

INTERIM STUDY PROPOSAL 2021-089

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021

A Bill

SENATE BILL 713

4 By: Senator C. Tucker
5 By: Representative McCullough

6 Filed with: Arkansas Legislative Council
7 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE ARKANSAS EQUAL PAY ACT OF
9 2021; TO REQUIRE STATE AGENCIES TO PAY EQUAL WAGES OR
10 SALARIES TO BOTH MEN AND WOMEN; TO ENCOURAGE ALL
11 EMPLOYERS TO ELIMINATE WAGE AND SALARY DIFFERENTIALS;
12 TO REWARD BUSINESSES WHO LEAD ARKANSAS IN THE
13 POSITIVE DIRECTION OF EQUALITY IN PAY; TO EDUCATE THE
14 PUBLIC ON WAGE AND SALARY DIFFERENTIALS; TO PROVIDE
15 GIRLS AND WOMEN WITH SPECIALIZED TRAINING ON WAGE AND
16 SALARY NEGOTIATION IN THE WORKPLACE; AND FOR OTHER
17 PURPOSES.
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Subtitle

23 TO ESTABLISH THE ARKANSAS EQUAL PAY ACT
24 OF 2021.
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. DO NOT CODIFY. Title.

31 This act shall be known and may be cited as the “Arkansas Equal Pay Act
32 of 2021”.
33

34 SECTION 2. DO NOT CODIFY. Legislative intent.

35 The General Assembly finds that:

1 (1) Women have entered the workforce in record numbers over the
2 past fifty (50) years;

3 (2) Despite the enactment of the Equal Pay Act of 1963, Pub. L.
4 No. 88-38, many women continue to earn significantly lower pay than men for
5 equal work.

6 (3) These pay disparities exist in both the private and
7 governmental sectors.

8 (4) The existence of such pay disparities:

9 (A) Depresses the wages of working families who rely on
10 the wages of all members of the family to make ends meet;

11 (B) Undermines women's retirement security, which is often
12 based on earnings while in the workforce;

13 (C) Prevents the optimum utilization of available labor
14 resources;

15 (D) Has been spread and perpetuated through commerce, and
16 the channels and instrumentalities of commerce, among the workers of
17 Arkansas;

18 (E) Burdens commerce and the free flow of goods in
19 commerce;

20 (F) Constitutes an unfair method of competition in
21 commerce;

22 (G) Leads to labor disputes burdening and obstructing
23 commerce and the free flow of goods in commerce;

24 (H) Interferes with the orderly and fair marketing of
25 goods in commerce; and

26 (I) In many instances, may deprive workers of equal
27 protection on the basis of sex in violation of:

28 (i) The Fifth and Fourteenth Amendments to the
29 United States Constitution; and

30 (ii) Arkansas Constitution, Article 2, §§ 2, 3, and
31 18;

32 (5)(A) Artificial barriers to the elimination of discrimination
33 in the payment of wages and salaries on the basis of sex continue to exist
34 decades after the enactment of the Fair Labor Standards Act of 1938, 29
35 U.S.C. § 201 et seq., the Civil Rights Act of 1964, Pub. L. No. 88-352, and
36 Arkansas Code § 11-4-601 et seq.

1 (B)(i) These barriers have resulted, in significant part,
2 because the Equal Pay Act of 1963, Pub. L. No. 88-38, has not worked as the
3 United States Congress originally intended.

4 (ii) Additional laws are necessary to ensure that
5 the Equal Pay Act of 1963 provides effective protection to those subject to
6 pay discrimination on the basis of their sex.

7 (C) Elimination of those barriers will have positive
8 effects, including without limitation:

9 (i) Providing a solution to problems in the economy
10 created by unfair pay disparities;

11 (ii) Substantially reducing the number of working
12 women earning unfairly low wages or salaries, thereby reducing the dependence
13 on public assistance;

14 (iii) Promoting stable families by enabling all
15 family members to earn a fair rate of pay;

16 (iv) Remedying the effects of past discrimination on
17 the basis of sex and ensuring that in the future workers are afforded equal
18 protection on the basis of sex; and

19 (v) Ensuring equal protection under the law;

20 (6) The Division of Labor, the Office of Personnel Management,
21 and other state agency employers have important and unique responsibilities
22 to help ensure that women receive equal pay for equal work;

23 (7) With a stronger commitment by state agency employers to
24 their responsibilities, increased information as a result of the protections
25 created by this act, wage and salary data, and more effective remedies, women
26 will be better able to recognize and enforce their rights;

27 (8) Certain employers have already made great strides in
28 eradicating unfair pay disparities in the workplace and their achievements
29 should be recognized; and

30 (9) By enactment of this act, the State of Arkansas commits to
31 lead our fellow states by ensuring that pay disparity based on sex is
32 eradicated in the State of Arkansas and, in turn, the United States of
33 America.

