

By: Representatives Williams-Barnes, Stamps,
Bell (65th), Paden

To: Workforce Development;
Judiciary A

HOUSE BILL NO. 1158

1 AN ACT TO CREATE THE "2022 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, 2022; 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 "2022 Mississippi Women's Economic Security Act."



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 2022, 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 is authorized to implement an All
359 Patient Refined Diagnosis Related Groups (APR-DRG) reimbursement
360 methodology for inpatient hospital services.

361 (b) No service benefits or reimbursement
362 limitations in this subsection (A) (1) shall apply to payments
363 under an APR-DRG or Ambulatory Payment Classification (APC) model
364 or a managed care program or similar model described in subsection
365 (H) of this section unless specifically authorized by the
366 division.

367 (2) Outpatient hospital services.

368 (a) Emergency services.

369 (b) Other outpatient hospital services. The
370 division shall allow benefits for other medically necessary
371 outpatient hospital services (such as chemotherapy, radiation,
372 surgery and therapy), including outpatient services in a clinic or
373 other facility that is not located inside the hospital, but that
374 has been designated as an outpatient facility by the hospital, and
375 that was in operation or under construction on July 1, 2009,
376 provided that the costs and charges associated with the operation
377 of the hospital clinic are included in the hospital's cost report.
378 In addition, the Medicare thirty-five-mile rule will apply to



379 those hospital clinics not located inside the hospital that are
380 constructed after July 1, 2009. Where the same services are
381 reimbursed as clinic services, the division may revise the rate or
382 methodology of outpatient reimbursement to maintain consistency,
383 efficiency, economy and quality of care.

384 (c) The division is authorized to implement an
385 Ambulatory Payment Classification (APC) methodology for outpatient
386 hospital services. The division shall give rural hospitals that
387 have fifty (50) or fewer licensed beds the option to not be
388 reimbursed for outpatient hospital services using the APC
389 methodology, but reimbursement for outpatient hospital services
390 provided by those hospitals shall be based on one hundred one
391 percent (101%) of the rate established under Medicare for
392 outpatient hospital services. Those hospitals choosing to not be
393 reimbursed under the APC methodology shall remain under cost-based
394 reimbursement for a two-year period.

395 (d) No service benefits or reimbursement
396 limitations in this subsection (A) (2) shall apply to payments
397 under an APR-DRG or APC model or a managed care program or similar
398 model described in subsection (H) of this section unless
399 specifically authorized by the division.

400 (3) Laboratory and x-ray services.

401 (4) Nursing facility services.

402 (a) The division shall make full payment to
403 nursing facilities for each day, not exceeding forty-two (42) days



404 per year, that a patient is absent from the facility on home
405 leave. Payment may be made for the following home leave days in
406 addition to the forty-two-day limitation: Christmas, the day
407 before Christmas, the day after Christmas, Thanksgiving, the day
408 before Thanksgiving and the day after Thanksgiving.

409 (b) From and after July 1, 1997, the division
410 shall implement the integrated case-mix payment and quality
411 monitoring system, which includes the fair rental system for
412 property costs and in which recapture of depreciation is
413 eliminated. The division may reduce the payment for hospital
414 leave and therapeutic home leave days to the lower of the case-mix
415 category as computed for the resident on leave using the
416 assessment being utilized for payment at that point in time, or a
417 case-mix score of 1.000 for nursing facilities, and shall compute
418 case-mix scores of residents so that only services provided at the
419 nursing facility are considered in calculating a facility's per
420 diem.

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

424 (d) On or after January 1, 2015, the division
425 shall update the case-mix payment system resource utilization
426 grouper and classifications and fair rental reimbursement system.
427 The division shall develop and implement a payment add-on to



428 reimburse nursing facilities for ventilator-dependent resident
429 services.

