

By: Representative Williams-Barnes

To: Public Health and Human Services

HOUSE BILL NO. 1089

1 AN ACT TO CREATE THE "2019 WOMEN'S ECONOMIC SECURITY ACT"; TO
 2 REQUIRE MINIMUM SPENDING LEVELS ON THE CHILD CARE PAYMENT PROGRAM
 3 (CCPP) FROM THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)
 4 BLOCK GRANT; TO AMEND SECTION 43-13-115, MISSISSIPPI CODE OF 1972,
 5 TO REVISE MEDICAID ELIGIBILITY TO INCLUDE THOSE INDIVIDUALS WHO
 6 ARE ENTITLED TO BENEFITS UNDER THE FEDERAL PATIENT PROTECTION AND
 7 AFFORDABLE CARE ACT OF 2010 (ACA) BEGINNING JULY 1, 2019; TO AMEND
 8 SECTION 43-13-117, MISSISSIPPI CODE OF 1972, TO INCLUDE ESSENTIAL
 9 HEALTH BENEFITS FOR INDIVIDUALS ELIGIBLE FOR MEDICAID UNDER THE
 10 FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 (ACA);
 11 TO AMEND SECTION 37-153-7, MISSISSIPPI CODE OF 1972, TO EXPAND THE
 12 MISSISSIPPI STATE WORKFORCE INVESTMENT BOARD TO INCLUDE A WOMAN
 13 WITH EXPERTISE IN ASSISTING WOMEN IN JOB TRAINING AND SECURING
 14 EMPLOYMENT IN NONTRADITIONAL OCCUPATIONS; TO AMEND SECTION
 15 7-1-355, MISSISSIPPI CODE OF 1972, TO REQUIRE THE MISSISSIPPI
 16 DEPARTMENT OF EMPLOYMENT SECURITY TO ACHIEVE GENDER EQUITY IN THE
 17 WORKFORCE INVESTMENT ACT OR WORKFORCE INNOVATION OPPORTUNITY ACT
 18 WORKFORCE DEVELOPMENT SYSTEM; TO REQUIRE CERTAIN INFORMATION TO BE
 19 INCLUDED IN AN ANNUAL REPORT TO THE LEGISLATURE; TO REQUIRE EQUAL
 20 PAY CERTIFICATES OF COMPLIANCE; TO CREATE WOMEN AND HIGH-WAGE,
 21 HIGH-DEMAND, NONTRADITIONAL JOBS GRANT PROGRAM; TO ESTABLISH THE
 22 MISSISSIPPI PAID FAMILY LEAVE ACT; TO PROHIBIT DISCRIMINATION IN
 23 EMPLOYMENT BASED ON PREGNANCY, CHILDBIRTH, OR A RELATED CONDITION;
 24 TO PROVIDE FOR PAID SICK AND SAFE LEAVE TIME; TO INCREASE THE
 25 STATE MINIMUM WAGE; TO AMEND SECTIONS 17-1-51 AND 25-3-40,
 26 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS
 27 ACT; TO ENACT THE EVELYN GANDY FAIR PAY ACT; AND FOR RELATED
 28 PURPOSES.

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

30 **SECTION 1.** This act shall be known and may be cited as the "
 31 2019 Mississippi Women's Economic Security Act of 2019."



32 **SECTION 2.** (1) This section shall be known and cited as the
33 "Mississippi Affordable Child Care Act."

34 (2) Each federal fiscal year, the Mississippi Department
35 of Human Services (MDHS) and/or any state agency receiving and
36 administering the federal Temporary Assistance for Needy Families
37 (TANF) Block Grant shall spend no less than Twenty Million Dollars
38 (\$20,000,000.00) of federal TANF funds and/or state TANF
39 Maintenance of Effort (MOE) funds on the Child Care Payment
40 Program (CCPP). The Mississippi Department of Human Services
41 (MDHS) and/or any state agency receiving and administering the
42 federal TANF Block Grant shall transfer no less than twenty
43 percent (20%) of the state's fixed basic block grant amount for
44 its annual TANF Block Grant to the Child Care and Development Fund
45 (CCDF) for purposes of serving eligible families through the Child
46 Care Payment Program (CCPP).

47 **SECTION 3.** Section 43-13-115, Mississippi Code of 1972, is
48 amended as follows:

49 43-13-115. Recipients of Medicaid shall be the following
50 persons only:

51 (1) Those who are qualified for public assistance
52 grants under provisions of Title IV-A and E of the federal Social
53 Security Act, as amended, including those statutorily deemed to be
54 IV-A and low-income families and children under Section 1931 of
55 the federal Social Security Act. For the purposes of this
56 paragraph (1) and paragraphs (8), (17) and (18) of this section,



57 any reference to Title IV-A or to Part A of Title IV of the
58 federal Social Security Act, as amended, or the state plan under
59 Title IV-A or Part A of Title IV, shall be considered as a
60 reference to Title IV-A of the federal Social Security Act, as
61 amended, and the state plan under Title IV-A, including the income
62 and resource standards and methodologies under Title IV-A and the
63 state plan, as they existed on July 16, 1996. The Department of
64 Human Services shall determine Medicaid eligibility for children
65 receiving public assistance grants under Title IV-E. The division
66 shall determine eligibility for low-income families under Section
67 1931 of the federal Social Security Act and shall redetermine
68 eligibility for those continuing under Title IV-A grants.

69 (2) Those qualified for Supplemental Security Income
70 (SSI) benefits under Title XVI of the federal Social Security Act,
71 as amended, and those who are deemed SSI eligible as contained in
72 federal statute. The eligibility of individuals covered in this
73 paragraph shall be determined by the Social Security
74 Administration and certified to the Division of Medicaid.

75 (3) Qualified pregnant women who would be eligible for
76 Medicaid as a low-income family member under Section 1931 of the
77 federal Social Security Act if her child were born. The
78 eligibility of the individuals covered under this paragraph shall
79 be determined by the division.

80 (4) [Deleted]



81 (5) A child born on or after October 1, 1984, to a
82 woman eligible for and receiving Medicaid under the state plan on
83 the date of the child's birth shall be deemed to have applied for
84 Medicaid and to have been found eligible for Medicaid under the
85 plan on the date of that birth, and will remain eligible for
86 Medicaid for a period of one (1) year so long as the child is a
87 member of the woman's household and the woman remains eligible for
88 Medicaid or would be eligible for Medicaid if pregnant. The
89 eligibility of individuals covered in this paragraph shall be
90 determined by the Division of Medicaid.

91 (6) Children certified by the State Department of Human
92 Services to the Division of Medicaid of whom the state and county
93 departments of human services have custody and financial
94 responsibility, and children who are in adoptions subsidized in
95 full or part by the Department of Human Services, including
96 special needs children in non-Title IV-E adoption assistance, who
97 are approvable under Title XIX of the Medicaid program. The
98 eligibility of the children covered under this paragraph shall be
99 determined by the State Department of Human Services.

100 (7) Persons certified by the Division of Medicaid who
101 are patients in a medical facility (nursing home, hospital,
102 tuberculosis sanatorium or institution for treatment of mental
103 diseases), and who, except for the fact that they are patients in
104 that medical facility, would qualify for grants under Title IV,
105 Supplementary Security Income (SSI) benefits under Title XVI or



106 state supplements, and those aged, blind and disabled persons who
107 would not be eligible for Supplemental Security Income (SSI)
108 benefits under Title XVI or state supplements if they were not
109 institutionalized in a medical facility but whose income is below
110 the maximum standard set by the Division of Medicaid, which
111 standard shall not exceed that prescribed by federal regulation.

112 (8) Children under eighteen (18) years of age and
113 pregnant women (including those in intact families) who meet the
114 financial standards of the state plan approved under Title IV-A of
115 the federal Social Security Act, as amended. The eligibility of
116 children covered under this paragraph shall be determined by the
117 Division of Medicaid.

118 (9) Individuals who are:

119 (a) Children born after September 30, 1983, who
120 have not attained the age of nineteen (19), with family income
121 that does not exceed one hundred percent (100%) of the nonfarm
122 official poverty level;

123 (b) Pregnant women, infants and children who have
124 not attained the age of six (6), with family income that does not
125 exceed one hundred thirty-three percent (133%) of the federal
126 poverty level; and

127 (c) Pregnant women and infants who have not
128 attained the age of one (1), with family income that does not
129 exceed one hundred eighty-five percent (185%) of the federal
130 poverty level.



131 The eligibility of individuals covered in (a), (b) and (c) of
132 this paragraph shall be determined by the division.

133 (10) Certain disabled children age eighteen (18) or
134 under who are living at home, who would be eligible, if in a
135 medical institution, for SSI or a state supplemental payment under
136 Title XVI of the federal Social Security Act, as amended, and
137 therefore for Medicaid under the plan, and for whom the state has
138 made a determination as required under Section 1902(e)(3)(b) of
139 the federal Social Security Act, as amended. The eligibility of
140 individuals under this paragraph shall be determined by the
141 Division of Medicaid.

142 (11) Until the end of the day on December 31, 2005,
143 individuals who are sixty-five (65) years of age or older or are
144 disabled as determined under Section 1614(a)(3) of the federal
145 Social Security Act, as amended, and whose income does not exceed
146 one hundred thirty-five percent (135%) of the nonfarm official
147 poverty level as defined by the Office of Management and Budget
148 and revised annually, and whose resources do not exceed those
149 established by the Division of Medicaid. The eligibility of
150 individuals covered under this paragraph shall be determined by
151 the Division of Medicaid. After December 31, 2005, only those
152 individuals covered under the 1115(c) Healthier Mississippi waiver
153 will be covered under this category.

154 Any individual who applied for Medicaid during the period
155 from July 1, 2004, through March 31, 2005, who otherwise would



156 have been eligible for coverage under this paragraph (11) if it
157 had been in effect at the time the individual submitted his or her
158 application and is still eligible for coverage under this
159 paragraph (11) on March 31, 2005, shall be eligible for Medicaid
160 coverage under this paragraph (11) from March 31, 2005, through
161 December 31, 2005. The division shall give priority in processing
162 the applications for those individuals to determine their
163 eligibility under this paragraph (11).

164 (12) Individuals who are qualified Medicare
165 beneficiaries (QMB) entitled to Part A Medicare as defined under
166 Section 301, Public Law 100-360, known as the Medicare
167 Catastrophic Coverage Act of 1988, and whose income does not
168 exceed one hundred percent (100%) of the nonfarm official poverty
169 level as defined by the Office of Management and Budget and
170 revised annually.

171 The eligibility of individuals covered under this paragraph
172 shall be determined by the Division of Medicaid, and those
173 individuals determined eligible shall receive Medicare
174 cost-sharing expenses only as more fully defined by the Medicare
175 Catastrophic Coverage Act of 1988 and the Balanced Budget Act of
176 1997.

177 (13) (a) Individuals who are entitled to Medicare Part
178 A as defined in Section 4501 of the Omnibus Budget Reconciliation
179 Act of 1990, and whose income does not exceed one hundred twenty
180 percent (120%) of the nonfarm official poverty level as defined by



181 the Office of Management and Budget and revised annually.
182 Eligibility for Medicaid benefits is limited to full payment of
183 Medicare Part B premiums.

184 (b) Individuals entitled to Part A of Medicare,
185 with income above one hundred twenty percent (120%), but less than
186 one hundred thirty-five percent (135%) of the federal poverty
187 level, and not otherwise eligible for Medicaid. Eligibility for
188 Medicaid benefits is limited to full payment of Medicare Part B
189 premiums. The number of eligible individuals is limited by the
190 availability of the federal capped allocation at one hundred
191 percent (100%) of federal matching funds, as more fully defined in
192 the Balanced Budget Act of 1997.

193 The eligibility of individuals covered under this paragraph
194 shall be determined by the Division of Medicaid.

195 (14) [Deleted]

196 (15) Disabled workers who are eligible to enroll in
197 Part A Medicare as required by Public Law 101-239, known as the
198 Omnibus Budget Reconciliation Act of 1989, and whose income does
199 not exceed two hundred percent (200%) of the federal poverty level
200 as determined in accordance with the Supplemental Security Income
201 (SSI) program. The eligibility of individuals covered under this
202 paragraph shall be determined by the Division of Medicaid and
203 those individuals shall be entitled to buy-in coverage of Medicare
204 Part A premiums only under the provisions of this paragraph (15).



205 (16) In accordance with the terms and conditions of
206 approved Title XIX waiver from the United States Department of
207 Health and Human Services, persons provided home- and
208 community-based services who are physically disabled and certified
209 by the Division of Medicaid as eligible due to applying the income
210 and deeming requirements as if they were institutionalized.

211 (17) In accordance with the terms of the federal
212 Personal Responsibility and Work Opportunity Reconciliation Act of
213 1996 (Public Law 104-193), persons who become ineligible for
214 assistance under Title IV-A of the federal Social Security Act, as
215 amended, because of increased income from or hours of employment
216 of the caretaker relative or because of the expiration of the
217 applicable earned income disregards, who were eligible for
218 Medicaid for at least three (3) of the six (6) months preceding
219 the month in which the ineligibility begins, shall be eligible for
220 Medicaid for up to twelve (12) months. The eligibility of the
221 individuals covered under this paragraph shall be determined by
222 the division.

223 (18) Persons who become ineligible for assistance under
224 Title IV-A of the federal Social Security Act, as amended, as a
225 result, in whole or in part, of the collection or increased
226 collection of child or spousal support under Title IV-D of the
227 federal Social Security Act, as amended, who were eligible for
228 Medicaid for at least three (3) of the six (6) months immediately
229 preceding the month in which the ineligibility begins, shall be



230 eligible for Medicaid for an additional four (4) months beginning
231 with the month in which the ineligibility begins. The eligibility
232 of the individuals covered under this paragraph shall be
233 determined by the division.

234 (19) Disabled workers, whose incomes are above the
235 Medicaid eligibility limits, but below two hundred fifty percent
236 (250%) of the federal poverty level, shall be allowed to purchase
237 Medicaid coverage on a sliding fee scale developed by the Division
238 of Medicaid.

239 (20) Medicaid eligible children under age eighteen (18)
240 shall remain eligible for Medicaid benefits until the end of a
241 period of twelve (12) months following an eligibility
242 determination, or until such time that the individual exceeds age
243 eighteen (18).

244 (21) Women of childbearing age whose family income does
245 not exceed one hundred eighty-five percent (185%) of the federal
246 poverty level. The eligibility of individuals covered under this
247 paragraph (21) shall be determined by the Division of Medicaid,
248 and those individuals determined eligible shall only receive
249 family planning services covered under Section 43-13-117(13) and
250 not any other services covered under Medicaid. However, any
251 individual eligible under this paragraph (21) who is also eligible
252 under any other provision of this section shall receive the
253 benefits to which he or she is entitled under that other



254 provision, in addition to family planning services covered under
255 Section 43-13-117(13).

256 The Division of Medicaid shall apply to the United States
257 Secretary of Health and Human Services for a federal waiver of the
258 applicable provisions of Title XIX of the federal Social Security
259 Act, as amended, and any other applicable provisions of federal
260 law as necessary to allow for the implementation of this paragraph
261 (21). The provisions of this paragraph (21) shall be implemented
262 from and after the date that the Division of Medicaid receives the
263 federal waiver.

264 (22) Persons who are workers with a potentially severe
265 disability, as determined by the division, shall be allowed to
266 purchase Medicaid coverage. The term "worker with a potentially
267 severe disability" means a person who is at least sixteen (16)
268 years of age but under sixty-five (65) years of age, who has a
269 physical or mental impairment that is reasonably expected to cause
270 the person to become blind or disabled as defined under Section
271 1614(a) of the federal Social Security Act, as amended, if the
272 person does not receive items and services provided under
273 Medicaid.

274 The eligibility of persons under this paragraph (22) shall be
275 conducted as a demonstration project that is consistent with
276 Section 204 of the Ticket to Work and Work Incentives Improvement
277 Act of 1999, Public Law 106-170, for a certain number of persons
278 as specified by the division. The eligibility of individuals



279 covered under this paragraph (22) shall be determined by the
280 Division of Medicaid.

281 (23) Children certified by the Mississippi Department
282 of Human Services for whom the state and county departments of
283 human services have custody and financial responsibility who are
284 in foster care on their eighteenth birthday as reported by the
285 Mississippi Department of Human Services shall be certified
286 Medicaid eligible by the Division of Medicaid until their
287 twenty-first birthday.

288 (24) Individuals who have not attained age sixty-five
289 (65), are not otherwise covered by creditable coverage as defined
290 in the Public Health Services Act, and have been screened for
291 breast and cervical cancer under the Centers for Disease Control
292 and Prevention Breast and Cervical Cancer Early Detection Program
293 established under Title XV of the Public Health Service Act in
294 accordance with the requirements of that act and who need
295 treatment for breast or cervical cancer. Eligibility of
296 individuals under this paragraph (24) shall be determined by the
297 Division of Medicaid.

298 (25) The division shall apply to the Centers for
299 Medicare and Medicaid Services (CMS) for any necessary waivers to
300 provide services to individuals who are sixty-five (65) years of
301 age or older or are disabled as determined under Section
302 1614(a)(3) of the federal Social Security Act, as amended, and
303 whose income does not exceed one hundred thirty-five percent



304 (135%) of the nonfarm official poverty level as defined by the
305 Office of Management and Budget and revised annually, and whose
306 resources do not exceed those established by the Division of
307 Medicaid, and who are not otherwise covered by Medicare. Nothing
308 contained in this paragraph (25) shall entitle an individual to
309 benefits. The eligibility of individuals covered under this
310 paragraph shall be determined by the Division of Medicaid.

311 (26) The division shall apply to the Centers for
312 Medicare and Medicaid Services (CMS) for any necessary waivers to
313 provide services to individuals who are sixty-five (65) years of
314 age or older or are disabled as determined under Section
315 1614(a)(3) of the federal Social Security Act, as amended, who are
316 end stage renal disease patients on dialysis, cancer patients on
317 chemotherapy or organ transplant recipients on antirejection
318 drugs, whose income does not exceed one hundred thirty-five
319 percent (135%) of the nonfarm official poverty level as defined by
320 the Office of Management and Budget and revised annually, and
321 whose resources do not exceed those established by the division.
322 Nothing contained in this paragraph (26) shall entitle an
323 individual to benefits. The eligibility of individuals covered
324 under this paragraph shall be determined by the Division of
325 Medicaid.

326 (27) Individuals who are entitled to Medicare Part D
327 and whose income does not exceed one hundred fifty percent (150%)
328 of the nonfarm official poverty level as defined by the Office of



329 Management and Budget and revised annually. Eligibility for
330 payment of the Medicare Part D subsidy under this paragraph shall
331 be determined by the division.

332 (28) Under the federal Patient Protection and
333 Affordable Care Act of 2010 and as amended, beginning July 1,
334 2019, individuals who are sixty-five (65) years of age, not
335 pregnant, not entitled to nor enrolled for benefits in Part A of
336 Title XVIII of the federal Social Security Act, are not described
337 in any other part of this section, and whose income does not
338 exceed one hundred thirty-three percent (133%) of the Federal
339 Poverty Level applicable to a family of the size involved. The
340 eligibility of individuals covered under this paragraph (28) shall
341 be determined by the Division of Medicaid, and those individuals
342 determined eligible shall only receive essential health benefits
343 as described in the federal Patient Protection and Affordable Care
344 Act of 2010 as amended.

345 The division shall redetermine eligibility for all categories
346 of recipients described in each paragraph of this section not less
347 frequently than required by federal law.

348 **SECTION 4.** Section 43-13-117, Mississippi Code of 1972, is
349 amended as follows:

350 43-13-117. (A) Medicaid as authorized by this article shall
351 include payment of part or all of the costs, at the discretion of
352 the division, with approval of the Governor and the Centers for
353 Medicare and Medicaid Services, of the following types of care and



354 services rendered to eligible applicants who have been determined
355 to be eligible for that care and services, within the limits of
356 state appropriations and federal matching funds:

357 (1) Inpatient hospital services.

358 (a) The division shall allow thirty (30) days of
359 inpatient hospital care annually for all Medicaid recipients.
360 Medicaid recipients requiring transplants shall not have those
361 days included in the transplant hospital stay count against the
362 thirty-day limit for inpatient hospital care. Precertification of
363 inpatient days must be obtained as required by the division.

364 (b) From and after July 1, 1994, the Executive
365 Director of the Division of Medicaid shall amend the Mississippi
366 Title XIX Inpatient Hospital Reimbursement Plan to remove the
367 occupancy rate penalty from the calculation of the Medicaid
368 Capital Cost Component utilized to determine total hospital costs
369 allocated to the Medicaid program.

370 (c) Hospitals may receive an additional payment
371 for the implantable programmable baclofen drug pump used to treat
372 spasticity that is implanted on an inpatient basis. The payment
373 pursuant to written invoice will be in addition to the facility's
374 per diem reimbursement and will represent a reduction of costs on
375 the facility's annual cost report, and shall not exceed Ten
376 Thousand Dollars (\$10,000.00) per year per recipient.



377 (d) The division is authorized to implement an All
378 Patient Refined Diagnosis Related Groups (APR-DRG) reimbursement
379 methodology for inpatient hospital services.

