

AMENDMENT TO H.R. 5645

OFFERED BY MS. DELAURO OF CONNECTICUT

Page 1, before line 3, insert the following:

1 **TITLE I—MERGER AND**
2 **ACQUISITION REVIEWS**

Redesignate sections 1 through 4 of the bill as sections 101 through 104, respectively.

Page 1 line 4, strike “Act” each place it appears and insert “title”.

Page 5, lines 17, 18, 19, 21, and 23, strike “Act” each place it appears and insert “title”.

At the end of the bill, add the following:

3 **TITLE II—PAYCHECK FAIRNESS**

4 **SEC. 201. SHORT TITLE.**

5 This title may be cited as the “Paycheck Fairness
6 Act”.

7 **SEC. 202. FINDINGS.**

8 Congress finds the following:

9 (1) Women have entered the workforce in
10 record numbers over the past 50 years.

1 (2) Despite the enactment of the Equal Pay Act
2 of 1963, many women continue to earn significantly
3 lower pay than men for equal work. These pay dis-
4 parities exist in both the private and governmental
5 sectors. In many instances, the pay disparities can
6 only be due to continued intentional discrimination
7 or the lingering effects of past discrimination.

8 (3) The existence of such pay disparities—

9 (A) depresses the wages of working fami-
10 lies who rely on the wages of all members of the
11 family to make ends meet;

12 (B) undermines women’s retirement secu-
13 rity, which is often based on earnings while in
14 the workforce;

15 (C) prevents the optimum utilization of
16 available labor resources;

17 (D) has been spread and perpetuated,
18 through commerce and the channels and instru-
19 mentalities of commerce, among the workers of
20 the several States;

21 (E) burdens commerce and the free flow of
22 goods in commerce;

23 (F) constitutes an unfair method of com-
24 petition in commerce;

1 (G) leads to labor disputes burdening and
2 obstructing commerce and the free flow of
3 goods in commerce;

4 (H) interferes with the orderly and fair
5 marketing of goods in commerce; and

6 (I) in many instances, may deprive workers
7 of equal protection on the basis of sex in viola-
8 tion of the 5th and 14th Amendments.

9 (4)(A) Artificial barriers to the elimination of
10 discrimination in the payment of wages on the basis
11 of sex continue to exist decades after the enactment
12 of the Fair Labor Standards Act of 1938 (29 U.S.C.
13 201 et seq.) and the Civil Rights Act of 1964 (42
14 U.S.C. 2000a et seq.).

15 (B) These barriers have resulted, in significant
16 part, because the Equal Pay Act of 1963 has not
17 worked as Congress originally intended. Improve-
18 ments and modifications to the law are necessary to
19 ensure that the Act provides effective protection to
20 those subject to pay discrimination on the basis of
21 their sex.

22 (C) Elimination of such barriers would have
23 positive effects, including—

24 (i) providing a solution to problems in the
25 economy created by unfair pay disparities;

1 (ii) substantially reducing the number of
2 working women earning unfairly low wages,
3 thereby reducing the dependence on public as-
4 sistance;

5 (iii) promoting stable families by enabling
6 all family members to earn a fair rate of pay;

7 (iv) remedying the effects of past discrimi-
8 nation on the basis of sex and ensuring that in
9 the future workers are afforded equal protection
10 on the basis of sex; and

11 (v) ensuring equal protection pursuant to
12 Congress' power to enforce the 5th and 14th
13 Amendments.

14 (5) The Department of Labor and the Equal
15 Employment Opportunity Commission have impor-
16 tant and unique responsibilities to help ensure that
17 women receive equal pay for equal work.

18 (6) The Department of Labor is responsible
19 for—

20 (A) collecting and making publicly avail-
21 able information about women's pay;

22 (B) ensuring that companies receiving
23 Federal contracts comply with anti-discrimina-
24 tion affirmative action requirements of Execu-

1 tive Order 11246 (relating to equal employment
2 opportunity);

3 (C) disseminating information about wom-
4 en's rights in the workplace;

5 (D) helping women who have been victims
6 of pay discrimination obtain a remedy; and

7 (E) being proactive in investigating and
8 prosecuting equal pay violations, especially sys-
9 temic violations, and in enforcing all of its man-
10 dates.

