

By Senator Dawson

30-79-01

1                                   A bill to be entitled  
2           An act relating to wage discrimination;  
3           creating the "Fair Pay Act"; amending s.  
4           760.02, F.S.; providing definitions; amending  
5           s. 760.06, F.S.; providing an additional duty  
6           of the Florida Commission on Human Relations;  
7           providing for the adoption of specified rules;  
8           amending s. 760.10, F.S.; clarifying provisions  
9           governing discrimination against individuals  
10          with respect to compensation, terms,  
11          conditions, or privileges of employment which  
12          constitutes an unlawful employment practice;  
13          providing administrative and civil remedies;  
14          creating s. 760.105, F.S.; specifying wage  
15          disclosure, recordkeeping, and reporting  
16          requirements; providing for relief and damages  
17          for violations; amending s. 760.11, F.S.,  
18          relating to administrative and civil remedies  
19          under the Florida Civil Rights Act of 1992;  
20          including s. 760.105, F.S., within the scope of  
21          the act; providing an effective date.

22  
23           WHEREAS, despite federal and state laws banning  
24          discrimination in employment and pay in both the public and  
25          private sectors, wage differentials persist between women and  
26          men and between minorities and nonminorities in the same jobs  
27          and in jobs that are dissimilar but that require equivalent  
28          composites of skill, effort, responsibility, and working  
29          conditions, and

30           WHEREAS, the existence of such wage differentials  
31          depresses wages and living standards for employees which

1 necessarily contribute to their health and efficiency, reduces  
2 family incomes and contributes to higher poverty rates among  
3 households headed by females and minority households, prevents  
4 the maximum utilization of available labor resources, and  
5 tends to cause labor disputes, thereby burdening, affecting,  
6 and obstructing commerce, and

7           WHEREAS, the Florida Civil Rights Act of 1992, sections  
8 760.01-760.11, Florida Statutes, states that it is an unlawful  
9 employment practice for an employer "to discriminate against  
10 any individual with respect to compensation, terms,  
11 conditions, or privileges of employment because of such  
12 individual's race, color, religion, sex, national origin, age,  
13 handicap, or marital status," and

14           WHEREAS, discrimination in wage setting-practices has  
15 played a role in depressing wages for women and minorities  
16 generally, and

17           WHEREAS, many individuals work in occupations that are  
18 dominated by individuals of their own sex, race, or national  
19 origin, and discrimination in hiring, job assignments, and  
20 promotion has played a role in establishing and maintaining  
21 segregated work forces, and

22           WHEREAS, eliminating discrimination in compensation  
23 based on sex, race, and national origin would have positive  
24 effects, including providing a solution to problems in the  
25 economy created by discriminatory wage differentials, reducing  
26 the number of working women and people of color earning low  
27 wages, thereby lowering their incidence of poverty during  
28 normal working years and in retirement, and promoting stable  
29 families by raising family incomes, and

30           WHEREAS, it is the purpose of this act to correct and  
31 as rapidly as practicable eliminate discriminatory wage

1 practices based on sex, race, color, religion, national  
2 origin, age, handicap, or marital status, NOW, THEREFORE,

3  
4 Be It Enacted by the Legislature of the State of Florida:

5  
6 Section 1. This act may be cited as the "Fair Pay  
7 Act."

8 Section 2. Section 760.02, Florida Statutes, is  
9 amended to read:

10 760.02 Definitions.--For the purposes of ss.  
11 760.01-760.11 and 509.092, the term:

12 (1) "Aggrieved person" means any person who files a  
13 complaint with the Human Relations Commission.~~"Florida Civil~~  
14 ~~Rights Act of 1992" means ss. 760.01-760.11 and 509.092.~~

15 (2) "Commission" means the Florida Commission on Human  
16 Relations created by s. 760.03.

17 (3) "Commissioner" or "member" means a member of the  
18 commission.

19 (4) "Discriminatory practice" means any practice made  
20 unlawful by the Florida Civil Rights Act of 1992.

21 (5) "Employ" means to suffer or permit to work.

22 (6) "Employee" means any person employed by an  
23 employer and includes all of an employer's permanent  
24 employees, whether working full-time or part-time, and any  
25 temporary employee employed by an employer for a period of at  
26 least 3 months. The term does not include any person employed  
27 by his or her parents, spouse, or child.