380 (e) No service benefits or reimbursement
381 limitations in this section shall apply to payments under an
382 APR-DRG or Ambulatory Payment Classification (APC) model or a
383 managed care program or similar model described in subsection (H)
384 of this section unless specifically authorized by the division.

385 (2) Outpatient hospital services.

386 (a) Emergency services.

387 (b) Other outpatient hospital services. The
388 division shall allow benefits for other medically necessary
389 outpatient hospital services (such as chemotherapy, radiation,
390 surgery and therapy), including outpatient services in a clinic or
391 other facility that is not located inside the hospital, but that
392 has been designated as an outpatient facility by the hospital, and
393 that was in operation or under construction on July 1, 2009,
394 provided that the costs and charges associated with the operation
395 of the hospital clinic are included in the hospital's cost report.
396 In addition, the Medicare thirty-five-mile rule will apply to
397 those hospital clinics not located inside the hospital that are
398 constructed after July 1, 2009. Where the same services are
399 reimbursed as clinic services, the division may revise the rate or
400 methodology of outpatient reimbursement to maintain consistency,
401 efficiency, economy and quality of care.



402 (c) The division is authorized to implement an
403 Ambulatory Payment Classification (APC) methodology for outpatient
404 hospital services. The division may give rural hospitals that
405 have fifty (50) or fewer licensed beds the option to not be
406 reimbursed for outpatient hospital services using the APC
407 methodology, but reimbursement for outpatient hospital services
408 provided by those hospitals shall be based on one hundred one
409 percent (101%) of the rate established under Medicare for
410 outpatient hospital services. Those hospitals choosing to not be
411 reimbursed under the APC methodology shall remain under cost-based
412 reimbursement for a two-year period.

413 (d) No service benefits or reimbursement
414 limitations in this section shall apply to payments under an
415 APR-DRG or APC model or a managed care program or similar model
416 described in subsection (H) of this section.

417 (3) Laboratory and x-ray services.

418 (4) Nursing facility services.

419 (a) The division shall make full payment to
420 nursing facilities for each day, not exceeding forty-two (42) days
421 per year, that a patient is absent from the facility on home
422 leave. Payment may be made for the following home leave days in
423 addition to the forty-two-day limitation: Christmas, the day
424 before Christmas, the day after Christmas, Thanksgiving, the day
425 before Thanksgiving and the day after Thanksgiving.



426 (b) From and after July 1, 1997, the division
427 shall implement the integrated case-mix payment and quality
428 monitoring system, which includes the fair rental system for
429 property costs and in which recapture of depreciation is
430 eliminated. The division may reduce the payment for hospital
431 leave and therapeutic home leave days to the lower of the case-mix
432 category as computed for the resident on leave using the
433 assessment being utilized for payment at that point in time, or a
434 case-mix score of 1.000 for nursing facilities, and shall compute
435 case-mix scores of residents so that only services provided at the
436 nursing facility are considered in calculating a facility's per
437 diem.

438 (c) From and after July 1, 1997, all state-owned
439 nursing facilities shall be reimbursed on a full reasonable cost
440 basis.

441 (d) On or after January 1, 2015, the division
442 shall update the case-mix payment system resource utilization
443 grouper and classifications and fair rental reimbursement system.
444 The division shall develop and implement a payment add-on to
445 reimburse nursing facilities for ventilator-dependent resident
446 services.

447 (e) The division shall develop and implement, not
448 later than January 1, 2001, a case-mix payment add-on determined
449 by time studies and other valid statistical data that will
450 reimburse a nursing facility for the additional cost of caring for



451 a resident who has a diagnosis of Alzheimer's or other related
452 dementia and exhibits symptoms that require special care. Any
453 such case-mix add-on payment shall be supported by a determination
454 of additional cost. The division shall also develop and implement
455 as part of the fair rental reimbursement system for nursing
456 facility beds, an Alzheimer's resident bed depreciation enhanced
457 reimbursement system that will provide an incentive to encourage
458 nursing facilities to convert or construct beds for residents with
459 Alzheimer's or other related dementia.

460 (f) The division shall develop and implement an
461 assessment process for long-term care services. The division may
462 provide the assessment and related functions directly or through
463 contract with the area agencies on aging.

464 The division shall apply for necessary federal waivers to
465 assure that additional services providing alternatives to nursing
466 facility care are made available to applicants for nursing
467 facility care.

468 (5) Periodic screening and diagnostic services for
469 individuals under age twenty-one (21) years as are needed to
470 identify physical and mental defects and to provide health care
471 treatment and other measures designed to correct or ameliorate
472 defects and physical and mental illness and conditions discovered
473 by the screening services, regardless of whether these services
474 are included in the state plan. The division may include in its
475 periodic screening and diagnostic program those discretionary



476 services authorized under the federal regulations adopted to
477 implement Title XIX of the federal Social Security Act, as
478 amended. The division, in obtaining physical therapy services,
479 occupational therapy services, and services for individuals with
480 speech, hearing and language disorders, may enter into a
481 cooperative agreement with the State Department of Education for
482 the provision of those services to handicapped students by public
483 school districts using state funds that are provided from the
484 appropriation to the Department of Education to obtain federal
485 matching funds through the division. The division, in obtaining
486 medical and mental health assessments, treatment, care and
487 services for children who are in, or at risk of being put in, the
488 custody of the Mississippi Department of Human Services may enter
489 into a cooperative agreement with the Mississippi Department of
490 Human Services for the provision of those services using state
491 funds that are provided from the appropriation to the Department
492 of Human Services to obtain federal matching funds through the
493 division.

494 (6) Physician's services. Physician visits as
495 determined by the division and in accordance with federal laws and
496 regulations. The division may develop and implement a different
497 reimbursement model or schedule for physician's services provided
498 by physicians based at an academic health care center and by
499 physicians at rural health centers that are associated with an
500 academic health care center. From and after January 1, 2010, all



501 fees for physician's services that are covered only by Medicaid
502 shall be increased to ninety percent (90%) of the rate established
503 on January 1, 2018, and as may be adjusted each July thereafter,
504 under Medicare. The division may provide for a reimbursement rate
505 for physician's services of up to one hundred percent (100%) of
506 the rate established under Medicare for physician's services that
507 are provided after the normal working hours of the physician, as
508 determined in accordance with regulations of the division. The
509 division may reimburse eligible providers as determined by the
510 Patient Protection and Affordable Care Act for certain primary
511 care services as defined by the act at one hundred percent (100%)
512 of the rate established under Medicare. Additionally, the
513 division shall reimburse obstetricians and gynecologists for
514 certain primary care services as defined by the division at one
515 hundred percent (100%) of the rate established under Medicare.

516 (7) (a) Home health services for eligible persons, not
517 to exceed in cost the prevailing cost of nursing facility
518 services. All home health visits must be precertified as required
519 by the division.

520 (b) [Repealed]

521 (8) Emergency medical transportation services as
522 determined by the division.

523 (9) Prescription drugs and other covered drugs and
524 services as may be determined by the division.



525 The division shall establish a mandatory preferred drug list.
526 Drugs not on the mandatory preferred drug list shall be made
527 available by utilizing prior authorization procedures established
528 by the division.

529 The division may seek to establish relationships with other
530 states in order to lower acquisition costs of prescription drugs
531 to include single-source and innovator multiple-source drugs or
532 generic drugs. In addition, if allowed by federal law or
533 regulation, the division may seek to establish relationships with
534 and negotiate with other countries to facilitate the acquisition
535 of prescription drugs to include single-source and innovator
536 multiple-source drugs or generic drugs, if that will lower the
537 acquisition costs of those prescription drugs.

538 The division may allow for a combination of prescriptions for
539 single-source and innovator multiple-source drugs and generic
540 drugs to meet the needs of the beneficiaries.

541 The executive director may approve specific maintenance drugs
542 for beneficiaries with certain medical conditions, which may be
543 prescribed and dispensed in three-month supply increments.

544 Drugs prescribed for a resident of a psychiatric residential
545 treatment facility must be provided in true unit doses when
546 available. The division may require that drugs not covered by
547 Medicare Part D for a resident of a long-term care facility be
548 provided in true unit doses when available. Those drugs that were
549 originally billed to the division but are not used by a resident



550 in any of those facilities shall be returned to the billing
551 pharmacy for credit to the division, in accordance with the
552 guidelines of the State Board of Pharmacy and any requirements of
553 federal law and regulation. Drugs shall be dispensed to a
554 recipient and only one (1) dispensing fee per month may be
555 charged. The division shall develop a methodology for reimbursing
556 for restocked drugs, which shall include a restock fee as
557 determined by the division not exceeding Seven Dollars and
558 Eighty-two Cents (\$7.82).

559 Except for those specific maintenance drugs approved by the
560 executive director, the division shall not reimburse for any
561 portion of a prescription that exceeds a thirty-one-day supply of
562 the drug based on the daily dosage.

563 The division is authorized to develop and implement a program
564 of payment for additional pharmacist services as may be determined
565 by the division.

566 All claims for drugs for dually eligible Medicare/Medicaid
567 beneficiaries that are paid for by Medicare must be submitted to
568 Medicare for payment before they may be processed by the
569 division's online payment system.

570 The division shall develop a pharmacy policy in which drugs
571 in tamper-resistant packaging that are prescribed for a resident
572 of a nursing facility but are not dispensed to the resident shall
573 be returned to the pharmacy and not billed to Medicaid, in
574 accordance with guidelines of the State Board of Pharmacy.



575 The division shall develop and implement a method or methods
576 by which the division will provide on a regular basis to Medicaid
577 providers who are authorized to prescribe drugs, information about
578 the costs to the Medicaid program of single-source drugs and
579 innovator multiple-source drugs, and information about other drugs
580 that may be prescribed as alternatives to those single-source
581 drugs and innovator multiple-source drugs and the costs to the
582 Medicaid program of those alternative drugs.

583 Notwithstanding any law or regulation, information obtained
584 or maintained by the division regarding the prescription drug
585 program, including trade secrets and manufacturer or labeler
586 pricing, is confidential and not subject to disclosure except to
587 other state agencies.

588 The dispensing fee for each new or refill prescription,
589 including nonlegend or over-the-counter drugs covered by the
590 division, shall be not less than Three Dollars and Ninety-one
591 Cents (\$3.91), as determined by the division.

592 The division shall not reimburse for single-source or
593 innovator multiple-source drugs if there are equally effective
594 generic equivalents available and if the generic equivalents are
595 the least expensive.

596 It is the intent of the Legislature that the pharmacists
597 providers be reimbursed for the reasonable costs of filling and
598 dispensing prescriptions for Medicaid beneficiaries.



599 The division may allow certain drugs, implantable drug system
600 devices, and medical supplies, with limited distribution or
601 limited access for beneficiaries and administered in an
602 appropriate clinical setting, to be reimbursed as either a medical
603 claim or pharmacy claim, as determined by the division.

604 Notwithstanding any other provision of this article, the
605 division shall allow physician-administered drugs to be billed and
606 reimbursed as either a medical claim or pharmacy point-of-sale to
607 allow greater access to care.

608 It is the intent of the Legislature that the division and any
609 managed care entity described in subsection (H) of this section
610 encourage the use of Alpha-Hydroxyprogesterone Caproate (17P) to
611 prevent recurrent preterm birth.

612 (10) Dental and orthodontic services to be determined
613 by the division.

614 This dental services program under this paragraph shall be
615 known as the "James Russell Dumas Medicaid Dental Services
616 Program."

617 The Medical Care Advisory Committee, assisted by the Division
618 of Medicaid, shall annually determine the effect of this incentive
619 by evaluating the number of dentists who are Medicaid providers,
620 the number who and the degree to which they are actively billing
621 Medicaid, the geographic trends of where dentists are offering
622 what types of Medicaid services and other statistics pertinent to
623 the goals of this legislative intent. This data shall annually be



624 presented to the Chair of the Senate Medicaid Committee and the
625 Chair of the House Medicaid Committee.

626 The division shall include dental services as a necessary
627 component of overall health services provided to children who are
628 eligible for services.

629 (11) Eyeglasses for all Medicaid beneficiaries who have
630 (a) had surgery on the eyeball or ocular muscle that results in a
631 vision change for which eyeglasses or a change in eyeglasses is
632 medically indicated within six (6) months of the surgery and is in
633 accordance with policies established by the division, or (b) one
634 (1) pair every five (5) years and in accordance with policies
635 established by the division. In either instance, the eyeglasses
636 must be prescribed by a physician skilled in diseases of the eye
637 or an optometrist, whichever the beneficiary may select.

638 (12) Intermediate care facility services.

639 (a) The division shall make full payment to all
640 intermediate care facilities for individuals with intellectual
641 disabilities for each day, not exceeding sixty-three (63) days per
642 year, that a patient is absent from the facility on home leave.
643 Payment may be made for the following home leave days in addition
644 to the sixty-three-day limitation: Christmas, the day before
645 Christmas, the day after Christmas, Thanksgiving, the day before
646 Thanksgiving and the day after Thanksgiving.



647 (b) All state-owned intermediate care facilities
648 for individuals with intellectual disabilities shall be reimbursed
649 on a full reasonable cost basis.

650 (c) Effective January 1, 2015, the division shall
651 update the fair rental reimbursement system for intermediate care
652 facilities for individuals with intellectual disabilities.

653 (13) Family planning services, including drugs,
654 supplies and devices, when those services are under the
655 supervision of a physician or nurse practitioner.

656 (14) Clinic services. Such diagnostic, preventive,
657 therapeutic, rehabilitative or palliative services furnished to an
658 outpatient by or under the supervision of a physician or dentist
659 in a facility that is not a part of a hospital but that is
660 organized and operated to provide medical care to outpatients.
661 Clinic services shall include any services reimbursed as
662 outpatient hospital services that may be rendered in such a
663 facility, including those that become so after July 1, 1991. On
664 July 1, 1999, all fees for physicians' services reimbursed under
665 authority of this paragraph (14) shall be reimbursed at ninety
666 percent (90%) of the rate established on January 1, 1999, and as
667 may be adjusted each July thereafter, under Medicare (Title XVIII
668 of the federal Social Security Act, as amended). The division may
669 develop and implement a different reimbursement model or schedule
670 for physician's services provided by physicians based at an
671 academic health care center and by physicians at rural health



672 centers that are associated with an academic health care center.
673 The division may provide for a reimbursement rate for physician's
674 clinic services of up to one hundred percent (100%) of the rate
675 established under Medicare for physician's services that are
676 provided after the normal working hours of the physician, as
677 determined in accordance with regulations of the division.

678 (15) Home- and community-based services for the elderly
679 and disabled, as provided under Title XIX of the federal Social
680 Security Act, as amended, under waivers, subject to the
681 availability of funds specifically appropriated for that purpose
682 by the Legislature.

683 The Division of Medicaid is directed to apply for a waiver
684 amendment to increase payments for all adult day care facilities
685 based on acuity of individual patients, with a maximum of
686 Seventy-five Dollars (\$75.00) per day for the most acute patients.

687 (16) Mental health services. Certain services provided
688 by a psychiatrist shall be reimbursed at up to one hundred percent
689 (100%) of the Medicare rate. Approved therapeutic and case
690 management services (a) provided by an approved regional mental
691 health/intellectual disability center established under Sections
692 41-19-31 through 41-19-39, or by another community mental health
693 service provider meeting the requirements of the Department of
694 Mental Health to be an approved mental health/intellectual
695 disability center if determined necessary by the Department of
696 Mental Health, using state funds that are provided in the



697 appropriation to the division to match federal funds, or (b)
698 provided by a facility that is certified by the State Department
699 of Mental Health to provide therapeutic and case management
700 services, to be reimbursed on a fee for service basis, or (c)
701 provided in the community by a facility or program operated by the
702 Department of Mental Health. Any such services provided by a
703 facility described in subparagraph (b) must have the prior
704 approval of the division to be reimbursable under this section.

705 (17) Durable medical equipment services and medical
706 supplies. Precertification of durable medical equipment and
707 medical supplies must be obtained as required by the division.
708 The Division of Medicaid may require durable medical equipment
709 providers to obtain a surety bond in the amount and to the
710 specifications as established by the Balanced Budget Act of 1997.

711 (18) (a) Notwithstanding any other provision of this
712 section to the contrary, as provided in the Medicaid state plan
713 amendment or amendments as defined in Section 43-13-145(10), the
714 division shall make additional reimbursement to hospitals that
715 serve a disproportionate share of low-income patients and that
716 meet the federal requirements for those payments as provided in
717 Section 1923 of the federal Social Security Act and any applicable
718 regulations. It is the intent of the Legislature that the
719 division shall draw down all available federal funds allotted to
720 the state for disproportionate share hospitals. However, from and
721 after January 1, 1999, public hospitals participating in the



722 Medicaid disproportionate share program may be required to
723 participate in an intergovernmental transfer program as provided
724 in Section 1903 of the federal Social Security Act and any
725 applicable regulations.

726 (b) The division may establish a Medicare Upper
727 Payment Limits Program, as defined in Section 1902(a)(30) of the
728 federal Social Security Act and any applicable federal
729 regulations, for hospitals, and may establish a Medicare Upper
730 Payment Limits Program for nursing facilities, and may establish a
731 Medicare Upper Payment Limits Program for physicians employed or
732 contracted by public hospitals. Upon successful implementation of
733 a Medicare Upper Payment Limits Program for physicians employed by
734 public hospitals, the division may develop a plan for implementing
735 an Upper Payment Limits Program for physicians employed by other
736 classes of hospitals. The division shall assess each hospital
737 and, if the program is established for nursing facilities, shall
738 assess each nursing facility, for the sole purpose of financing
739 the state portion of the Medicare Upper Payment Limits Program.
740 The hospital assessment shall be as provided in Section
741 43-13-145(4)(a) and the nursing facility assessment, if
742 established, shall be based on Medicaid utilization or other
743 appropriate method consistent with federal regulations. The
744 assessment will remain in effect as long as the state participates
745 in the Medicare Upper Payment Limits Program. Public hospitals
746 with physicians participating in the Medicare Upper Payment Limits



747 Program shall be required to participate in an intergovernmental
748 transfer program for the purpose of financing the state portion of
749 the physician UPL payments. As provided in the Medicaid state
750 plan amendment or amendments as defined in Section 43-13-145(10),
751 the division shall make additional reimbursement to hospitals and,
752 if the program is established for nursing facilities, shall make
753 additional reimbursement to nursing facilities, for the Medicare
754 Upper Payment Limits, and, if the program is established for
755 physicians, shall make additional reimbursement for physicians, as
756 defined in Section 1902(a)(30) of the federal Social Security Act
757 and any applicable federal regulations. Notwithstanding any other
758 provision of this article to the contrary, effective upon
759 implementation of the Mississippi Hospital Access Program (MHAP)
760 provided in subparagraph (c)(i) below, the hospital portion of the
761 inpatient Upper Payment Limits Program shall transition into and
762 be replaced by the MHAP program. However, the division is
763 authorized to develop and implement an alternative fee-for-service
764 Upper Payment Limits model in accordance with federal laws and
765 regulations if necessary to preserve supplemental funding.
766 Further, the division, in consultation with the Mississippi
767 Hospital Association and a governmental hospital located in a
768 county bordering the Gulf of Mexico and the State of Alabama shall
769 develop alternative models for distribution of medical claims and
770 supplemental payments for inpatient and outpatient hospital
771 services, and such models may include, but shall not be limited to



772 the following: increasing rates for inpatient and outpatient
773 services; creating a low-income utilization pool of funds to
774 reimburse hospitals for the costs of uncompensated care, charity
775 care and bad debts as permitted and approved pursuant to federal
776 regulations and the Centers for Medicare and Medicaid Services;
777 supplemental payments based upon Medicaid utilization, quality,
778 service lines and/or costs of providing such services to Medicaid
779 beneficiaries and to uninsured patients. The goals of such
780 payment models shall be to ensure access to inpatient and
781 outpatient care and to maximize any federal funds that are
782 available to reimburse hospitals for services provided. Any such
783 documents required to achieve the goals described in this
784 paragraph shall be submitted to the Centers for Medicare and
785 Medicaid Services, with a proposed effective date of July 1, 2019,
786 to the extent possible, but in no event shall the effective date
787 of such payment models be later than July 1, 2020. The Chairmen
788 of the Senate and House Medicaid Committees shall be provided a
789 copy of the proposed payment model(s) prior to submission.
790 Effective July 1, 2018, and until such time as any payment
791 model(s) as described above become effective, the division, in
792 consultation with the Mississippi Hospital Association and a
793 governmental hospital located in a county bordering the Gulf of
794 Mexico and the State of Alabama is authorized to implement a
795 transitional program for inpatient and outpatient payments and/or
796 supplemental payments (including, but not limited to, MHAP and



797 directed payments), to redistribute available supplemental funds
798 among hospital providers, provided that when compared to a
799 hospital's prior year supplemental payments, supplemental payments
800 made pursuant to any such transitional program shall not result in
801 a decrease of more than five percent (5%) and shall not increase
802 by more than the amount needed to maximize the distribution of the
803 available funds.