430 (e) The division shall develop and implement, not
431 later than January 1, 2001, a case-mix payment add-on determined
432 by time studies and other valid statistical data that will
433 reimburse a nursing facility for the additional cost of caring for
434 a resident who has a diagnosis of Alzheimer's or other related
435 dementia and exhibits symptoms that require special care. Any
436 such case-mix add-on payment shall be supported by a determination
437 of additional cost. The division shall also develop and implement
438 as part of the fair rental reimbursement system for nursing
439 facility beds, an Alzheimer's resident bed depreciation enhanced
440 reimbursement system that will provide an incentive to encourage
441 nursing facilities to convert or construct beds for residents with
442 Alzheimer's or other related dementia.

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

447 The division shall apply for necessary federal waivers to
448 assure that additional services providing alternatives to nursing
449 facility care are made available to applicants for nursing
450 facility care.

451 (5) Periodic screening and diagnostic services for
452 individuals under age twenty-one (21) years as are needed to



453 identify physical and mental defects and to provide health care
454 treatment and other measures designed to correct or ameliorate
455 defects and physical and mental illness and conditions discovered
456 by the screening services, regardless of whether these services
457 are included in the state plan. The division may include in its
458 periodic screening and diagnostic program those discretionary
459 services authorized under the federal regulations adopted to
460 implement Title XIX of the federal Social Security Act, as
461 amended. The division, in obtaining physical therapy services,
462 occupational therapy services, and services for individuals with
463 speech, hearing and language disorders, may enter into a
464 cooperative agreement with the State Department of Education for
465 the provision of those services to handicapped students by public
466 school districts using state funds that are provided from the
467 appropriation to the Department of Education to obtain federal
468 matching funds through the division. The division, in obtaining
469 medical and mental health assessments, treatment, care and
470 services for children who are in, or at risk of being put in, the
471 custody of the Mississippi Department of Human Services may enter
472 into a cooperative agreement with the Mississippi Department of
473 Human Services for the provision of those services using state
474 funds that are provided from the appropriation to the Department
475 of Human Services to obtain federal matching funds through the
476 division.



477 (6) Physician services. Fees for physician's services
478 that are covered only by Medicaid shall be reimbursed at ninety
479 percent (90%) of the rate established on January 1, 2018, and as
480 may be adjusted each July thereafter, under Medicare. The
481 division may provide for a reimbursement rate for physician's
482 services of up to one hundred percent (100%) of the rate
483 established under Medicare for physician's services that are
484 provided after the normal working hours of the physician, as
485 determined in accordance with regulations of the division. The
486 division may reimburse eligible providers, as determined by the
487 division, for certain primary care services at one hundred percent
488 (100%) of the rate established under Medicare. The division shall
489 reimburse obstetricians and gynecologists for certain primary care
490 services as defined by the division at one hundred percent (100%)
491 of the rate established under Medicare.

492 (7) (a) Home health services for eligible persons, not
493 to exceed in cost the prevailing cost of nursing facility
494 services. All home health visits must be precertified as required
495 by the division. In addition to physicians, certified registered
496 nurse practitioners, physician assistants and clinical nurse
497 specialists are authorized to prescribe or order home health
498 services and plans of care, sign home health plans of care,
499 certify and recertify eligibility for home health services and
500 conduct the required initial face-to-face visit with the recipient
501 of the services.



502 (b) [Repealed]

503 (8) Emergency medical transportation services as
504 determined by the division.

505 (9) Prescription drugs and other covered drugs and
506 services as determined by the division.

507 The division shall establish a mandatory preferred drug list.
508 Drugs not on the mandatory preferred drug list shall be made
509 available by utilizing prior authorization procedures established
510 by the division.

511 The division may seek to establish relationships with other
512 states in order to lower acquisition costs of prescription drugs
513 to include single-source and innovator multiple-source drugs or
514 generic drugs. In addition, if allowed by federal law or
515 regulation, the division may seek to establish relationships with
516 and negotiate with other countries to facilitate the acquisition
517 of prescription drugs to include single-source and innovator
518 multiple-source drugs or generic drugs, if that will lower the
519 acquisition costs of those prescription drugs.

