HOUSE BILL NO. 165

AN ACT TO CREATE THE "FAIR PAY ACT OF 2002" FOR THE PURPOSE OF ELIMINATING DISCRIMINATORY WAGE PRACTICES BASED ON SEX, RACE OR NATIONAL ORIGIN; TO PROVIDE DEFINITIONS; TO PROVIDE UNLAWFUL EMPLOYMENT PRACTICES; TO REQUIRE CERTAIN WAGE DISCLOSURES TO EMPLOYEES BY EMPLOYERS; TO PROVIDE REMEDIES FOR VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known and may be cited as the "Fair Pay Act of 2002."

SECTION 2. The Legislature finds the following:

(a) Despite federal and state laws banning discrimination in employment and pay, in both the private and public sector, wage differentials persist between women and men and between minorities and nonminorities in the same jobs and in jobs that are dissimilar but that require equivalent composites of skill, effort, responsibility and working conditions.

(b) The existence of such wage differentials:

(i) Depresses wages and living standards for employees necessary for their health and efficiency;

(ii) Reduces family incomes and contributes to the higher poverty rates among female-headed and minority households;

(iii) Prevents the maximum utilization of the available labor resources;

(iv) Tends to cause labor disputes, thereby burdening, affecting and obstructing commerce;

(v) Constitutes an unfair method of competition; and

(vi) Violates the state's public policy against discrimination.
(c) Discrimination in wage-setting practices has played a role in depressing wages for women and minorities generally.

(d) Many individuals work in occupations that are dominated by individuals of their same sex, race or national origin, and discrimination in hiring, job assignment and promotion has played a role in establishing and maintaining segregated work forces.

(e) Eliminating discrimination in compensation based on sex, race and national origin would have positive effects, including:

(i) Providing a solution to problems in the economy created by discriminatory wage differentials;

(ii) Reducing the number of working women and people of color earning low wages, thereby lowering their incidence of poverty during normal working years and in retirement; and

(iii) Promoting stable families by raising family incomes.

SECTION 3. It is the purpose of this act to correct and as rapidly as practicable to eliminate discriminatory wage practices based on sex, race or national origin.

SECTION 4. The following terms shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) The term "employ" means to suffer or permit to work.

(b) The term "employee" means any person employed by an employer and includes all of an employer's permanent employees, whether working full time or part time, and any temporary employee employed by an employer for a period of at least three (3) months. "Employee" shall not include any individual employed by his parents, spouse or child.
(c) The term "employer" means any person who employs three (3) or more persons and includes the state and all political subdivisions thereof.

(d) The term "equivalent jobs" means jobs or occupations that are equal within the meaning of the Equal Pay Act of 1963, 29 USCS 206(d), or jobs or occupations that are dissimilar but whose requirements are equivalent, when viewed as a composite of skills, effort, responsibility and working conditions.

(e) The term "person" means one or more individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, receivers and the state and all political subdivisions and agencies thereof.

(f) The term "labor organization" means any organization that exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms of conditions of employment or of other mutual aid or protection in connection with employment.

(g) The term "market rates" means the rates that employers within a prescribed geographic area actually pay, or are reported to pay, for specific jobs, as determined by formal or informal surveys, wage studies or other means.

(h) The term "wages" and wage "rates" includes all compensation in any form that an employer provides to employees in payment for work done or services rendered, including, but not limited to, base pay, bonuses, commissions, awards, tips or various forms of nonmonetary compensation if provided in lieu of or in addition to monetary compensation and that have economic value to an employee.

**SECTION 5.** (1) It shall be an unlawful employment practice in violation of this chapter for an employer to discriminate between employees on the basis of sex, race or national origin by:
(a) Paying wages to employees at a rate less than the rate paid to employees of the opposite sex or of a different race or national origin for work in equivalent jobs; or

(b) Paying wages to employees in a job that is dominated by employees of a particular sex, race or national origin at a rate less than the rate at which such employer pays to employees in another job that is dominated by employees of the opposite sex or of a different race or national origin for work on equivalent jobs.

(2) Notwithstanding subsection (1) of this section, it shall not be an unlawful employment practice for an employer to pay different wage rates to employees where such payments are made under:

(a) A bona fide seniority or merit system;

(b) A system that measures earnings by quantity or quality of production; or

(c) Any bona fide factor other than sex, race or national origin; however, wage differentials based on varying market rates for equivalent jobs or the differing economic benefits to the employer of equivalent jobs shall not be considered differentials based on bona fide factors other than sex, race or national origin.