804 (c) (i) Not later than December 1, 2015, the
805 division shall, subject to approval by the Centers for Medicare
806 and Medicaid Services (CMS), establish, implement and operate a
807 Mississippi Hospital Access Program (MHAP) for the purpose of
808 protecting patient access to hospital care through hospital
809 inpatient reimbursement programs provided in this section designed
810 to maintain total hospital reimbursement for inpatient services
811 rendered by in-state hospitals and the out-of-state hospital that
812 is authorized by federal law to submit intergovernmental transfers
813 (IGTs) to the State of Mississippi and is classified as Level I
814 trauma center located in a county contiguous to the state line at
815 the maximum levels permissible under applicable federal statutes
816 and regulations, at which time the current inpatient Medicare
817 Upper Payment Limits (UPL) Program for hospital inpatient services
818 shall transition to the MHAP.

819 (ii) Subject only to approval by the Centers
820 for Medicare and Medicaid Services (CMS) where required, the MHAP
821 shall provide increased inpatient capitation (PMPM) payments to



822 managed care entities contracting with the division pursuant to
823 subsection (H) of this section to support availability of hospital
824 services or such other payments permissible under federal law
825 necessary to accomplish the intent of this subsection.

826 (iii) The intent of this subparagraph (c) is
827 that effective for all inpatient hospital Medicaid services during
828 state fiscal year 2016, and so long as this provision shall remain
829 in effect hereafter, the division shall to the fullest extent
830 feasible replace the additional reimbursement for hospital
831 inpatient services under the inpatient Medicare Upper Payment
832 Limits (UPL) Program with additional reimbursement under the MHAP
833 and other payment programs for inpatient and/or outpatient
834 payments which may be developed under the authority of this
835 paragraph.

836 (iv) The division shall assess each hospital
837 as provided in Section 43-13-145(4) (a) for the purpose of
838 financing the state portion of the MHAP, supplemental payments and
839 such other purposes as specified in Section 43-13-145. The
840 assessment will remain in effect as long as the MHAP and
841 supplemental payments are in effect.

842 (19) (a) Perinatal risk management services. The
843 division shall promulgate regulations to be effective from and
844 after October 1, 1988, to establish a comprehensive perinatal
845 system for risk assessment of all pregnant and infant Medicaid
846 recipients and for management, education and follow-up for those



847 who are determined to be at risk. Services to be performed
848 include case management, nutrition assessment/counseling,
849 psychosocial assessment/counseling and health education. The
850 division shall contract with the State Department of Health to
851 provide the services within this paragraph (Perinatal High Risk
852 Management/Infant Services System (PHRM/ISS)). The State
853 Department of Health as the agency for PHRM/ISS for the Division
854 of Medicaid shall be reimbursed on a full reasonable cost basis.

855 (b) Early intervention system services. The
856 division shall cooperate with the State Department of Health,
857 acting as lead agency, in the development and implementation of a
858 statewide system of delivery of early intervention services, under
859 Part C of the Individuals with Disabilities Education Act (IDEA).
860 The State Department of Health shall certify annually in writing
861 to the executive director of the division the dollar amount of
862 state early intervention funds available that will be utilized as
863 a certified match for Medicaid matching funds. Those funds then
864 shall be used to provide expanded targeted case management
865 services for Medicaid eligible children with special needs who are
866 eligible for the state's early intervention system.

867 Qualifications for persons providing service coordination shall be
868 determined by the State Department of Health and the Division of
869 Medicaid.

870 (20) Home- and community-based services for physically
871 disabled approved services as allowed by a waiver from the United



872 States Department of Health and Human Services for home- and
873 community-based services for physically disabled people using
874 state funds that are provided from the appropriation to the State
875 Department of Rehabilitation Services and used to match federal
876 funds under a cooperative agreement between the division and the
877 department, provided that funds for these services are
878 specifically appropriated to the Department of Rehabilitation
879 Services.

880 (21) Nurse practitioner services. Services furnished
881 by a registered nurse who is licensed and certified by the
882 Mississippi Board of Nursing as a nurse practitioner, including,
883 but not limited to, nurse anesthetists, nurse midwives, family
884 nurse practitioners, family planning nurse practitioners,
885 pediatric nurse practitioners, obstetrics-gynecology nurse
886 practitioners and neonatal nurse practitioners, under regulations
887 adopted by the division. Reimbursement for those services shall
888 not exceed ninety percent (90%) of the reimbursement rate for
889 comparable services rendered by a physician. The division may
890 provide for a reimbursement rate for nurse practitioner services
891 of up to one hundred percent (100%) of the reimbursement rate for
892 comparable services rendered by a physician for nurse practitioner
893 services that are provided after the normal working hours of the
894 nurse practitioner, as determined in accordance with regulations
895 of the division.



896 (22) Ambulatory services delivered in federally
897 qualified health centers, rural health centers and clinics of the
898 local health departments of the State Department of Health for
899 individuals eligible for Medicaid under this article based on
900 reasonable costs as determined by the division. Federally
901 qualified health centers shall be reimbursed by the Medicaid
902 prospective payment system as approved by the Centers for Medicare
903 and Medicaid Services.

904 (23) Inpatient psychiatric services. Inpatient
905 psychiatric services to be determined by the division for
906 recipients under age twenty-one (21) that are provided under the
907 direction of a physician in an inpatient program in a licensed
908 acute care psychiatric facility or in a licensed psychiatric
909 residential treatment facility, before the recipient reaches age
910 twenty-one (21) or, if the recipient was receiving the services
911 immediately before he or she reached age twenty-one (21), before
912 the earlier of the date he or she no longer requires the services
913 or the date he or she reaches age twenty-two (22), as provided by
914 federal regulations. From and after January 1, 2015, the division
915 shall update the fair rental reimbursement system for psychiatric
916 residential treatment facilities. Precertification of inpatient
917 days and residential treatment days must be obtained as required
918 by the division. From and after July 1, 2009, all state-owned and
919 state-operated facilities that provide inpatient psychiatric
920 services to persons under age twenty-one (21) who are eligible for



921 Medicaid reimbursement shall be reimbursed for those services on a
922 full reasonable cost basis.

923 (24) [Deleted]

924 (25) [Deleted]

925 (26) Hospice care. As used in this paragraph, the term
926 "hospice care" means a coordinated program of active professional
927 medical attention within the home and outpatient and inpatient
928 care that treats the terminally ill patient and family as a unit,
929 employing a medically directed interdisciplinary team. The
930 program provides relief of severe pain or other physical symptoms
931 and supportive care to meet the special needs arising out of
932 physical, psychological, spiritual, social and economic stresses
933 that are experienced during the final stages of illness and during
934 dying and bereavement and meets the Medicare requirements for
935 participation as a hospice as provided in federal regulations.

936 (27) Group health plan premiums and cost-sharing if it
937 is cost-effective as defined by the United States Secretary of
938 Health and Human Services.

939 (28) Other health insurance premiums that are
940 cost-effective as defined by the United States Secretary of Health
941 and Human Services. Medicare eligible must have Medicare Part B
942 before other insurance premiums can be paid.

943 (29) The Division of Medicaid may apply for a waiver
944 from the United States Department of Health and Human Services for
945 home- and community-based services for developmentally disabled



946 people using state funds that are provided from the appropriation
947 to the State Department of Mental Health and/or funds transferred
948 to the department by a political subdivision or instrumentality of
949 the state and used to match federal funds under a cooperative
950 agreement between the division and the department, provided that
951 funds for these services are specifically appropriated to the
952 Department of Mental Health and/or transferred to the department
953 by a political subdivision or instrumentality of the state.

954 (30) Pediatric skilled nursing services for eligible
955 persons under twenty-one (21) years of age.

956 (31) Targeted case management services for children
957 with special needs, under waivers from the United States
958 Department of Health and Human Services, using state funds that
959 are provided from the appropriation to the Mississippi Department
960 of Human Services and used to match federal funds under a
961 cooperative agreement between the division and the department.

962 (32) Care and services provided in Christian Science
963 Sanatoria listed and certified by the Commission for Accreditation
964 of Christian Science Nursing Organizations/Facilities, Inc.,
965 rendered in connection with treatment by prayer or spiritual means
966 to the extent that those services are subject to reimbursement
967 under Section 1903 of the federal Social Security Act.

968 (33) Podiatrist services.

969 (34) Assisted living services as provided through
970 home- and community-based services under Title XIX of the federal



971 Social Security Act, as amended, subject to the availability of
972 funds specifically appropriated for that purpose by the
973 Legislature.

974 (35) Services and activities authorized in Sections
975 43-27-101 and 43-27-103, using state funds that are provided from
976 the appropriation to the Mississippi Department of Human Services
977 and used to match federal funds under a cooperative agreement
978 between the division and the department.

979 (36) Nonemergency transportation services for
980 Medicaid-eligible persons, to be provided by the Division of
981 Medicaid. The division may contract with additional entities to
982 administer nonemergency transportation services as it deems
983 necessary. All providers shall have a valid driver's license,
984 valid vehicle license tags and a standard liability insurance
985 policy covering the vehicle. The division may pay providers a
986 flat fee based on mileage tiers, or in the alternative, may
987 reimburse on actual miles traveled. The division may apply to the
988 Center for Medicare and Medicaid Services (CMS) for a waiver to
989 draw federal matching funds for nonemergency transportation
990 services as a covered service instead of an administrative cost.
991 The PEER Committee shall conduct a performance evaluation of the
992 nonemergency transportation program to evaluate the administration
993 of the program and the providers of transportation services to
994 determine the most cost-effective ways of providing nonemergency
995 transportation services to the patients served under the program.



996 The performance evaluation shall be completed and provided to the
997 members of the Senate Medicaid Committee and the House Medicaid
998 Committee not later than January 1, 2019, and every two (2) years
999 thereafter.

1000 (37) [Deleted]

1001 (38) Chiropractic services. A chiropractor's manual
1002 manipulation of the spine to correct a subluxation, if x-ray
1003 demonstrates that a subluxation exists and if the subluxation has
1004 resulted in a neuromusculoskeletal condition for which
1005 manipulation is appropriate treatment, and related spinal x-rays
1006 performed to document these conditions. Reimbursement for
1007 chiropractic services shall not exceed Seven Hundred Dollars
1008 (\$700.00) per year per beneficiary.

1009 (39) Dually eligible Medicare/Medicaid beneficiaries.
1010 The division shall pay the Medicare deductible and coinsurance
1011 amounts for services available under Medicare, as determined by
1012 the division. From and after July 1, 2009, the division shall
1013 reimburse crossover claims for inpatient hospital services and
1014 crossover claims covered under Medicare Part B in the same manner
1015 that was in effect on January 1, 2008, unless specifically
1016 authorized by the Legislature to change this method.

1017 (40) [Deleted]

1018 (41) Services provided by the State Department of
1019 Rehabilitation Services for the care and rehabilitation of persons
1020 with spinal cord injuries or traumatic brain injuries, as allowed



1021 under waivers from the United States Department of Health and
1022 Human Services, using up to seventy-five percent (75%) of the
1023 funds that are appropriated to the Department of Rehabilitation
1024 Services from the Spinal Cord and Head Injury Trust Fund
1025 established under Section 37-33-261 and used to match federal
1026 funds under a cooperative agreement between the division and the
1027 department.

1028 (42) [Deleted]

1029 (43) The division shall provide reimbursement,
1030 according to a payment schedule developed by the division, for
1031 smoking cessation medications for pregnant women during their
1032 pregnancy and other Medicaid-eligible women who are of
1033 child-bearing age.

1034 (44) Nursing facility services for the severely
1035 disabled.

1036 (a) Severe disabilities include, but are not
1037 limited to, spinal cord injuries, closed-head injuries and
1038 ventilator-dependent patients.

1039 (b) Those services must be provided in a long-term
1040 care nursing facility dedicated to the care and treatment of
1041 persons with severe disabilities.

1042 (45) Physician assistant services. Services furnished
1043 by a physician assistant who is licensed by the State Board of
1044 Medical Licensure and is practicing with physician supervision
1045 under regulations adopted by the board, under regulations adopted



1046 by the division. Reimbursement for those services shall not
1047 exceed ninety percent (90%) of the reimbursement rate for
1048 comparable services rendered by a physician. The division may
1049 provide for a reimbursement rate for physician assistant services
1050 of up to one hundred percent (100%) or the reimbursement rate for
1051 comparable services rendered by a physician for physician
1052 assistant services that are provided after the normal working
1053 hours of the physician assistant, as determined in accordance with
1054 regulations of the division.

1055 (46) The division shall make application to the federal
1056 Centers for Medicare and Medicaid Services (CMS) for a waiver to
1057 develop and provide services for children with serious emotional
1058 disturbances as defined in Section 43-14-1(1), which may include
1059 home- and community-based services, case management services or
1060 managed care services through mental health providers certified by
1061 the Department of Mental Health. The division may implement and
1062 provide services under this waived program only if funds for
1063 these services are specifically appropriated for this purpose by
1064 the Legislature, or if funds are voluntarily provided by affected
1065 agencies.

1066 (47) (a) The division may develop and implement
1067 disease management programs for individuals with high-cost chronic
1068 diseases and conditions, including the use of grants, waivers,
1069 demonstrations or other projects as necessary.



1070 (b) Participation in any disease management
1071 program implemented under this paragraph (47) is optional with the
1072 individual. An individual must affirmatively elect to participate
1073 in the disease management program in order to participate, and may
1074 elect to discontinue participation in the program at any time.

1075 (48) Pediatric long-term acute care hospital services.

1076 (a) Pediatric long-term acute care hospital
1077 services means services provided to eligible persons under
1078 twenty-one (21) years of age by a freestanding Medicare-certified
1079 hospital that has an average length of inpatient stay greater than
1080 twenty-five (25) days and that is primarily engaged in providing
1081 chronic or long-term medical care to persons under twenty-one (21)
1082 years of age.

1083 (b) The services under this paragraph (48) shall
1084 be reimbursed as a separate category of hospital services.

1085 (49) The division shall establish copayments and/or
1086 coinsurance for all Medicaid services for which copayments and/or
1087 coinsurance are allowable under federal law or regulation.

1088 (50) Services provided by the State Department of
1089 Rehabilitation Services for the care and rehabilitation of persons
1090 who are deaf and blind, as allowed under waivers from the United
1091 States Department of Health and Human Services to provide home-
1092 and community-based services using state funds that are provided
1093 from the appropriation to the State Department of Rehabilitation
1094 Services or if funds are voluntarily provided by another agency.



1095 (51) Upon determination of Medicaid eligibility and in
1096 association with annual redetermination of Medicaid eligibility,
1097 beneficiaries shall be encouraged to undertake a physical
1098 examination that will establish a base-line level of health and
1099 identification of a usual and customary source of care (a medical
1100 home) to aid utilization of disease management tools. This
1101 physical examination and utilization of these disease management
1102 tools shall be consistent with current United States Preventive
1103 Services Task Force or other recognized authority recommendations.

1104 For persons who are determined ineligible for Medicaid, the
1105 division will provide information and direction for accessing
1106 medical care and services in the area of their residence.

1107 (52) Notwithstanding any provisions of this article,
1108 the division may pay enhanced reimbursement fees related to trauma
1109 care, as determined by the division in conjunction with the State
1110 Department of Health, using funds appropriated to the State
1111 Department of Health for trauma care and services and used to
1112 match federal funds under a cooperative agreement between the
1113 division and the State Department of Health. The division, in
1114 conjunction with the State Department of Health, may use grants,
1115 waivers, demonstrations, or other projects as necessary in the
1116 development and implementation of this reimbursement program.

1117 (53) Targeted case management services for high-cost
1118 beneficiaries may be developed by the division for all services
1119 under this section.



1120 (54) [Deleted]

1121 (55) Therapy services. The plan of care for therapy
1122 services may be developed to cover a period of treatment for up to
1123 six (6) months, but in no event shall the plan of care exceed a
1124 six-month period of treatment. The projected period of treatment
1125 must be indicated on the initial plan of care and must be updated
1126 with each subsequent revised plan of care. Based on medical
1127 necessity, the division shall approve certification periods for
1128 less than or up to six (6) months, but in no event shall the
1129 certification period exceed the period of treatment indicated on
1130 the plan of care. The appeal process for any reduction in therapy
1131 services shall be consistent with the appeal process in federal
1132 regulations.

1133 (56) Prescribed pediatric extended care centers
1134 services for medically dependent or technologically dependent
1135 children with complex medical conditions that require continual
1136 care as prescribed by the child's attending physician, as
1137 determined by the division.

1138 (57) No Medicaid benefit shall restrict coverage for
1139 medically appropriate treatment prescribed by a physician and
1140 agreed to by a fully informed individual, or if the individual
1141 lacks legal capacity to consent by a person who has legal
1142 authority to consent on his or her behalf, based on an
1143 individual's diagnosis with a terminal condition. As used in this
1144 paragraph (57), "terminal condition" means any aggressive



1145 malignancy, chronic end-stage cardiovascular or cerebral vascular
1146 disease, or any other disease, illness or condition which a
1147 physician diagnoses as terminal.

1148 (58) Treatment services for persons with opioid
1149 dependency or other highly addictive substance use disorders. The
1150 division is authorized to reimburse eligible providers for
1151 treatment of opioid dependency and other highly addictive
1152 substance use disorders, as determined by the division. Treatment
1153 related to these conditions shall not count against any physician
1154 visit limit imposed under this section.

1155 (59) The division shall allow beneficiaries between the
1156 ages of ten (10) and eighteen (18) years to receive vaccines
1157 through a pharmacy venue.

1158 (60) Beginning July 1, 2019, essential health benefits
1159 as described in the federal Patient Protection and Affordable Care
1160 Act of 2010 and as amended, for individuals eligible for Medicaid
1161 under the federal Patient Protection and Affordable Care Act of
1162 2010 as amended, as described in Section 43-13-115(28).

1163 (B) Notwithstanding any other provision of this article to
1164 the contrary, the division shall reduce the rate of reimbursement
1165 to providers for any service provided under this section by five
1166 percent (5%) of the allowed amount for that service. However, the
1167 reduction in the reimbursement rates required by this subsection
1168 (B) shall not apply to inpatient hospital services, outpatient
1169 hospital services, nursing facility services, intermediate care



1170 facility services, psychiatric residential treatment facility
1171 services, pharmacy services provided under subsection (A) (9) of
1172 this section, or any service provided by the University of
1173 Mississippi Medical Center or a state agency, a state facility or
1174 a public agency that either provides its own state match through
1175 intergovernmental transfer or certification of funds to the
1176 division, or a service for which the federal government sets the
1177 reimbursement methodology and rate. From and after January 1,
1178 2010, the reduction in the reimbursement rates required by this
1179 subsection (B) shall not apply to physicians' services. In
1180 addition, the reduction in the reimbursement rates required by
1181 this subsection (B) shall not apply to case management services
1182 and home-delivered meals provided under the home- and
1183 community-based services program for the elderly and disabled by a
1184 planning and development district (PDD). Planning and development
1185 districts participating in the home- and community-based services
1186 program for the elderly and disabled as case management providers
1187 shall be reimbursed for case management services at the maximum
1188 rate approved by the Centers for Medicare and Medicaid Services
1189 (CMS). The Medical Care Advisory Committee established in Section
1190 43-13-107(3) (a) shall develop a study and advise the division with
1191 respect to (1) determining the effect of any across-the-board five
1192 percent (5%) reduction in the rate of reimbursement to providers
1193 authorized under this subsection (B), and (2) comparing provider
1194 reimbursement rates to those applicable in other states in order



1195 to establish a fair and equitable provider reimbursement structure
1196 that encourages participation in the Medicaid program, and (3)
1197 comparing dental and orthodontic services reimbursement rates to
1198 those applicable in other states in fee-for-service and in managed
1199 care programs in order to establish a fair and equitable dental
1200 provider reimbursement structure that encourages participation in
1201 the Medicaid program, and (4) make a report thereon with any
1202 legislative recommendations to the Chairmen of the Senate and
1203 House Medicaid Committees prior to January 1, 2019.

1204 (C) The division may pay to those providers who participate
1205 in and accept patient referrals from the division's emergency room
1206 redirection program a percentage, as determined by the division,
1207 of savings achieved according to the performance measures and
1208 reduction of costs required of that program. Federally qualified
1209 health centers may participate in the emergency room redirection
1210 program, and the division may pay those centers a percentage of
1211 any savings to the Medicaid program achieved by the centers'
1212 accepting patient referrals through the program, as provided in
1213 this subsection (C).

1214 (D) [Deleted]

1215 (E) Notwithstanding any provision of this article, no new
1216 groups or categories of recipients and new types of care and
1217 services may be added without enabling legislation from the
1218 Mississippi Legislature, except that the division may authorize



1219 those changes without enabling legislation when the addition of
1220 recipients or services is ordered by a court of proper authority.

1221 (F) The executive director shall keep the Governor advised
1222 on a timely basis of the funds available for expenditure and the
1223 projected expenditures. Notwithstanding any other provisions of
1224 this article, if current or projected expenditures of the division
1225 are reasonably anticipated to exceed the amount of funds
1226 appropriated to the division for any fiscal year, the Governor,
1227 after consultation with the executive director, shall take all
1228 appropriate measures to reduce costs, which may include, but are
1229 not limited to:

1230 (1) Reducing or discontinuing any or all services that
1231 are deemed to be optional under Title XIX of the Social Security
1232 Act;

1233 (2) Reducing reimbursement rates for any or all service
1234 types;

1235 (3) Imposing additional assessments on health care
1236 providers; or

1237 (4) Any additional cost-containment measures deemed
1238 appropriate by the Governor.

