

By: Senator(s) Williamson

To: Labor

SENATE BILL NO. 2088

1 AN ACT TO ENACT A MINIMUM WAGE LAW FOR THE STATE OF
 2 MISSISSIPPI EFFECTIVE JANUARY 1, 2008; TO DEFINE EMPLOYERS AND
 3 EMPLOYEES SUBJECT TO THE MINIMUM WAGE LAW; TO EMPOWER THE
 4 MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY, OFFICE OF THE
 5 GOVERNOR, TO ENFORCE AND ADMINISTER THE PROVISIONS OF THE MINIMUM
 6 WAGE LAW; TO PROVIDE CRIMINAL PENALTIES AND A CIVIL CAUSE OF
 7 ACTION AGAINST EMPLOYERS FOR VIOLATIONS OF THE MINIMUM WAGE LAW;
 8 AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** This act shall be known as the Minimum Wage Act
 11 of the State of Mississippi.

12 **SECTION 2.** It is declared to be the public policy of the
 13 State of Mississippi to establish minimum wages for workers in
 14 order to safeguard their health, efficiency and general well-being
 15 and to protect them as well as their employers from the effects of
 16 serious and unfair competition resulting from wage levels
 17 detrimental to their health, efficiency and well-being.

18 **SECTION 3.** Beginning January 1, 2008, every employer shall
 19 pay to each of his employees wages at the rate of not less than
 20 Six Dollars and Fifty Cents (\$6.50) per hour, or One Dollar
 21 (\$1.00) per hour more than the current federal minimum wage rate,
 22 whichever is greater, except as otherwise provided in this act.

23 **SECTION 4.** As used in this act, unless the context otherwise
 24 requires:

25 (a) "Director" means the Executive Director of the
 26 Mississippi Department of Employment Security;

27 (b) "Department" means the Mississippi Department of
 28 Employment Security, Office of the Governor, established under
 29 Section 71-5-101, Mississippi Code of 1972;

30 (c) "Wage" means compensation due to an employee by
31 reason of his employment, payable in legal tender of the United
32 States or checks on banks convertible into cash on demand at full
33 face value, subject to such deductions, charges or allowances as
34 may be permitted by this act or by regulations of the department
35 under this act;

36 (d) "Employ" includes to suffer or to permit to work;

37 (e) "Employer" includes any individual, partnership,
38 association, corporation, business trust, or any person or group
39 of persons acting directly or indirectly in the interest of an
40 employer in relation to an employee. "Employer" shall not include
41 any individual, partnership, association, corporation, business
42 trust, or any person or group of persons acting directly or
43 indirectly in the interest of an employer in relation to an
44 employee that employs fewer than five (5) employees in a regular
45 employment relationship. Nor shall "employer" or any provisions
46 of this act be deemed to include or to apply to any person, firm
47 or corporation, or other entity subject to the provisions of the
48 federal Fair Labor Standards Act of 1938;

49 (f) "Independent contractor" means any individual who
50 contracts to perform certain work away from the premises of his
51 employer, uses his own methods to accomplish the work, and is
52 subject to the control of the employer only as to the result of
53 his work;

54 (g) "Employee" includes any individual employed by an
55 employer but shall not include:

56 (i) Any individual employed in a bona fide
57 executive, administrative or professional capacity, or as an
58 outside commission-paid salesman, who customarily performs his
59 services away from his employer's premises, taking orders for
60 goods or services;

61 (ii) Students performing services for any school,
62 college or university in which they are enrolled and are regularly
63 attending classes;

64 (iii) Any individual employed by the United States
65 or by the state or any political subdivision thereof, except
66 public schools and school districts;

67 (iv) Any individual engaged in the activities of
68 any educational, charitable, religious or nonprofit organization
69 where the employer-employee relationship does not in fact exist or
70 where the services are rendered to the organizations gratuitously;

71 (v) Any bona fide independent contractor;

72 (vi) Any individual employed by an agricultural
73 employer who did not use more than five hundred (500) man-days of
74 agricultural labor in any calendar quarter of the preceding
75 calendar year;

76 (vii) The parent, spouse, child or other member of
77 an agricultural employer's immediate family;

78 (viii) An individual who:

79 1. Is employed as a hand harvest laborer and
80 is paid on a piece-rate basis in an operation which has been, and
81 is customarily and generally recognized as having been, paid on a
82 piece-rate basis in the region of employment;

