1
EQUAL PAY FOR MEN AND WOMEN

34-06.1-01. Declaration of public policy.

The public policy of this state is declared to be that the practice of discriminating on the basis of sex by paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs which have comparable requirements unjustly discriminates against the person receiving the lesser rate; leads to low worker morale, high turnover, and frequent labor unrest; discourages workers paid at the lesser wage rates from training for higher level jobs; curtails employment opportunities, decreases workers' mobility, and increases labor costs; impairs purchasing power and threatens the maintenance of an adequate standard of living by such workers and their families; prevents optimum utilization of the state's available labor resources; threatens the well-being of citizens of this state; and adversely affects the general welfare. It is therefore declared to be the policy of this state through exercise of its police power to correct and, as rapidly as possible, to eliminate discriminatory wage practices based on sex.

34-06.1-02. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the labor commissioner.
2. "Employ" includes to suffer or permit to work.
3. "Employee" means any individual employed by an employer, including individuals employed by the state or any of its political subdivisions, including public bodies.
4. "Employer" means any person acting directly or indirectly in the interest of an employer in relation to one or more employees of each sex.
5. "Occupation" includes any industry, trade, business or branch thereof, or any employment or class of employment, but does not include domestic employment in private homes.
6. "Person" includes one or more individuals, partnerships, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, or voluntary associations.
7. "Wage rate" means all compensation for employment, including payment in kind and amounts paid by employers for employee benefits, as defined by the commissioner in regulations issued under this chapter.

34-06.1-03. Prohibition of discrimination.

1. An employer may not discriminate between employees in the same establishment on the basis of gender, by paying wages to any employee in any occupation in this state at a rate less than the rate at which the employer pays any employee of the opposite gender for comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility. Differentials that are paid pursuant to established seniority systems, systems that measure earnings by quantity or quality of production, merit systems, or a bona fide factor other than gender, such as education, training, or experience, and which do not discriminate on the basis of gender, are not within this prohibition.
2. An employer that is paying a wage differential in violation of this chapter may not, in order to comply with this chapter, reduce the wage rates of any employee.
3. A person may not cause or attempt to cause an employer to discriminate against any employee in violation of this chapter.
4. An employer may not discharge or discriminate against an employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of this chapter, except when proven that the act of the employee is fraudulent.
5. An unlawful employment practice occurs under this section when a discriminatory compensation decision or other practice is adopted; when an individual becomes subject to a discriminatory compensation decision or other practice; or when an

individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

34-06.1-04. Powers of commissioner.

The commissioner has the power and duty to carry out the provisions of this chapter and for this purpose, the commissioner, or the commissioner's authorized representative, has power to:

1. With the consent of the employer or upon appropriate court order, for cause, enter the place of employment of any employer to inspect and copy payrolls and other employment records, to compare character of work and operations on which persons employed by the employer are engaged, to question such persons, and to obtain such other information as is reasonably necessary to the administration and enforcement of this chapter.
2. Examine witnesses under oath, and to require by subpoena the attendance and testimony of witnesses and the production of any documentary evidence relating to the subject matter of any investigation undertaken pursuant to this section.
3. Eliminate pay practices unlawful under this chapter, by informal methods of conference, conciliation and persuasion, and to supervise the payment of wages owing to any employee under this chapter.
4. Issue such regulations, not inconsistent with the purpose of this chapter, as the commissioner deems necessary or appropriate to carry out its provisions.

Witnesses summoned by the commissioner or the commissioner's authorized representative must be paid the same fees as are allowed witnesses attending the district courts of this state. In the event of the failure of a person to attend, testify, or produce documents under or in response to a subpoena, the court on application of the commissioner or the commissioner's representative may issue an order requiring said person to appear before the commissioner or authorized representative, or to produce documentary evidence, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

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

1. An employer that violates the provisions of section 34-06.1-03 is liable to the employee or employees affected in the amount of their unpaid wages, and in instances of willful violation in employee suits up to an additional equal amount as liquidated damages.
2. Any one or more individuals claiming to be aggrieved by an unlawful employment practice under section 34-06.1-03 may bring an action in the district court in the judicial district in which the unlawful employment practice is alleged to have been committed, in the district in which the records relevant to the alleged unlawful employment practice are maintained and administered, or in the district in which the individual would have worked or obtained credit were it not for the alleged unlawful employment practice. In an action brought under this chapter, the court shall, in cases of violation in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.
3. An agreement by an employee to work for less than the wage to which the employee is entitled under this chapter does not bar an action or voluntary wage restitution of the full amount due under this chapter.
4. At the written request of an employee claiming to have been paid less than the wage to which the employee may be entitled under this chapter, the commissioner may bring any legal action necessary on behalf of the employee to collect the claim for unpaid wages. The commissioner is not required to pay the filing fee, or other costs, in connection with an action under this section. The commissioner may join various claims against the employer in one claim for relief. In proceedings under this section, the court may order other affirmative action as appropriate, including reinstatement of employees discharged in violation of this chapter. The commissioner may petition the district court to restrain violations of section 34-06.1-03, and for affirmative relief as the

court may deem appropriate, including restoration of unpaid wages and reinstatement of employees, consistent with the purpose of this chapter.

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

34-06.1-06. Statute of limitations.

Court action under this chapter may be commenced no later than two years after the unlawful employment practice occurred. However, if a complaint of a discriminatory practice is first filed with the commissioner, this period of limitation for bringing an action in the district court is tolled until the commissioner completes an investigation or otherwise notifies the complainant the commissioner will be taking no further action on the complaint.

34-06.1-07. Records and reporting.

An employer subject to this chapter shall make, keep, and maintain records of the wages and wage rates, job classifications, and other terms and conditions of employment of the individuals employed by the employer; shall preserve such records for as long as the employee is employed and two years thereafter; and shall make such reports from the records as the commissioner prescribes.

34-06.1-08. Posting of law.

Repealed by S.L. 1997, ch. 296, § 1.

34-06.1-09. Penalties.

Any person who violates any provision of this chapter, or who discharges or in any other manner discriminates against any employee because such employee has made any complaint relating to a violation of any provision of this chapter, or has instituted, or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings, is guilty of a class B misdemeanor.