1239 Beginning in fiscal year 2010 and in fiscal years thereafter,
1240 when Medicaid expenditures are projected to exceed funds available
1241 for the fiscal year, the division shall submit the expected
1242 shortfall information to the PEER Committee not later than
1243 December 1 of the year in which the shortfall is projected to



1244 occur. PEER shall review the computations of the division and
1245 report its findings to the Legislative Budget Office not later
1246 than January 7 in any year.

1247 (G) Notwithstanding any other provision of this article, it
1248 shall be the duty of each provider participating in the Medicaid
1249 program to keep and maintain books, documents and other records as
1250 prescribed by the Division of Medicaid in substantiation of its
1251 cost reports for a period of three (3) years after the date of
1252 submission to the Division of Medicaid of an original cost report,
1253 or three (3) years after the date of submission to the Division of
1254 Medicaid of an amended cost report.

1255 (H) (1) Notwithstanding any other provision of this
1256 article, the division is authorized to implement (a) a managed
1257 care program, (b) a coordinated care program, (c) a coordinated
1258 care organization program, (d) a health maintenance organization
1259 program, (e) a patient-centered medical home program, (f) an
1260 accountable care organization program, (g) provider-sponsored
1261 health plan, or (h) any combination of the above programs.
1262 Managed care programs, coordinated care programs, coordinated care
1263 organization programs, health maintenance organization programs,
1264 patient-centered medical home programs, accountable care
1265 organization programs, provider-sponsored health plans, or any
1266 combination of the above programs or other similar programs
1267 implemented by the division under this section shall be limited to
1268 the greater of (i) forty-five percent (45%) of the total



1269 enrollment of Medicaid beneficiaries, or (ii) the categories of
1270 beneficiaries participating in the program as of January 1, 2014,
1271 plus the categories of beneficiaries composed primarily of persons
1272 younger than nineteen (19) years of age, and the division is
1273 authorized to enroll categories of beneficiaries in such
1274 program(s) as long as the appropriate limitations are not exceeded
1275 in the aggregate. As a condition for the approval of any program
1276 under this subsection (H) (1), the division shall require that no
1277 program may:

1278 (a) Pay providers at a rate that is less than the
1279 Medicaid All Patient Refined Diagnosis Related Groups (APR-DRG)
1280 reimbursement rate;

1281 (b) Override the medical decisions of hospital
1282 physicians or staff regarding patients admitted to a hospital for
1283 an emergency medical condition as defined by 42 US Code Section
1284 1395dd. This restriction (b) does not prohibit the retrospective
1285 review of the appropriateness of the determination that an
1286 emergency medical condition exists by chart review or coding
1287 algorithm, nor does it prohibit prior authorization for
1288 nonemergency hospital admissions;

1289 (c) Pay providers at a rate that is less than the
1290 normal Medicaid reimbursement rate. It is the intent of the
1291 Legislature that all managed care entities described in this
1292 subsection (H), in collaboration with the division, develop and
1293 implement innovative payment models that incentivize improvements



1294 in health care quality, outcomes, or value, as determined by the
1295 division. Participation in the provider network of any managed
1296 care, coordinated care, provider-sponsored health plan, or similar
1297 contractor shall not be conditioned on the provider's agreement to
1298 accept such alternative payment models;

1299 (d) Implement a prior authorization program for
1300 prescription drugs that is more stringent than the prior
1301 authorization processes used by the division in its administration
1302 of the Medicaid program;

1303 (e) [Deleted]

1304 (f) Implement a preferred drug list that is more
1305 stringent than the mandatory preferred drug list established by
1306 the division under subsection (A)(9) of this section;

1307 (g) Implement a policy which denies beneficiaries
1308 with hemophilia access to the federally funded hemophilia
1309 treatment centers as part of the Medicaid Managed Care network of
1310 providers. All Medicaid beneficiaries with hemophilia shall
1311 receive unrestricted access to anti-hemophilia factor products
1312 through noncapitated reimbursement programs.

1313 (2) Notwithstanding any provision of this section, no
1314 expansion of Medicaid managed care program contracts may be
1315 implemented by the division without enabling legislation from the
1316 Mississippi Legislature. There is hereby established the
1317 Commission on Expanding Medicaid Managed Care to develop a
1318 recommendation to the Legislature and the Division of Medicaid



1319 relative to authorizing the division to expand Medicaid managed
1320 care contracts to include additional categories of
1321 Medicaid-eligible beneficiaries, and to study the feasibility of
1322 developing an alternative managed care payment model for medically
1323 complex children.

1324 (a) The members of the commission shall be as
1325 follows:

1326 (i) The Chairmen of the Senate Medicaid
1327 Committee and the Senate Appropriations Committee and a member of
1328 the Senate appointed by the Lieutenant Governor;

1329 (ii) The Chairmen of the House Medicaid
1330 Committee and the House Appropriations Committee and a member of
1331 the House of Representatives appointed by the Speaker of the
1332 House;

1333 (iii) The Executive Director of the Division
1334 of Medicaid, Office of the Governor;

1335 (iv) The Commissioner of the Mississippi
1336 Department of Insurance;

1337 (v) A representative of a hospital that
1338 operates in Mississippi, appointed by the Speaker of the House;

1339 (vi) A licensed physician appointed by the
1340 Lieutenant Governor;

1341 (vii) A licensed pharmacist appointed by the
1342 Governor;



1343 (viii) A licensed mental health professional
1344 or alcohol and drug counselor appointed by the Governor;

1345 (ix) The Executive Director of the
1346 Mississippi State Medical Association (MSMA);

1347 (x) Representatives of each of the current
1348 managed care organizations operated in the state appointed by the
1349 Governor; and

1350 (xi) A representative of the long-term care
1351 industry appointed by the Governor.

1352 (b) The commission shall meet within forty-five
1353 (45) days of the effective date of this section, upon the call of
1354 the Governor, and shall evaluate the Medicaid managed care
1355 program. Specifically, the commission shall:

1356 (i) Review the program's financial metrics;

1357 (ii) Review the program's product offerings;

1358 (iii) Review the program's impact on
1359 insurance premiums for individuals and small businesses;

1360 (iv) Make recommendations for future managed
1361 care program modifications;

1362 (v) Determine whether the expansion of the
1363 Medicaid managed care program may endanger the access to care by
1364 vulnerable patients;

1365 (vi) Review the financial feasibility and
1366 health outcomes of populations health management as specifically
1367 provided in paragraph (2) above;



1368 (vii) Make recommendations regarding a pilot
1369 program to evaluate an alternative managed care payment model for
1370 medically complex children;

1371 (viii) The commission may request the
1372 assistance of the PEER Committee in making its evaluation; and

1373 (ix) The commission shall solicit information
1374 from any person or entity the commission deems relevant to its
1375 study.

1376 (c) The members of the commission shall elect a
1377 chair from among the members. The commission shall develop and
1378 report its findings and any recommendations for proposed
1379 legislation to the Governor and the Legislature on or before
1380 December 1, 2018. A quorum of the membership shall be required to
1381 approve any final report and recommendation. Members of the
1382 commission shall be reimbursed for necessary travel expense in the
1383 same manner as public employees are reimbursed for official duties
1384 and members of the Legislature shall be reimbursed in the same
1385 manner as for attending out-of-session committee meetings.

1386 (d) Upon making its report, the commission shall
1387 be dissolved.

1388 (3) Any contractors providing direct patient care under
1389 a managed care program established in this section shall provide
1390 to the Legislature and the division statistical data to be shared
1391 with provider groups in order to improve patient access,
1392 appropriate utilization, cost savings and health outcomes not



1393 later than October 1 of each year. The division and the
1394 contractors participating in the managed care program, a
1395 coordinated care program or a provider-sponsored health plan shall
1396 be subject to annual program audits performed by the Office of the
1397 State Auditor, the PEER Committee and/or an independent third
1398 party that has no existing contractual relationship with the
1399 division. Those audits shall determine among other items, the
1400 financial benefit to the State of Mississippi of the managed care
1401 program, the difference between the premiums paid to the managed
1402 care contractors and the payments made by those contractors to
1403 health care providers, compliance with performance measures
1404 required under the contracts, and whether costs have been
1405 contained due to improved health care outcomes. In addition, the
1406 audit shall review the most common claim denial codes to determine
1407 the reasons for the denials. This audit report shall be
1408 considered a public document and shall be posted in its entirety
1409 on the division's website.

1410 (4) All health maintenance organizations, coordinated
1411 care organizations, provider-sponsored health plans, or other
1412 organizations paid for services on a capitated basis by the
1413 division under any managed care program or coordinated care
1414 program implemented by the division under this section shall
1415 reimburse all providers in those organizations at rates no lower
1416 than those provided under this section for beneficiaries who are
1417 not participating in those programs.



1418 (5) No health maintenance organization, coordinated
1419 care organization, provider-sponsored health plan, or other
1420 organization paid for services on a capitated basis by the
1421 division under any managed care program or coordinated care
1422 program implemented by the division under this section shall
1423 require its providers or beneficiaries to use any pharmacy that
1424 ships, mails or delivers prescription drugs or legend drugs or
1425 devices.

1426 (6) No health maintenance organization, coordinated
1427 care organization, provider-sponsored health plan, or other
1428 organization paid for services on a capitated basis by the
1429 division under any managed care program or coordinated care
1430 program implemented by the division under this section shall
1431 require its providers to be credentialed by the organization in
1432 order to receive reimbursement from the organization, but those
1433 organizations shall recognize the credentialing of the providers
1434 by the division.

1435 (I) [Deleted]

1436 (J) There shall be no cuts in inpatient and outpatient
1437 hospital payments, or allowable days or volumes, as long as the
1438 hospital assessment provided in Section 43-13-145 is in effect.
1439 This subsection (J) shall not apply to decreases in payments that
1440 are a result of: reduced hospital admissions, audits or payments
1441 under the APR-DRG or APC models, or a managed care program or
1442 similar model described in subsection (H) of this section.



1443 (K) This section shall stand repealed on July 1, 2021.

1444 **SECTION 5.** Section 37-153-7, Mississippi Code of 1972, is
1445 amended as follows:

1446 37-153-7. (1) There is created the Mississippi State
1447 Workforce Investment Board. The Mississippi State Workforce
1448 Investment Board shall be composed of * * * thirty-eight (38)
1449 voting members, of which a majority shall be representatives of
1450 business and industry in accordance with the federal Workforce
1451 Investment Act.

1452 (a) The Governor shall appoint the following members of
1453 the board to serve a term of four (4) years:

1454 (i) The Executive Director of the Mississippi
1455 Association of Supervisors, or his/her designee;

1456 (ii) The Executive Director of the Mississippi
1457 Municipal League;

1458 (iii) One (1) elected mayor;

1459 (iv) One (1) * * * elected county supervisor;

1460 (v) * * * Two (2) representatives of labor
1461 organizations, who * * * have been nominated by state labor
1462 federations;

1463 (vi) * * * Two (2) representatives of individuals
1464 and organizations that * * * have experience with respect to youth
1465 activities;

1466 (vii) One (1) representative of the Mississippi
1467 Association of Planning and Development Districts;



1468 (viii) One (1) representative from each of the
1469 four (4) workforce areas in the state, who has been nominated by
1470 the community colleges in each respective area, with the consent
1471 of the elected county supervisors within the respective workforce
1472 area;

1473 * * *

1474 (* * *ix) * * * Nineteen (19) representatives of
1475 business owners nominated by business and industry organizations,
1476 which may include representatives of the various planning and
1477 development districts in Mississippi * * *; and

1478 (x) One (1) woman with expertise in assisting
1479 women in job training and securing employment in nontraditional
1480 occupations.

1481 (b) The following state officials shall be members of
1482 the board:

1483 (i) The Executive Director of the Mississippi
1484 Department of Employment Security;

1485 (ii) The Executive Director of the Department of
1486 Rehabilitation Services;

1487 (iii) The State Superintendent of Public
1488 Education;

1489 (iv) The Executive Director of the Mississippi
1490 Development Authority;

1491 (v) The Executive Director of the Mississippi
1492 Department of Human Services;



1493 (vi) The Executive Director of the Mississippi
1494 Community College Board; and

1495 (vii) The Commissioner of the Institutions of
1496 Higher Learning.

1497 (c) The Governor, or his or her designee, shall serve
1498 as a member.

1499 (d) Four (4) legislators, who shall serve in a
1500 nonvoting capacity, two (2) of whom shall be appointed by the
1501 Lieutenant Governor from the membership of the Mississippi Senate,
1502 and two (2) of whom shall be appointed by the Speaker of the House
1503 from the membership of the Mississippi House of Representatives.

1504 (e) The membership of the board shall reflect the
1505 diversity of the State of Mississippi.

1506 (f) The Governor shall designate the * * * Chair of the
1507 Mississippi State Workforce Investment Board from among the voting
1508 members of the board, and a quorum of the board shall consist of a
1509 majority of the voting members of the board.

1510 (g) The voting members of the board who are not state
1511 employees shall be entitled to reimbursement of their reasonable
1512 expenses incurred in carrying out their duties under this chapter,
1513 from any funds available for that purpose.

1514 (h) The Mississippi Department of Employment Security
1515 shall be responsible for providing necessary administrative,
1516 clerical and budget support for the State Workforce Investment
1517 Board.



1518 (2) The Mississippi Department of Employment Security shall
1519 establish limits on administrative costs for each portion of
1520 Mississippi's workforce development system consistent with the
1521 federal Workforce Investment Act or any future federal workforce
1522 legislation.

1523 (3) The Mississippi State Workforce Investment Board shall
1524 have the following duties:

1525 (a) Develop and submit to the Governor a strategic plan
1526 for an integrated state workforce development system that aligns
1527 resources and structures the system to more effectively and
1528 efficiently meet the demands of Mississippi's employers and job
1529 seekers. This plan will comply with the federal Workforce
1530 Investment Act of 1998, as amended, the federal Workforce
1531 Innovation and Opportunity Act of 2014 and amendments and
1532 successor legislation to these acts;

1533 (b) Assist the Governor in the development and
1534 continuous improvement of the statewide workforce investment
1535 system that shall include:

1536 (i) Development of linkages in order to assure
1537 coordination and nonduplication among programs and activities; and

1538 (ii) Review local workforce development plans that
1539 reflect the use of funds from the federal Workforce Investment
1540 Act, * * * the Wagner-Peyser Act and the * * * Mississippi
1541 Comprehensive Workforce Training and Education Consolidation Act;



1542 (c) Recommend the designation of local workforce
1543 investment areas as required in Section 116 of the federal
1544 Workforce Investment Act of 1998 and the Workforce Innovation and
1545 Opportunity Act of 2014. There shall be four (4) workforce
1546 investment areas that are generally aligned with the planning and
1547 development district structure in Mississippi. Planning and
1548 development districts will serve as the fiscal agents to manage
1549 Workforce Investment Act funds, oversee and support the local
1550 workforce investment boards aligned with the area and the local
1551 programs and activities as delivered by the one-stop employment
1552 and training system. The planning and development districts will
1553 perform this function through the provisions of the county
1554 cooperative service districts created under Sections 19-3-101
1555 through 19-3-115; however, planning and development districts
1556 currently performing this function under the Interlocal
1557 Cooperation Act of 1974, Sections 17-13-1 through 17-13-17, may
1558 continue to do so;

1559 (d) Assist the Governor in the development of an
1560 allocation formula for the distribution of funds for adult
1561 employment and training activities and youth activities to local
1562 workforce investment areas;

1563 (e) Recommend comprehensive, results-oriented measures
1564 that shall be applied to all of Mississippi's workforce
1565 development system programs;



1566 (f) Assist the Governor in the establishment and
1567 management of a one-stop employment and training system conforming
1568 to the requirements of the federal Workforce Investment Act of
1569 1998 and the Workforce Innovation and Opportunity Act of 2014, as
1570 amended, recommending policy for implementing the Governor's
1571 approved plan for employment and training activities and services
1572 within the state. In developing this one-stop career operating
1573 system, the Mississippi State Workforce Investment Board, in
1574 conjunction with local workforce investment boards, shall:

1575 (i) Design broad guidelines for the delivery of
1576 workforce development programs;

1577 (ii) Identify all existing delivery agencies and
1578 other resources;

1579 (iii) Define appropriate roles of the various
1580 agencies to include an analysis of service providers' strengths
1581 and weaknesses;

1582 (iv) Determine the best way to * * * use the
1583 various agencies to deliver services to recipients; and

1584 (v) Develop a financial plan to support the
1585 delivery system that shall, at a minimum, include an
1586 accountability system;

1587 (g) Assist the Governor in reducing duplication of
1588 services by urging the local workforce investment boards to
1589 designate the local community/junior college as the operator of
1590 the WIN Job Center. Incentive grants of Two Hundred Thousand



1591 Dollars (\$200,000.00) from federal Workforce Investment Act funds
1592 may be awarded to the local workforce boards where the
1593 community/junior college district is designated as the WIN Job
1594 Center. These grants must be provided to the community and junior
1595 colleges for the extraordinary costs of coordinating with the
1596 Workforce Investment Act, advanced technology centers and advanced
1597 skills centers. In no case shall these funds be used to supplant
1598 state resources being used for operation of workforce development
1599 programs;

1600 (h) To provide authority, in accordance with any
1601 executive order of the Governor, for developing the necessary
1602 collaboration among state agencies at the highest level for
1603 accomplishing the purposes of this chapter;

1604 (i) To monitor the effectiveness of the workforce
1605 development centers and WIN job centers;

1606 (j) To advise the Governor, public schools,
1607 community/junior colleges and institutions of higher learning on
1608 effective school-to-work transition policies and programs that
1609 link students moving from high school to higher education and
1610 students moving between community colleges and four-year
1611 institutions in pursuit of academic and technical skills training;

1612 (k) To work with industry to identify barriers that
1613 inhibit the delivery of quality workforce education and the
1614 responsiveness of educational institutions to the needs of
1615 industry;



1616 (1) To provide periodic assessments on effectiveness
1617 and results of the overall Mississippi comprehensive workforce
1618 development system and district councils; and

1619 (m) To assist the Governor in carrying out any other
1620 responsibility required by the federal Workforce Investment Act of
1621 1998, as amended and the Workforce Innovation and Opportunity Act,
1622 successor legislation and amendments.

1623 (4) The Mississippi State Workforce Investment Board shall
1624 coordinate all training programs and funds in the State of
1625 Mississippi.

1626 Each state agency director responsible for workforce training
1627 activities shall advise the Mississippi State Workforce Investment
1628 Board of appropriate federal and state requirements. Each such
1629 state agency director shall remain responsible for the actions of
1630 his or her agency; however, each state agency and director shall
1631 work cooperatively, and shall be individually and collectively
1632 responsible to the Governor for the successful implementation of
1633 the statewide workforce investment system. The Governor, as the
1634 Chief Executive Officer of the state, shall have complete
1635 authority to enforce cooperation among all entities within the
1636 state that * * * use federal or state funding for the conduct of
1637 workforce development activities.

1638 (5) The State Workforce Investment Board shall establish a
1639 Rules Committee. The Rules Committee, in consultation with the
1640 full board, shall be designated as the body with the sole



1641 authority to promulgate rules and regulations for distribution of
1642 Mississippi Works Funds created in Section 71-5-353. The State
1643 Workforce Investment Board Rules Committee shall develop and
1644 submit rules and regulations in accordance with the Mississippi
1645 Administrative Procedures Act, within sixty (60) days of March 21,
1646 2016. The State Workforce Investment Board Rules Committee shall
1647 consist of the following State Workforce Investment Board members:

1648 (a) The Executive Director of the Mississippi
1649 Development Authority;

1650 (b) The Executive Director of the Mississippi
1651 Department of Employment Security;

1652 (c) The Executive Director of the Mississippi Community
1653 College Board;

1654 (d) The Chair of the Mississippi Association of
1655 Community and Junior Colleges;

1656 (e) The Chair of the State Workforce Investment Board;

1657 (f) A representative from the workforce areas selected
1658 by the Mississippi Association of Workforce Areas, Inc.;

1659 (g) A business representative currently serving on the
1660 board, selected by the * * * Chair of the State Workforce
1661 Investment Board; and

1662 (h) Two (2) legislators, who shall serve in a nonvoting
1663 capacity, one (1) of whom shall be appointed by the Lieutenant
1664 Governor from the membership of the Mississippi Senate and one (1)
1665 of whom shall be appointed by the Speaker of the House of



1666 Representatives from the membership of the Mississippi House of
1667 Representatives.

1668 (6) The Mississippi State Workforce Investment Board shall
1669 create and implement performance metrics for the Mississippi Works
1670 Fund to determine the added value to the local and state economy
1671 and the contribution to the future growth of the state economy. A
1672 report on the performance of the fund shall be made to the
1673 Governor, Lieutenant Governor and Speaker of the House of
1674 Representatives annually, throughout the life of the fund.

1675 **SECTION 6.** Section 7-1-355, Mississippi Code of 1972, is
1676 amended as follows:

1677 7-1-355. (1) The Mississippi Department of Employment
1678 Security, Office of the Governor, is designated as the sole
1679 administrator of all programs for which the state is the prime
1680 sponsor under Title 1(B) of Public Law 105-220, Workforce
1681 Investment Act of 1998, and the Workforce Innovation Opportunity
1682 Act (Public Law 113-128) and the regulations promulgated
1683 thereunder, and may take all necessary action to secure to this
1684 state the benefits of that legislation. The Mississippi
1685 Department of Employment Security, Office of the Governor, may
1686 receive and disburse funds for those programs that become
1687 available to it from any source.