28 ~~(5) "National origin" includes ancestry.~~

29 ~~(6) "Person" includes an individual, association,~~  
30 ~~corporation, joint apprenticeship committee, joint-stock~~  
31 ~~company, labor union, legal representative, mutual company,~~

1 ~~partnership, receiver, trust, trustee in bankruptcy, or~~  
2 ~~unincorporated organization; any other legal or commercial~~  
3 ~~entity; the state; or any governmental entity or agency.~~

4 (7) "Employer" means any person employing 15 or more  
5 employees for each working day in each of 20 or more calendar  
6 weeks in the current or preceding calendar year, and any agent  
7 of such a person.

8 (8) "Employment agency" means any person regularly  
9 undertaking, with or without compensation, to procure  
10 employees for an employer or to procure for employees  
11 opportunities to work for an employer, and includes an agent  
12 of such a person.

13 (9) "Equivalent jobs" means jobs or occupations that  
14 are equal within the meaning of the Equal Pay Act of 1963, 39  
15 U.S.C. 206(d), or jobs or occupations that are dissimilar but  
16 whose requirements are equivalent in terms of skills, effort,  
17 responsibility, and working conditions.

18 (10) "Florida Civil Rights Act of 1992" means ss.  
19 760.01-760.11 and s. 509.092.

20 (11)~~(9)~~ "Labor organization" means any organization  
21 that ~~which~~ exists for the purpose, in whole or in part, of  
22 collective bargaining or of dealing with employers concerning  
23 grievances, terms or conditions of employment, or other mutual  
24 aid or protection in connection with employment.

25 (12) "National origin" includes ancestry.

26 (13) "Person" includes an individual, association,  
27 corporation, joint apprenticeship committee, joint-stock  
28 company, labor union, legal representative, mutual company,  
29 partnership, receiver, trust, trustee in bankruptcy, or  
30 unincorporated organization; any other legal or commercial  
31 entity; the state; or any governmental entity or agency.

1           (14) "Wages" or "wage rates" means all compensation in  
2 any form which an employer provides to employees in payment  
3 for work performed or services rendered, including, without  
4 limitation, base pay, bonuses, commissions, awards, tips, or  
5 various forms of nonmonetary compensation if provided in lieu  
6 of or in addition to monetary compensation, and which has  
7 economic value to an employee.

8           ~~(10) "Aggrieved person" means any person who files a~~  
9 ~~complaint with the Human Relations Commission.~~

10           Section 3. Section 760.06, Florida Statutes, is  
11 amended to read:

12           760.06 Powers of the commission.--Within the  
13 limitations provided by law, the commission shall have the  
14 following powers:

15           (1) To maintain offices in the State of Florida.

16           (2) To meet and exercise its powers at any place  
17 within the state.

18           (3) To promote the creation of, and to provide  
19 continuing technical assistance to, local commissions on human  
20 relations and to cooperate with individuals and state, local,  
21 and other agencies, both public and private, including  
22 agencies of the Federal Government and of other states.

23           (4) To accept gifts, bequests, grants, or other  
24 payments, public or private, to help finance its activities.

25           (5) To receive, initiate, investigate, seek to  
26 conciliate, hold hearings on, and act upon complaints alleging  
27 any discriminatory practice, as defined by the Florida Civil  
28 Rights Act of 1992.

29           (6) To issue subpoenas for, administer oaths or  
30 affirmations to and compel the attendance and testimony of  
31 witnesses or to issue subpoenas for and compel the production

1 of books, papers, records, documents, and other evidence  
2 pertaining to any investigation or hearing convened pursuant  
3 to the powers of the commission. In conducting an  
4 investigation, the commission and its investigators shall have  
5 access at all reasonable times to premises, records,  
6 documents, and other evidence or possible sources of evidence  
7 and may examine, record, and copy such materials and take and  
8 record the testimony or statements of such persons as are  
9 reasonably necessary for the furtherance of the investigation.  
10 The authority to issue subpoenas and administer oaths may be  
11 delegated by the commission, for investigations or hearings,  
12 to a commissioner or the executive director. In the case of a  
13 refusal to obey a subpoena issued to any person, the  
14 commission may make application to any circuit court of this  
15 state, which shall have jurisdiction to order the witness to  
16 appear before the commission to give testimony and to produce  
17 evidence concerning the matter in question. Failure to obey  
18 the court's order may be punished by the court as contempt. If  
19 the court enters an order holding a person in contempt or  
20 compelling the person to comply with the commission's order or  
21 subpoena, the court shall order the person to pay the  
22 commission reasonable expenses, including reasonable  
23 attorneys' fees, accrued by the commission in obtaining the  
24 order from the court.