520 The division may allow for a combination of prescriptions for
521 single-source and innovator multiple-source drugs and generic
522 drugs to meet the needs of the beneficiaries.

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



526 Drugs prescribed for a resident of a psychiatric residential
527 treatment facility must be provided in true unit doses when
528 available. The division may require that drugs not covered by
529 Medicare Part D for a resident of a long-term care facility be
530 provided in true unit doses when available. Those drugs that were
531 originally billed to the division but are not used by a resident
532 in any of those facilities shall be returned to the billing
533 pharmacy for credit to the division, in accordance with the
534 guidelines of the State Board of Pharmacy and any requirements of
535 federal law and regulation. Drugs shall be dispensed to a
536 recipient and only one (1) dispensing fee per month may be
537 charged. The division shall develop a methodology for reimbursing
538 for restocked drugs, which shall include a restock fee as
539 determined by the division not exceeding Seven Dollars and
540 Eighty-two Cents (\$7.82).

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

545 The division is authorized to develop and implement a program
546 of payment for additional pharmacist services as determined by the
547 division.

548 All claims for drugs for dually eligible Medicare/Medicaid
549 beneficiaries that are paid for by Medicare must be submitted to



550 Medicare for payment before they may be processed by the
551 division's online payment system.

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

557 The division shall develop and implement a method or methods
558 by which the division will provide on a regular basis to Medicaid
559 providers who are authorized to prescribe drugs, information about
560 the costs to the Medicaid program of single-source drugs and
561 innovator multiple-source drugs, and information about other drugs
562 that may be prescribed as alternatives to those single-source
563 drugs and innovator multiple-source drugs and the costs to the
564 Medicaid program of those alternative drugs.

565 Notwithstanding any law or regulation, information obtained
566 or maintained by the division regarding the prescription drug
567 program, including trade secrets and manufacturer or labeler
568 pricing, is confidential and not subject to disclosure except to
569 other state agencies.

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



574 The division shall not reimburse for single-source or
575 innovator multiple-source drugs if there are equally effective
576 generic equivalents available and if the generic equivalents are
577 the least expensive.

578 It is the intent of the Legislature that the pharmacists
579 providers be reimbursed for the reasonable costs of filling and
580 dispensing prescriptions for Medicaid beneficiaries.

581 The division shall allow certain drugs, including
582 physician-administered drugs, and implantable drug system devices,
583 and medical supplies, with limited distribution or limited access
584 for beneficiaries and administered in an appropriate clinical
585 setting, to be reimbursed as either a medical claim or pharmacy
586 claim, as determined by the division.

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

591 (10) Dental and orthodontic services to be determined
592 by the division.

593 The division shall increase the amount of the reimbursement
594 rate for diagnostic and preventative dental services for each of
595 the fiscal years 2022, 2023 and 2024 by five percent (5%) above
596 the amount of the reimbursement rate for the previous fiscal year.
597 It is the intent of the Legislature that the reimbursement rate
598 revision for preventative dental services will be an incentive to



599 increase the number of dentists who actively provide Medicaid
600 services. This dental services reimbursement rate revision shall
601 be known as the "James Russell Dumas Medicaid Dental Services
602 Incentive Program."

603 The Medical Care Advisory Committee, assisted by the Division
604 of Medicaid, shall annually determine the effect of this incentive
605 by evaluating the number of dentists who are Medicaid providers,
606 the number who and the degree to which they are actively billing
607 Medicaid, the geographic trends of where dentists are offering
608 what types of Medicaid services and other statistics pertinent to
609 the goals of this legislative intent. This data shall annually be
610 presented to the Chair of the Senate Medicaid Committee and the
611 Chair of the House Medicaid Committee.

612 The division shall include dental services as a necessary
613 component of overall health services provided to children who are
614 eligible for services.