1688 (2) The Mississippi Department of Employment Security,
1689 Office of the Governor, shall establish guidelines on the amount
1690 and/or percentage of indirect and/or administrative expenses by



1691 the local fiscal agent or the Workforce Development Center
1692 operator. The Mississippi Department of Employment Security,
1693 Office of the Governor, shall develop an accountability system and
1694 make an annual report to the Legislature before December 31 of
1695 each year on Workforce Investment Act activities. The report
1696 shall include, but is not limited to, the following:

1697 (a) The total number of individuals served through the
1698 Workforce Development Centers and the percentage and number of
1699 individuals for which a quarterly follow-up is provided;

1700 (b) The number of individuals who receive core services
1701 by each center;

1702 (c) The number of individuals who receive intensive
1703 services by each center;

1704 (d) The number of Workforce Investment Act vouchers
1705 issued by the Workforce Development Centers including:

1706 (i) A list of schools and colleges to which these
1707 vouchers were issued and the average cost per school of the
1708 vouchers; and

1709 (ii) A list of the types of programs for which
1710 these vouchers were issued;

1711 (e) The number of individuals placed in a job through
1712 Workforce Development Centers;

1713 (f) The monies and the amount retained for
1714 administrative and other costs received from Workforce Investment
1715 Act or Workforce Innovation Opportunity Act funds or Workforce



1716 Innovation Opportunity Act for each agency or organization that
1717 Workforce Investment Act or Workforce Innovation Opportunity Act
1718 funds flow through as a percentage and actual dollar amount of all
1719 Workforce Investment Act or Workforce Innovation Opportunity Act
1720 funds received.

1721 (3) The Mississippi Department of Employment Security shall
1722 achieve gender pay equity in the Workforce Investment Act or
1723 Workforce Innovation Opportunity Act workforce development system.
1724 The department shall include in the annual report required by
1725 subsection (2) of this section:

1726 (a) The gender and race of those seeking employment
1727 services;

1728 (b) Training by training provider extended to each
1729 participant by gender; and

1730 (c) Earnings for each participant by gender as
1731 verification of pay equity in the workforce system.

1732 **SECTION 7. Equal pay certificate.** (1) No department or
1733 agency of the state shall execute a contract or agreement in
1734 excess of One Hundred Thousand Dollars (\$100,000.00) with a
1735 business that has forty (40) or more full-time employees in this
1736 state or a state where the business has its primary place of
1737 business on a single day during the prior twelve (12) months,
1738 unless the business has an equal pay certificate or it has
1739 certified in writing that it is exempt. A certificate is valid
1740 for four (4) years.



1741 (2) This section does not apply to a business with respect
1742 to a specific contract if the Executive Director of the Department
1743 of Finance and Administration determines that application of this
1744 section would cause undue hardship to the contracting entity.

1745 (3) A business shall apply for an equal pay certificate by
1746 paying a One Hundred Fifty Dollar (\$150.00) filing fee and
1747 submitting an equal pay compliance statement to the Department of
1748 Finance and Administration. The proceeds from the fees collected
1749 under this section shall be deposited in an equal pay certificate
1750 special revenue account. The Department of Finance and
1751 Administration shall issue an equal pay certificate of compliance
1752 to a business that submits to the department a statement signed by
1753 the chairperson of the board or chief executive officer of the
1754 business:

1755 (a) That the business is in compliance with Title VII
1756 of the Civil Rights Act of 1964;

1757 (b) That the average compensation for its female
1758 employees is not consistently below the average compensation for
1759 its male employees within each of the major job categories in the
1760 EEO-1 Employer Information Report for which an employee is
1761 expected to perform work under the contract, taking into account
1762 factors such as length of service, requirements of specific jobs,
1763 experience, skill, effort, responsibility, working conditions of
1764 the job, or other mitigating factors;



1765 (c) That the business does not restrict employees of
1766 one (1) sex to certain job classifications and makes retention and
1767 promotion decisions without regard to sex;

1768 (d) That wage and benefit disparities are corrected
1769 when identified to ensure compliance with the laws cited in
1770 paragraph (a) and with paragraph (b) of this subsection; and

1771 (e) How often wages and benefits are evaluated to
1772 ensure compliance with the laws cited in paragraph (a) and with
1773 paragraph (b) of this subsection.

1774 (4) The equal pay compliance statement shall also indicate
1775 whether the business, in setting compensation and benefits, uses:

1776 (a) A market pricing approach;

1777 (b) State prevailing wage or union contract
1778 requirements;

1779 (c) A performance pay system;

1780 (d) An internal analysis; or

1781 (e) An alternative approach to determine what level of
1782 wages and benefits to pay its employees. If the business uses an
1783 alternative approach, the business must provide a description of
1784 its approach.

1785 Receipt of the equal pay compliance statement by the
1786 commissioner does not establish compliance with the laws set forth
1787 in subsection (3) (a) of this section.

1788 (5) The Department of Finance and Administration must issue
1789 an equal pay certificate, or a statement of why the application



1790 was rejected, within fifteen (15) days of receipt of the
1791 application. An application may be rejected only if it does not
1792 comply with the requirements of subsection (3) of this section.

1793 (6) An equal pay certificate for a business may be suspended
1794 or revoked by the Department of Finance and Administration when
1795 the business fails to make a good-faith effort to comply with the
1796 laws identified in subsection (3) of this section, fails to make a
1797 good-faith effort to comply with this section, or has multiple
1798 violations of this section or the laws identified in subsection
1799 (3) of this section. Before suspending or revoking a certificate,
1800 the Department of Finance and Administration must first have
1801 sought to conciliate with the business regarding wages and
1802 benefits due to employees.

1803 (7) If a contract is awarded to a business that does not
1804 have an equal pay certificate as required under this section, or
1805 that is not in compliance with subsection (3) of this section, the
1806 Department of Finance and Administration may void the contract on
1807 behalf of the state. The contract award entity that is a party to
1808 the agreement must be notified by the Department of Finance and
1809 Administration before the Department of Finance and Administration
1810 takes action to void the contract.

1811 A contract may be abridged or terminated by the contract
1812 award entity identified upon notice that the Department of Finance
1813 and Administration has suspended or revoked the certificate of the
1814 business.



1815 (8) A business may obtain an administrative hearing before
1816 the suspension or revocation of its certificate is effective by
1817 filing a written request for a hearing twenty (20) days after
1818 service of notice by the Department of Finance and Administration.
1819 A business may obtain an administrative hearing before the
1820 contract award entity's abridgement or termination of a contract
1821 is effective by filing a written request for a hearing twenty (20)
1822 days after service of notice by the contract award entity.

1823 (9) The Department of Finance and Administration must
1824 provide technical assistance to any business that requests
1825 assistance regarding this section.

1826 (10) The State Auditor may audit the business's compliance
1827 with this section. As part of an audit, upon request, a business
1828 must provide the State Auditor the following information with
1829 respect to employees expected to perform work under the contract
1830 in each of the major job categories in the EEO-1 Employer
1831 Information Report:

1832 (a) Number of male employees;

1833 (b) Number of female employees;

1834 (c) Average annualized salaries paid to male employees
1835 and to female employees, in the manner most consistent with the
1836 employer's compensation system, within each major job category;

1837 (d) Information on performance payments, benefits, or
1838 other elements of compensation, in the manner most consistent with
1839 the employer's compensation system, if requested by the State



1840 Auditor as part of a determination as to whether these elements of
1841 compensation are different for male and female employees;

1842 (e) Average length of service for male and female
1843 employees in each major job category; and

1844 (f) Other information identified by the business or by
1845 the Department of Finance and Administration, as needed, to
1846 determine compliance.

1847 (11) Data submitted to the Department of Finance and
1848 Administration related to equal pay certificates are private data
1849 on individuals or nonpublic data with respect to persons other
1850 than department employees. The Department of Finance and
1851 Administration's decision to issue, not issue, revoke or suspend
1852 an equal pay certificate is public data.

1853 (12) The Department of Finance and Administration shall
1854 report to the Governor and the Legislature by January 31 of every
1855 year, beginning January 31, 2020. The report shall indicate the
1856 number of equal pay certificates issued, the number of audits
1857 conducted, the processes used by contractors to ensure compliance
1858 with subsection (3) of this section, and a summary of its auditing
1859 efforts. The Department of Finance and Administration shall
1860 consult with the Committee on the Status of Women in preparing the
1861 report.

1862 **SECTION 8.** It is declared to be the public policy of the
1863 State of Mississippi to establish fair minimum wages for workers
1864 in order to safeguard their health, efficiency and general



1865 well-being and to protect those workers as well as their employers
1866 from the effects of unfair competition resulting from wage levels
1867 detrimental to their health, efficiency and well-being.

1868 **SECTION 9.** (1) Except as otherwise provided in this act,
1869 every employer shall pay each of its employees a fair minimum wage
1870 as provided in this section.

1871 (2) The state minimum wage shall be as follows:

1872 (a) Beginning January 1, 2020, the rate of not less
1873 than Seven Dollars and Fifty Cents (\$7.50) per hour;

1874 (b) Beginning January 1, 2021, the rate of not less
1875 than Seven Dollars and Seventy-five Cents (\$7.75) per hour;

1876 (c) Beginning January 1, 2022, the rate of not less
1877 than Eight Dollars (\$8.00) per hour; and

1878 (d) Beginning January 1, 2023, the rate of not less
1879 than Ten Dollars (\$10.00) per hour.

1880 (3) Whenever the highest federal minimum wage is increased,
1881 the minimum wage established under this section shall be increased
1882 to the amount of the federal minimum wage plus one-half of one
1883 percent (1/2 of 1%) more than the federal rate, rounded to the
1884 nearest whole cent, effective on the same date as the increase in
1885 the highest federal minimum wage, and shall apply to all wage
1886 orders and administrative regulations then in force.

1887 (4) The rates for learners, beginners, and persons under the
1888 age of eighteen (18) years shall be not less than eighty-five
1889 percent (85%) of the state minimum wage for the first two hundred



1890 (200) hours of their employment and equal to the applicable state
1891 minimum wage thereafter, except institutional training programs
1892 specifically exempted by the director.

1893 **SECTION 10.** As used in this act, the following words shall
1894 have the meanings ascribed herein unless the context clearly
1895 requires otherwise:

1896 (a) "Director" means the Executive Director of the
1897 Mississippi Department of Employment Security.

1898 (b) "Department" means the Mississippi Department of
1899 Employment Security, Office of the Governor, established under
1900 Section 71-5-101.

1901 (c) "Wage" means compensation due to an employee by reason
1902 of his or her employment, payable in legal tender of the United
1903 States or checks on banks convertible into cash on demand at full
1904 face value, subject to any deductions, charges or allowances as
1905 may be permitted by this act or by regulations of the department
1906 under this act.

1907 (d) "Employ" means to suffer or to permit to work.

1908 (e) "Employer" means any individual, partnership,
1909 association, corporation, business trust, or any person or group
1910 of persons acting directly or indirectly in the interest of an
1911 employer in relation to an employee. The term "employer" does not
1912 mean:

1913 (i) Any individual, partnership, association,
1914 corporation, business trust, or any person or group of persons



1915 acting directly or indirectly in the interest of an employer in
1916 relation to an employee that employs fewer than five (5) employees
1917 in a regular employment relationship; or

1918 (ii) Any person, firm or corporation, or other
1919 entity subject to the provisions of the federal Fair Labor
1920 Standards Act of 1938.

1921 (f) "Independent contractor" means any individual who
1922 contracts to perform certain work away from the premises of his or
1923 her employer, uses his or her own methods to accomplish the work,
1924 and is subject to the control of the employer only as to the
1925 result of his or her work.

1926 (g) "Employee" means any individual employed by an
1927 employer but does not mean:

1928 (i) Any individual employed in a bona fide
1929 executive, administrative or professional capacity, or as an
1930 outside commission-paid salesperson, who customarily performs his
1931 or her services away from his or her employer's premises, taking
1932 orders for goods or services;

1933 (ii) Any student performing services for any
1934 school, college or university in which he or she is enrolled and
1935 is regularly attending classes;

1936 (iii) Any individual employed by the United States
1937 or by the state or any political subdivision of the state, except
1938 public schools and school districts;



1939 (iv) Any individual engaged in an activity of any
1940 educational, charitable, religious or nonprofit organization where
1941 the employer/employee relationship does not in fact exist or where
1942 the service is rendered to the organization gratuitously;

1943 (v) Any bona fide independent contractor;

1944 (vi) Any individual employed by an agricultural
1945 employer who did not use more than five hundred (500) man-days of
1946 agricultural labor in any calendar quarter of the preceding
1947 calendar year;

1948 (vii) The parent, spouse, child or other member of
1949 an agricultural employer's immediate family;

1950 (viii) An individual who:

1951 1. Is employed as a hand harvest laborer and
1952 is paid on a piece-rate basis in an operation that has been, and
1953 is customarily and generally recognized as having been, paid on a
1954 piece-rate basis in the region of employment;

1955 2. Commutes daily from his or her permanent
1956 residence to the farm on which he or she is so employed; and

1957 3. Has been employed in agriculture less than
1958 thirteen (13) weeks during the preceding calendar year;

1959 (ix) A migrant who:

1960 1. Is sixteen (16) years of age or under and
1961 is employed as a hand harvest laborer;

1962 2. Is paid on a piece-rate basis in an
1963 operation which has been, and is customarily and generally



1964 recognized as having been, paid on a piece-rate basis in the
1965 region of employment;

1966 3. Is employed on the same farm as his or her
1967 parents; and

1968 4. Is paid the same piece-rate as employees
1969 over age sixteen (16) are paid on the same farm;

1970 (x) Any employee principally engaged in the range
1971 production of livestock; or

1972 (xi) Any employee employed in planting or tending
1973 trees, cruising, surveying or felling timber, or in preparing or
1974 transporting logs or other forestry products to the mill,
1975 processing plants, or railroad or other transportation terminal if
1976 the number of employees employed by his or her employer in the
1977 forestry or lumbering operations does not exceed eight (8).

1978 (h) "Occupation" means any occupation, service, trade,
1979 business, industry, or branch or group of industries or employment
1980 or class of employment in which employees are gainfully employed.

1981 (i) "Gratuities" means voluntary monetary contributions
1982 received by an employee from a guest, patron or customer for
1983 services rendered.

1984 (j) "Man-day" means any day during any portion of which
1985 an employee performs any agricultural labor.

1986 **SECTION 11.** Nothing in this act shall be deemed to interfere
1987 with, impede, or in any way diminish the right of employers and
1988 employees to bargain collectively through representatives of their



1989 own choosing in order to establish wages or other conditions of
1990 work.

1991 **SECTION 12.** (1) Any employer who willfully:

1992 (a) Hinders or delays the department or its authorized
1993 representative in the performance of its duties in the enforcement
1994 of this act;

1995 (b) Refuses to admit the department or its authorized
1996 representative to any place of employment;

1997 (c) Fails to make, keep and preserve any records as
1998 required under the provisions of this act or to make the record
1999 accessible to the department or its authorized representative upon
2000 demand;

2001 (d) Refuses to furnish a sworn statement of the record
2002 or any other information required for the proper enforcement of
2003 this act to the department or its authorized representative upon
2004 demand; or

2005 (e) Fails to post a summary of this act or a copy of
2006 any applicable regulations as required by this act shall be deemed
2007 in violation of this act and shall, upon conviction, be fined not
2008 less than One Hundred Dollars (\$100.00) nor more than Four Hundred
2009 Dollars (\$400.00). For the purposes of this subsection, each
2010 violation shall constitute a separate offense.

2011 (2) Any employer who pays or agrees to pay minimum wages at
2012 a rate less than the rate applicable under this act shall be
2013 guilty of a felony and the employer shall:



2014 (a) Be fined not less than Four Thousand Dollars
2015 (\$4,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for
2016 each offense if the total amount of all unpaid wages owed to an
2017 employee is more than Two Thousand Dollars (\$2,000.00);

2018 (b) Be fined not less than Two Thousand Dollars
2019 (\$2,000.00) nor more than Four Thousand Dollars (\$4,000.00) or the
2020 agent or officer of the employer shall be imprisoned not more than
2021 one (1) year, or both, for each offense if the total amount of all
2022 unpaid wages owed to an employee is more than One Thousand Dollars
2023 (\$1,000.00) but not more than Two Thousand Dollars (\$2,000.00);

2024 (c) Be fined not less than One Thousand Dollars
2025 (\$1,000.00) nor more than Two Thousand Dollars (\$2,000.00) or the
2026 agent or officer of the employer shall be imprisoned not more than
2027 six (6) months, or both, for each offense if the total amount of
2028 all unpaid wages owed to an employee is more than Five Hundred
2029 Dollars (\$500.00) but not more than One Thousand Dollars
2030 (\$1,000.00); or

2031 (d) Be fined not less than Four Hundred Dollars
2032 (\$400.00) nor more than One Thousand Dollars (\$1,000.00) or the
2033 agent or officer of the employer shall be imprisoned not more than
2034 three (3) months, or both, for each offense if the total amount of
2035 all unpaid wages owed to an employee is Five Hundred Dollars
2036 (\$500.00) or less.

2037 (3) Any employer who willfully discharges or in any other
2038 manner willfully discriminates against any employee because:



2039 (a) The employee has made any complaint to his or her
2040 employer, to the department, or to the director or his or her
2041 authorized representative that he or she has not been paid minimum
2042 wages in accordance with the provisions of this act;

2043 (b) The employee has caused to be instituted or is
2044 about to cause to be instituted any proceeding under or related to
2045 this act; or

2046 (c) The employee has testified or is about to testify
2047 in any such proceeding;

2048 Shall be deemed in violation of this act and shall, upon
2049 conviction, be fined not more than One Hundred Dollars (\$100.00).

2050 **SECTION 13.** (1) For any occupation, the department shall
2051 make and revise any administrative regulations, including
2052 definitions of terms, as it may deem appropriate to carry out the
2053 purposes of this act or necessary to prevent the circumvention or
2054 evasion of those purposes and to safeguard the minimum wage rates
2055 established.

2056 (2) The regulations may include, but are not limited to,
2057 regulations governing:

2058 (a) Outside or commission salespeople;

2059 (b) Learners and apprentices, their number, proportion
2060 or length of service;

2061 (c) Part-time pay, bonuses or fringe benefits;

2062 (d) Special pay for special or extra work;



2063 (e) Permitted charges to employees or allowances for
2064 board, lodging, apparel or other facilities or services
2065 customarily furnished by employers to employees;

2066 (f) Allowances for gratuities; or

2067 (g) Allowances for other special conditions or
2068 circumstances that may be usual in a particular employer/employee
2069 relationship.

2070 (3) Regulations or revisions issued by the department under
2071 this section shall be made only after a public hearing, at which
2072 any person may be heard by the department, at least ten (10) days
2073 subsequent to publication of notice of the hearing in a newspaper
2074 of general circulation throughout the State of Mississippi.

2075 **SECTION 14.** The director or his or her authorized
2076 representatives shall:

2077 (a) Have authority to enter and inspect the place of
2078 business or employment of any employer in the state for the
2079 purpose of examining and inspecting any books, registers, payrolls
2080 and other records of any employer that in any way relate to or
2081 have a bearing upon the question of wages, hours or other
2082 conditions of employment of any employees; copy any of the books,
2083 registers, payrolls or other records as he or she may deem
2084 necessary or appropriate; and question employees to ascertain
2085 whether the provisions of this act and regulations issued under
2086 this act have been and are being complied with;



2087 (b) Have authority to require from the employer full
2088 and correct statements in writing, including sworn statements,
2089 with respect to wages, hours, names, addresses and any information
2090 pertaining to his or her employees as the director or his or her
2091 authorized representative may deem necessary or appropriate;

2092 (c) Publish all regulations made by the department; and

2093 (d) Otherwise implement and enforce the regulations and
2094 decisions of the department.

2095 **SECTION 15.** Except as otherwise provided in this section, no
2096 employer shall employ any of his or her employees for a workweek
2097 longer than forty (40) hours unless the employee receives
2098 compensation for his or her employment in excess of the hours
2099 above specified at a rate not less than one and one-half (1-1/2)
2100 times the regular rate of pay at which he or she is employed.

2101 **SECTION 16.** (1) Every employer of an employee engaged in
2102 any occupation in which gratuities have been customarily and
2103 usually constituted and have been recognized as a part of
2104 remuneration for hiring purposes shall be entitled to an allowance
2105 for gratuities as a part of the hourly wage rate provided in
2106 Section 7 of this act in an amount not to exceed fifty percent
2107 (50%) of the minimum wage established by Section 7 of this act,
2108 provided that the employee actually received that amount in
2109 gratuities and that the application of the foregoing gratuity
2110 allowances results in payment of wages other than gratuities to
2111 tipped employees, including full-time students, subject to the



2112 provisions of this act, of not less than fifty percent (50%) of
2113 the minimum wage prescribed by this act.

2114 (2) In determining whether an employee received in
2115 gratuities the amount claimed, the director may require the
2116 employee to show to the satisfaction of the director that the
2117 actual amount of gratuities received by him or her during any
2118 workweek was less than the amount determined by the employer as
2119 the amount by which the wage paid the employee was deemed to be
2120 increased under this section.