25 (7) To recommend methods for elimination of  
26 discrimination and intergroup tensions and to use its best  
27 efforts to secure compliance with its recommendations.

28 (8) To furnish technical assistance requested by  
29 persons to facilitate progress in human relations.

30 (9) To make or arrange for studies appropriate to  
31 effectuate the purposes and policies of the Florida Civil

1 Rights Act of 1992 and to make the results thereof available  
2 to the public.

3 (10) To become a deferral agency for the Federal  
4 Government and to comply with the necessary federal  
5 regulations to effect the Florida Civil Rights Act of 1992.

6 (11) To render, at least annually, a comprehensive  
7 written report to the Governor and the Legislature. The report  
8 may contain recommendations of the commission for legislation  
9 or other action to effectuate the purposes and policies of the  
10 Florida Civil Rights Act of 1992.

11 (12) To adopt, ~~promulgate~~, amend, and rescind rules  
12 pursuant to ss. 120.54 and 120.536(1) to effectuate the  
13 purposes and policies of the Florida Civil Rights Act of 1992  
14 and govern the proceedings of the commission, in accordance  
15 with chapter 120. Such rules must include guidelines that  
16 specify the criteria for determining whether a job is  
17 dominated by employees of a particular sex, race, or national  
18 origin for purposes of the wage disclosure, recordkeeping, and  
19 reporting requirements of s. 760.105. Such criteria must  
20 include, but need not be limited to, factors such as whether a  
21 job has ever been formally classified as, or traditionally  
22 considered to be, a "male" or "female" job, or a "white" or  
23 "minority" job; whether there is a history of discrimination  
24 against women or people of color, or both, with regard to  
25 wages, assignment or access to jobs, or other terms and  
26 conditions of employment; and the demographic composition of  
27 the workforce in equivalent jobs, which may include the  
28 numbers or percentages of women, men, Caucasians, and people  
29 of color working in equivalent jobs. The guidelines must not  
30 include a list of jobs.

31

1           (13) To receive complaints and coordinate all  
2 activities as required by the Whistle-blower's Act pursuant to  
3 ss. 112.3187-112.31895.

4           Section 4. Section 760.10, Florida Statutes, is  
5 amended to read:

6           760.10 Unlawful employment practices.--

7           (1) It is an unlawful employment practice for an  
8 employer:

9           (a) To discharge or to fail or refuse to hire any  
10 individual, or otherwise to discriminate against any  
11 individual with respect to compensation, terms, conditions, or  
12 privileges of employment, because of such individual's race,  
13 color, religion, sex, national origin, age, handicap, or  
14 marital status. This paragraph must be construed to cover any  
15 discrimination by an employer between employees on the basis  
16 of sex, race, color, religion, national origin, age, handicap,  
17 or marital status by the payment of wages to employees at a  
18 rate less than the rate at which an employer pays wages to  
19 employees of the opposite sex, of a different race, color,  
20 religion, national origin, age, or marital status, or without  
21 handicap for equal work on jobs the performance of which  
22 requires equal skill, effort, and responsibility and which are  
23 performed under similar working conditions.

24           (b) To limit, segregate, or classify employees or  
25 applicants for employment in any way which would deprive or  
26 tend to deprive any individual of employment opportunities, or  
27 adversely affect any individual's status as an employee,  
28 because of such individual's race, color, religion, sex,  
29 national origin, age, handicap, or marital status.

30           (2) It is an unlawful employment practice for an  
31 employment agency to fail or refuse to refer for employment,



1 or otherwise to discriminate against, any individual because  
2 of race, color, religion, sex, national origin, age, handicap,  
3 or marital status or to classify or refer for employment any  
4 individual on the basis of race, color, religion, sex,  
5 national origin, age, handicap, or marital status.