615 (11) Eyeglasses for all Medicaid beneficiaries who have
616 (a) had surgery on the eyeball or ocular muscle that results in a
617 vision change for which eyeglasses or a change in eyeglasses is
618 medically indicated within six (6) months of the surgery and is in
619 accordance with policies established by the division, or (b) one
620 (1) pair every five (5) years and in accordance with policies
621 established by the division. In either instance, the eyeglasses
622 must be prescribed by a physician skilled in diseases of the eye
623 or an optometrist, whichever the beneficiary may select.



624 (12) Intermediate care facility services.

625 (a) The division shall make full payment to all
626 intermediate care facilities for individuals with intellectual
627 disabilities for each day, not exceeding sixty-three (63) days per
628 year, that a patient is absent from the facility on home leave.
629 Payment may be made for the following home leave days in addition
630 to the sixty-three-day limitation: Christmas, the day before
631 Christmas, the day after Christmas, Thanksgiving, the day before
632 Thanksgiving and the day after Thanksgiving.

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

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

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

642 (14) Clinic services. Preventive, diagnostic,
643 therapeutic, rehabilitative or palliative services that are
644 furnished by a facility that is not part of a hospital but is
645 organized and operated to provide medical care to outpatients.
646 Clinic services include, but are not limited to:

647 (a) Services provided by ambulatory surgical
648 centers (ACSS) as defined in Section 41-75-1(a); and



649 (b) Dialysis center services.

650 (15) Home- and community-based services for the elderly
651 and disabled, as provided under Title XIX of the federal Social
652 Security Act, as amended, under waivers, subject to the
653 availability of funds specifically appropriated for that purpose
654 by the Legislature.

655 (16) Mental health services. Certain services provided
656 by a psychiatrist shall be reimbursed at up to one hundred percent
657 (100%) of the Medicare rate. Approved therapeutic and case
658 management services (a) provided by an approved regional mental
659 health/intellectual disability center established under Sections
660 41-19-31 through 41-19-39, or by another community mental health
661 service provider meeting the requirements of the Department of
662 Mental Health to be an approved mental health/intellectual
663 disability center if determined necessary by the Department of
664 Mental Health, using state funds that are provided in the
665 appropriation to the division to match federal funds, or (b)
666 provided by a facility that is certified by the State Department
667 of Mental Health to provide therapeutic and case management
668 services, to be reimbursed on a fee for service basis, or (c)
669 provided in the community by a facility or program operated by the
670 Department of Mental Health. Any such services provided by a
671 facility described in subparagraph (b) must have the prior
672 approval of the division to be reimbursable under this section.



673 (17) Durable medical equipment services and medical
674 supplies. Precertification of durable medical equipment and
675 medical supplies must be obtained as required by the division.
676 The Division of Medicaid may require durable medical equipment
677 providers to obtain a surety bond in the amount and to the
678 specifications as established by the Balanced Budget Act of 1997.

679 (18) (a) Notwithstanding any other provision of this
680 section to the contrary, as provided in the Medicaid state plan
681 amendment or amendments as defined in Section 43-13-145(10), the
682 division shall make additional reimbursement to hospitals that
683 serve a disproportionate share of low-income patients and that
684 meet the federal requirements for those payments as provided in
685 Section 1923 of the federal Social Security Act and any applicable
686 regulations. It is the intent of the Legislature that the
687 division shall draw down all available federal funds allotted to
688 the state for disproportionate share hospitals. However, from and
689 after January 1, 1999, public hospitals participating in the
690 Medicaid disproportionate share program may be required to
691 participate in an intergovernmental transfer program as provided
692 in Section 1903 of the federal Social Security Act and any
693 applicable regulations.

694 (b) (i) The division may establish a Medicare
695 Upper Payment Limits Program, as defined in Section 1902(a)(30) of
696 the federal Social Security Act and any applicable federal
697 regulations, or an allowable delivery system or provider payment



698 initiative authorized under 42 CFR 438.6(c), for hospitals,
699 nursing facilities, physicians employed or contracted by
700 hospitals, and emergency ambulance transportation providers.

