

By: Representatives Baker, Turner, Arnold,
Willis, Kinkade

To: Judiciary A

HOUSE BILL NO. 1241
(As Passed the House)

1 AN ACT TO PROVIDE THAT THE REGULATION OF THE EMPLOYMENT
2 RELATIONSHIP BETWEEN A NONPUBLIC EMPLOYER AND ITS EMPLOYEES IS A
3 MATTER OF STATE CONCERN AND OUTSIDE THE EXPRESS OR IMPLIED
4 AUTHORITY OF LOCAL GOVERNMENTAL BODIES TO REGULATE, ABSENT EXPRESS
5 DELEGATION OF THAT AUTHORITY TO THE LOCAL GOVERNMENTAL BODY; TO
6 BRING FORWARD SECTION 17-1-51, MISSISSIPPI CODE OF 1972, WHICH
7 PROVIDES THAT NO COUNTY, BOARD OF SUPERVISORS OF A COUNTY,
8 MUNICIPALITY OR GOVERNING AUTHORITY OF A MUNICIPALITY MAY
9 ESTABLISH A MANDATORY, MINIMUM LIVING WAGE RATE AND MINIMUM NUMBER
10 OF VACATION OR SICK DAYS, FOR THE PURPOSE OF POSSIBLE AMENDMENT;
11 AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** (1) The Legislature finds that regulation of the
14 employment relationship between a nonpublic employer and its
15 employees is a matter of state concern and is outside the express
16 or implied authority of local governmental bodies to regulate,
17 absent express delegation of that authority to the local
18 governmental body.

19 (2) The following words and phrases shall have the meanings
20 as defined in this subsection unless the context clearly indicates
21 otherwise:



22 (a) "Employee" means a person employed in this state by
23 an employer.

24 (b) "Employer" means a person or entity engaging in or
25 intending to engage in a commercial activity, enterprise or
26 business in this state, but excludes a local governmental body or
27 an educational institution.

28 (c) "Local governmental body" means any local
29 government or its subdivision, including, but not limited to, a
30 city, village, township, county or educational institution; a
31 local public authority, agency, board, commission or other local
32 governmental, quasi-governmental, or quasi-public body; or a
33 public body that acts or purports to act in a commercial,
34 business, economic development or similar capacity for a local
35 government or its subdivision.

36 (d) "Ordinance, local policy or local resolution" does
37 not include the terms of an agreement voluntarily offered to a
38 local governmental body by an owner, purchaser or developer of
39 property.

40 (3) A local governmental body shall not adopt, enforce or
41 administer an ordinance, local policy or local resolution
42 regulating work stoppage or strike activity of employers and their
43 employees or the means by which employees may organize.

44 (4) A local governmental body shall not adopt, enforce or
45 administer an ordinance, local policy or local resolution



46 requiring an employer to provide to an employee paid or unpaid
47 leave time.

48 (5) A local governmental body shall not adopt, enforce or
49 administer an ordinance, local policy or local resolution
50 regulating hours and scheduling that an employer is required to
51 provide to employees. This subsection (5) does not prohibit an
52 ordinance, local policy or local resolution that limits the hours
53 a business may operate.

54 (6) A local governmental body shall not adopt, enforce or
55 administer an ordinance, local policy or local resolution
56 requiring an employer to provide to an employee any specific
57 fringe benefit or any other benefit for which the employer would
58 incur an expense.

59 (7) A local governmental body shall not adopt, enforce or
60 administer an ordinance, local policy or local resolution
61 regulating or creating administrative or judicial remedies for
62 wage, hour or benefit disputes.

63 (8) If any parts of this act are found to be in conflict
64 with the Mississippi Constitution, the United States Constitution,
65 or federal law, this act shall be implemented to the maximum
66 extent that the Mississippi Constitution, the United States
67 Constitution, or federal law permit. Any provision held invalid
68 or inoperative is severable from the remaining portions of this
69 section.



70 **SECTION 2.** Section 17-1-51, Mississippi Code of 1972, is
71 brought forward as follows:

72 17-1-51. (1) No county, board of supervisors of a county,
73 municipality or governing authority of a municipality is
74 authorized to establish a mandatory, minimum living wage rate,
75 minimum number of vacation or sick days, whether paid or unpaid,
76 that would regulate how a private employer pays its employees.
77 Each county, board of supervisors of a county, municipality or
78 governing authority of a municipality shall be prohibited from
79 establishing a mandatory, minimum living wage rate, minimum number
80 of vacation or sick days, whether paid or unpaid, that would
81 regulate how a private employer pays its employees.