6 (3) It is an unlawful employment practice for a labor  
7 organization:

8 (a) To exclude or to expel from its membership, or  
9 otherwise to discriminate against, any individual because of  
10 race, color, religion, sex, national origin, age, handicap, or  
11 marital status.

12 (b) To limit, segregate, or classify its membership or  
13 applicants for membership, or to classify or fail or refuse to  
14 refer for employment any individual, in any way which would  
15 deprive or tend to deprive any individual of employment  
16 opportunities, or adversely affect any individual's status as  
17 an employee or as an applicant for employment, because of such  
18 individual's race, color, religion, sex, national origin, age,  
19 handicap, or marital status.

20 (c) To cause or attempt to cause an employer to  
21 discriminate against an individual in violation of this  
22 section.

23 (4) It is an unlawful employment practice for any  
24 employer, labor organization, or joint labor-management  
25 committee controlling apprenticeship or other training or  
26 retraining, including on-the-job training programs, to  
27 discriminate against any individual because of race, color,  
28 religion, sex, national origin, age, handicap, or marital  
29 status in admission to, or employment in, any program  
30 established to provide apprenticeship or other training.

31

1           (5) Whenever, in order to engage in a profession,  
2 occupation, or trade, it is required that a person receive a  
3 license, certification, or other credential, become a member  
4 or an associate of any club, association, or other  
5 organization, or pass any examination, it is an unlawful  
6 employment practice for any person to discriminate against any  
7 other person seeking such license, certification, or other  
8 credential, seeking to become a member or associate of such  
9 club, association, or other organization, or seeking to take  
10 or pass such examination, because of such other person's race,  
11 color, religion, sex, national origin, age, handicap, or  
12 marital status.

13           (6) It is an unlawful employment practice for an  
14 employer, labor organization, employment agency, or joint  
15 labor-management committee to print, or cause to be printed or  
16 published, any notice or advertisement relating to employment,  
17 membership, classification, referral for employment, or  
18 apprenticeship or other training, indicating any preference,  
19 limitation, specification, or discrimination, based on race,  
20 color, religion, sex, national origin, age, absence of  
21 handicap, or marital status.

22           (7) It is an unlawful employment practice for an  
23 employer, an employment agency, a joint labor-management  
24 committee, or a labor organization to discriminate against any  
25 person because that person has opposed any practice which is  
26 an unlawful employment practice under this section, or because  
27 that person has made a charge, testified, assisted, or  
28 participated in any manner in an investigation, proceeding, or  
29 hearing under this section.

30           (8) Notwithstanding any other provision of this  
31 section, it is not an unlawful employment practice under ss.

1 760.01-760.10 for an employer, employment agency, labor  
2 organization, or joint labor-management committee to:

3 (a) Take or fail to take any action on the basis of  
4 religion, sex, national origin, age, handicap, or marital  
5 status in those certain instances in which religion, sex,  
6 national origin, age, absence of a particular handicap, or  
7 marital status is a bona fide occupational qualification  
8 reasonably necessary for the performance of the particular  
9 employment to which such action or inaction is related.

10 (b) Observe the terms of a bona fide seniority system,  
11 a bona fide employee benefit plan such as a retirement,  
12 pension, or insurance plan, or a system which measures  
13 earnings by quantity or quality of production, which is not  
14 designed, intended, or used to evade the purposes of ss.  
15 760.01-760.10. However, no such employee benefit plan or  
16 system which measures earnings shall excuse the failure to  
17 hire, and no such seniority system, employee benefit plan, or  
18 system which measures earnings shall excuse the involuntary  
19 retirement of, any individual on the basis of any factor not  
20 related to the ability of such individual to perform the  
21 particular employment for which such individual has applied or  
22 in which such individual is engaged. This subsection shall  
23 not be construed to make unlawful the rejection or termination  
24 of employment when the individual applicant or employee has  
25 failed to meet bona fide requirements for the job or position  
26 sought or held or to require any changes in any bona fide  
27 retirement or pension programs or existing collective  
28 bargaining agreements during the life of the contract, or for  
29 2 years after October 1, 1981, whichever occurs first, nor  
30 shall this act preclude such physical and medical examinations  
31 of applicants and employees as an employer may require of

1 applicants and employees to determine fitness for the job or  
2 position sought or held.