11 (7) The Equal Employment Opportunity Com-
12 mission is the primary enforcement agency for
13 claims made under the Equal Pay Act of 1963, and
14 issues regulations and guidance on appropriate in-
15 terpretations of the law.

16 (8) With a stronger commitment by the Depart-
17 ment of Labor and the Equal Employment Oppor-
18 tunity Commission to their responsibilities, increased
19 information as a result of the amendments made by
20 this title to the Equal Pay Act of 1963, wage data,
21 and more effective remedies, women will be better
22 able to recognize and enforce their rights.

23 (9) Certain employers have already made great
24 strides in eradicating unfair pay disparities in the

1 workplace and their achievements should be recog-
2 nized.

3 **SEC. 203. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**
4 **QUIREMENTS.**

5 (a) BONA FIDE FACTOR DEFENSE AND MODIFICA-
6 TION OF SAME ESTABLISHMENT REQUIREMENT.—Section
7 6(d)(1) of the Fair Labor Standards Act of 1938 (29
8 U.S.C. 206(d)(1)) is amended—

9 (1) by striking “No employer having” and in-
10 sserting “(A) No employer having”;

11 (2) by striking “any other factor other than
12 sex” and inserting “a bona fide factor other than
13 sex, such as education, training, or experience”; and

14 (3) by inserting at the end the following:

15 “(B) The bona fide factor defense described in sub-
16 paragraph (A)(iv) shall apply only if the employer dem-
17 onstrates that such factor (i) is not based upon or derived
18 from a sex-based differential in compensation; (ii) is job-
19 related with respect to the position in question; (iii) is con-
20 sistent with business necessity; and (iv) accounts for the
21 entire differential in compensation at issue. Such defense
22 shall not apply where the employee demonstrates that an
23 alternative employment practice exists that would serve
24 the same business purpose without producing such dif-

1 ferential and that the employer has refused to adopt such
2 alternative practice.

3 “(C) For purposes of subparagraph (A), employees
4 shall be deemed to work in the same establishment if the
5 employees work for the same employer at workplaces lo-
6 cated in the same county or similar political subdivision
7 of a State. The preceding sentence shall not be construed
8 as limiting broader applications of the term ‘establish-
9 ment’ consistent with rules prescribed or guidance issued
10 by the Equal Opportunity Employment Commission.”.

11 (b) NONRETALIATION PROVISION.—Section 15 of the
12 Fair Labor Standards Act of 1938 (29 U.S.C. 215) is
13 amended—

14 (1) in subsection (a)—

15 (A) in paragraph (3), by striking “em-
16 ployee has filed” and all that follows and insert-
17 ing “employee—

18 “(A) has made a charge or filed any com-
19 plaint or instituted or caused to be instituted
20 any investigation, proceeding, hearing, or action
21 under or related to this title, including an inves-
22 tigation conducted by the employer, or has tes-
23 tified or is planning to testify or has assisted or
24 participated in any manner in any such inves-
25 tigation, proceeding, hearing or action, or has

1 served or is planning to serve on an industry
2 committee; or

3 “(B) has inquired about, discussed, or dis-
4 closed the wages of the employee or another
5 employee;”;

6 (B) in paragraph (5), by striking the pe-
7 riod at the end and inserting “; or”; and

8 (C) by adding at the end the following:

9 “(6) to require an employee to sign a contract
10 or waiver that would prohibit the employee from dis-
11 closing information about the employee’s wages.”;
12 and

13 (2) by adding at the end the following:

14 “(c) Subsection (a)(3)(B) shall not apply to instances
15 in which an employee who has access to the wage informa-
16 tion of other employees as a part of such employee’s essen-
17 tial job functions discloses the wages of such other employ-
18 ees to individuals who do not otherwise have access to such
19 information, unless such disclosure is in response to a
20 complaint or charge or in furtherance of an investigation,
21 proceeding, hearing, or action under section 6(d), includ-
22 ing an investigation conducted by the employer. Nothing
23 in this subsection shall be construed to limit the rights
24 of an employee provided under any other provision of
25 law.”.

