

By: Representative Blackmon

To: Judiciary A;
Appropriations

HOUSE BILL NO. 111

1 AN ACT TO CREATE A CIVIL RIGHTS COMMISSION; TO PROVIDE FOR
2 THE APPOINTMENT OF THE MEMBERS OF THE CIVIL RIGHTS COMMISSION; TO
3 PROVIDE THE POWERS AND DUTIES OF THE CIVIL RIGHTS COMMISSION; AND
4 FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 SECTION 1. (1) It is the public policy of the state to
7 provide all of its citizens equal opportunity for education,
8 employment, access to public conveniences and accommodations and
9 acquisition through purchase or rental of real property,
10 including, but not limited to, housing and to eliminate
11 segregation or separation based solely on race, religion, color,
12 sex, disability, national origin or ancestry since such
13 segregation is an impediment to equal opportunity. Equal
14 education and employment opportunities, equal access to and use of
15 public accommodations and equal opportunity for acquisition of
16 real property are declared to be civil rights.

17 (2) The practice of denying these rights to properly
18 qualified persons by reason of the race, religion, color, sex,
19 disability, national origin or ancestry of such person is contrary
20 to the principles of freedom and equality of opportunity and is a
21 burden to the objectives of the public policy of this state and
22 shall be considered as discriminatory practices. The promotion of
23 equal opportunity without regard to race, religion, color, sex,
24 disability, national origin or ancestry through reasonable methods
25 is the purpose of this act.

26 (3) It is also the public policy of this state to protect
27 employers, labor organization, employment agencies, property

owners, real estate brokers, builders and lending institutions from unfounded charges of discrimination.

(4) It is declared to be contrary to the public policy of the state and an unlawful practice for any person, for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin or ancestry.

SECTION 2. As used in this act:

(a) "Person" means one or more individuals, partnerships, associations, organizations, limited liability companies, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons.

(b) "Commission" means the Civil Rights Commission created under Section 3 of this act.

(c) "Director" means the Director of the Civil Rights Commission.

(d) "Deputy director" means the Deputy Director of the Civil Rights Commission.

(e) "Commission attorney" means the Attorney General, such assistants of the Attorney General as may be assigned to the commission or such other attorney as may be engaged by the commission.

(f) "Consent agreement" means a formal agreement entered into in lieu of adjudication.

(g) "Affirmative action" means those acts that the commission determines necessary to assure compliance with Mississippi law.

(h) "Employer" means the state or any political or civil subdivision thereof and any person employing six (6) or more persons within the state, except that the term "employer" does not include:

(i) Any nonprofit corporation or association organized exclusively for fraternal or religious purposes;

(ii) Any school, educational or charitable

65 religious institution owned or conducted by or affiliated with a
66 church or religious institution; or

67 (iii) Any exclusively social club, corporation or
68 association that is not organized for profit.

69 (i) "Employee" means any person employed by another for
70 wages or salary. However, the term does not include any
71 individual employed:

72 (i) By his parents, spouse or child; or

73 (ii) In the domestic service of any person.

74 (j) "Labor organization" means any organization that
75 exists for the purpose in whole or in part of collective
76 bargaining or of dealing with employers concerning grievances,
77 terms or conditions of employment or for other mutual aid or
78 protection in relation to employment.

79 (k) "Employment agency" means any person undertaking
80 with or without compensation to procure, recruit, refer or place
81 employees.

82 (l) "Discriminatory practice" means:

83 (i) The exclusion of a person from equal
84 opportunities because of race, religion, color, sex, disability,
85 national origin or ancestry;

86 (ii) A system that excludes person from equal
87 opportunities because of race, religion, color, sex, disability,
88 national origin or ancestry;

89 (iii) The promotion of racial segregation or
90 separation in any manner, including, but not limited to, the
91 inducing of or the attempting to induce for profit any person to
92 sell or rent any dwelling by representations regarding the entry
93 or prospective entry in the neighborhood of a person or persons of
94 a particular race, religion, color, sex, disability, national
95 origin or ancestry.

96 (iv) Any practice that excludes persons from equal
97 opportunities relating to the acquisition or sale of real estate,

education, public accommodations, employment or the extending of credit because of race, religion, color, sex, disability, national origin or ancestry unless it is specifically exempted by this act.

(m) "Public accommodations" means any establishment that caters or offers its services or facilities or goods to the general public.

(n) "Complainant" means:

(i) Any individual charging on his own behalf to have been personally aggrieved by a discriminatory practice; or

(ii) The director or deputy director of the commission charging that a discriminatory practice was committed against a person other than himself or a class of people in order to vindicate the public policy of the state.