2121 **SECTION 17.** (1) Every employer subject to any provisions of
2122 this act shall keep a summary of this act, approved by the
2123 department, and copies of any applicable regulations issued under
2124 this act posted in a conspicuous and accessible place in or about
2125 the premises where any person subject to this act is employed.

2126 (2) Employers shall be furnished copies of the summaries of
2127 this statute and regulations by the director on request without
2128 charge.

2129 **SECTION 18.** (1) Every employer subject to any provision of
2130 this act or of any regulation issued under this act shall make and
2131 keep for a period of not less than three (3) years, in or about
2132 the premises where any employee is employed, a record of the name,
2133 address and occupation of each of his or her employees, the rate
2134 of pay and the amount paid each pay period to each employee and
2135 any other information as the department prescribes by regulation



2136 as necessary or appropriate for the enforcement of the provisions
2137 of this act or of the regulations under this act.

2138 (2) The records shall be open for inspection or
2139 transcription by the director or his or her authorized
2140 representative at any reasonable time.

2141 (3) Every employer shall furnish to the director or to his
2142 or her authorized representative on demand a sworn statement of
2143 the records and information upon forms prescribed or approved by
2144 the director.

2145 **SECTION 19.** (1) Any employer who pays any employee less
2146 than minimum wages to which the employee is entitled under or by
2147 virtue of this act shall be liable to the employee affected for
2148 the full amount of the wages, less any amount actually paid to the
2149 employee by the employer, and for costs and reasonable attorney's
2150 fees as may be allowed by the court.

2151 (2) Any agreement between the employee and employer to work
2152 for less than minimum wages shall be no defense to the action.

2153 (3) The venue of the action shall lie in the circuit court
2154 of any county in which the services which are the subject of the
2155 employment were performed.

2156 (4) The director shall have the authority to fully enforce
2157 this act by instituting legal action to recover any wages which he
2158 or she determines to be due to employees under this act.

2159 **SECTION 20.** Section 17-1-51, Mississippi Code of 1972, is
2160 amended as follows:



2161 17-1-51. (1) No county, board of supervisors of a county,
2162 municipality or governing authority of a municipality is
2163 authorized to establish a mandatory, minimum living wage rate that
2164 is lower than the rate provided in this act, minimum number of
2165 vacation or sick days, whether paid or unpaid, that would regulate
2166 how a private employer pays its employees. Each county, board of
2167 supervisors of a county, municipality or governing authority of a
2168 municipality shall be prohibited from establishing a mandatory,
2169 minimum living wage rate that is lower than the rate provided in
2170 this act, minimum number of vacation or sick days, whether paid or
2171 unpaid, that would regulate how a private employer pays its
2172 employees.

2173 (2) The Legislature finds that the prohibitions of
2174 subsection (1) of this section are necessary to ensure an economic
2175 climate conducive to new business development and job growth in
2176 the State of Mississippi while protecting the health and
2177 well-being of workers. * * *

2178 * * *

2179 (* * *3) The Legislature concludes from * * * this finding
2180 that, in order for a business to remain competitive and yet
2181 attract and retain the highest possible caliber of employees, and
2182 thereby remain sound, an enterprise must work in * * * an
2183 environment * * * that respects its workers and that encourages
2184 the payment of fair minimum wage rates * * *. The net impact of
2185 any local * * * wages that are greater than the rate provided in



2186 this act * * * will be economically * * * stable and create
2187 a * * * rise and * * * increase in the standard of living for the
2188 citizens of the state. * * *

2189 **SECTION 21.** Section 25-3-40, Mississippi Code of 1972, is
2190 amended as follows:

2191 25-3-40. On July 1, 1978, and each year thereafter, the
2192 Mississippi Compensation Plan shall be amended to provide salary
2193 increases in such amounts and percentages as might be recommended
2194 by the Legislative Budget Office and as may be authorized by funds
2195 appropriated by the Legislature for the purpose of granting
2196 incentive salary increases as deemed possible dependent upon the
2197 availability of general and special funds.

2198 It is hereby declared to be the intent of the Mississippi
2199 Legislature to implement the minimum wage as enacted by statutory
2200 law of the United States Congress subject to funds being available
2201 for that purpose. It is further the intent of the Legislature to
2202 implement the state minimum wage as provided in this act. It is
2203 the intent and purpose of this section to maximize annual salary
2204 increases consistent with the availability of funds as might be
2205 determined by the Mississippi Legislature at its regular annual
2206 session and that all salary increases hereafter be made consistent
2207 with the provisions of this section.

2208 **SECTION 22.** (1) **Definitions.** The following words and
2209 phrases shall have the meanings as defined in this section unless
2210 the context clearly indicates otherwise:



2211 (a) "Child" means a biological, adopted, or foster
2212 child, a stepchild, a legal ward, or a child of a person standing
2213 in loco parentis, who is: (i) Under eighteen (18) years of age;
2214 (ii) or eighteen (18) years of age or older and incapable of
2215 self-care because of a mental or physical disability.

2216 (b) "Department" means the Mississippi Department of
2217 Employment Security.

2218 (c) "Director" means the director of the department.

2219 (d) "Employee" means a person who has been employed:
2220 (i) for at least twelve (12) months by the employer with respect
2221 to whom leave is requested; and (ii) for at least one thousand two
2222 hundred fifty (1,250) hours of service with the employer during
2223 the previous twelve-month period.

2224 "Employee" does not mean a person who is employed at a
2225 worksite at which the employer employs less than fifty (50)
2226 employees if the total number of employees employed by that
2227 employer within seventy-five (75) miles of that worksite is less
2228 than fifty (50).

2229 (e) "Employer" means: (i) any person, firm,
2230 corporation, partnership, business trust, legal representative, or
2231 other business entity which engages in any business, industry,
2232 profession, or activity in this state and includes any unit of
2233 local government including, but not limited to, a county, city,
2234 town, municipal corporation, quasi-municipal corporation, or
2235 political subdivision, which employs fifty (50) or more employees



2236 for each working day during each of twenty (20) or more calendar
2237 workweeks in the current or preceding calendar year; (ii) the
2238 state, state institutions, and state agencies; and (iii) any unit
2239 of local government including, but not limited to, a county, city,
2240 town, municipal corporation, quasi-municipal corporation, or
2241 political subdivision.

2242 (f) "Employment benefits" means all benefits provided
2243 or made available to employees by an employer, including group
2244 life insurance, health insurance, disability insurance, sick
2245 leave, annual leave, educational benefits, and pensions except
2246 benefits that are provided by a practice or written policy of an
2247 employer or through an employee benefit plan as defined in 29 USC
2248 Section 1002(3).

2249 (g) "Family member" means a child, parent, spouse, or
2250 state registered domestic partner of an employee.

2251 (h) "Health care provider" means: (i) a person
2252 licensed as a physician or an osteopathic physician and surgeon;
2253 (ii) a person licensed as an advanced registered nurse
2254 practitioner; or (iii) any other person determined by the director
2255 to be capable of providing health care services.

2256 (i) "Intermittent leave" is leave taken in separate
2257 blocks of time due to a single qualifying reason.

2258 (j) "Leave for a family member's serious health
2259 condition" means leave as defined in subsection (3) of this
2260 section.



2261 (k) "Leave for the birth or placement of a child" means
2262 leave as defined in subsection (3) of this section.

2263 (l) "Leave for the employee's serious health condition"
2264 means leave as defined in subsection (3) of this section.

2265 (m) "Parent" means the biological or adoptive parent of
2266 an employee or an individual who stood in loco parentis to an
2267 employee when the employee was a child.

2268 (n) "Period of incapacity" means an inability to work,
2269 attend school, or perform other regular daily activities because
2270 of the serious health condition, treatment of that condition or
2271 recovery from it, or subsequent treatment in connection with such
2272 inpatient care.

2273 (o) "Reduced leave schedule" means a leave schedule
2274 that reduces the usual number of hours per workweek, or hours per
2275 workday, of an employee.

2276 (p) (i) "Serious health condition" means an illness,
2277 injury, impairment, or physical or mental condition that involves:
2278 1 inpatient care in a hospital, hospice, or residential medical
2279 care facility, including any period of incapacity; or 2 continuing
2280 treatment by a health care provider. A serious health condition
2281 involving continuing treatment by a health care provider includes
2282 any one or more of the following:

2283 1. A period of incapacity of more than three
2284 (3) consecutive calendar days, and any subsequent treatment or



2285 period of incapacity relating to the same condition, that also
2286 involves:

2287 a. Treatment two (2) or more times by a
2288 health care provider, by a nurse or physician's assistant under
2289 direct supervision of a health care provider, or by a provider of
2290 health care services under orders of, or on referral by, a health
2291 care provider; or

2292 b. Treatment by a health care provider
2293 on at least one (1) occasion which results in a regimen of
2294 continuing treatment under the supervision of the health care
2295 provider;

2296 2. Any period of incapacity due to pregnancy,
2297 or for prenatal care;

2298 3. Any period of incapacity or treatment for
2299 such incapacity due to a chronic serious health condition. A
2300 chronic serious health condition is one which:

2301 a. Requires periodic visits for
2302 treatment by a health care provider, or by a nurse or physician's
2303 assistant under direct supervision of a health care provider;

2304 b. Continues over an extended period of
2305 time, including recurring episodes of a single underlying
2306 condition; and

2307 c. May cause episodic rather than a
2308 continuing period of incapacity;



2309 4. A period of incapacity which is permanent
2310 or long-term due to a condition for which treatment may not be
2311 effective. The employee or family member must be under the
2312 continuing supervision of, but need not be receiving active
2313 treatment by, a health care provider; or

2314 5. Any period of absence to receive multiple
2315 treatments, including any period of recovery from the treatments,
2316 by a health care provider or by a provider of health care services
2317 under orders of, or on referral by, a health care provider, either
2318 for restorative surgery after an accident or other injury, or for
2319 a condition that would likely result in a period of incapacity of
2320 more than three (3) consecutive calendar days in the absence of
2321 medical intervention or treatment, such as cancer, severe
2322 arthritis, or kidney disease.

2323 (ii) Treatment for purposes of subparagraph (i) of
2324 this paragraph (p) includes, but is not limited to, examinations
2325 to determine if a serious health condition exists and evaluations
2326 of the condition.

2327 Treatment does not include routine physical examinations, eye
2328 examinations, or dental examinations. Under subparagraph (i)1.b.
2329 of this paragraph (p), a regimen of continuing treatment includes,
2330 but is not limited to, a course of prescription medication or
2331 therapy requiring special equipment to resolve or alleviate the
2332 health condition. A regimen of continuing treatment that includes
2333 taking over-the-counter medications, such as aspirin,



2334 antihistamines, or salves, or bed rest, drinking fluids, exercise,
2335 and other similar activities that can be initiated without a visit
2336 to a health care provider, is not, by itself, sufficient to
2337 constitute a regimen of continuing treatment for purposes of this
2338 act.

2339 (iii) Conditions for which cosmetic treatments are
2340 administered are not "serious health conditions" unless inpatient
2341 hospital care is required or unless complications develop. Unless
2342 complications arise, the common cold, the flu, earaches, upset
2343 stomach, minor ulcers, headaches other than migraine, routine
2344 dental or orthodontia problems, and periodontal disease are
2345 examples of conditions that do not meet the definition of a
2346 "serious health condition" and do not qualify for leave under this
2347 act. Restorative dental or plastic surgery after an injury or
2348 removal of cancerous growths are serious health conditions
2349 provided all the other conditions of this section are met.

2350 Mental illness resulting from stress or allergies may be
2351 serious health conditions provided all the other conditions of
2352 this section are met.

2353 (iv) Substance abuse may be a serious health
2354 condition if the conditions of this section are met. However,
2355 leave may only be taken for treatment for substance abuse by a
2356 health care provider or by a provider of health care services upon
2357 referral by a health care provider. Absence from work because of



2358 the employee's use of the substance, rather than for treatment,
2359 does not qualify for leave under this act.

2360 (v) Absences attributable to incapacity under
2361 subparagraph (i)1. or 3. of this paragraph (p) qualify for leave
2362 under this act even though the employee or the immediate family
2363 member does not receive treatment from a health care provider
2364 during the absence, and even if the absence does not last more
2365 than three (3) days.

2366 (q) "Spouse" means a husband or wife, as the case may
2367 be, or state registered domestic partner.

2368 (2) **Administration.** The Mississippi Department of
2369 Employment Security shall administer the provisions of this act.

2370 (3) **Entitlement to paid leave.** (a) An employee is entitled
2371 to a total of twelve (12) workweeks of paid leave during any
2372 twelve-month period for one or more of the following:

2373 (i) Because of the birth of a child of the
2374 employee and in order to care for the child;

2375 (ii) Because of the placement of a child with the
2376 employee for adoption or foster care;

2377 (iii) In order to care for a family member of the
2378 employee, if the family member has a serious health condition; or

2379 (iv) Because of a serious health condition that
2380 makes the employee unable to perform the functions of the position
2381 of the employee.



2382 (b) The entitlement to leave for the birth or placement
2383 of a child expires at the end of the twelve-month period beginning
2384 on the date of such birth or placement.

2385 (4) **Leave taken intermittently or on reduced leave schedule.**

2386 (a) When paid leave is taken after the birth or
2387 placement of a child for adoption or foster care, an employee may
2388 take paid leave intermittently or on a reduced paid leave schedule
2389 with the employers' agreement. The employers' agreement is not
2390 required, however, for paid leave during which the employee has a
2391 serious health condition in connection with the birth of a child
2392 or if the newborn child has a serious health condition.

2393 (b) Paid leave may be taken intermittently or on a
2394 reduced leave schedule when medically necessary for medical
2395 treatment of a serious health condition by or under the
2396 supervision of a health care provider, or for recovery from
2397 treatment or recovery from a serious health condition. It may
2398 also be taken to provide care or psychological comfort to an
2399 immediate family member with a serious health condition.

2400 (i) Intermittent paid leave may be taken for a
2401 serious health condition that requires treatment by a health care
2402 provider periodically, rather than for one (1) continuous period
2403 of time, and may include leave of periods from an hour or more to
2404 several weeks.

2405 (ii) Intermittent or reduced schedule paid leave
2406 may be taken for absences where the employee or family member is



2407 incapacitated or unable to perform the essential functions of the
2408 position because of a chronic serious health condition even if he
2409 or she does not receive treatment by a health care provider.

2410 (c) There is no limit on the size of an increment of
2411 paid leave when an employee takes intermittent paid leave or paid
2412 leave on a reduced paid leave schedule. However, an employer may
2413 limit leave increments to the shortest period of time that the
2414 employer's payroll system uses to account for absences or use of
2415 leave, provided it is one (1) hour or less.

2416 (d) The taking of paid leave intermittently or on a
2417 reduced leave schedule under this section may not result in a
2418 reduction in the total amount of leave to which the employee is
2419 entitled beyond the amount of leave actually taken.

2420 (e) If an employee requests intermittent paid leave, or
2421 leave on a reduced leave schedule, for a family member's serious
2422 health condition or the employees' serious health condition when
2423 the condition is foreseeable based on planned medical treatment,
2424 the employer may require such employee to transfer temporarily to
2425 an available alternative position offered by the employer for
2426 which the employee is qualified and that:

2427 (i) Has equivalent pay and benefits; and
2428 (ii) Better accommodates recurring periods of
2429 leave than the regular employment position of the employee.

2430 (5) **Foreseeable paid leave.** (a) If the necessity for paid
2431 leave for the birth or placement of a child is foreseeable based



2432 on an expected birth or placement, the employee shall provide the
2433 employer with not less than thirty (30) days notice, before the
2434 date the leave is to begin, of the employee's intention to take
2435 leave for the birth or placement of a child, except that if the
2436 date of the birth or placement requires leave to begin in less
2437 than thirty (30) days, the employee shall provide such notice as
2438 is practicable.

2439 (b) If the necessity for paid leave for a family
2440 member's serious health condition or the employee's serious health
2441 condition is foreseeable based on planned medical treatment, the
2442 employee:

2443 (i) Must make a reasonable effort to schedule the
2444 treatment so as not to unduly disrupt the operations of the
2445 employer, subject to the approval of the health care provider of
2446 the employee or the health care provider of the family member, as
2447 appropriate; and

2448 (ii) Must provide the employer with not less than
2449 thirty (30) days notice, before the date the leave is to begin, of
2450 the employee's intention to take leave for a family member's
2451 serious health condition or the employee's serious health
2452 condition, except that if the date of the treatment requires leave
2453 to begin in less than thirty (30) days, the employee must provide
2454 such notice as is practicable.

2455 (6) **Spouses employed by same employer.** If spouses entitled
2456 to leave under this act are employed by the same employer, the



2457 aggregate number of workweeks of paid leave to which both may be
2458 entitled may be limited to twelve (12) workweeks during any
2459 twelve-month period, if such leave is taken: (a) for the birth or
2460 placement of a child; or (b) for a parent's serious health
2461 condition.

2462 (7) **Certification.** (a) An employer may require that a
2463 request for paid leave for a family member's serious health
2464 condition or the employee's serious health condition be supported
2465 by a certification issued by the health care provider of the
2466 employee or of the family member, as appropriate. The employee
2467 must provide, in a timely manner, a copy of the certification to
2468 the employer.

2469 (b) Certification provided under paragraph (a) of this
2470 subsection is sufficient if it states:

2471 (i) The date on which the serious health condition
2472 commenced;

2473 (ii) The probable duration of the condition;

2474 (iii) The appropriate medical facts within the
2475 knowledge of the health care provider regarding the condition;

2476 (iv) 1. For purposes of leave for a family
2477 member's serious health condition, a statement that the employee
2478 is needed to care for the family member and an estimate of the
2479 amount of time that such employee is needed to care for the family
2480 member; and



2481 2. For purposes of leave for the employee's
2482 serious health condition, a statement that the employee is unable
2483 to perform the functions of the position of the employee;

2484 (v) In the case of certification for intermittent
2485 leave, or leave on a reduced leave schedule, for planned medical
2486 treatment, the dates on which the treatment is expected to be
2487 given and the duration of the treatment;

2488 (vi) In the case of certification for intermittent
2489 leave, or leave on a reduced leave schedule, for the employee's
2490 serious health condition, a statement of the medical necessity for
2491 the intermittent leave or leave on a reduced leave schedule, and
2492 the expected duration of the intermittent leave or reduced leave
2493 schedule; and

2494 (vii) In the case of certification for
2495 intermittent leave, or leave on a reduced leave schedule, for a
2496 family member's serious health condition, a statement that the
2497 employee's intermittent leave or leave on a reduced leave schedule
2498 is necessary for the care of the family member who has a serious
2499 health condition, or will assist in their recovery, and the
2500 expected duration and schedule of the intermittent leave or
2501 reduced leave schedule.

2502 (c) If the employer has reason to doubt the validity of
2503 the certification provided under paragraph (a) of this subsection
2504 (7) for leave for a family member's serious health condition or
2505 the employee's serious health condition, the employer may require,



2506 at the expense of the employer, that the employee obtain the
2507 opinion of a second health care provider designated or approved by
2508 the employer concerning any information certified under paragraph
2509 (b) of this subsection (7) for the leave. The second health care
2510 provider may not be employed on a regular basis by the employer.

2511 (d) If the second opinion described in paragraph (c) of
2512 this subsection (7) differs from the opinion in the original
2513 certification provided under paragraph (a) of this subsection (7),
2514 the employer may require, at the expense of the employer, that the
2515 employee obtain the opinion of a third health care provider
2516 designated or approved jointly by the employer and the employee
2517 concerning the information certified under paragraph (b) of this
2518 subsection (7). The opinion of the third health care provider
2519 concerning the information certified under paragraph (b) of this
2520 subsection (7) is considered to be final and is binding on the
2521 employer and the employee.

2522 (e) The employer may require that the employee obtain
2523 subsequent recertifications on a reasonable basis.

2524 (8) **Employment protection.** (a) Except as provided in
2525 paragraph (b) of this subsection, any employee who takes paid
2526 leave for the intended purpose of the leave is entitled, on return
2527 from the leave:

2528 (i) To be restored by the employer to the position
2529 of employment held by the employee when the leave commenced; or



2530 (ii) To be restored to an equivalent position with
2531 equivalent employment benefits, pay, and other terms and
2532 conditions of employment at a workplace within twenty (20) miles
2533 of the employee's workplace when leave commenced.

2534 (b) The taking of leave may not result in the loss of
2535 any employment benefits accrued before the date on which the leave
2536 commenced.

2537 (c) Nothing in this section entitles any restored
2538 employee to (i) the accrual of any seniority or employment
2539 benefits during any period of leave; or (ii) any right, benefit,
2540 or position of employment other than any right, benefit, or
2541 position to which the employee would have been entitled had the
2542 employee not taken the leave.

2543 (d) As a condition of restoration under paragraph (a)
2544 of this subsection for an employee who has taken leave for the
2545 employee's serious health condition, the employer may have a
2546 uniformly applied practice or policy that requires each such
2547 employee to receive certification from the health care provider of
2548 the employee that the employee is able to resume work, except that
2549 nothing in this paragraph (d) supersedes a valid local law or a
2550 collective bargaining agreement that governs the return to work of
2551 such employees.

2552 (e) Nothing in this subsection prohibits an employer
2553 from requiring an employee on leave to report periodically to the



2554 employer on the status and intention of the employee to return to
2555 work.