1 (c) ENHANCED PENALTIES.—Section 16(b) of the
2 Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is
3 amended—

4 (1) by inserting after the first sentence the fol-
5 lowing: “Any employer who violates section 6(d)
6 shall additionally be liable for such compensatory
7 damages, or, where the employee demonstrates that
8 the employer acted with malice or reckless indiffer-
9 ence, punitive damages as may be appropriate, ex-
10 cept that the United States shall not be liable for
11 punitive damages.”;

12 (2) in the sentence beginning “An action to”,
13 by striking “either of the preceding sentences” and
14 inserting “any of the preceding sentences of this
15 subsection”;

16 (3) in the sentence beginning “No employees
17 shall”, by striking “No employees” and inserting
18 “Except with respect to class actions brought to en-
19 force section 6(d), no employee”;

20 (4) by inserting after the sentence referred to
21 in paragraph (3), the following: “Notwithstanding
22 any other provision of Federal law, any action
23 brought to enforce section 6(d) may be maintained
24 as a class action as provided by the Federal Rules
25 of Civil Procedure.”; and

1 (5) in the sentence beginning “The court in”—

2 (A) by striking “in such action” and in-
3 serting “in any action brought to recover the li-
4 ability prescribed in any of the preceding sen-
5 tences of this subsection”; and

6 (B) by inserting before the period the fol-
7 lowing: “, including expert fees”.

8 (d) ACTION BY SECRETARY.—Section 16(c) of the
9 Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is
10 amended—

11 (1) in the first sentence—

12 (A) by inserting “or, in the case of a viola-
13 tion of section 6(d), additional compensatory or
14 punitive damages, as described in subsection
15 (b),” before “and the agreement”; and

16 (B) by inserting before the period the fol-
17 lowing: “, or such compensatory or punitive
18 damages, as appropriate”;

19 (2) in the second sentence, by inserting before
20 the period the following: “and, in the case of a viola-
21 tion of section 6(d), additional compensatory or pu-
22 nitive damages, as described in subsection (b)”;

23 (3) in the third sentence, by striking “the first
24 sentence” and inserting “the first or second sen-
25 tence”; and

1 (4) in the last sentence—

2 (A) by striking “commenced in the case”

3 and inserting “commenced—

4 “(1) in the case”;

5 (B) by striking the period and inserting “;

6 or”; and

7 (C) by adding at the end the following:

8 “(2) in the case of a class action brought to en-
9 force section 6(d), on the date on which the indi-
10 vidual becomes a party plaintiff to the class action.”.

11 **SEC. 204. TRAINING.**

12 The Equal Employment Opportunity Commission
13 and the Office of Federal Contract Compliance Programs,
14 subject to the availability of funds appropriated under sec-
15 tion 11, shall provide training to Commission employees
16 and affected individuals and entities on matters involving
17 discrimination in the payment of wages.

18 **SEC. 205. NEGOTIATION SKILLS TRAINING FOR GIRLS AND**

19 **WOMEN.**

20 (a) PROGRAM AUTHORIZED.—

21 (1) IN GENERAL.—The Secretary of Labor,
22 after consultation with the Secretary of Education,
23 is authorized to establish and carry out a grant pro-
24 gram.

1 (2) GRANTS.—In carrying out the program, the
2 Secretary of Labor may make grants on a competi-
3 tive basis to eligible entities, to carry out negotiation
4 skills training programs for girls and women.

5 (3) ELIGIBLE ENTITIES.—To be eligible to re-
6 ceive a grant under this subsection, an entity shall
7 be a public agency, such as a State, a local govern-
8 ment in a metropolitan statistical area (as defined
9 by the Office of Management and Budget), a State
10 educational agency, or a local educational agency, a
11 private nonprofit organization, or a community-
12 based organization.

13 (4) APPLICATION.—To be eligible to receive a
14 grant under this subsection, an entity shall submit
15 an application to the Secretary of Labor at such
16 time, in such manner, and containing such informa-
17 tion as the Secretary of Labor may require.

