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*Bill Analysis*  
*Legislative Service Commission*

## **S.B. 69**

127th General Assembly  
(As Introduced)

**Sens. R. Miller, D. Miller, Smith**

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### **BILL SUMMARY**

- Requires an employer who discriminates in the payment of wages on the basis of race, color, religion, sex, age, national origin, or ancestry by paying wages to any employee at a rate less than the rate at which the employer pays wages to another employee for equal work on jobs the performance of which requires equal skill, effort, and responsibility and that are performed under similar conditions, who reduces the wage rate of any employee in order to comply with the R.C. section that contains the prohibition against the above-described discrimination, who violates any rule adopted by the Director of Commerce under that section, or who discriminates against any employee who makes a complaint or institutes, or testifies in, any proceeding under that section to pay a civil penalty of \$2,500 to the Director for each violation for each employee affected.
- Allows the Director of Commerce, if an employer has not paid the civil penalty within a reasonable time after its assessment, to request the Attorney General or the prosecuting attorney of the county where the violation occurred, to institute an action to recover the amount of the civil penalty.
- Provides that any money collected under the above two dot points be deposited into the Industrial Compliance Operating Fund.
- Provides that an employer who discriminates against an employee because the employee made a complaint or instituted, or testified in, any proceeding involving the above-described wage discrimination, is liable to the employee for the value of any wages or benefits lost by the employee as a result of the employer's actions.

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## CONTENT AND OPERATION

### Wage discrimination

#### Existing law

Existing law prohibits an employer, including the state and its political subdivisions, from discriminating in the payment of wages on the basis of race, color, religion, sex, age, national origin, or ancestry by paying wages to any employee at a rate less than the rate at which the employer pays wages to another employee for equal work on jobs if the performance requires equal skill, effort, and responsibility and the jobs are performed under similar conditions (R.C. 4111.17(A)). An employer may pay wages to one employee at a rate different from that at which the employer pays another employee for the performance of equal work under similar conditions on jobs requiring equal skill, effort, and responsibility when the payment is made pursuant to any of the following (R.C. 4111.17(B)):

- (1) A seniority system;
- (2) A merit system;
- (3) A system that measures earnings by the quantity or quality of production;
- (4) A wage rate differential determined by any factor other than race, color, religion, sex, age, national origin, or ancestry.

Existing law also prohibits an employer from reducing the wage rate of any employee in order to comply with the above-described prohibition against wage discrimination (R.C. 4111.17(C)).

The Director of Commerce is responsible for carrying out, administering, and enforcing these provisions. Any employee discriminated against in violation of the above-described provisions may sue in any court of competent jurisdiction to recover two times the amount of the difference between the wages actually received and the wages received by a person performing equal work for the employer, from the date of the commencement of the violation, and for costs, including attorney fees. The Director may take an assignment of any such wage claim in trust for that employee and sue in the employee's behalf. (R.C. 4111.17(D).)

Existing law also provides that an agreement to work for a discriminatory wage is not a defense for any civil or criminal action to enforce R.C. 4111.17.

Existing law also prohibits an employer from discriminating against any employee because that employee makes a complaint or institutes, or testifies in, any proceeding under the R.C. section that contains the above-described prohibitions and other provisions (R.C. 4111.17(D)).

### **Operation of the bill**

The bill provides that any employer who violates any provision of existing law described above under "**Existing law**" or any applicable rule adopted by the Director to carry out the purposes of those provisions must pay a civil penalty of \$2,500 to the Director for each violation for each employee affected. At the request of the Director, if an employer has not paid this civil penalty within a reasonable time after its assessment, the Attorney General, or under the Attorney General's direction the prosecuting attorney of the county where a violation occurred, is required to institute an action to recover the amount of the penalty. Any money collected under the above provisions must be paid into the state treasury to the credit of the Industrial Compliance Operating Fund. (R.C. 4111.17(D)(2).)

The bill also provides that an employer who discriminates against an employee because that employee made a complaint or instituted, or testified in, a proceeding under the existing law described above under "**Existing law**" is liable to the employee for the value of any wages or benefits lost by the employee as a result of the employer's actions (R.C. 4111.17(D)(4)).

### **Industrial Compliance Operating Fund**

Existing law provides that all moneys collected under R.C. 3783.05 (Board of Building Standards Rules), 3791.07 (Board of Building Standards inspection fees), 4104.07 (fee for examination as an inspector of boilers and pressure vessels), 4104.18 (fee for certificate of competency for inspectors of boilers and pressure vessels), 4104.44 (fee for submission of copies of all certified welding and brazing procedure specifications, procedure qualification records, and performance qualification records for building services piping), 4105.17 (fees for elevator inspections and certificate of operation), 4105.20 (fees for prohibited acts related to operation, construction, maintenance, and repair of elevators), 4169.03 (registration fees and fines related to passenger tramway operators), 4171.04 (registration and renewal fees for rolling skating rink operators), and 5104.051 (moneys collected regarding child day-care center inspections), and any other moneys collected by the Division of Industrial Compliance must be paid into the state treasury to the credit of the Industrial Compliance Operating Fund. The Department of Commerce must use the moneys in the Fund for paying the operating expenses of the Division and the administrative assessment of the Fund. The bill provides that the civil penalties collected by the Director of Commerce for

violations of the prohibitions against wage discrimination discussed above under "Wage discrimination" must be paid into the state treasury to the credit of the Industrial Compliance Operating Fund. (R.C. 121.084(A) and 4111.17(D)(2).)

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## HISTORY

ACTION	DATE
Introduced	02-20-07

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