83 2. Commutes daily from his permanent
84 residence to the farm on which he is so employed; and

85 3. Has been employed in agriculture less than
86 thirteen (13) weeks during the preceding calendar year;

87 (ix) A migrant who:

88 1. Is sixteen (16) years of age or under and
89 is employed as a hand harvest laborer;

90 2. Is paid on a piece-rate basis in an
91 operation which has been, and is customarily and generally
92 recognized as having been, paid on a piece-rate basis in the
93 region of employment;

94 3. Is employed on the same farm as his
95 parents; and

96 4. Is paid the same piece-rate as employees
97 over age sixteen (16) are paid on the same farm; or

98 (x) Any employee principally engaged in the range
99 production of livestock;

100 (xi) Any employee employed in planting or tending
101 trees, cruising, surveying or felling timber, or in preparing or
102 transporting logs or other forestry products to the mill,
103 processing plants, or railroad or other transportation terminal if
104 the number of employees employed by his employer in such forestry
105 or lumbering operations does not exceed eight (8);

106 (h) "Occupation" means any occupation, service, trade,
107 business, industry, or branch or group of industries or employment
108 or class of employment in which employees are gainfully employed;

109 (i) "Gratuities" means voluntary monetary contributions
110 received by an employee from a guest, patron or customer for
111 services rendered;

112 (j) "Man-day" means any day during any portion of which
113 an employee performs any agricultural labor.

114 **SECTION 5.** Nothing in this act shall be deemed to interfere
115 with, impede, or in any way diminish the right of employers and
116 employees to bargain collectively through representatives of their
117 own choosing in order to establish wages or other conditions of
118 work.

119 **SECTION 6.** (1) Any employer who willfully hinders or delays
120 the department or its authorized representative in the performance
121 of its duties in the enforcement of this act; willfully refuses to
122 admit the department or its authorized representative to any place
123 of employment; willfully fails to make, keep and preserve any
124 records as required under the provisions of this act; willfully
125 falsifies any such record; willfully refuses to make the record
126 accessible to the department or its authorized representative upon

127 demand; willfully refuses to furnish a sworn statement of the
128 record or any other information required for the proper
129 enforcement of this act to the department or its authorized
130 representative upon demand; willfully fails to post a summary of
131 this act or a copy of any applicable regulations as required by
132 this act; willfully pays or agrees to pay minimum wages at a rate
133 less than the rate applicable under this act; or otherwise
134 willfully violates any provision of this act shall be deemed in
135 violation of this act and shall, upon conviction, be fined not
136 more than One Hundred Dollars (\$100.00). For the purposes of this
137 subsection, each violation shall constitute a separate offense.

138 (2) Any employer who willfully discharges or in any other
139 manner willfully discriminates against any employee because the
140 employee has made any complaint to his employer, to the
141 department, or to the director or his authorized representative
142 that he has not been paid minimum wages in accordance with the
143 provisions of this act, or because the employee has caused to be
144 instituted or is about to cause to be instituted any proceeding
145 under or related to this act, or because the employee has
146 testified or is about to testify in any such proceeding shall be
147 deemed in violation of this act and shall, upon conviction, be
148 fined not more than One Hundred Dollars (\$100.00).

149 **SECTION 7.** (1) For any occupation, the department shall
150 make and revise such administrative regulations, including
151 definitions of terms, as they may deem appropriate to carry out
152 the purposes of this act or necessary to prevent the circumvention
153 or evasion thereof and to safeguard the minimum wage rates
154 established.

155 (2) The regulations may include, but are not limited to,
156 regulations governing:

157 (a) Outside or commission salespeople;

158 (b) Learners and apprentices, their number, proportion
159 and length of service;

160 (c) Part-time pay, bonuses and fringe benefits;
161 (d) Special pay for special or extra work;
162 (e) Permitted charges to employees or allowances for
163 board, lodging, apparel, or other facilities or services
164 customarily furnished by employers to employees;
165 (f) Allowances for gratuities; or
166 (g) Allowances for other special conditions or
167 circumstances which may be usual in a particular employer-employee
168 relationship.

169 (3) Regulations or revisions issued by the department
170 pursuant to this section shall be made only after a public
171 hearing, at which any person may be heard by the department, at
172 least ten (10) days subsequent to publication of notice of the
173 hearing in a newspaper of general circulation throughout the State
174 of Mississippi.