18 (5) USE OF FUNDS.—An entity that receives a
19 grant under this subsection shall use the funds made
20 available through the grant to carry out an effective
21 negotiation skills training program that empowers
22 girls and women. The training provided through the
23 program shall help girls and women strengthen their
24 negotiation skills to allow the girls and women to ob-
25 tain higher salaries and rates of compensation that

1 are equal to those paid to similarly situated male
2 employees.

3 (b) INCORPORATING TRAINING INTO EXISTING PRO-
4 GRAMS.—The Secretary of Labor and the Secretary of
5 Education shall issue regulations or policy guidance that
6 provides for integrating the negotiation skills training, to
7 the extent practicable, into programs authorized under—

8 (1) in the case of the Secretary of Education,
9 the Elementary and Secondary Education Act of
10 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins
11 Career and Technical Education Act of 2006 (20
12 U.S.C. 2301 et seq.), the Higher Education Act of
13 1965 (20 U.S.C. 1001 et seq.), and other programs
14 carried out by the Department of Education that the
15 Secretary of Education determines to be appro-
16 priate; and

17 (2) in the case of the Secretary of Labor, the
18 Workforce Innovation and Opportunity Act (29
19 U.S.C. 3101 et seq.), and other programs carried
20 out by the Department of Labor that the Secretary
21 of Labor determines to be appropriate.

22 (c) REPORT.—Not later than 1 year after the date
23 of enactment of this title, and annually thereafter, the Sec-
24 retary of Labor and the Secretary of Education shall pre-
25 pare and submit to Congress a report describing the ac-

1 tivities conducted under this section and evaluating the ef-
2 fectiveness of such activities in achieving the purposes of
3 this title.

4 **SEC. 206. RESEARCH, EDUCATION, AND OUTREACH.**

5 The Secretary of Labor shall conduct studies and
6 provide information to employers, labor organizations, and
7 the general public concerning the means available to elimi-
8 nate pay disparities between men and women, including—

9 (1) conducting and promoting research to de-
10 velop the means to correct expeditiously the condi-
11 tions leading to the pay disparities;

12 (2) publishing and otherwise making available
13 to employers, labor organizations, professional asso-
14 ciations, educational institutions, the media, and the
15 general public the findings resulting from studies
16 and other materials, relating to eliminating the pay
17 disparities;

18 (3) sponsoring and assisting State and commu-
19 nity informational and educational programs;

20 (4) providing information to employers, labor
21 organizations, professional associations, and other
22 interested persons on the means of eliminating the
23 pay disparities;

24 (5) recognizing and promoting the achievements
25 of employers, labor organizations, and professional

1 associations that have worked to eliminate the pay
2 disparities; and

3 (6) convening a national summit to discuss, and
4 consider approaches for rectifying, the pay dispari-
5 ties.

6 **SEC. 207. ESTABLISHMENT OF THE NATIONAL AWARD FOR**
7 **PAY EQUITY IN THE WORKPLACE.**

8 (a) IN GENERAL.—There is established the Secretary
9 of Labor’s National Award for Pay Equity in the Work-
10 place, which shall be awarded, as appropriate, to encour-
11 age proactive efforts to comply with section 6(d) of the
12 Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)).

13 (b) CRITERIA FOR QUALIFICATION.—The Secretary
14 of Labor shall set criteria for receipt of the award, includ-
15 ing a requirement that an employer has made substantial
16 effort to eliminate pay disparities between men and
17 women, and deserves special recognition as a consequence
18 of such effort. The Secretary shall establish procedures for
19 the application and presentation of the award.

20 (c) BUSINESS.—In this section, the term “employer”
21 includes—

22 (1)(A) a corporation, including a nonprofit cor-
23 poration;

24 (B) a partnership;

25 (C) a professional association;

1 (D) a labor organization; and

2 (E) a business entity similar to an entity de-
3 scribed in any of subparagraphs (A) through (D);

4 (2) an entity carrying out an education referral
5 program, a training program, such as an apprentice-
6 ship or management training program, or a similar
7 program; and

8 (3) an entity carrying out a joint program,
9 formed by a combination of any entities described in
10 paragraph (1) or (2).