(o) "Complaint" means any written grievance that is:

(i) Sufficiently complete, signed and verified before a notary public or other person authorized by law to administer oaths and take acknowledgments and filed by a complainant with the commission within one hundred eighty (180) days from the date of the occurrence of the alleged discriminatory practice; or

(ii) Filed by a complainant as a civil action in the circuit or chancery court having jurisdiction in the county in which the alleged discriminatory practice occurred within one hundred eighty (180) days from the date of the occurrence of the alleged discriminatory practice.

(p) "Sufficiently complete" refers to a complaint that includes:

(i) The full name and address of the complainant;

(ii) The name and address of the respondent against whom the complaint is made;

(iii) The alleged discriminatory practice and a statement of particulars thereof;

(iv) The date or dates and places of the alleged

discriminatory practice and, if the alleged discriminatory practice is of a continuing nature, the dates between which continuing acts of discrimination are alleged to have occurred; and

(v) A statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance alleged in the complaint, together with a statement as to the status or disposition of the other action.

(q) "Sex" as it applies to segregation or separation in this act applies to all types of employment, education, public accommodations and housing. However:

(i) It shall not be a discriminatory practice to maintain separate rest rooms;

(ii) It shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual or for an employer, labor organization or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any other individual in any program on the basis of sex in those certain instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(iii) It shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one (1) sex only.

(r) "Disabled" or "disability" means the physical or mental condition on a person that constitutes a substantial disability. In reference to employment under this act, "disabled or disability" also means the physical or mental condition of a person that constitutes a substantial disability unrelated to the

person's ability to engage in a particular occupation.

SECTION 3. (1) There is created a Civil Rights Commission composed of seven (7) members, not more than four (4) of whom shall be members of the same political party, to be appointed by the Governor. In making such appointments, the Governor shall take into consideration all interests in the community, including, but not limited to, the interests of minority groups, employers, labor and the public.

(2) Successors to all members of the commission shall be appointed for terms of four (4) years except appointments to fill a vacancy, in which case, such appointment shall be for the unexpired term.

(3) Members of the commission may be removed by the Governor for cause but for no other reason.

(4) The members of the commission shall be paid per diem as provided in Section 25-3-69 and reimbursement of travel expenses as provided in Section 25-3-41 for attendance at meetings and hearings of the commission.

SECTION 4. The members of the commission shall be appointed within thirty (30) days after the effective date of this act and the first meeting thereof shall be called by the member first appointed within sixty (60) days after the effective date of this act.

At its first meeting and at each annual meeting held thereafter, the commission shall organize by the election of a chairman and vice chairman from its membership, each of whom, except those first elected, shall serve for a term of one (1) year and until his successor is elected.

The commission shall hold one (1) regular meeting each month, and such called meetings as its chairman may deem to be necessary.

The April meeting shall be the annual meeting.

SECTION 5. (1) The commission shall establish and maintain a permanent office in the City of Jackson.

197 (2) The commission may appoint such attorneys and other
198 employees and agents as it considers necessary, fix their
199 compensation within the limitation provided by law and prescribe
200 their duties. All these employees shall be appointed by the
201 commission on the basis of training, practical experience,
202 education and character. However, special consideration and due
203 weight shall be given to the practical experience and training
204 that a person may have for the particular position involved
205 regardless of his academic training. Promotion, suspension and
206 removal of persons appointed from such list shall be in accordance
207 with applicable state laws. The reasonable and necessary
208 traveling expenses of each employee of the commission while
209 actually engaged in the performance of duties in behalf of the
210 commission while actually engaged in the performance of duties in
211 behalf of the commission shall be paid in accordance with state
212 travel policies and procedures.

213 (3) Except as it concerns judicial review, the commission
214 may adopt rules to implement this act.

215 (4) The commission shall formulate policies to effectuate
216 the purposes of this act and make recommendations to agencies and
217 officers of the state or local subdivisions thereof to effectuate
218 such policies. The several departments, commissions, divisions,
219 authorities, boards, bureaus, agencies and officers of the state
220 or any political subdivision or agency thereof shall furnish the
221 commission, upon its request, all records, papers and information
222 in their possession relating to any matter before the commission.

223 (5) The commission shall receive and investigate complaints
224 alleging discriminatory practices. The commission shall not hold
225 hearings in the absence of a complaint. All investigations of
226 complaints shall be conducted by staff member of the Civil Rights
227 Commission or their agents.