3 (c) Take or fail to take any action on the basis of  
4 age, pursuant to law or regulation governing any employment or  
5 training program designed to benefit persons of a particular  
6 age group.

7 (d) Take or fail to take any action on the basis of  
8 marital status if that status is prohibited under its  
9 antinepotism policy.

10 (9) This section shall not apply to any religious  
11 corporation, association, educational institution, or society  
12 which conditions opportunities in the area of employment or  
13 public accommodation to members of that religious corporation,  
14 association, educational institution, or society or to persons  
15 who subscribe to its tenets or beliefs. This section shall  
16 not prohibit a religious corporation, association, educational  
17 institution, or society from giving preference in employment  
18 to individuals of a particular religion to perform work  
19 connected with the carrying on by such corporations,  
20 associations, educational institutions, or societies of its  
21 various activities.

22 (10) Each employer, employment agency, and labor  
23 organization shall post and keep posted in conspicuous places  
24 upon its premises a notice provided by the commission setting  
25 forth such information as the commission deems appropriate to  
26 effectuate the purposes of ss. 760.01-760.10.

27 Section 5. Section 760.105, Florida Statutes, is  
28 created to read:

29 760.105 Wage disclosure; recordkeeping and reporting  
30 requirements.--

31

1           (1) Upon commencement of an individual's employment  
2 and at least annually thereafter, each employer subject to the  
3 Florida Civil Rights Act of 1992 shall provide to each  
4 employee a written statement sufficient to inform the employee  
5 of his or her job title, wage rate, and the manner or method  
6 in which the wage is calculated. This notice must be  
7 supplemented whenever an employee is promoted or reassigned to  
8 a different position with the employer; however, the employer  
9 need not issue supplemental notifications for temporary  
10 reassignments that are no greater than 3 months in duration.

11           (2) Each employer subject to the Florida Civil Rights  
12 Act of 1992 shall make and preserve records that document the  
13 wages paid to employees and that document and support the  
14 method, system, calculations, and other bases used to  
15 establish, adjust, and determine the wage rates paid to the  
16 employer's employees and shall preserve such records for such  
17 periods of time and shall make such reports from the records  
18 in accordance with rules adopted by the commission as provided  
19 under s. 760.06(12).

20           (3) Rules adopted under s. 760.06(12) which relate to  
21 the form of reports required by subsection (2) must require  
22 confidentiality concerning employees' identities, and must  
23 expressly require that reports may not include the names or  
24 other identifying information from which readers could discern  
25 the identities of employees. The rules may also identify  
26 circumstances that warrant a prohibition on disclosure of  
27 reports or information identifying the employer.

28           (4) The commission may use the information and data it  
29 collects under subsection (2) for statistical and research  
30 purposes and may compile and publish such studies, analyses,  
31

1 reports, and surveys based on the information and data that it  
2 considers appropriate.

3 (5) A violation of the wage disclosure, recordkeeping,  
4 or reporting requirements under this section by any employer  
5 who is subject to this section gives rise to a cause of action  
6 for all relief and damages described in s. 760.11(5), unless  
7 greater damages are expressly provided for.

8 Section 6. Section 760.11, Florida Statutes, is  
9 amended to read:

10 760.11 Administrative and civil remedies;  
11 construction.--

12 (1) Any person aggrieved by a violation of ss.  
13 760.01-760.105 ~~ss. 760.01-760.10~~ may file a complaint with the  
14 commission within 365 days after ~~of~~ the alleged violation  
15 occurs, naming the employer, employment agency, labor  
16 organization, or joint labor-management committee, or, in the  
17 case of an alleged violation of s. 760.10(5), the person  
18 responsible for the violation and describing the violation.  
19 Any person aggrieved by a violation of s. 509.092 may file a  
20 complaint with the commission within 365 days after ~~of~~ the  
21 alleged violation occurs, naming the person responsible for  
22 the violation and describing the violation. The commission, a  
23 commissioner, or the Attorney General may in like manner file  
24 such a complaint. On the same day the complaint is filed with  
25 the commission, the commission shall clearly stamp on the face  
26 of the complaint the date the complaint was filed with the  
27 commission. The complaint shall contain a short and plain  
28 statement of the facts describing the violation and the relief  
29 sought. The commission may require additional information to  
30 be in the complaint. The commission, within 5 days after ~~of~~  
31 the complaint is being ~~is~~ filed, shall by registered mail send a