175 **SECTION 8.** The director or his authorized representatives
176 shall:

177 (a) Have authority to enter and inspect the place of
178 business or employment of any employer in the state for the
179 purpose of examining and inspecting any or all books, registers,
180 payrolls and other records of any employer that in any way relate
181 to or have a bearing upon the question of wages, hours and other
182 conditions of employment of any employees; copy any or all of the
183 books, registers, payrolls and other records as he may deem
184 necessary or appropriate; and question employees for the purpose
185 of ascertaining whether the provisions of this act and regulations
186 issued thereunder have been and are being complied with;

187 (b) Have authority to require from the employer full
188 and correct statements in writing, including sworn statements,
189 with respect to wages, hours, names, addresses and such
190 information pertaining to his employees as the director or his
191 authorized representative may deem necessary or appropriate;

192 (c) Publish all regulations made by the department; and

193 (d) Otherwise implement and enforce the regulations and
194 decisions of the department.

195 **SECTION 9.** (1) Except as otherwise provided in this
196 section, no employer shall employ any of his employees for a
197 workweek longer than forty (40) hours unless the employee receives
198 compensation for his employment in excess of the hours above
199 specified at a rate not less than one and one-half (1-1/2) times
200 the regular rate of pay at which he is employed.

201 (2) The provisions regarding the payment of wages at one and
202 one-half (1-1/2) times the regular rate of pay for overtime
203 services shall not be applicable with respect to agricultural
204 employees.

205 **SECTION 10.** (1) Every employer of an employee engaged in
206 any occupation in which gratuities have been customarily and
207 usually constituted and have been recognized as a part of
208 remuneration for hiring purposes shall be entitled to an allowance
209 for gratuities as a part of the hourly wage rate provided in
210 Section 3 of this act in an amount not to exceed fifty percent
211 (50%) of the minimum wage established by Section 3, provided that
212 the employee actually received that amount in gratuities and that
213 the application of the foregoing gratuity allowances results in
214 payment of wages other than gratuities to tipped employees,
215 including full-time students subject to the provisions of this
216 act, of no less than fifty percent (50%) of the minimum wage
217 prescribed by this act.

218 (2) In determining whether an employee received in
219 gratuities the amount claimed, the director may require the
220 employee to show to the satisfaction of the director that the
221 actual amount of gratuities received by him during any workweek
222 was less than the amount determined by the employer as the amount
223 by which the wage paid the employee was deemed to be increased
224 under this section.

225 **SECTION 11.** (1) Every employer subject to any provisions of
226 this act shall keep a summary of this act, approved by the
227 department, and copies of any applicable regulations issued under
228 this act posted in a conspicuous and accessible place in or about
229 the premises wherein any person subject thereto is employed.

230 (2) Employers shall be furnished copies of the summaries of
231 this statute and regulations by the director on request without
232 charge.

233 **SECTION 12.** (1) Every employer subject to any provision of
234 this act or of any regulation issued under this act shall make and
235 keep for a period of not less than three (3) years, in or about
236 the premises wherein any employee is employed, a record of the
237 name, address and occupation of each of his employees, the rate of
238 pay and the amount paid each pay period to each employee and such
239 other information as the department shall prescribe by regulation
240 as necessary or appropriate for the enforcement of the provisions
241 of this act or of the regulations thereunder.

242 (2) The records shall be open for inspection or
243 transcription by the director or his authorized representative at
244 any reasonable time.

245 (3) Every employer shall furnish to the director or to his
246 authorized representative on demand a sworn statement of the
247 records and information upon forms prescribed or approved by the
248 director.

249 **SECTION 13.** (1) Any employer who pays any employee less
250 than minimum wages to which the employee is entitled under or by
251 virtue of this act shall be liable to the employee affected for
252 the full amount of the wages, less any amount actually paid to the
253 employee by the employer, and for costs and such reasonable
254 attorney's fees as may be allowed by the court.

255 (2) Any agreement between the employee and employer to work
256 for less than minimum wages shall be no defense to the action.

257 (3) The venue of the action shall lie in the circuit court
258 of any county in which the services which are the subject of the
259 employment were performed.

260 (4) The Executive Director of the Mississippi Department of
261 Employment Security, Office of the Governor, shall have the
262 authority to fully enforce this act by instituting legal action to
263 recover any wages which he determines to be due to employees under
264 this act.

265 **SECTION 14.** This act shall take effect and be in force from
266 and after July 1, 2007.