82 (2) The Legislature finds that the prohibitions of
83 subsection (1) of this section are necessary to ensure an economic
84 climate conducive to new business development and job growth in
85 the State of Mississippi. We believe that inconsistent
86 application of wage and benefit laws from city to city or county
87 to county must be avoided. While not suggesting a state minimum
88 wage or minimum benefit package, any debate and subsequent action
89 on these matters should be assigned to the Mississippi Legislature
90 as provided in Section 25-3-40, and not local counties or
91 municipalities.

92 (3) The Legislature further finds that wages and employee
93 benefits comprise the most significant expense of operating a
94 business. It also recognizes that neither potential employees or



95 business patrons are likely to restrict themselves to employment
96 opportunities or goods and services in any particular county or
97 municipality. Consequently, local variations in legally required
98 minimum wage rates or mandatory minimum number of vacation or sick
99 leave days would threaten many businesses with a loss of employees
100 to local governments which require a higher minimum wage rate and
101 many other businesses with the loss of patrons to areas which
102 allow for a lower wage rate and more or less vacation or sick
103 days. The net effect of this situation would be detrimental to
104 the business environment of the state and to the citizens,
105 businesses and governments of the local jurisdictions as well as
106 the local labor markets.

107 (4) The Legislature concludes from these findings that, in
108 order for a business to remain competitive and yet attract and
109 retain the highest possible caliber of employees, and thereby
110 remain sound, an enterprise must work in a uniform environment
111 with respect to minimum wage rates, and mandatory minimum number
112 of vacation or sick leave days. The net impact of local
113 variations in mandated wages and mandatory minimum number of
114 vacation or sick leave days would be economically unstable and
115 create a decline and decrease in the standard of living for the
116 citizens of the state. Consequently, decisions regarding minimum
117 wage, living wage and other employee benefit policies must be made
118 by the state as provided in Section 25-3-40, so that consistency
119 in the wage market is preserved.



120 SECTION 3. (1) (a) No employer having employees subject to
121 any provisions of the Equal Pay Act of 1963, 29 USC Section
122 206(d), except as to those exemptions set forth in 29 USC Section
123 213 shall discriminate, within any establishment in which such
124 employees are employed, between employees on the basis of sex by
125 paying wages to employees in such establishment at a rate less
126 than the rate at which he pays wages to employees of the opposite
127 sex in such establishment for equal work on jobs the performance
128 of which requires equal skill, effort, and responsibility, and
129 which are performed under similar working conditions, except where
130 such payment is made pursuant to (i) a seniority system; (ii) a
131 merit system; (iii) a system which measures earnings by quantity
132 or quality of production; or (iv) a differential based on any
133 other factor other than sex: provided, that an employer who is
134 paying a wage rate differential in violation of this subsection
135 shall not, in order to comply with the provisions of this
136 subsection, reduce the wage rate of any employee.

137 (b) No labor organization, or its agents, representing
138 employees of an employer having employees subject to any
139 provisions of this section shall cause or attempt to cause such an
140 employer to discriminate against an employee in violation of
141 paragraph (a) of this subsection.

142 (c) For purposes of administration and enforcement, any
143 amounts owing to any employee which have been withheld in



144 violation of this subsection shall be deemed to be unpaid minimum
145 wages or unpaid overtime compensation.

146 (d) As used in this subsection (1), the term "labor
147 organization" means any organization of any kind, or any agency or
148 employee representation committee or plan, in which employees
149 participate and which exists for the purpose, in whole or in part,
150 of dealing with employers concerning grievances, labor disputes,
151 wages, rates of pay, hours of employment, or conditions of work.

152 (2) Subsection (1) of this section creates an actionable
153 right in Mississippi for any person who is an employee and who
154 believes that such person's employer has violated the provisions
155 of subsection (1) of this section. Any employee who is aggrieved
156 under subsection (1) of this section may file a complaint in the
157 circuit court in Mississippi having jurisdiction in accordance
158 with Section 11-11-1 et seq.

159 Subject to the provisions herein, if an employer is found to
160 have violated the provisions of subsection (1) of this section,
161 the employee shall be entitled to seek remedies, damages,
162 attorney's fees and costs, as provided by federal law for such
163 violations, including, but not limited to, the Equal Pay Act of
164 1963, Title VII of the Civil Rights Act of 1964, the Age
165 Discrimination in Employment Act of 1967, 42 USC Section 1981, 42
166 USC Section 1983, the Americans with Disabilities Act of 1990, and
167 the Lilly Ledbetter Fair Pay Act of 2009, as applicable.



168 (3) Claims asserted against a governmental entity by a
169 public employee under subsection (1) of this section, shall be
170 subject to the provisions of the Mississippi Tort Claims Act as
171 provided in Section 11-46-1 et seq.

172 **SECTION 4.** This act shall take effect and be in force from
173 and after June 30, 2018.