1 copy of the complaint to the person who allegedly committed  
2 the violation. The person who allegedly committed the  
3 violation must ~~may~~ file an answer to the complaint within 25  
4 days after ~~of~~ the date the complaint was filed with the  
5 commission. Any answer filed shall be mailed to the aggrieved  
6 person by the person filing the answer. Both the complaint  
7 and the answer must ~~shall~~ be verified.

8 (2) If ~~In the event that~~ any other agency of the state  
9 or of any other unit of government of the state has  
10 jurisdiction of the subject matter of any complaint filed with  
11 the commission and has legal authority to investigate the  
12 complaint, the commission may refer the ~~such~~ complaint to the  
13 ~~such~~ agency for an investigation. Referral of such a complaint  
14 by the commission does ~~shall~~ not constitute agency action  
15 within the meaning of s. 120.52. If a ~~In the event of a~~  
16 referral is made under this subsection, the commission shall  
17 accord substantial weight to any findings and conclusions of  
18 any such agency. The referral of a complaint by the  
19 commission to a local agency does not divest the commission's  
20 jurisdiction over the complaint.

21 (3) Except as provided in subsection (2), the  
22 commission shall investigate the allegations in the complaint.  
23 Within 180 days after ~~of the filing of~~ the complaint is filed,  
24 the commission shall determine whether ~~if~~ there is reasonable  
25 cause to believe that discriminatory practice has occurred in  
26 violation of the Florida Civil Rights Act of 1992. ~~When the~~  
27 ~~commission determines~~ Whether or not the commission finds  
28 ~~there is~~ reasonable cause, it ~~the commission by registered~~  
29 ~~mail~~ shall promptly notify by registered mail the aggrieved  
30 person and the respondent of its ~~the reasonable cause~~

31

1 determination, the date of that ~~such~~ determination, and the  
2 options available to the aggrieved person under this section.

3 (4) ~~If in the event that~~ the commission finds  
4 ~~determines that there is~~ reasonable cause to believe that a  
5 discriminatory practice has occurred in violation of the  
6 Florida Civil Rights Act of 1992, the aggrieved person may  
7 either:

8 (a) Bring a civil action against the person named in  
9 the complaint in any court of competent jurisdiction; or

10 (b) Request an administrative hearing under ss.  
11 120.569 and 120.57.

12  
13 The election by the aggrieved person of filing a civil action  
14 or requesting an administrative hearing under this subsection  
15 is the exclusive procedure available to the aggrieved person  
16 pursuant to this act.

17 (5) In any civil action brought under this section,  
18 the court may issue an order prohibiting the discriminatory  
19 practice and providing affirmative relief from the effects of  
20 the practice, including back pay. The court may also award  
21 compensatory damages, including, but not limited to, damages  
22 for mental anguish, loss of dignity, and any other intangible  
23 injuries, and punitive damages. Sections ~~The provisions of~~  
24 ~~ss.~~768.72 and 768.73 do not apply to this section. The  
25 judgment for the total amount of punitive damages awarded  
26 under this section to an aggrieved person may ~~shall~~ not exceed  
27 \$100,000. In any action or proceeding under this subsection,  
28 the court, in its discretion, may allow the prevailing party a  
29 reasonable attorney's fee as part of the costs. It is the  
30 intent of the Legislature that this provision for attorney's  
31 fees be interpreted in a manner consistent with federal case



1 law involving a Title VII action. The right to trial by jury  
2 is preserved in any such private right of action in which the  
3 aggrieved person is seeking compensatory or punitive damages,  
4 and any party may demand a trial by jury. The commission's  
5 determination of reasonable cause is not admissible into  
6 evidence in any civil proceeding, including any hearing or  
7 trial, except to establish for the court the right to maintain  
8 the private right of action. A civil action brought under this  
9 section must ~~shall~~ be commenced no later than 1 year after the  
10 date of determination of reasonable cause by the commission.  
11 The commencement of such an action divests ~~shall divest~~ the  
12 commission of jurisdiction of the complaint, except that the  
13 commission may intervene in the civil action as a matter of  
14 right. Notwithstanding the above, the state and its agencies  
15 and subdivisions may ~~shall~~ not be held liable for punitive  
16 damages. The total amount of recovery against the state and  
17 its agencies and subdivisions may ~~shall~~ not exceed the  
18 limitation ~~as~~ set forth in s. 768.28(5).

