

SENATE BILL NO. 338

May 21, 2019, Introduced by Senators BAYER, MOSS, POLEHANKI, ALEXANDER, WOJNO, GEISS, IRWIN, MCMORROW, HERTEL, BRINKS, HOLLIER, MCCANN, BULLOCK, SANTANA, ANANICH and CHANG 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

1 with respect to hire, tenure, terms, conditions, or privileges of
2 employment, or a matter directly or indirectly related to
3 employment, because of race, color, religion, national origin, age,
4 sex, height, weight, or marital status. Breach of this covenant **or**
5 **failure to comply with section 209a** may be regarded as a material
6 breach of the contract.

7 **Sec. 209a. (1) This state or a political subdivision or agency**
8 **of this state shall not enter into a contract described in section**
9 **209 for more than \$500,000.00 with a business that had 40 or more**
10 **full-time employees in this state on any day during the previous 12**
11 **months unless the business submits an equal pay certificate or**
12 **certifies in writing that it is exempt under subsection (2).**

13 **(2) This section does not apply to a business with respect to**
14 **a specific contract if the state purchasing director or the**
15 **equivalent purchasing officer for a local unit of government**
16 **determines that application of this section would cause undue**
17 **hardship to the contracting entity. This section does not apply to**
18 **a contract for vocational training or a contract for goods or**
19 **services provided by a health insurer regulated under the insurance**
20 **code of 1956, 1956 PA 218, MCL 500.100 to 500.8302; by an insurer**
21 **created under the nonprofit health care corporation reform act,**
22 **1980 PA 350, MCL 550.1101 to 550.1704; by a program for medical**
23 **assistance established under title XIX of the social security act,**
24 **42 USC 1396 to 1396w-5; or by a nursing home licensed under article**
25 **17 of the public health code, 1978 PA 368, MCL 333.20101 to**
26 **333.22260.**

27 **(3) The department shall issue an equal pay certificate to a**
28 **business that pays a \$150.00 filing fee and submits an equal pay**
29 **compliance statement as described in this section. An equal pay**

1 certificate issued by the department is valid for 4 years. The
2 proceeds from the fees collected under this subsection must be
3 deposited in an equal pay certificate special revenue account in
4 the state treasury. Money in the account is appropriated to the
5 department for the purposes of issuing equal pay certificates. An
6 equal pay compliance statement must be signed by the chairperson of
7 the board or chief executive officer of the business certifying all
8 of the following:

9 (a) The business is in compliance with title VII of the civil
10 rights act of 1964, 42 USC 2000e to 2000e-17; 29 USC 206(d); and
11 section 556 of the Michigan penal code, 1931 PA 328, MCL 750.556.

12 (b) There is not an appreciable difference between the average
13 compensation of its female and male employees within each of the
14 major job categories in the EEO-1 employee information report for
15 which an employee is expected to perform work under the contract,
16 taking into account factors such as length of service, requirements
17 of specific jobs, experience, skill, effort, responsibility,
18 working conditions of the job, or other mitigating factors.

19 (c) The business does not restrict employees of a certain sex
20 to certain job classifications and makes retention and promotion
21 decisions without regard to sex.

22 (d) Wage and benefit disparities are corrected when identified
23 to ensure compliance with the laws cited in subdivision (a) and
24 with subdivision (b).

25 (e) The interval at which the business evaluates wages and
26 benefits to ensure compliance with the laws cited in subdivision
27 (a) and with subdivision (b).

28 (4) The equal pay compliance statement must also indicate
29 which of the following the business utilizes in setting

1 compensation and benefits:

2 (a) A market pricing approach.

3 (b) State prevailing wage or union contract requirements.

4 (c) A performance pay system.

5 (d) An internal analysis.

6 (e) An alternative approach. If the business uses an
7 alternative approach, the business shall provide a description of
8 its approach.

9 (5) The department's receipt of the equal pay compliance
10 statement does not establish compliance with the laws set forth in
11 subsection (3) (a).

12 (6) The department shall issue an equal pay certificate, or a
13 statement of why the application was rejected, within 15 days after
14 receipt of the application. An application may be rejected only if
15 it does not comply with subsection (3).

16 (7) The department may suspend or revoke an equal pay
17 certificate for a business if the business fails to make a good-
18 faith effort to comply with the laws identified in subsection
19 (3) (a), fails to make a good-faith effort to comply with this
20 section, or has multiple violations of this section or the laws
21 identified in subsection (3) (a). Proceedings for suspending or
22 revoking a certificate are subject to the administrative procedures
23 act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Before suspending
24 or revoking a certificate, the department shall work with the
25 business to reconcile wages and benefits due to employees. Upon
26 notice that the department has suspended or revoked the certificate
27 of a business that holds a contract subject to this section or if
28 the contracting public entity learns that a contract was awarded to
29 a business that is not in compliance with this section, the

1 contracting public entity may void, abridge, or terminate the
2 contract.

3 (8) Upon request, the department shall provide technical
4 assistance to a business in complying with this section.

5 (9) Upon a request from the department to enable it to fulfill
6 its duties under this section, a business shall provide all of the
7 following information with respect to employees expected to perform
8 work under a contract described in section 209 in each of the major
9 job categories in the EEO-1 employee information report:

10 (a) The number of male employees.

11 (b) The number of female employees.

12 (c) The average annualized salaries paid to male employees and
13 to female employees, in the manner most consistent with the
14 employer's compensation system, within each major job category.

15 (d) Performance payments, benefits, or other elements of
16 compensation, in the manner most consistent with the employer's
17 compensation system, if requested by the department for use in
18 determining whether compensation is different for male and female
19 employees.

20 (e) Average length of service for male and female employees in
21 each major job category.

22 (f) Other information identified by the business or by the
23 department, as needed, to determine compliance with items specified
24 in subsection (3).

25 (10) Data submitted to the department related to equal pay
26 certificates are confidential and are exempt from disclosure under
27 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246,
28 to persons other than department employees. The department's
29 decision to issue, not issue, revoke, or suspend an equal pay

1 certificate is not confidential or exempt from disclosure.

2 Enacting section 1. This amendatory act takes effect 90 days

3 after the date it is enacted into law.