701 (ii) The division shall assess each hospital,
702 nursing facility, and emergency ambulance transportation provider
703 for the sole purpose of financing the state portion of the
704 Medicare Upper Payment Limits Program or other program(s)
705 authorized under this subsection (A) (18) (b). The hospital
706 assessment shall be as provided in Section 43-13-145(4) (a), and
707 the nursing facility and the emergency ambulance transportation
708 assessments, if established, shall be based on Medicaid
709 utilization or other appropriate method, as determined by the
710 division, consistent with federal regulations. The assessments
711 will remain in effect as long as the state participates in the
712 Medicare Upper Payment Limits Program or other program(s)
713 authorized under this subsection (A) (18) (b). In addition to the
714 hospital assessment provided in Section 43-13-145(4) (a), hospitals
715 with physicians participating in the Medicare Upper Payment Limits
716 Program or other program(s) authorized under this subsection
717 (A) (18) (b) shall be required to participate in an
718 intergovernmental transfer or assessment, as determined by the
719 division, for the purpose of financing the state portion of the
720 physician UPL payments or other payment(s) authorized under this
721 subsection (A) (18) (b).



722 (iii) Subject to approval by the Centers for
723 Medicare and Medicaid Services (CMS) and the provisions of this
724 subsection (A) (18) (b), the division shall make additional
725 reimbursement to hospitals, nursing facilities, and emergency
726 ambulance transportation providers for the Medicare Upper Payment
727 Limits Program or other program(s) authorized under this
728 subsection (A) (18) (b), and, if the program is established for
729 physicians, shall make additional reimbursement for physicians, as
730 defined in Section 1902(a) (30) of the federal Social Security Act
731 and any applicable federal regulations, provided the assessment in
732 this subsection (A) (18) (b) is in effect.

733 (iv) Notwithstanding any other provision of
734 this article to the contrary, effective upon implementation of the
735 Mississippi Hospital Access Program (MHAP) provided in
736 subparagraph (c) (i) below, the hospital portion of the inpatient
737 Upper Payment Limits Program shall transition into and be replaced
738 by the MHAP program. However, the division is authorized to
739 develop and implement an alternative fee-for-service Upper Payment
740 Limits model in accordance with federal laws and regulations if
741 necessary to preserve supplemental funding. Further, the
742 division, in consultation with the hospital industry shall develop
743 alternative models for distribution of medical claims and
744 supplemental payments for inpatient and outpatient hospital
745 services, and such models may include, but shall not be limited to
746 the following: increasing rates for inpatient and outpatient



747 services; creating a low-income utilization pool of funds to
748 reimburse hospitals for the costs of uncompensated care, charity
749 care and bad debts as permitted and approved pursuant to federal
750 regulations and the Centers for Medicare and Medicaid Services;
751 supplemental payments based upon Medicaid utilization, quality,
752 service lines and/or costs of providing such services to Medicaid
753 beneficiaries and to uninsured patients. The goals of such
754 payment models shall be to ensure access to inpatient and
755 outpatient care and to maximize any federal funds that are
756 available to reimburse hospitals for services provided. Any such
757 documents required to achieve the goals described in this
758 paragraph shall be submitted to the Centers for Medicare and
759 Medicaid Services, with a proposed effective date of July 1, 2019,
760 to the extent possible, but in no event shall the effective date
761 of such payment models be later than July 1, 2020. The Chairmen
762 of the Senate and House Medicaid Committees shall be provided a
763 copy of the proposed payment model(s) prior to submission.
764 Effective July 1, 2018, and until such time as any payment
765 model(s) as described above become effective, the division, in
766 consultation with the hospital industry, is authorized to
767 implement a transitional program for inpatient and outpatient
768 payments and/or supplemental payments (including, but not limited
769 to, MHAP and directed payments), to redistribute available
770 supplemental funds among hospital providers, provided that when
771 compared to a hospital's prior year supplemental payments,



772 supplemental payments made pursuant to any such transitional
773 program shall not result in a decrease of more than five percent
774 (5%) and shall not increase by more than the amount needed to
775 maximize the distribution of the available funds.