19 (6) Any administrative hearing brought under ~~pursuant~~  
20 ~~to~~ paragraph (4)(b) must ~~shall~~ be conducted under ss. 120.569  
21 and 120.57. The commission may hear the case provided that the  
22 final order is issued by members of the commission who did not  
23 conduct the hearing, or the commission may request that it be  
24 heard by an administrative law judge pursuant to s.  
25 120.569(2)(a). If the commission elects to hear the case, it  
26 may be heard by a commissioner. If the commissioner, after  
27 the hearing, finds that a violation of the Florida Civil  
28 Rights Act of 1992 has occurred, the commissioner shall issue  
29 an appropriate proposed order in accordance with chapter 120  
30 prohibiting the practice and providing affirmative relief from  
31 the effects of the practice, including back pay. If the

1 administrative law judge, after the hearing, finds that a  
2 violation of the Florida Civil Rights Act of 1992 has  
3 occurred, the administrative law judge shall issue an  
4 appropriate recommended order in accordance with chapter 120  
5 prohibiting the practice and providing affirmative relief from  
6 the effects of the practice, including back pay. Within 90  
7 days after ~~of~~ the date the recommended or proposed order is  
8 rendered, the commission shall issue a final order by  
9 adopting, rejecting, or modifying the recommended order as  
10 provided under ss. 120.569 and 120.57. The 90-day period may  
11 be extended with the consent of all the parties. An  
12 administrative hearing under ~~pursuant to~~ paragraph (4)(b) must  
13 be requested no later than 35 days after the date of  
14 determination of reasonable cause by the commission. In any  
15 action or proceeding under this subsection, the commission, in  
16 its discretion, may allow the prevailing party a reasonable  
17 attorney's fee as part of the costs. It is the intent of the  
18 Legislature that this provision for attorney's fees be  
19 interpreted in a manner consistent with federal case law  
20 involving a Title VII action.

21 (7) If the commission determines that there is not  
22 reasonable cause to believe that a violation of the Florida  
23 Civil Rights Act of 1992 has occurred, the commission shall  
24 dismiss the complaint. The aggrieved person may request an  
25 administrative hearing under ss. 120.569 and 120.57, but any  
26 such request must be made within 35 days after ~~of~~ the date of  
27 determination of reasonable cause, and any such hearing must  
28 ~~shall~~ be heard by an administrative law judge and not by the  
29 commission or a commissioner. If the aggrieved person does  
30 not request an administrative hearing within the 35 days, the  
31 claim will be barred. If the administrative law judge finds

1 that a violation of the Florida Civil Rights Act of 1992 has  
2 occurred, he or she shall issue an appropriate recommended  
3 order to the commission prohibiting the practice and  
4 recommending affirmative relief from the effects of the  
5 practice, including back pay. Within 90 days after ~~of~~ the  
6 date the recommended order is rendered, the commission shall  
7 issue a final order by adopting, rejecting, or modifying the  
8 recommended order as provided under ss. 120.569 and 120.57.  
9 The 90-day period may be extended with the consent of all the  
10 parties. In any action or proceeding under this subsection,  
11 the commission, in its discretion, may allow the prevailing  
12 party a reasonable attorney's fee as part of the costs. It is  
13 the intent of the Legislature that this provision for  
14 attorney's fees be interpreted in a manner consistent with  
15 federal case law involving a Title VII action. If ~~in the~~  
16 ~~event~~ the final order issued by the commission determines that  
17 a violation of the Florida Civil Rights Act of 1992 has  
18 occurred, the aggrieved person may bring, within 1 year after  
19 ~~of~~ the date of the final order, a civil action under  
20 subsection (5) as if there has been a reasonable cause  
21 determination or accept the affirmative relief offered by the  
22 commission, but not both.

