

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

774Z0088

SENATE BILL NO. 121

Introduced by: Senators Nesiba, Frerichs, Heinert, Killer, and Sutton and Representatives Ahlers, Bartling, Hawley, Lesmeister, McCleerey, Ring, and Smith

1 FOR AN ACT ENTITLED, An Act to prohibit employers from obtaining, seeking, or using
2 certain prior salary information.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 60-2 be amended by adding a NEW SECTION to read:

5 It is an unlawful employment practice for an employer to:

- 6 (1) Require, as a condition of employment, that an employee refrain from inquiring
7 about, discussing or disclosing information about either the employee's own wages,
8 or about any other employee's wages. Nothing in this Act obligates an employer to
9 disclose an employee's wages to another employee or a third party; or
- 10 (2) Seek the wage or salary history of a prospective employee from the prospective
11 employee or a current or former employer or to require that a prospective employee's
12 prior wage or salary history meet certain criteria.

13 Section 2. That chapter 60-2 be amended by adding a NEW SECTION to read:

14 It is an unlawful employment practice for an employer to discharge or in any other manner
15 retaliate against any employee because:



- 1 (1) The employee opposed any act or practice made unlawful by this Act;
- 2 (2) Made or indicated an intent to make a complaint or has otherwise caused to be
- 3 instituted any proceeding under this Act;
- 4 (3) Testified or is about to testify, assist or participate in any manner in an investigation
- 5 or proceeding under this Act; or
- 6 (4) Disclosed the employee's wages or has inquired about or discussed the wages of any
- 7 other employee.

8 Section 3. That chapter 60-2 be amended by adding a NEW SECTION to read:

9 No employer may contract with an employee to avoid complying with this Act, or by any

10 other means exempt itself from this Act. However, an employer may prohibit a human resources

11 employee, a supervisor, or any other employee whose job responsibilities require or allow access

12 to other employees' compensation information, from disclosing the information without prior

13 written consent from the employee whose information is sought or requested, unless the

14 compensation information is a public record pursuant to chapter 1-27.

15 Section 4. That chapter 60-2 be amended by adding a NEW SECTION to read:

16 Any employee or prospective employee claiming to be aggrieved by any unlawful

17 employment practice under sections 1 or 2 of this Act may bring a civil suit for damages in

18 circuit court. The court may award reasonable attorney fees and costs in addition to any

19 judgment awarded to the employee or prospective employee.

20 Section 5. That chapter 60-2 be amended by adding a NEW SECTION to read:

21 The unlawful prohibitions on employers under this Act do not apply if:

- 22 (1) A prospective employee has voluntarily disclosed the information at issue under
- 23 section 1 of this Act; or
- 24 (2) A prospective employer seeks to permit a prospective employee to confirm prior

1 wages or salary.