11 **SEC. 208. COLLECTION OF PAY INFORMATION BY THE**
12 **EQUAL EMPLOYMENT OPPORTUNITY COM-**
13 **MISSION.**

14 Section 709 of the Civil Rights Act of 1964 (42
15 U.S.C. 2000e–8) is amended by adding at the end the fol-
16 lowing:

17 “(f)(1) Not later than 18 months after the date of
18 enactment of this subsection, the Commission shall issue
19 regulations to provide for the collection from employers
20 of compensation data and other employment-related data
21 (including hiring, termination, and promotion data)
22 disaggregated by the sex, race, and national origin of em-
23 ployees.

24 “(2) In carrying out paragraph (1), the Commission
25 shall have as its primary consideration the most effective

1 and efficient means for enhancing the enforcement of Fed-
2 eral laws prohibiting pay discrimination. For this purpose,
3 the Commission shall consider factors including the im-
4 position of burdens on employers, the frequency of required
5 reports (including which employers should be required to
6 prepare reports), appropriate protections for maintaining
7 data confidentiality, and the most effective format for re-
8 ports containing such data.”.

9 **SEC. 209. REINSTATEMENT OF PAY EQUITY PROGRAMS AND**
10 **PAY EQUITY DATA COLLECTION.**

11 (a) BUREAU OF LABOR STATISTICS DATA COLLEC-
12 TION.—The Commissioner of Labor Statistics shall con-
13 tinue to collect data on women workers in the Current
14 Employment Statistics survey.

15 (b) OFFICE OF FEDERAL CONTRACT COMPLIANCE
16 PROGRAMS INITIATIVES.—The Director of the Office of
17 Federal Contract Compliance Programs shall ensure that
18 employees of the Office—

19 (1)(A) shall use the full range of investigatory
20 tools at the Office’s disposal, including pay grade
21 methodology;

22 (B) in considering evidence of possible com-
23 pensation discrimination—

24 (i) shall not limit its consideration to a
25 small number of types of evidence; and

1 (ii) shall not limit its evaluation of the evi-
2 dence to a small number of methods of evalu-
3 ating the evidence; and

4 (C) shall not require a multiple regression anal-
5 ysis or anecdotal evidence for a compensation dis-
6 crimination case;

7 (2) for purposes of its investigative, compliance,
8 and enforcement activities, shall define “similarly
9 situated employees” in a way that is consistent with
10 and not more stringent than the definition provided
11 in item 1 of subsection A of section 10–III of the
12 Equal Employment Opportunity Commission Com-
13 pliance Manual (2000), and shall consider only fac-
14 tors that the Office’s investigation reveals were used
15 in making compensation decisions; and

16 (3) shall implement a survey to collect com-
17 pensation data and other employment-related data
18 (including hiring, termination, and promotion data)
19 and designate not less than half of all nonconstruc-
20 tion contractor establishments each year to prepare
21 and file such survey, and shall review and utilize the
22 responses to such survey to identify contractor es-
23 tablishments for further evaluation and for other en-
24 forcement purposes as appropriate.

1 (c) DEPARTMENT OF LABOR DISTRIBUTION OF
2 WAGE DISCRIMINATION INFORMATION.—The Secretary of
3 Labor shall make readily available (in print, on the De-
4 partment of Labor website, and through any other forum
5 that the Department may use to distribute compensation
6 discrimination information), accurate information on com-
7 pensation discrimination, including statistics, explanations
8 of employee rights, historical analyses of such discrimina-
9 tion, instructions for employers on compliance, and any
10 other information that will assist the public in under-
11 standing and addressing such discrimination.

12 **SEC. 210. PROHIBITIONS RELATING TO PROSPECTIVE EM-**
13 **PLOYEES' SALARY AND BENEFIT HISTORY.**

14 (a) IN GENERAL.—The Fair Labor Standards Act of
15 1938 (29 U.S.C. 201 et seq.) is amended by inserting
16 after section 7 the following new section:

17 **“SEC. 8. REQUIREMENTS AND PROHIBITIONS RELATING TO**
18 **WAGE, SALARY, AND BENEFIT HISTORY.**

19 “(a) IN GENERAL.—It shall be an unlawful practice
20 for an employer to—

21 “(1) rely on the wage history of a prospective
22 employee in considering the prospective employee for
23 employment, including requiring that a prospective
24 employee’s prior wages satisfy minimum or max-

