

By: Representatives Williams-Barnes,  
Faulkner, Jackson

To: Workforce Development;  
Judiciary A

HOUSE BILL NO. 1257

1 AN ACT TO CREATE THE EVELYN GANDY FAIR PAY ACT TO PROHIBIT  
2 DISCRIMINATION BY INDUSTRIES ENGAGED IN COMMERCE OR IN THE  
3 PRODUCTION OF GOODS FOR COMMERCE AGAINST ANY EMPLOYEE ON THE BASIS  
4 OF SEX BY PAYING A SALARY OR WAGE TO SUCH EMPLOYEE AT A RATE LESS  
5 THAN THE RATE PAID TO ITS EMPLOYEES OF THE OPPOSITE SEX FOR EQUAL  
6 WORK ON JOBS THAT REQUIRE EQUAL SKILL, EFFORT AND RESPONSIBILITY  
7 TO PERFORM; TO PROVIDE WHEN AN UNLAWFUL EMPLOYMENT PRACTICE  
8 OCCURS; TO PROVIDE THE REMEDIES FOR AN EMPLOYER WHEN AN UNLAWFUL  
9 EMPLOYMENT PRACTICE OCCURS; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** This act shall be known and may be cited as the  
12 "Evelyn Gandy Fair Pay Act."

13 **SECTION 2.** The Mississippi Legislature finds that the  
14 existence of wage differentials based on sex in industries engaged  
15 in commerce or in the production of goods for commerce:

16 (a) Depresses the wages and living standards for  
17 employees that are necessary for their health and efficiency,  
18 thereby increasing the poverty rate in Mississippi;

19 (b) Prevents the maximum utilization of the available  
20 labor resources, thereby depressing the growth of the state GDP;



21 (c) Tends to cause labor disputes, thereby burdening,  
22 affecting and obstructing commerce;

23 (d) Burdens commerce and the free flow of goods in  
24 commerce; and

25 (e) Constitutes an unfair method of competition.

26 **SECTION 3.** (1) No employer shall discriminate in any way  
27 against any employee on the basis of sex by paying a salary or  
28 wage to any employee at a rate less than the rate paid to its  
29 employees of the opposite sex for equal work on jobs that require  
30 equal skill, effort and responsibility to perform, and which are  
31 performed under similar working conditions, except where such  
32 payment is made pursuant to:

33 (a) A seniority system; however, time spent on leave  
34 due to a pregnancy-related condition and parental, family and  
35 medical leave, shall not reduce the seniority-level of an  
36 employee;

37 (b) A merit system;

38 (c) A system which measures earnings by quantity or  
39 quality of production; or

40 (d) A differential based on any bona fide factor other  
41 than sex if the factor:

42 (i) Is not based on or derived from a differential  
43 in wage based on sex;

44 (ii) Is job-related with respect to the position  
45 and necessary for the business; and



46 (iii) Accounts for the entire differential.

47 An employer who is paying a wage rate differential in  
48 violation of this subsection shall not, in order to comply with  
49 the provisions of this subsection, reduce the wage rate of any  
50 employee.

51 (2) (a) No labor organization, or its agents, representing  
52 employees of an employer whose employees are subject to the  
53 provisions of this section, shall cause or attempt to cause the  
54 employer to discriminate against an employee in violation of  
55 subsection (1) of this section.

56 (b) As used in this subsection (2), the term "labor  
57 organization" means any organization of any kind, or any agency or  
58 employee representation committee or plan, in which employees  
59 participate and which exists for the purpose, in whole or in part,  
60 of dealing with employers concerning grievances, labor disputes,  
61 wages, rates of pay, hours of employment or conditions of work.

62 (3) For purposes of administration and enforcement, any  
63 amounts owed to an employee that have been withheld in violation  
64 of this section shall be deemed to be unpaid minimum wages or  
65 unpaid overtime compensation.

66 (4) (a) An employer that has been charged with unlawful sex  
67 discrimination under this section shall be entitled to a  
68 rebuttable presumption that the employer has not engaged in  
69 unlawful sex discrimination in violation of this section if:



70 (i) The charge is made by an employee who holds a  
71 job predominantly occupied by members of one (1) sex, which means  
72 that at least seventy-five percent (75%) of the occupants of the  
73 job are of the same sex, and the employee alleges he or she is  
74 being paid less than an employee who does a different job;

75 (ii) The employer has, within two (2) years of the  
76 commencement of the action, completed a self-evaluation that meets  
77 the standards set forth in paragraph (d) of this subsection; and

78 (iii) The employer makes an affirmative showing  
79 that it has made reasonable and substantial progress towards  
80 eliminating wage differentials, including implementing any  
81 required remediation plan, between jobs of equivalent value,  
82 including the job of the employee making the charge, in accordance  
83 with the self-evaluation required in subparagraph (ii) of this  
84 paragraph.