(3) An employer who is paying wages in violation of this section shall not, in order to comply with the provisions of this section, reduce the wage of any employee.

(4) No labor organization or its agents representing employees of an employer having employees subject to any provisions of this act shall cause or attempt to cause such an employer to discriminate against an employee in violation of this section.

(5) The Employment Security Commission shall promulgate guidelines specifying the criteria for determining whether a job is dominated by employees of a particular sex, race or national origin.
origin. Criteria shall include, but not be limited to, factors such as whether the job has ever been formally classified as or traditionally considered to be a "male" or "female" or "white" or "minority" job; whether there is a history of discrimination against women or people of color with regard to wages, assignment or access to jobs or other terms and conditions of employment; and the demographic composition of the work force in equivalent jobs. The guidelines shall not include a list of jobs.

SECTION 6. It shall be an unlawful employment practice in violation of this act for an employer:

   (a) To take adverse actions or otherwise discriminate against any individual because such individual has opposed any act or practice made unlawful by this act, has sought to enforce rights protected under this act or has testified, assisted or participated in any manner in an investigation, hearing or other proceeding to enforce this act; or

   (b) To discharge or in any other manner discriminate against, coerce, intimidate, threaten or interfere with any employee or any other person because the employee inquired about, disclosed, compared or otherwise discussed the employee's wages or the wages of any other employee, or because the employee exercised, enjoyed, aided or encouraged any other person to exercise or enjoy any right granted or protected by this act.

SECTION 7. (1) Upon the beginning of an individual's employment and at least annually thereafter, every employer subject to this act shall provide to each employee a written statement sufficient to inform the employee of his or her job title, wage rate and how the wage is calculated. This notice shall be supplemented whenever an employee is promoted or reassigned to a different position with the employer; however, the employer is not required to issue supplemental notifications for temporary reassignments that are no greater than three (3) months in duration.
(2) Every employer subject to this act shall make and preserve records that document the wages paid to employees and that document and support the method, system, calculations and other basis used to establish, adjust and determine the wage rates paid to the employer's employees. Every employer subject to this act shall preserve such records for such periods of time and shall make such reports from the records as shall be prescribed by regulation or order by the Employment Security Commission.

(3) The regulations promulgated under this act, relating to the form of reports required by subsection (2) of this section, shall provide for protection of the confidentiality of employees and shall expressly require that reports shall not include the names or other identifying information from which readers could discern the identities of employees. The regulations may also identify circumstances that warrant a prohibition on disclosure of reports of information identifying the employer.

(4) The Employment Security Commission may use the information and data it collects under subsection (2) of this section for statistical and research purposes and may compile and publish such studies, analyses, reports and surveys based on the information and data as it may consider appropriate.

SECTION 8. (1) In any action in which a court or jury finds that an employer has engaged in acts that violate Sections 5, 6 or 7 of this act, the court or jury shall award to any affected employee or employees monetary relief including back pay in an amount equal to the difference between the employees' actual earnings and what the employee would have earned but for the employer's unlawful practices and an additional amount in compensatory and punitive damages, as appropriate.

(2) In any action in which a court or jury finds that an employer has engaged in acts that violate Section 5, 6 or 7 of this act, the court shall enjoin the employer from continuing to discriminate against affected employees and shall direct the
employer to comply with the provisions of this act and may order
the employer to take such additional affirmative steps as are
necessary, including reinstatement or reclassification of affected
workers, to ensure an end to unlawful discrimination.

(3) In any action in which an affected employee or employees
prevail in their claims against employers, the court shall, in
addition to any judgment awarded to the plaintiffs, allow a
reasonable attorney’s fee, reasonable expert witness fees and
other costs of the action to be paid by the employer.

(4) An action to recover the damages or equitable relief
prescribed in this section may be maintained against any employer
in any court of competent jurisdiction by any one or more
employees or their representative for or on behalf of:

(a) The employees; or

(b) The employees and other employees similarly
situated.

(5) An action may be brought under this section not later
than two (2) years after the date of the last event constituting
the alleged violation for which the action is brought.

SECTION 9. This act shall take effect and be in force from
and after July 1, 2002.