1 imum criteria as a condition of being considered for
2 employment;

3 “(2) rely on the wage history of a prospective
4 employee in determining the wages for such prospec-
5 tive employee, except that an employer may rely on
6 wage history if it is voluntarily provided by a pro-
7 spective employee, after the employer makes an offer
8 of employment with an offer of compensation to the
9 prospective employee, to support a wage higher than
10 the wage offered by the employer;

11 “(3) seek from a prospective employee or any
12 current or former employer the wage history of the
13 prospective employee, except that an employer may
14 seek to confirm prior wage information only after an
15 offer of employment with compensation has been
16 made to the prospective employee and the prospec-
17 tive employee responds to the offer by providing
18 prior wage information to support a wage higher
19 than that offered by the employer; or

20 “(4) discharge or in any other manner retaliate
21 against any employee or prospective employee be-
22 cause the employee or prospective employee—

23 “(A) opposed any act or practice made un-
24 lawful by this section; or

1 “(B) took an action for which discrimina-
2 tion is forbidden under section 15(3).

3 “(b) DEFINITIONS.—In this section:

4 “(1) WAGES; COMPENSATION.—The term
5 ‘wages’ or ‘compensation’ has the meaning given the
6 term ‘wages’ in section 6(d).

7 “(2) WAGE HISTORY.—The term ‘wage history’
8 means the wages paid to the prospective employee by
9 the prospective employee’s current employer or pre-
10 vious employer.”.

11 (b) PENALTIES.—Section 16 of such Act (29 U.S.C.
12 216) is amended by adding at the end the following new
13 subsection:

14 “(f)(1) Any person who violates the provisions of sec-
15 tion 8 shall—

16 “(A) be subject to a civil penalty of \$5,000 for
17 a first offense, increased by an additional \$1,000 for
18 each subsequent offense, not to exceed \$10,000; and

19 “(B) be liable to each employee or prospective
20 employee who was the subject of the violation for
21 special damages not to exceed \$10,000 plus attor-
22 neys’ fees, and shall be subject to such injunctive re-
23 lief as may be appropriate.

24 “(2) An action to recover the liability described in
25 paragraph (1)(B) may be maintained against any em-

1 ployer (including a public agency) in any Federal or State
2 court of competent jurisdiction by any one or more em-
3 ployees or prospective employees for and on behalf of—

4 “(A) the employees or prospective employees;

5 and

6 “(B) other employees or prospective employees
7 similarly situated.”.

8 **SEC. 211. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
10 are authorized to be appropriated \$15,000,000 to carry
11 out this title.

12 (b) **PROHIBITION ON EARMARKS.**—None of the funds
13 appropriated pursuant to subsection (a) for purposes of
14 the grant program in section 205 of this title may be used
15 for a congressional earmark as defined in clause 9(e) of
16 rule XXI of the Rules of the House of Representatives.

17 **SEC. 212. SMALL BUSINESS ASSISTANCE.**

18 (a) **EFFECTIVE DATE.**—This title and the amend-
19 ments made by this title shall take effect on the date that
20 is 6 months after the date of enactment of this title.

21 (b) **TECHNICAL ASSISTANCE MATERIALS.**—The Sec-
22 retary of Labor and the Commissioner of the Equal Em-
23 ployment Opportunity Commission shall jointly develop
24 technical assistance material to assist small businesses in

1 complying with the requirements of this title and the
2 amendments made by this title.

3 (c) SMALL BUSINESSES.—A small business shall be
4 exempt from the provisions of this title, and the amend-
5 ments made by this title, to the same extent that such
6 business is exempt from the requirements of the Fair
7 Labor Standards Act of 1938 pursuant to clauses (i) and
8 (ii) of section 3(s)(1)(A) of such Act (29 U.S.C.
9 203(s)(1)(A)).

10 **SEC. 213. RULE OF CONSTRUCTION.**

11 Nothing in this title, or in any amendments made by
12 this title, shall affect the obligation of employers and em-
13 ployees to fully comply with all applicable immigration
14 laws, including any penalties, fines, or other sanctions.