2556 An employer may deny restoration under this subsection to any
2557 salaried employee who is among the highest paid ten percent (10%)
2558 of the employees employed by the employer within seventy-five (75)
2559 miles of the facility at which the employee is employed if:

2560 (i) Denial is necessary to prevent substantial and
2561 grievous economic injury to the operations of the employer;

2562 (ii) The employer notifies the employee of the
2563 intent of the employer to deny restoration on such basis at the
2564 time the employer determines that the injury would occur; and

2565 (iii) The leave has commenced and the employee
2566 elects not to return to employment after receiving the notice.

2567 (9) **Employment benefits.** During any period of paid leave
2568 taken, if the employee is not eligible for any employer
2569 contribution to medical or dental benefits under an applicable
2570 collective bargaining agreement or employer policy during any
2571 period of leave, an employer shall allow the employee to continue,
2572 at the employee's expense, medical or dental insurance coverage,
2573 including any spouse and dependent coverage, in accordance with
2574 state or federal law. The premium to be paid by the employee
2575 shall not exceed one hundred two percent (102%) of the applicable
2576 premium for the leave period.

2577 (10) **Prohibited acts.** (a) It is unlawful for any employer
2578 to:



2579 (i) Interfere with, restrain, or deny the exercise
2580 of, or the attempt to exercise, any right provided under this act;
2581 or

2582 (ii) Discharge or in any other manner discriminate
2583 against any individual for opposing any practice made unlawful by
2584 this act.

2585 (b) It is unlawful for any person to discharge or in
2586 any other manner discriminate against any individual because the
2587 individual has:

2588 (i) Filed any charge, or has instituted or caused
2589 to be instituted any proceeding, under or related to this act;

2590 (ii) Given, or is about to give, any information
2591 in connection with any inquiry or proceeding relating to any right
2592 provided under this act; or

2593 (iii) Testified, or is about to testify, in any
2594 inquiry or proceeding relating to any right provided under this
2595 act.

2596 (11) **Complaint investigations by director.** Upon complaint
2597 by an employee, the director shall investigate to determine if
2598 there has been compliance with this act and the rules adopted
2599 under this act. If the investigation indicates that a violation
2600 may have occurred, a hearing must be held. The director must
2601 issue a written determination including his or her findings after
2602 the hearing. A judicial appeal from the director's determination



2603 may be taken, with the prevailing party entitled to recover
2604 reasonable costs and attorney's fees.

2605 (12) **Civil penalty.** An employer who is found to have
2606 violated a requirement of this act and the rules adopted under
2607 this act, is subject to a civil penalty of not less than One
2608 Thousand Dollars (\$1,000.00) for each violation. Civil penalties
2609 must be collected by the department and deposited into the family
2610 and medical leave enforcement account.

2611 (13) **Civil action by employees.** (a) Any employer who
2612 violates is liable:

2613 (i) For damages equal to:

2614 1. The amount of:

2615 a. Any wages, salary, employment
2616 benefits, or other compensation denied or lost to such employee by
2617 reason of the violation; or

2618 b. In a case in which wages, salary,
2619 employment benefits, or other compensation have not been denied or
2620 lost to the employee, any actual monetary losses sustained by the
2621 employee as a direct result of the violation, such as the cost of
2622 providing care, up to a sum equal to twelve (12) weeks of wages or
2623 salary for the employee;

2624 2. The interest on the amount described in
2625 subparagraph (i)1 of this paragraph (a) calculated at the
2626 prevailing rate; and



2627 3. An additional amount as liquidated damages
2628 equal to the sum of the amount described in subparagraph (i)1 of
2629 this paragraph (a) and the interest described in subparagraph (i)2
2630 of this paragraph (a), except that if an employer who has violated
2631 proves to the satisfaction of the court that the act or omission
2632 which violated was in good faith and that the employer had
2633 reasonable grounds for believing that the act or omission was not
2634 a violation of, the court may, in the discretion of the court,
2635 reduce the amount of the liability to the amount and interest
2636 determined under subparagraph (i)1 and 2 of this paragraph (a),
2637 respectively; and

2638 (ii) For such equitable relief as may be
2639 appropriate, including employment, reinstatement, and promotion.

2640 (b) An action to recover the damages or equitable
2641 relief prescribed in subsection (1) of this section may be
2642 maintained against any employer in any court of competent
2643 jurisdiction by any one or more employees for and on behalf of:

2644 (i) The employees; or

2645 (ii) The employees and other employees similarly
2646 situated.

2647 (c) The court in such an action shall, in addition to
2648 any judgment awarded to the plaintiff, allow reasonable attorney's
2649 fees, reasonable expert witness fees, and other costs of the
2650 action to be paid by the defendant.



2651 (14) **Notice-Penalties.** Each employer shall post and keep
2652 posted, in conspicuous places on the premises of the employer
2653 where notices to employees and applicants for employment are
2654 customarily posted, a notice, to be prepared or approved by the
2655 director, setting forth excerpts from, or summaries of, the
2656 pertinent provisions of this act and information pertaining to the
2657 filing of a charge. Any employer that willfully violates this
2658 section may be subject to a civil penalty of not more than One
2659 Hundred Dollars (\$100.00) for each separate offense. Any
2660 penalties collected by the department under this subsection shall
2661 be deposited into the family and medical leave enforcement
2662 account.

2663 (15) **Effect on other laws.** Nothing in this act shall be
2664 construed: (a) to modify or affect any state or local law
2665 prohibiting discrimination on the basis of race, religion, color,
2666 national origin, sex, age, or disability; or (b) to supersede any
2667 provision of any local law that provides greater family or medical
2668 leave rights than the rights established under this act.

2669 (16) **Effect on existing employment benefits.** Nothing in
2670 this act diminishes the obligation of an employer to comply with
2671 any collective bargaining agreement or any employment benefit
2672 program or plan that provides greater family or medical leave
2673 rights to employees than the rights established under this act.
2674 The rights established for employees under this act may not be



2675 diminished by any collective bargaining agreement or any
2676 employment benefit program or plan.

2677 (17) **Encouragement of more generous leave policies.** Nothing
2678 in this act shall be construed to discourage employers from
2679 adopting or retaining leave policies more generous than any
2680 policies that comply with the requirements under this act.

2681 (18) **Relationship to federal Family and Medical Leave Act.**

2682 (a) Leave under this section and leave under the
2683 federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993,
2684 Public Law 103-3, 107 Stat. 6) is in addition to any leave for
2685 sickness or temporary disability because of pregnancy or
2686 childbirth;

2687 (b) Leave taken under this act must be taken
2688 concurrently with any leave taken under the federal Family and
2689 Medical Leave Act of 1993 (Act Feb. 5, 1993, Public Law 103-3, 107
2690 Stat. 6).

2691 (19) **Construction.** This must be construed to the extent
2692 possible in a manner that is consistent with similar provisions,
2693 if any, of the federal Family and Medical Leave Act of 1993 (Act
2694 Feb. 5, 1993, Public Law 103-3, 107 Stat. 6), and that gives
2695 consideration to the rules, precedents, and practices of the
2696 federal Department of Labor relevant to the federal act.

2697 **SECTION 23. Women in High-Wage, High-Demand, Nontraditional**
2698 **Jobs Grant Program.** (1) The following words and phrases shall



2699 have the meanings as defined in this section unless the context
2700 clearly indicates otherwise:

2701 (a) "Commissioner" means the Executive Director of the
2702 Mississippi Department of Employment Security.

2703 (b) "Eligible organization" includes, but is not
2704 limited to:

2705 (i) Community-based organizations experienced in
2706 serving women;

2707 (ii) Employers;

2708 (iii) Business and trade associations;

2709 (iv) Labor unions and employee organizations;

2710 (v) Registered apprenticeship programs;

2711 (vi) Secondary and postsecondary education
2712 institutions located in Mississippi; and

2713 (vii) Workforce and economic development agencies.

2714 (c) "High-wage, high-demand" means occupations that
2715 represent at least one-tenth of one percent (0.1%) of total
2716 employment in the base year, have an annual median salary which is
2717 higher than the average for the current year, and are projected to
2718 have more total openings as a share of employment than the
2719 average.

2720 (d) "Low-income" means income less than two hundred
2721 percent (200%) of the federal poverty guideline adjusted for a
2722 family size of four (4).



2723 (e) "Nontraditional occupations" mean those occupations
2724 in which women make up less than twenty-five percent (25%) of the
2725 workforce as defined under United States Code, Title 20, Section
2726 2302.

2727 (2) **Grant program.** The Executive Director of the
2728 Mississippi Department of Employment Security shall establish the
2729 Women in High-Wage, High-Demand, Nontraditional Jobs Grant Program
2730 to increase the number of women in high-wage, high-demand,
2731 nontraditional occupations. The Executive Director of the
2732 Mississippi Department of Employment Security shall make grants to
2733 eligible organizations for programs that encourage and assist
2734 women to enter high-wage, high-demand, nontraditional occupations,
2735 including, but not limited to, those in the skilled trades,
2736 science, technology, engineering and math (STEM) occupations.

2737 (3) **Use of funds.** Grant funds awarded under this section
2738 may be used for:

2739 (a) Recruitment, preparation, placement, and retention
2740 of women, including low-income women and women over fifty (50)
2741 years old, in registered apprenticeships, postsecondary education
2742 programs, on-the-job training and permanent employment in
2743 high-wage, high-demand, nontraditional occupations;

2744 (b) Secondary or postsecondary education or other
2745 training to prepare women to succeed in high-wage, high-demand,
2746 nontraditional occupations. Activities under this section may be
2747 conducted by the grantee or in collaboration with another



2748 institution, including, but not limited to, a public or private
2749 secondary or postsecondary school;

2750 (c) Innovative, hands-on best practices that stimulate
2751 interest in high-wage, high-demand, nontraditional occupations
2752 among women, increase awareness among women about opportunities in
2753 high-wage, high-demand, nontraditional occupations, or increase
2754 access to secondary programming leading to jobs in high-wage,
2755 high-demand, nontraditional occupations. Best practices include,
2756 but are not limited to, mentoring, internships, or apprenticeships
2757 for women in high-wage, high-demand, nontraditional occupations;

2758 (d) Training and other staff development for job seeker
2759 counselors and Mississippi Family Investment Program (MFIP)
2760 caseworkers on opportunities in high-wage, high-demand,
2761 nontraditional occupations;

2762 (e) Incentives for employers and sponsors of registered
2763 apprenticeship programs to retain women in high-wage, high-demand,
2764 nontraditional occupations for more than one (1) year;

2765 (f) Training and technical assistance for employers to
2766 create a safe and healthy workplace environment designed to retain
2767 and advance women, including best practices for addressing sexual
2768 harassment, and to overcome gender inequity among employers and
2769 registered apprenticeship programs;

2770 (g) Public education and outreach activities to
2771 overcome stereotypes about women in high-wage, high-demand,



2772 nontraditional occupations, including the development of
2773 educational and marketing materials; and

2774 (h) Support for women in high-wage, high-demand,
2775 nontraditional occupations including, but not limited to,
2776 assistance with workplace issues resolution and access to advocacy
2777 assistance and services.

2778 (4) Grant applications must include detailed information
2779 about how the applicant plans to:

2780 (a) Increase women's participation in high-wage,
2781 high-demand occupations in which women are currently
2782 underrepresented in the workforce;

2783 (b) Comply with the requirements under subsection (3)
2784 of this section; and

2785 (c) Use grant funds in conjunction with funding from
2786 other public or private sources.

2787 (5) In awarding grants under this section, the executive
2788 director shall give priority to eligible organizations:

2789 (a) With demonstrated success in recruiting and
2790 preparing women, especially low-income women and women over fifty
2791 (50) years old, for high-wage, high-demand, nontraditional
2792 occupations; and

2793 (b) That leverage additional public and private
2794 resources.



2795 (6) At least fifty percent (50%) of total grant funds must
2796 be awarded to programs providing services and activities targeted
2797 to low-income women.

2798 (7) The executive director shall monitor the use of funds
2799 under this section, collect and compile information on the
2800 activities of other state agencies and public or private entities
2801 that have purposes similar to those under this section, and
2802 identify other public and private funding available for these
2803 purposes.

2804 **SECTION 24.** Sections 24 through 28 of this act shall be
2805 known and may be cited as the "Mississippi Pregnant Workers
2806 Fairness Act."

2807 **SECTION 25.** It is the intent of the Legislature to combat
2808 pregnancy discrimination, promote public health and ensure full
2809 and equal participation for women in the labor force by requiring
2810 employers to provide reasonable accommodations to employees with
2811 conditions related to pregnancy, childbirth or a related
2812 condition. Mississippi currently has no current workplace laws to
2813 protect pregnant women from being forced out or fired when they
2814 need a simple, reasonable accommodation in order to stay on the
2815 job. Many pregnant women are single mothers or the primary
2816 breadwinners for their families – if they lose their jobs then the
2817 whole family will suffer. This is not an outcome that families
2818 can afford in today's difficult economy.

2819 **SECTION 26.** (1) No employer may:



2820 (a) Refuse to make reasonable accommodations for any
2821 condition of a job applicant or employee related to pregnancy,
2822 childbirth, or a related condition, including, but not limited to,
2823 the need to express breast milk for a nursing child, if the
2824 employee or applicant so requests, unless the employer can
2825 demonstrate that the accommodation would impose an undue hardship
2826 on the employer's program, enterprise, or business;

2827 (b) Take adverse action against an employee who
2828 requests or uses an accommodation in terms, conditions or
2829 privileges of employment, including, but not limited to, failing
2830 to reinstate the employee to her original job or to an equivalent
2831 position with equivalent pay and accumulated seniority,
2832 retirement, fringe benefits and other applicable service credits
2833 when her need for reasonable accommodations ceases;

2834 (c) Deny employment opportunities to an otherwise
2835 qualified job applicant or employee, if such denial is based on
2836 the need of the employer to make reasonable accommodations to the
2837 known conditions related to the pregnancy, childbirth, or related
2838 conditions of the applicant or employee; or

2839 (d) Require an employee to take leave if another
2840 reasonable accommodation can be provided to the known conditions
2841 related to the pregnancy, childbirth, or related conditions of an
2842 employee.



2843 (2) The employer shall engage in a timely, good faith, and
2844 interactive process with the employee to determine effective
2845 reasonable accommodations.

2846 (3) The following words and phrases shall have the meanings
2847 as defined in this section unless the context clearly indicates
2848 otherwise:

2849 (a) "Reasonable accommodations" shall include, but not
2850 be limited to: more frequent or longer breaks, time off to
2851 recover from childbirth, acquisition or modification of equipment,
2852 seating, temporary transfer to a less strenuous or hazardous
2853 position, job restructuring, light duty, break time and private
2854 nonbathroom space for expressing breast milk, assistance with
2855 manual labor, or modified work schedules, provided that:

2856 (i) No employer shall be required by this section
2857 to create additional employment that the employer would not
2858 otherwise have created, unless the employer does so or would do so
2859 for other classes of employees who need accommodation, and

2860 (ii) The employer shall not be required to
2861 discharge any employee, transfer any employee with more seniority,
2862 or promote any employee who is not qualified to perform the job,
2863 unless the employer does so or would do so to accommodate other
2864 classes of employees who need it.

2865 (b) "Related conditions" includes, but is not limited
2866 to, lactation or the need to express breast milk for a nursing
2867 child.



2868 (c) "Undue hardship" means an action requiring
2869 significant difficulty or expense, when considered in light of the
2870 factors set forth as follows:

2871 (i) The employer shall have the burden of proving
2872 undue hardship. In making a determination of undue hardship, the
2873 factors that may be considered include but shall not be limited
2874 to:

2875 1. The nature and cost of the accommodation;
2876 2. The overall financial resources of the
2877 employer;

2878 3. The overall size of the business of the
2879 employer with respect to the number of employees;

2880 4. The number, type, and location of the
2881 facilities of the employer; and

2882 5. The effect on expenses and resources or
2883 the impact otherwise of such accommodation upon the operation of
2884 the employer.

2885 (ii) The fact that the employer provides or would
2886 be required to provide a similar accommodation to other classes of
2887 employees who need it shall create a rebuttable presumption that
2888 the accommodation does not impose an undue hardship on the
2889 employer.

2890 **SECTION 27.** An employer shall provide written notice of the
2891 right to be free from discrimination in relation to pregnancy,
2892 childbirth, and related conditions, including the right to



2893 reasonable accommodations for conditions related to pregnancy,
2894 childbirth, or related conditions, pursuant to the Mississippi
2895 Pregnant Workers Fairness Act to:

- 2896 (a) New employees at the commencement of employment;
- 2897 (b) Existing employees within one hundred twenty (120)
2898 days after July 1, 2019; and
- 2899 (c) Any employee who notifies the employer of her
2900 pregnancy within ten (10) days of such notification.

2901 Such notice must also be conspicuously posted at an
2902 employer's place of business in an area accessible to employees.

2903 **SECTION 28.** (1) An actionable right is hereby created for
2904 any person who is an employee and who believes that such person's
2905 employer has violated the provisions of the Mississippi Pregnant
2906 Workers Fairness Act. Any such employee who is aggrieved under
2907 the act may file a petition in the proper circuit court in
2908 Mississippi.

2909 (2) If an employer is found to have violated the provisions
2910 of the Mississippi Pregnant Workers Fairness Act, the employee
2911 shall be awarded reasonable remedies, which shall include
2912 attorney's fees, prejudgment interest, back pay, liquidated
2913 damages and one hundred percent (100%) of the difference of unpaid
2914 wages. If the employer is found to have willfully violated the
2915 provisions of subsection (1), the employee shall be awarded three
2916 hundred percent (300%) of reasonable remedies.



2917 **SECTION 29.** (1) This section shall be known and cited as
2918 the "Mississippi Sick and Safe Leave Act."

2919 (2) The following words and phrases shall have the meanings
2920 as defined in this section unless the context clearly indicates
2921 otherwise:

2922 (a) "Department" means the Mississippi Department of
2923 Employment Security.

2924 (b) "Domestic violence" means the same as defined in
2925 Section 97-3-7.

2926 (c) "Earned paid sick time" means time that is
2927 compensated at the same hourly rate and with the same benefits,
2928 including health care benefits, as the employee normally earns
2929 during hours worked and is provided by an employer to an employee
2930 for the purposes described in subsection (3) of this section but
2931 in no case shall this hourly amount be less than that provided
2932 under 29 U.S.C. Section 206(a)(1).

2933 (d) "Employee" is as defined in the Fair Labor
2934 Standards Act 29 U.S.C. Section 203(e).

2935 (e) "Employer" is as defined in the Fair Labor
2936 Standards Act 29 U.S.C. Section 203(d).

2937 (f) "Family member" means:

2938 (i) Regardless of age, a biological, adopted or
2939 foster child, stepchild or legal ward, a child of a domestic
2940 partner, a child to whom the employee stands in loco parentis, or



2941 an individual to whom the employee stood in loco parentis when the
2942 individual was a minor;

2943 (ii) A biological, foster, stepparent or adoptive
2944 parent or legal guardian of an employee or an employee's spouse or
2945 domestic partner or a person who stood in loco parentis when the
2946 employee or employee's spouse or domestic partner was a minor
2947 child;

2948 (iii) A person to whom the employee is legally
2949 married under the laws of any state, or a domestic partner of an
2950 employee as registered under the laws of any state or political
2951 subdivision;

2952 (iv) A grandparent, grandchild or sibling (whether
2953 of a biological, foster, adoptive or step relationship) of the
2954 employee or the employee's spouse or domestic partner;

2955 (v) A person for whom the employee is responsible
2956 for providing or arranging care, including, but not limited, to
2957 helping that individual obtain diagnostic, preventive, routine or
2958 therapeutic health treatment; or

2959 (vi) Any other individual related by blood or
2960 whose close association with the employee is the equivalent of a
2961 family relationship.

2962 (g) "Health care professional" means any person
2963 licensed under federal or state law to provide medical or
2964 emergency services, including, but not limited to, doctors, nurses
2965 and emergency room personnel.



2966 (h) "Retaliatory personnel action" means denial of any
2967 right guaranteed under this section and any threat, discharge,
2968 suspension, demotion, reduction of hours, reporting or threatening
2969 to report an employee's suspected citizenship or immigration
2970 status, or the suspected citizenship or immigration status of a
2971 family member of the employee to a federal, state or local agency,
2972 or any other adverse action against an employee for the exercise
2973 of any right guaranteed herein including any sanctions against an
2974 employee who is the recipient of public benefits for rights
2975 guaranteed under this section. Retaliation shall also include
2976 interference with or punishment for in any manner participating in
2977 or assisting an investigation, proceeding or hearing under this
2978 section.

2979 (i) "Sexual assault" means the same as defined in
2980 Section 97-3-95.

2981 (j) "Stalking" means the same as defined in Section
2982 97-3-107.

2983 (k) "Year" means a regular and consecutive twelve-month
2984 period as determined by the employer.

2985 (3) (a) All employees shall accrue a minimum of one (1)
2986 hour of earned paid sick time for every thirty (30) hours worked.
2987 Employees shall not use more than forty (40) hours of earned paid
2988 sick time in a year, unless the employer selects a higher limit.