85 (b) In such cases, the court must give the aggrieved  
86 party an opportunity to rebut this presumption through evidence  
87 that reasonably demonstrates that, notwithstanding the employer's  
88 self-evaluation, the employer has violated this section. In  
89 rebutting this presumption, the aggrieved party may provide all  
90 relevant information including, but not limited to, evidence that:

91 (i) The employer's job analysis devalues  
92 attributes associated with jobs occupied predominantly by members  
93 of one (1) sex and/or over-values attributes associated with jobs  
94 occupied predominantly by members of the opposite sex;



95 (ii) The job the aggrieved party occupies was not  
96 adequately evaluated; or

97 (iii) A job evaluation process has been completed  
98 and, if necessary, a remediation process is in progress or has  
99 been completed, but the self-evaluation has not been reviewed and  
100 updated at reasonable intervals to adjust for changes in the work  
101 environment over time.

102 (c) An employer wishing to be availed of this  
103 presumption must produce documentation that describes the  
104 self-evaluation process in detail sufficient to show that the  
105 employer has met the standards under paragraph (d).

106 (d) In order to be eligible for the presumption of  
107 compliance, the self-evaluation must:

108 (i) Clearly define the employer's establishment;

109 (ii) Analyze the employee population to identify  
110 differentials in wages, including raises, bonuses, incentive  
111 payments and other forms of remuneration, based on sex;

112 (iii) Establish a job evaluation plan to determine  
113 the value of jobs within the establishment. The plan must:

114 1. Be free of any bias based on a person's  
115 sex;

116 2. Allow for the comparison of all jobs; and

117 3. Fully and accurately measure the skill,  
118 effort, responsibility and working conditions of each job based on  
119 the actual work performance requirements of the jobs evaluated;



- 120 (iv) Apply the job evaluation plan to all jobs;
- 121 (v) Create a salary structure or have an
- 122 identifying salary group system where jobs of equal value are
- 123 placed in the same level or grouping;
- 124 (vi) Determine for each salary grouping, or for
- 125 each total job evaluation score, the pay differential between jobs
- 126 that are predominantly occupied by one (1) sex and other jobs,
- 127 including those predominantly occupied by the opposite sex, in
- 128 order to identify any wage rate discrimination; and
- 129 (vii) Remedy any pay differential identified in
- 130 subsection (vi); however, such remediation may not reduce the pay
- 131 of any employee or class of employees.

132 The presumption of compliance may be strengthened where,

133 through the self-evaluation, including any needed remediation, the

134 employer maintains communication with and keeps employees apprised

135 of the process. The method and procedure for that communication

136 may vary according to the size and organizational structure of the

137 establishment, but any method or procedure chosen should be

138 adequate to reach all employees at the establishment.

139 (5) It shall be an unlawful employment practice for an

140 employer to:

- 141 (a) Require, as a condition of employment, that an
- 142 employee refrain from inquiring about, discussing or disclosing
- 143 his or her wages or the wages of another employee;



144           (b) Require an employee to sign a waiver or other  
145 document which purports to deny an employee the right to disclose  
146 or discuss his or her wages;

147           (c) Discharge, formally discipline, or otherwise  
148 discriminate against an employee for inquiring about, discussing,  
149 or disclosing his or her wages or the wages of another employee;  
150 however, nothing in this subsection (5) creates an obligation for  
151 an employer or employee to disclose wages;

152           (d) Retaliate or in any other manner discriminate  
153 against an employee or applicant for employment because that  
154 individual has opposed a practice made unlawful by this act or  
155 because that individual has made a charge, filed a complaint, or  
156 instituted or caused to be instituted any investigation,  
157 proceeding, hearing, or action under or related to this act,  
158 including an investigation conducted by the employer, or has  
159 testified or is planning to testify, or has assisted, or  
160 participated in any manner in any such investigation, proceeding,  
161 or hearing under this act.

162           (6) (a) A civil action asserting a violation of this  
163 section may be maintained against any employer in any court of  
164 competent jurisdiction by any one or more employees for or on  
165 behalf of the employee, a group of employees, and other employees  
166 similarly situated. Any such action shall commence no later than  
167 two (2) years after the discriminatory practice declared unlawful  
168 by this section has occurred. A discriminatory practice occurs



169 when a discriminatory compensation decision or other practice is  
170 adopted, when an employee is subjected to a discriminatory  
171 compensation decision or other practice, or when an employee is  
172 affected by the application of a discriminatory compensation  
173 decision or other practice, including each time wages, benefits,  
174 or other compensation is paid based on the discriminatory  
175 compensation decision or other practice.

176 (b) If an employer is found in violation of this  
177 section, the employee may recover in a civil action the amount of  
178 their unpaid wages; liquidated damages; compensatory damages;  
179 punitive damages as may be appropriate, where the employee  
180 demonstrates that the employer acted with malice or reckless  
181 indifference; other equitable relief as may be appropriate; and  
182 the costs of the action and reasonable attorney's fees.

183 **SECTION 4.** This act shall take effect and be in force from  
184 and after its passage.