228 (6) The commission may create such advisory agencies and
229 conciliation councils, local or statewide, as will aid in

effectuating the purposes of this act. The commission may itself, or it may empower these agencies and councils to:

(a) Study the problems of discrimination in the areas covered by Section 2 of this act when based on race, religion, color, sex, handicap, national origin or ancestry; and

(b) Foster through community effort, or otherwise, good will among the groups and elements of the population of the state. These agencies and councils may make recommendations to the commission for the development of policies and procedures in general. Advisory agencies and conciliation councils created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for reasonable and necessary actual expenses.

(7) The commission may issue such publications and such results of investigations and research as in its judgement will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, handicap, national origin or ancestry.

(8) The commission shall prevent any person from discharging, expelling or otherwise discriminating against any other person because he files a complaint, testified in any hearing before this commission or in any way assisted the commission in any matter under its investigation.

(9) The commission may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath and require the production for examination of any books and papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena issued under this section shall constitute a contempt. All hearings shall be held within Mississippi at a location determined by the commission. A citation of contempt may be issued upon application by the

commission to the circuit or chancery court in the county in which the hearing is held or in which the witness resides or transacts business.

(10) The commission may appoint administrative law judges other than commissioners when an appointment is deemed necessary by a majority of the commission. The administrative law judges shall be members in a good standing before the bar of Mississippi and shall be appointed by the chairman of the commission. An administrative law judge appointed under this subsection shall have the same powers and duties as a commissioner sitting as an administrative law judge. However, the administrative law judge may not issue subpoenas.

(11) The commission shall state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of this act, including, but not limited to, the power:

(a) To restore complainants' losses incurred as a result of discriminatory treatment as the commission may deem necessary to assure justice; however, this specific provision when applied to orders pertaining to employment shall include only wages, salary or commissions;

(b) To require the posting of notice setting forth the public policy of Mississippi concerning civil rights and respondent's compliance with the policy in places of public accommodations;

(c) To require proof of compliance to be filed by respondent at periodic intervals; and

(d) To require a person who has been found to be in violation of this act and who is licensed by a state agency authorized to grant a license to show cause to the licensing

296 agency why his license should not be revoked or suspended.

297 (12) Judicial review of a cease and desist order or other
298 affirmative action as referred to in this act may be obtained in
299 the circuit court of the county in which the claim arose. If no
300 proceeding to obtain judicial review is instituted within thirty
301 (30) days from receipt of notice by a person that an order has
302 been made by the commission, the commission, if it determines that
303 the person upon whom the cease and desist order has been served is
304 not complying or is making no effort to comply, may obtain a
305 decree of a court of the enforcement of the order in circuit or
306 chancery court upon showing that the person is subject to the
307 commission's jurisdiction and resides or transacts business within
308 the county in which the petition for enforcement is brought.

309 (13) If, upon all the evidence, the commission shall find
310 that a person has not engaged in any unlawful practice or
311 violation of this act, the commission shall state its findings of
312 facts and shall issue and cause to be served on the complainant an
313 order dismissing the complaint as to the person.

314 (14) The commission may furnish technical assistance
315 requested by persons subject to this act to further compliance
316 with this act or with an order issued thereunder.

317 (15) The commission shall promote the creation of local
318 civil rights agencies to cooperate with individuals, neighborhood
319 associations and state, local and other agencies, both public and
320 private, including agencies of the federal government and of other
321 states.

322 (16) The commission may reduce the terms of conciliation
323 agreed to by the parties to writing (to be called a consent
324 agreement) that the parties and a majority of the commissioners
325 shall sign. When signed, the consent agreement shall have the
326 same effect as a cease and desist order issued under subsection
327 (11) of this Section 5 of this act. If the commission determines
328 that a party to the consent agreement is not complying with it,

the commission may obtain enforcement of the consent agreement in a circuit or chancery court upon showing that the party is not complying with the consent agreement and the party is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(17) In lieu of investigating a complaint and holding a hearing under this section, the commission may issue an order based on findings and determinations by the federal Department of Housing and Urban Development or the federal Equal Employment Opportunity Commission concerning a complaint that has been filed with one (1) of these federal agencies and with the commission. The commission shall adopt by rule standards under which the commission may issue such an order.

(18) Upon notice that a complaint is the subject of an action in federal court, the commission shall immediately cease investigation of the complaint and may not conduct hearings or issue findings of fact or orders concerning that complaint.