2989 (b) Employees who are exempt from overtime requirements
2990 under 29 U.S.C. Section 213(a) (1) of the Federal Fair Labor



2991 Standards Act will be assumed to work forty (40) hours in each
2992 work week for purposes of earned paid sick time accrual unless
2993 their normal work week is less than forty (40) hours, in which
2994 case earned paid sick time accrues based upon that normal work
2995 week.

2996 (c) Earned paid sick time as provided in this section
2997 shall begin to accrue at the commencement of employment or on the
2998 date this law goes into effect, whichever is later. An employer
2999 may provide all paid sick time that an employee is expected to
3000 accrue in a year at the beginning of the year.

3001 (d) Employees shall not be entitled to use accrued
3002 earned paid sick time until the ninetieth calendar day following
3003 commencement of their employment unless otherwise permitted by the
3004 employer. On and after the ninetieth calendar day of employment,
3005 employees may use earned paid sick time as it is accrued.

3006 (e) Earned paid sick time shall be carried over to the
3007 following year. Alternatively, in lieu of carryover of unused
3008 earned paid sick time from one (1) year to the next, an employer
3009 may pay an employee for unused earned paid sick time at the end of
3010 a year and provide the employee with an amount of paid sick time
3011 that meets or exceeds the requirements of this section that is
3012 available for the employee's immediate use at the beginning of the
3013 next year.

3014 (f) Any employer with a paid leave policy, such as a
3015 paid time off policy, who makes available an amount of paid leave



3016 sufficient to meet the accrual requirements of this section that
3017 may be used for the same purposes and under the same conditions as
3018 earned paid sick time under this section is not required to
3019 provide additional paid sick time.

3020 (g) Nothing in this section shall be construed as
3021 requiring financial or other reimbursement to an employee from an
3022 employer upon the employee's termination, resignation, retirement
3023 or other separation from employment for accrued earned paid sick
3024 time that has not been used.

3025 (h) If an employee is transferred to a separate
3026 division, entity or location, but remains employed by the same
3027 employer, the employee is entitled to all earned paid sick time
3028 accrued at the prior division, entity or location and is entitled
3029 to use all earned paid sick time as provided in this section. When
3030 there is a separation from employment and the employee is rehired
3031 within six (6) months of separation by the same employer,
3032 previously accrued earned paid sick time that had not been used
3033 shall be reinstated. Further, the employee shall be entitled to
3034 use accrued earned paid sick time and accrue additional earned
3035 paid sick time at the re-commencement of employment.

3036 (i) When a different employer succeeds or takes the
3037 place of an existing employer, all employees of the original
3038 employer who remain employed by the successor employer are
3039 entitled to all earned paid sick time they accrued when employed



3040 by the original employer, and are entitled to use earned paid sick
3041 time previously accrued.

3042 (j) At its discretion, an employer may loan earned paid
3043 sick time to an employee in advance of accrual by such employee.

3044 (4) (a) Earned paid sick time shall be provided to an
3045 employee by an employer for:

3046 (i) An employee's mental or physical illness,
3047 injury or health condition; an employee's need for medical
3048 diagnosis, care, or treatment of a mental or physical illness,
3049 injury or health condition; an employee's need for preventive
3050 medical care;

3051 (ii) Care of a family member with a mental or
3052 physical illness, injury or health condition; care of a family
3053 member who needs medical diagnosis, care, or treatment of a mental
3054 or physical illness, injury or health condition; care of a family
3055 member who needs preventive medical care; or in the case of a
3056 child, to attend a school meeting or a meeting at a place where
3057 the child is receiving care necessitated by the child's health
3058 condition or disability, domestic violence, sexual assault,
3059 harassment or stalking;

3060 (iii) Closure of the employee's place of business
3061 by order of a public official due to a public health emergency or
3062 an employee's need to care for a child whose school or place of
3063 care has been closed by order of a public official due to a public
3064 health emergency, or care for oneself or a family member when it



3065 has been determined by the health authorities having jurisdiction
3066 or by a health care provider that the employee's or family
3067 member's presence in the community may jeopardize the health of
3068 others because of his or her exposure to a communicable disease,
3069 whether or not the employee or family member has actually
3070 contracted the communicable disease; or

3071 (iv) Absence necessary due to domestic violence,
3072 sexual assault or stalking, provided the leave is to allow the
3073 employee to obtain for the employee or the employee's family
3074 member:

3075 1. Medical attention needed to recover from
3076 physical or psychological injury or disability caused by domestic
3077 violence, sexual assault, harassment or stalking;

3078 2. Services from a victim services
3079 organization;

3080 3. Psychological or other counseling;

3081 4. Relocation or taking steps to secure an
3082 existing home due to the domestic violence, sexual assault,
3083 harassment or stalking; or

3084 5. Legal services, including preparing for or
3085 participating in any civil or criminal legal proceeding related to
3086 or resulting from the domestic violence, sexual assault,
3087 harassment or stalking.

3088 (b) Earned paid sick time shall be provided upon the
3089 request of an employee. Such request may be made orally, in



3090 writing, by electronic means or by any other means acceptable to
3091 the employer. When possible, the request shall include the
3092 expected duration of the absence.

3093 (c) When the use of earned paid sick time is
3094 foreseeable, the employee shall make a good faith effort to
3095 provide notice of the need for such time to the employer in
3096 advance of the use of the earned paid sick time and shall make a
3097 reasonable effort to schedule the use of earned paid sick time in
3098 a manner that does not unduly disrupt the operations of the
3099 employer.

3100 (d) An employer that requires notice of the need to use
3101 earned paid sick time shall provide a written policy that contains
3102 procedures for the employee to provide notice. An employer that
3103 has not provided to the employee a copy of its written policy for
3104 providing such notice shall not deny earned paid sick time to the
3105 employee based on noncompliance with such a policy.

3106 (e) An employer may not require, as a condition of an
3107 employee's taking earned paid sick time, that the employee search
3108 for or find a replacement worker to cover the hours during which
3109 the employee is using earned paid sick time.

3110 (f) Earned paid sick time may be used in the smaller of
3111 hourly increments or the smallest increment that the employer's
3112 payroll system uses to account for absences or use of other time.

3113 (g) For earned paid sick time of three (3) or more
3114 consecutive work days, an employer may require reasonable



3115 documentation that the earned paid sick time has been used for a
3116 purpose covered by paragraph (a) of this subsection.
3117 Documentation signed by a health care professional indicating that
3118 earned paid sick time is necessary shall be considered reasonable
3119 documentation for purposes of this section. In cases of domestic
3120 violence, sexual assault, or stalking, one (1) of the following
3121 types of documentation selected by the employee shall be
3122 considered reasonable documentation: (i) a police report
3123 indicating that the employee or the employee's family member was a
3124 victim of domestic violence, sexual assault, harassment or
3125 stalking; (ii) a signed statement from a victim and witness
3126 advocate affirming that the employee or employee's family member
3127 is receiving services from a victim services organization; or
3128 (iii) a court document indicating that the employee or employee's
3129 family member is involved in legal action related to domestic
3130 violence, sexual assault, harassment or stalking. An employer may
3131 not require that the documentation explain the nature of the
3132 illness or the details of the domestic violence, sexual assault,
3133 harassment or stalking.

3134 (5) It shall be unlawful for an employer or any other person
3135 to interfere with, restrain, or deny the exercise of, or the
3136 attempt to exercise, any right protected under this section. An
3137 employer shall not take retaliatory personnel action or
3138 discriminate against an employee or former employee because the
3139 person has exercised rights protected under this section. Such



3140 rights include, but are not limited to, the right to request or
3141 use earned paid sick time pursuant to this section; the right to
3142 file a complaint with the agency or courts or inform any person
3143 about any employer's alleged violation of this section; the right
3144 to participate in an investigation, hearing or proceeding or
3145 cooperate with or assist the agency in its investigations of
3146 alleged violations of this section; and the right to inform any
3147 person of his or her potential rights under this section. It
3148 shall be unlawful for an employer's absence control policy to
3149 count earned paid sick time taken under this section as an absence
3150 that may lead to or result in discipline, discharge, demotion,
3151 suspension, or any other adverse action. Protections of this
3152 section shall apply to any person who mistakenly but in good faith
3153 alleges violations of this section.

3154 (6) (a) Employers shall give employees written notice of
3155 the following at the commencement of employment: employees are
3156 entitled to earned paid sick time and the amount of earned paid
3157 sick time, the terms of its use guaranteed under this section,
3158 that retaliatory personnel action against employees who request or
3159 use earned paid sick time is prohibited, that each employee has
3160 the right to file a complaint or bring a civil action if earned
3161 paid sick time as required by this section is denied by the
3162 employer or the employee is subjected to retaliatory personnel
3163 action for requesting or taking earned paid sick time, and the



3164 contact information for the agency where questions about rights
3165 and responsibilities under this section can be answered.

3166 (b) The amount of earned paid sick time available to
3167 the employee, the amount of earned paid sick time taken by the
3168 employee to date in the year and the amount of pay the employee
3169 has received as earned paid sick time shall be recorded in, or on
3170 an attachment to, the employee's regular paycheck.

3171 (7) Employers shall retain records documenting hours worked
3172 by employees and earned paid sick time taken by employees, for a
3173 period of three (3) years and shall allow the department access to
3174 such records, with appropriate notice and at a mutually agreeable
3175 time, to monitor compliance with the requirements of this section.
3176 When an issue arises as to an employee's entitlement to earned
3177 paid sick time under this section, if the employer does not
3178 maintain or retain adequate records documenting hours worked by
3179 the employee and earned paid sick time taken by the employee, or
3180 does not allow the department reasonable access to such records,
3181 it shall be presumed that the employer has violated the section,
3182 absent clear and convincing evidence otherwise.

3183 (8) The department shall be authorized to coordinate
3184 implementation and enforcement of this section and shall
3185 promulgate appropriate guidelines or regulations for such
3186 purposes.

3187 (9) (a) The department shall have the authority to take
3188 complaints, investigate those complaints and seek penalties under



3189 this section and to bring charges for noncompliance against any
3190 employer or employee.

3191 (b) (i) The department, the Attorney General, any
3192 person aggrieved by a violation of this section, or any entity a
3193 member of which is aggrieved by a violation of this section may
3194 bring a civil action in a court of competent jurisdiction against
3195 an employer violating this section. Such action may be brought by
3196 a person aggrieved by a violation of this section without first
3197 filing an administrative complaint.

3198 (ii) Upon prevailing in an action brought pursuant
3199 to this section, aggrieved persons shall recover the full amount
3200 of any unpaid earned sick time plus any actual damages suffered as
3201 the result of the employer's violation of this section plus an
3202 equal amount of liquidated damages. Aggrieved persons shall also
3203 be entitled to reasonable attorney's fees.

3204 (iii) Upon prevailing in an action brought
3205 pursuant to this section, aggrieved persons shall be entitled to
3206 such legal or equitable relief as may be appropriate to remedy the
3207 violation, including, without limitation, reinstatement to
3208 employment, back pay and injunctive relief.

3209 (iv) Any person aggrieved by a violation of this
3210 section may file a complaint with the Attorney General. The
3211 filing of a complaint with the Attorney General will not preclude
3212 the filing of a civil action.



3213 (v) The Attorney General may bring a civil action
3214 to enforce this section.

3215 (10) An employer may not require disclosure of details
3216 relating to domestic violence, sexual assault, or stalking or the
3217 details of an employee's or an employee's family member's health
3218 information as a condition of providing earned paid sick time
3219 under this section. If an employer possesses health information
3220 or information pertaining to domestic violence, sexual assault, or
3221 stalking about an employee or employee's family member, such
3222 information shall be treated as confidential and not disclosed
3223 except to the affected employee or with the permission of the
3224 affected employee.

3225 (11) (a) Nothing in this section shall be construed to
3226 discourage or prohibit an employer from the adoption or retention
3227 of an earned paid sick time policy more generous than the one
3228 required herein.

3229 (b) Nothing in this section shall be construed as
3230 diminishing the obligation of an employer to comply with any
3231 contract, collective bargaining agreement, employment benefit plan
3232 or other agreement providing more generous paid sick time to an
3233 employee than required herein. Nothing in this section shall be
3234 construed as diminishing the rights of public employees regarding
3235 paid sick time or use of paid sick time as provided in
3236 Mississippi.



3237 (12) This section provides minimum requirements pertaining
3238 to earned paid sick time and shall not be construed to preempt,
3239 limit, or otherwise affect the applicability of any other law,
3240 regulation, requirement, policy, or standard that provides for
3241 greater accrual or use by employees of earned paid sick time or
3242 that extends other protections to employees.

3243 (13) If any provision of this section or application thereof
3244 to any person or circumstance is judged invalid, the invalidity
3245 shall not affect other provisions or applications of this section
3246 which can be given effect without the invalid provision or
3247 application, and to this end the provisions of this section are
3248 declared severable.

3249 **SECTION 30.** Sections 30 through 32 shall be known and may be
3250 cited as the "Evelyn Gandy Fair Pay Act."

3251 **SECTION 31.** The Mississippi Legislature finds that the
3252 existence of wage differentials based on sex in industries engaged
3253 in commerce or in the production of goods for commerce:

3254 (a) Depresses the wages and living standards for
3255 employees that are necessary for their health and efficiency,
3256 thereby increasing the poverty rate in Mississippi;

3257 (b) Prevents the maximum utilization of the available
3258 labor resources, thereby depressing the growth of the state GDP;

3259 (c) Tends to cause labor disputes, thereby burdening,
3260 affecting and obstructing commerce;



3261 (d) Burdens commerce and the free flow of goods in
3262 commerce; and

3263 (e) Constitutes an unfair method of competition.

3264 **SECTION 32.** (1) No employer shall discriminate in any way
3265 against any employee on the basis of sex by paying a salary or
3266 wage to any employee at a rate less than the rate paid to its
3267 employees of the opposite sex for equal work on jobs that require
3268 equal skill, effort and responsibility to perform, and which are
3269 performed under similar working conditions, except where such
3270 payment is made pursuant to:

3271 (a) A seniority system; however, time spent on leave
3272 due to a pregnancy-related condition and parental, family and
3273 medical leave, shall not reduce the seniority-level of an
3274 employee;

3275 (b) A merit system;

3276 (c) A system which measures earnings by quantity or
3277 quality of production; or

3278 (d) A differential based on any bona fide factor other
3279 than sex if the factor:

3280 (i) Is not based on or derived from a differential
3281 in wage based on sex;

3282 (ii) Is job-related with respect to the position
3283 and necessary for the business; and

3284 (iii) Accounts for the entire differential.



3285 An employer who is paying a wage rate differential in
3286 violation of this subsection shall not, in order to comply with
3287 the provisions of this subsection, reduce the wage rate of any
3288 employee.

3289 (2) (a) No labor organization, or its agents, representing
3290 employees of an employer whose employees are subject to the
3291 provisions of this section, shall cause or attempt to cause the
3292 employer to discriminate against an employee in violation of
3293 subsection (1) of this section.

3294 (b) As used in this subsection (2), the term "labor
3295 organization" means any organization of any kind, or any agency or
3296 employee representation committee or plan, in which employees
3297 participate and which exists for the purpose, in whole or in part,
3298 of dealing with employers concerning grievances, labor disputes,
3299 wages, rates of pay, hours of employment or conditions of work.

3300 (3) For purposes of administration and enforcement, any
3301 amounts owed to an employee that have been withheld in violation
3302 of this section shall be deemed to be unpaid minimum wages or
3303 unpaid overtime compensation.

3304 (4) (a) An employer that has been charged with unlawful sex
3305 discrimination under this section shall be entitled to a
3306 rebuttable presumption that the employer has not engaged in
3307 unlawful sex discrimination in violation of this section if:

3308 (i) The charge is made by an employee who holds a
3309 job predominantly occupied by members of one (1) sex, which means



3310 that at least seventy-five percent (75%) of the occupants of the
3311 job are of the same sex, and the employee alleges he or she is
3312 being paid less than an employee who does a different job;

3313 (ii) The employer has, within two (2) years of the
3314 commencement of the action, completed a self-evaluation that meets
3315 the standards set forth in paragraph (d) of this subsection; and

3316 (iii) The employer makes an affirmative showing
3317 that it has made reasonable and substantial progress towards
3318 eliminating wage differentials, including implementing any
3319 required remediation plan, between jobs of equivalent value,
3320 including the job of the employee making the charge, in accordance
3321 with the self-evaluation required in subparagraph (ii) of this
3322 paragraph.

3323 (b) In such cases, the court must give the aggrieved
3324 party an opportunity to rebut this presumption through evidence
3325 that reasonably demonstrates that, notwithstanding the employer's
3326 self-evaluation, the employer has violated this section. In
3327 rebutting this presumption, the aggrieved party may provide all
3328 relevant information including, but not limited to, evidence that:

3329 (i) The employer's job analysis devalues
3330 attributes associated with jobs occupied predominantly by members
3331 of one (1) sex and/or over-values attributes associated with jobs
3332 occupied predominantly by members of the opposite sex;

3333 (ii) The job the aggrieved party occupies was not
3334 adequately evaluated; or



3335 (iii) A job evaluation process has been completed
3336 and, if necessary, a remediation process is in progress or has
3337 been completed, but the self-evaluation has not been reviewed and
3338 updated at reasonable intervals to adjust for changes in the work
3339 environment over time.

3340 (c) An employer wishing to be availed of this
3341 presumption must produce documentation that describes the
3342 self-evaluation process in detail sufficient to show that the
3343 employer has met the standards under paragraph (d).

3344 (d) In order to be eligible for the presumption of
3345 compliance, the self-evaluation must:

3346 (i) Clearly define the employer's establishment;

3347 (ii) Analyze the employee population to identify
3348 differentials in wages, including raises, bonuses, incentive
3349 payments and other forms of remuneration, based on sex;

3350 (iii) Establish a job evaluation plan to determine
3351 the value of jobs within the establishment. The plan must:

3352 1. Be free of any bias based on a person's
3353 sex;

3354 2. Allow for the comparison of all jobs; and

3355 3. Fully and accurately measure the skill,
3356 effort, responsibility and working conditions of each job based on
3357 the actual work performance requirements of the jobs evaluated;

3358 (iv) Apply the job evaluation plan to all jobs;



3359 (v) Create a salary structure or have an
3360 identifying salary group system where jobs of equal value are
3361 placed in the same level or grouping;

3362 (vi) Determine for each salary grouping, or for
3363 each total job evaluation score, the pay differential between jobs
3364 that are predominantly occupied by one (1) sex and other jobs,
3365 including those predominantly occupied by the opposite sex, in
3366 order to identify any wage rate discrimination; and

3367 (vii) Remedy any pay differential identified in
3368 subsection (vi); however, such remediation may not reduce the pay
3369 of any employee or class of employees.

3370 The presumption of compliance may be strengthened where,
3371 through the self-evaluation, including any needed remediation, the
3372 employer maintains communication with and keeps employees apprised
3373 of the process. The method and procedure for that communication
3374 may vary according to the size and organizational structure of the
3375 establishment, but any method or procedure chosen should be
3376 adequate to reach all employees at the establishment.

3377 (5) It shall be an unlawful employment practice for an
3378 employer to:

3379 (a) Require, as a condition of employment, that an
3380 employee refrain from inquiring about, discussing or disclosing
3381 his or her wages or the wages of another employee;



3382 (b) Require an employee to sign a waiver or other
3383 document which purports to deny an employee the right to disclose
3384 or discuss his or her wages;

3385 (c) Discharge, formally discipline, or otherwise
3386 discriminate against an employee for inquiring about, discussing,
3387 or disclosing his or her wages or the wages of another employee;
3388 however, nothing in this subsection (5) creates an obligation for
3389 an employer or employee to disclose wages;

3390 (d) Retaliate or in any other manner discriminate
3391 against an employee or applicant for employment because that
3392 individual has opposed a practice made unlawful by this act or
3393 because that individual has made a charge, filed a complaint, or
3394 instituted or caused to be instituted any investigation,
3395 proceeding, hearing, or action under or related to this act,
3396 including an investigation conducted by the employer, or has
3397 testified or is planning to testify, or has assisted, or
3398 participated in any manner in any such investigation, proceeding,
3399 or hearing under this act.

3400 (6) (a) A civil action asserting a violation of this
3401 section may be maintained against any employer in any court of
3402 competent jurisdiction by any one (1) or more employees for or on
3403 behalf of the employee, a group of employees, and other employees
3404 similarly situated. Any such action shall commence no later than
3405 two (2) years after the discriminatory practice declared unlawful
3406 by this section has occurred. A discriminatory practice occurs



3407 when a discriminatory compensation decision or other practice is
3408 adopted, when an employee is subjected to a discriminatory
3409 compensation decision or other practice, or when an employee is
3410 affected by the application of a discriminatory compensation
3411 decision or other practice, including each time wages, benefits,
3412 or other compensation is paid based on the discriminatory
3413 compensation decision or other practice.

3414 (b) If an employer is found in violation of this
3415 section, the employee may recover in a civil action the amount of
3416 their unpaid wages; liquidated damages; compensatory damages;
3417 punitive damages as may be appropriate, where the employee
3418 demonstrates that the employer acted with malice or reckless
3419 indifference; other equitable relief as may be appropriate; and
3420 the costs of the action and reasonable attorney's fees.

3421 **SECTION 33.** This act shall take effect and be in force from
3422 and after July 1, 2020.

