SPONSOR: Rep. Longhurst & Rep. Bennett & Rep. Bolden & Rep. Briggs King & Rep. Heffernan & Rep. Hudson & Rep. Keeley & Rep. M. Smith & Rep. K. Williams & Sen. Henry & Sen. Cloutier & Sen. Hansen & Sen. Poore Reps. Baumbach, Bentz, Carson, Jaques, J. Johnson, Kowalko, Mitchell, Osienski, Paradee, Potter, Schwartzkopf, B. Short, Viola, Wilson; Sens. Marshall, Townsend, Walsh

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO UNLAWFUL EMPLOYMENT PRACTICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline:

§ 709B. Unlawful employment practices; compensation history.

(a) Definitions.

For the purposes of this section:

(1) "Applicant" means a prospective employee applying for employment.

(2) "Compensation" includes monetary wages as well as benefits and other forms of compensation.

(b) It shall be an unlawful employment practice for an employer or an employer's agent to:

(1) Screen applicants based on their compensation histories, including by requiring that an applicant's prior compensation satisfy minimum or maximum criteria.

(2) Seek the compensation history of an applicant from the applicant or a current or former employer.

(c) For the purposes of this section, if the employer can demonstrate that the employer's agent was informed of the requirements of this section and instructed to comply, then the employer is not liable for actions taken by an agent in violation of this section.

(d) Nothing in this section prohibits an employer or an employer's agent and an applicant from discussing and negotiating compensation expectations provided that the employer or employer's agent does not request or require the applicant's compensation history.

(e) Nothing in this section prohibits an employer or an employer's agent from seeking the applicant's compensation history after an offer of employment with terms of compensation has been extended to the applicant and accepted, for the sole purpose of confirming the applicant's compensation history.

(f) Enforcement.

The Department of Labor has the same powers under this section as given in §1111 of this title.

(g) Penalties.

(1) Any employer who violates or fails to comply with any requirement of this section shall be deemed in violation of this section and shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for the first offense and not less than $5,000 nor more than $10,000 for each subsequent violation.

(2) For penalty purposes, any actions by an employer or employer's agent that violate the provisions of paragraphs (b)(1) or (b)(2) of this section that pertain to interviewing and hiring for a single position shall constitute a single violation.

(3) A civil penalty claim may be filed in any court of competent jurisdiction.

Section 2. This Act shall take effect 6 months after its enactment into law.

SYNOPSIS

This Act builds on some of the legislation passed by the 148th General Assembly that addressed the wage gap between men and women. When employers ask prospective employees for their wage or salary history, it perpetuates disparities in pay based on gender from one job into another. This Act prohibits employers from inquiring into an applicant's compensation history. An applicant may voluntarily disclose the information if he or she wishes to do so, and the bill explicitly permits discussion and negation of compensation expectations between an employer and applicants, so long as the employer does not affirmatively seek compensation history in the course of discussion and negotiation. An employer is permitted to seek and confirm such information after an offer, including compensation, has been negotiated, made, and accepted. The effective date of the bill is delayed by 6 months to allow employers to update their policies.