23 (8) If ~~in the event that~~ the commission fails to  
24 conciliate or determine whether there is reasonable cause on  
25 any complaint under this section within 180 days after ~~of~~ the  
26 filing of the complaint, an aggrieved person may proceed under  
27 subsection (4), as if the commission had determined that there  
28 was reasonable cause.

29 (9) ~~No~~ Liability for back pay may not ~~shall~~ accrue  
30 from a date more than 2 years prior to the filing of a  
31 complaint with the commission.

1           (10) A judgment for the amount of damages and costs  
2 assessed pursuant to a final order by the commission may be  
3 entered in any court having jurisdiction thereof and may be  
4 enforced as any other judgment.

5           (11) If a complaint is within the jurisdiction of the  
6 commission, the commission shall simultaneously with its other  
7 statutory obligations attempt to eliminate or correct the  
8 alleged discrimination by informal methods of conference,  
9 conciliation, and persuasion. Nothing said or done in the  
10 course of such informal endeavors may be made public or used  
11 as evidence in a subsequent civil proceeding, trial, or  
12 hearing. The commission may initiate dispute resolution  
13 procedures, including voluntary arbitration, by special  
14 masters or mediators. The commission may adopt rules as to  
15 the qualifications of persons who may serve as special masters  
16 and mediators.

17           (12) All complaints filed with the commission and all  
18 records and documents in the custody of the commission, which  
19 relate to and identify a particular person, including, but not  
20 limited to, a complainant, employer, employment agency, labor  
21 organization, or joint labor-management committee, shall be  
22 confidential and shall not be disclosed by the commission,  
23 except to the parties or in the course of a hearing or  
24 proceeding under this section. ~~The restriction of~~ This  
25 subsection does ~~shall~~ not apply to any record or document that  
26 ~~which~~ is part of the record of any hearing or court  
27 proceeding.

28           (13) Final orders of the commission are subject to  
29 judicial review pursuant to s. 120.68. The commission's  
30 determination of reasonable cause is not final agency action  
31 that is subject to judicial review. Unless specifically

1 ordered by the court, the commencement of an appeal does not  
2 suspend or stay the order of the commission, except as  
3 provided in the Rules of Appellate Procedure. In any action  
4 or proceeding under this subsection, the court, ~~in its~~  
5 ~~discretion,~~ may allow the prevailing party as part of the cost  
6 a reasonable attorney's fee ~~as part of the cost.~~ It is the  
7 ~~intent of the Legislature that this provision for attorney's~~  
8 ~~fees be interpreted~~ in a manner consistent with federal case  
9 law involving a Title VII action. If ~~in the event~~ the order  
10 of the court determines that a violation of the Florida Civil  
11 Rights Act of 1992 has occurred, the court shall remand the  
12 matter to the commission for appropriate relief. The  
13 aggrieved party has the option to accept the relief offered by  
14 the commission or may bring, within 1 year after ~~of~~ the date  
15 of the court order, a civil action under subsection (5) as if  
16 there had ~~has~~ been a reasonable cause determination.

17 (14) The commission may adopt, promulgate, amend, and  
18 rescind rules to effectuate the purposes and policies of this  
19 section and to govern the proceedings of the commission under  
20 this section.

21 (15) In any civil action or administrative proceeding  
22 brought under ~~pursuant to~~ this section, a finding that a  
23 person employed by the state or any governmental entity or  
24 agency has violated s. 760.10 shall as a matter of law  
25 constitute just or substantial cause for such person's  
26 discharge.

27 Section 7. This act shall take effect upon becoming a  
28 law.

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SENATE SUMMARY

Creates the "Fair Pay Act." Revises and creates various provisions of the "Florida Civil Rights Act of 1992" to:

1. Provide that the Florida Commission on Human Relations establish guidelines that specify criteria for determining whether particular jobs are dominated by employees of a particular sex, race, or national origin.

2. Provide clarifying language with respect to discrimination against individuals in compensation, terms, conditions, or privileges of employment which constitutes an unlawful employment practice.

3. Provide specified wage disclosure, recordkeeping, and reporting requirements of employers and provide administrative and civil remedies for violation of the requirements.