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35 SECTION 3. Arkansas Code Title 11, Chapter 4, Subchapter 6, is amended
36 to add additional sections to read as follows:

1 11-4-613. Negotiation skills training for girls and women.

2 (a) The Division of Labor, with the assistance of the Division of
3 Career and Technical Education, may establish and carry out a competitive
4 grant program designed to provide negotiation skills programs and training
5 for girls and women.

6 (b) The Division of Labor may provide the grants under this section to
7 state agencies, municipalities, counties, school districts, private nonprofit
8 organizations, and other community-based organizations upon application.

9 (c) An entity that receives a grant under this section shall use the
10 funds to carry out an effective negotiation skills training program that:

11 (1) Empowers girls and women; and

12 (2) Helps girls and women strengthen their negotiation skills to
13 obtain higher wages, salaries, and rates of compensation that are equal to
14 those paid to similarly situated male employees.

15 (d) The Division of Labor shall enact rules in furtherance of this
16 subchapter which, at a minimum:

17 (1) Provide for the application form and process;

18 (2) Adopt the factors to be considered in awarding the grants;
19 and

20 (3) Set minimum standards for the programs and trainings to be
21 instituted under this section.

22 (e) No later than September 1, 2022, and annually thereafter, the
23 Division of Labor shall prepare and submit to the Legislative Council a
24 report:

25 (1) Describing the activities conducted under this section;

26 (2) Evaluating the effectiveness of the activities in achieving
27 the purposes of this subchapter; and

28 (3) If an Arkansas Award for Pay Equity in the Workplace has not
29 been awarded, an explanation of the reasons for the failure to make the
30 award.

31
32 11-4-614. Research, education, and outreach.

33 (a) The Division of Labor may conduct and is encouraged to conduct
34 studies and provide information to employers, labor organizations,
35 professional associations, educational institutions, and the general public

1 concerning the means available to eliminate pay disparities between men and
2 women including without limitation:

3 (1) Conducting and promoting research to develop the means to
4 expeditiously correct the conditions leading to pay disparities;

5 (2) Publishing the findings resulting from studies and other
6 materials relating to eliminating the pay disparities;

7 (3) Sponsoring and assisting state and community informational
8 and educational programs;

9 (4) Providing information on the means of eliminating pay
10 disparities;

11 (5) Recognizing and promoting the achievements of employers,
12 labor organizations, and professional associations that have worked to
13 eliminate pay disparities; and

14 (6) Convening a statewide summit to discuss and consider
15 approaches for rectifying the pay disparities.

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17 11-4-615. Arkansas Award for Pay Equity in the Workplace –
18 Establishment.

19 (a) There is established the "Arkansas Award for Pay Equity in the
20 Workplace" which shall be:

21 (1) Administered by the Division of Labor; and

22 (2) Awarded, as appropriate, to encourage proactive efforts to
23 comply with this subchapter.

24 (b) The division shall by rule:

25 (1) Set criteria for receipt of the award, including without
26 limitation that an employer has made substantial effort to eliminate pay
27 disparities between men and women and who deserves special recognition for
28 that effort; and

29 (2) Establish procedures for the application for, third-party
30 nomination for, and presentation of the award.

31 (c) As used in this section, "employer" includes without limitation:

32 (1) A corporation, whether nonprofit or for profit;

33 (2) A partnership;

34 (3) A professional association;

35 (4) A labor organization;

36 (5) Any other business entity that has regular employees; and

1 (6) An entity carrying out an education referral program,
2 training program, apprenticeship, or management training program.

3
4 SECTION 4. Arkansas Code Title 21, Chapter 5, Subchapter 2, is amended
5 to add an additional section to read as follows:

6 21-5-226. Equal pay required – Definition.

7 (a) As used in this section, "state agency" has the same meaning as
8 defined in § 21-5-1501.