776 (c) (i) Not later than December 1, 2015, the
777 division shall, subject to approval by the Centers for Medicare
778 and Medicaid Services (CMS), establish, implement and operate a
779 Mississippi Hospital Access Program (MHAP) for the purpose of
780 protecting patient access to hospital care through hospital
781 inpatient reimbursement programs provided in this section designed
782 to maintain total hospital reimbursement for inpatient services
783 rendered by in-state hospitals and the out-of-state hospital that
784 is authorized by federal law to submit intergovernmental transfers
785 (IGTs) to the State of Mississippi and is classified as Level I
786 trauma center located in a county contiguous to the state line at
787 the maximum levels permissible under applicable federal statutes
788 and regulations, at which time the current inpatient Medicare
789 Upper Payment Limits (UPL) Program for hospital inpatient services
790 shall transition to the MHAP.

791 (ii) Subject to approval by the Centers for
792 Medicare and Medicaid Services (CMS), the MHAP shall provide
793 increased inpatient capitation (PMPM) payments to managed care
794 entities contracting with the division pursuant to subsection (H)
795 of this section to support availability of hospital services or



796 such other payments permissible under federal law necessary to
797 accomplish the intent of this subsection.

798 (iii) The intent of this subparagraph (c) is
799 that effective for all inpatient hospital Medicaid services during
800 state fiscal year 2016, and so long as this provision shall remain
801 in effect hereafter, the division shall to the fullest extent
802 feasible replace the additional reimbursement for hospital
803 inpatient services under the inpatient Medicare Upper Payment
804 Limits (UPL) Program with additional reimbursement under the MHAP
805 and other payment programs for inpatient and/or outpatient
806 payments which may be developed under the authority of this
807 paragraph.

808 (iv) The division shall assess each hospital
809 as provided in Section 43-13-145(4) (a) for the purpose of
810 financing the state portion of the MHAP, supplemental payments and
811 such other purposes as specified in Section 43-13-145. The
812 assessment will remain in effect as long as the MHAP and
813 supplemental payments are in effect.

814 (19) (a) Perinatal risk management services. The
815 division shall promulgate regulations to be effective from and
816 after October 1, 1988, to establish a comprehensive perinatal
817 system for risk assessment of all pregnant and infant Medicaid
818 recipients and for management, education and follow-up for those
819 who are determined to be at risk. Services to be performed
820 include case management, nutrition assessment/counseling,



821 psychosocial assessment/counseling and health education. The
822 division shall contract with the State Department of Health to
823 provide services within this paragraph (Perinatal High Risk
824 Management/Infant Services System (PHRM/ISS)). The State
825 Department of Health shall be reimbursed on a full reasonable cost
826 basis for services provided under this subparagraph (a).

827 (b) Early intervention system services. The
828 division shall cooperate with the State Department of Health,
829 acting as lead agency, in the development and implementation of a
830 statewide system of delivery of early intervention services, under
831 Part C of the Individuals with Disabilities Education Act (IDEA).
832 The State Department of Health shall certify annually in writing
833 to the executive director of the division the dollar amount of
834 state early intervention funds available that will be utilized as
835 a certified match for Medicaid matching funds. Those funds then
836 shall be used to provide expanded targeted case management
837 services for Medicaid eligible children with special needs who are
838 eligible for the state's early intervention system.

839 Qualifications for persons providing service coordination shall be
840 determined by the State Department of Health and the Division of
841 Medicaid.

842 (20) Home- and community-based services for physically
843 disabled approved services as allowed by a waiver from the United
844 States Department of Health and Human Services for home- and
845 community-based services for physically disabled people using



846 state funds that are provided from the appropriation to the State
847 Department of Rehabilitation Services and used to match federal
848 funds under a cooperative agreement between the division and the
849 department, provided that funds for these services are
850 specifically appropriated to the Department of Rehabilitation
851 Services.