SECTION 6. In order to eliminate prejudice among the various racial, religious and ethnic groups in this state and to further goodwill among such groups, the commission, in cooperation with the State Department of Education and the universities and colleges of the state, and such other universities and colleges as are willing to cooperate, is directed to prepare a comprehensive educational program designed to emphasize the origin of prejudice against such minority groups, its harmful effects, its incompatibility with American principles of equality and fair play and violation of the brotherhood of man.

SECTION 7. The Governor shall select and appoint a director who shall be secretary of the commission and chief administrative officer for the commission. The director shall devote his entire time and effort to the administration of the provisions of this act and shall not engage in or have any interest in any business

or activity which may create a conflict of interests. The salary of the director shall be fixed by the Governor with the approval of the State Personnel Department.

SECTION 8. The director and the members of the commission before entering upon the discharge of their official duties shall each take and subscribe to an oath of office which shall be endorsed upon their respective certificates of appointment.

SECTION 9. Every contract to which the state or any of its political or civil subdivisions is a party, including franchises granted to public utilities, shall contain a provision requiring the contractor and his subcontractors not to discriminate against any employee or applicant for employment to be employed in the performance of such contract with respect to his hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of his race, religion, color, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the contract.

SECTION 10. In addition to its power to investigate the discriminatory practices referred to in this act, the commission may receive written complaints of violations of this act or other discriminatory practices based upon race, religion, color, sex, national origin or ancestry and may investigate such complaints as it deems meritorious or may conduct such investigation in the absence of complaints whenever it deems it in the public interest. It may transmit to the Legislature its recommendations for legislation designed to aid in the removing of such discrimination.

SECTION 11. (1) As used in this section, the term "state agency" means every office, officer, board, commission, department, division, bureau, committee, fund, agency and, without limitation by reason of any enumeration in this section, every other instrumentality of the state, every hospital, every penal

institution and every other institutional enterprise and activity of the state, wherever located; the universities supported in whole or in part by state funds; and the judicial department of the state.

(2) Any city, town or county may adopt an ordinance or ordinances which may include establishment or designation of an appropriate local commission, office or agency to effectuate within its territorial jurisdiction the public policy of the state as declared in Section 2 of this act without conflict with any of the provision of this act. Any city or town may adopt such an ordinance or ordinances jointly with any other city or town located in the same county or jointly with that county. A city ordinance that establishes a local commission may provide that the members of the commission are to be appointed solely by the city executive or solely by the city legislative body or may provide for a combination of appointments by the city executive and the city legislative body. The board of commissioners of each county is also authorized to adopt ordinances in accordance with this section. An agency established or designated under this section has no jurisdiction over the state or any of its agencies.

(3) An ordinance adopted under this section may grant to the local agency the power to:

- (a) Investigate, conciliate and hear complaints;
- (b) Subpoena and compel the attendance of witnesses or production of pertinent documents and records;
- (c) Administer oaths;
- (d) Examine witnesses;
- (e) Appoint hearing examiners or panels;
- (f) Make findings and recommendations;
- (g) Issue cease and desist orders or orders requiring remedial action;
- (h) Order payment of actual damages, except that damages to be paid as a result of discriminatory practices

relating to employment shall be limited to lost wages, salaries, commissions or fringe benefits;

(i) Institute actions for appropriate legal or equitable relief in a circuit or chancery court;

(j) Employ an executive director and other staff personnel;

(k) Adopt rules and regulations;

(l) Initiate complaints, except that no person who initiates a complain may participate as a member of the agency in the hearing or disposition of the complaint; and

(m) Conduct programs and activities to carry out the public policy of the state, as provided in Section 2 of this act within the territorial boundaries of a local agency.

(4) Any person who files a complaint with any local agency may not also file a complaint with the Civil Rights Commission concerning any of the matters alleged in such complain, and any person who files a complaint with the Civil Rights Commission may not also file a complaint with any local agency concerning any of the matters alleged in such complaint. Any complaint filed with the commission may be transferred by the commission to any local agency having jurisdiction. The local agency shall proceed to act on the complain as if it had been originally filed with the local agency as of the date that the complaint was filed with the commission. Any complaint filed with a local agency may be transferred by the local agency to the commission if the commission has jurisdiction. The commission shall proceed to act on the complaint as if it had been originally filed with the commission as of the date that the complaint was filed with the local agency. Nothing in this subsection shall affect such person's right to pursue any and all other rights and remedies available in any other state or federal forum.

SECTION 12. This act shall take effect and be in force from and after its passage.