9 (b) A state agency shall not discriminate between employees of the
10 state agency on the basis of sex in violation of § 21-5-1501 et seq. by
11 paying wages or salaries to employees of one sex at a rate or in an amount
12 less than the rate at which a state agency pays wages or salaries to
13 employees of the opposite sex for equal work on jobs.

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15 SECTION 5. Arkansas Code Title 21, Chapter 5, is amended to add an
16 additional subchapter to read as follows:

17 Subchapter 15 – Equal Pay in Government

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19 21-5-1501. Definitions.

20 As used in this subchapter:

21 (1)(A) "Bona fide factor" means a reason or justification for a
22 wage differential that is based on qualifications for or performance of a
23 job.

24 (B) "Bona fide factor" includes without limitation:

25 (i) Education;

26 (ii) Experience;

27 (iii) Merit; and

28 (iv) Seniority;

29 (2) "State agency" means an agency, authority, department,
30 board, commission, bureau, council, or other agency of the state that is
31 supported by an appropriation of state or federal funds; and

32 (3) "Wage differential" means the difference in wage or salary
33 between employees of different sexes who have similar skills.

34
35 21-5-1502. Wage differential based on sex prohibited.

1 (a) A state agency shall not discriminate between employees of the
2 state agency on the basis of sex by paying wages or salaries to employees of
3 one sex at a rate or in an amount less than the rate at which the state
4 agency pays wages to employees of the opposite sex for equal work on jobs,
5 the performance of which requires equal skill, effort, and responsibility and
6 that are performed under similar working conditions, except when the payment
7 is made pursuant to a bona fide factor that:

8 (A) Is not based upon a person's sex or derived from a
9 sex-based consideration;

10 (B) Is job related;

11 (C) Is consistent with business necessity; and

12 (D) Accounts for the entire wage differential in
13 compensation at issue.

14 (b) A state agency that is paying a wage differential in violation of
15 this subchapter shall not reduce the wage or salary of any employee in order
16 to comply with this subchapter.

17 (c) A state agency shall not take adverse action against an employee
18 because the employee:

19 (1) Filed, communicated, or discussed with any party a
20 complaint, either written or verbal, of a violation of this subchapter;

21 (2) Discussed or disclosed his or her wage or salary to any
22 other person;

23 (3) Filed an action in court or a claim with the Arkansas State
24 Claims Commission alleging a violation of this subchapter; or

25 (4) Testified or assisted in an investigation or hearing
26 concerning an alleged violation under this subchapter.

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28 21-5-1503. Penalties.

29 (a)(1) An employee of a state agency may bring an action against a
30 state agency for a violation of this subchapter in:

31 (A) The Pulaski County Circuit Court; or

32 (B) A circuit court in the jurisdiction where the alleged
33 violation of this subchapter took place.

34 (2) If the circuit court finds the action to be unconstitutional
35 under Arkansas Constitution, Article 5, § 20:

1 (A) The employee may file a claim with the Arkansas State
2 Claims Commission for damages and attorney fees; and

3 (B) The commission shall have jurisdiction over the claim.

4 (b) If the state agency proves by a preponderance of the evidence that
5 its decision concerning an alleged violation of this subchapter was made
6 pursuant to a seniority system, merit system, or bona fide factor, the burden
7 is on the employee to demonstrate by a preponderance of the evidence that:

8 (1) An alternative employment practice exists that would serve
9 the same business purpose without producing the wage differential; and

10 (2) The employer has not adopted the alternative practice.

11 (c) If the employee prevails in an action under this section, the
12 employee shall be awarded by the Arkansas State Claims Commission:

13 (1) Compensatory damages;

14 (2) Reasonable attorney's fees; and

15 (3) Any other just and proper relief.

16 (d) This section does not limit the rights of an employee provided
17 under any provision of state or federal law.

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19 21-5-1504. Training.

20 Subject to the availability of funds and with the assistance of the
21 Division of Labor, the Office of Personnel Management shall develop and
22 provide a training manual and classes to state agency employers and employees
23 concerning matters involving discrimination in the payment of wages or
24 salaries.

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26 SECTION 6. DO NOT CODIFY. Effective date.

27 (a) This act is:

28 (1) Effective on and after July 1, 2022; and

29 (2) Not retroactive.

30 (b) A state agency shall not be liable under Sections 4 and 5 of this
31 act for actions that occurred before July 1, 2022.

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34 Referred requested by the Arkansas Senate

35 Prepared by: MBM/KFW

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