852 (21) Nurse practitioner services. Services furnished
853 by a registered nurse who is licensed and certified by the
854 Mississippi Board of Nursing as a nurse practitioner, including,
855 but not limited to, nurse anesthetists, nurse midwives, family
856 nurse practitioners, family planning nurse practitioners,
857 pediatric nurse practitioners, obstetrics-gynecology nurse
858 practitioners and neonatal nurse practitioners, under regulations
859 adopted by the division. Reimbursement for those services shall
860 not exceed ninety percent (90%) of the reimbursement rate for
861 comparable services rendered by a physician. The division may
862 provide for a reimbursement rate for nurse practitioner services
863 of up to one hundred percent (100%) of the reimbursement rate for
864 comparable services rendered by a physician for nurse practitioner
865 services that are provided after the normal working hours of the
866 nurse practitioner, as determined in accordance with regulations
867 of the division.

868 (22) Ambulatory services delivered in federally
869 qualified health centers, rural health centers and clinics of the
870 local health departments of the State Department of Health for



871 individuals eligible for Medicaid under this article based on
872 reasonable costs as determined by the division. Federally
873 qualified health centers shall be reimbursed by the Medicaid
874 prospective payment system as approved by the Centers for Medicare
875 and Medicaid Services. The division shall recognize federally
876 qualified health centers (FQHCs), rural health clinics (RHCs) and
877 community mental health centers (CMHCs) as both an originating and
878 distant site provider for the purposes of telehealth
879 reimbursement. The division is further authorized and directed to
880 reimburse FQHCs, RHCs and CMHCs for both distant site and
881 originating site services when such services are appropriately
882 provided by the same organization.

883 (23) Inpatient psychiatric services.

884 (a) Inpatient psychiatric services to be
885 determined by the division for recipients under age twenty-one
886 (21) that are provided under the direction of a physician in an
887 inpatient program in a licensed acute care psychiatric facility or
888 in a licensed psychiatric residential treatment facility, before
889 the recipient reaches age twenty-one (21) or, if the recipient was
890 receiving the services immediately before he or she reached age
891 twenty-one (21), before the earlier of the date he or she no
892 longer requires the services or the date he or she reaches age
893 twenty-two (22), as provided by federal regulations. From and
894 after January 1, 2015, the division shall update the fair rental
895 reimbursement system for psychiatric residential treatment



896 facilities. Precertification of inpatient days and residential
897 treatment days must be obtained as required by the division. From
898 and after July 1, 2009, all state-owned and state-operated
899 facilities that provide inpatient psychiatric services to persons
900 under age twenty-one (21) who are eligible for Medicaid
901 reimbursement shall be reimbursed for those services on a full
902 reasonable cost basis.

903 (b) The division may reimburse for services
904 provided by a licensed freestanding psychiatric hospital to
905 Medicaid recipients over the age of twenty-one (21) in a method
906 and manner consistent with the provisions of Section 43-13-117.5.

907 (24) [Deleted]

908 (25) [Deleted]

909 (26) Hospice care. As used in this paragraph, the term
910 "hospice care" means a coordinated program of active professional
911 medical attention within the home and outpatient and inpatient
912 care that treats the terminally ill patient and family as a unit,
913 employing a medically directed interdisciplinary team. The
914 program provides relief of severe pain or other physical symptoms
915 and supportive care to meet the special needs arising out of
916 physical, psychological, spiritual, social and economic stresses
917 that are experienced during the final stages of illness and during
918 dying and bereavement and meets the Medicare requirements for
919 participation as a hospice as provided in federal regulations.



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

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

927 (29) The Division of Medicaid may apply for a waiver
928 from the United States Department of Health and Human Services for
929 home- and community-based services for developmentally disabled
930 people using state funds that are provided from the appropriation
931 to the State Department of Mental Health and/or funds transferred
932 to the department by a political subdivision or instrumentality of
933 the state and used to match federal funds under a cooperative
934 agreement between the division and the department, provided that
935 funds for these services are specifically appropriated to the
936 Department of Mental Health and/or transferred to the department
937 by a political subdivision or instrumentality of the state.

938 (30) Pediatric skilled nursing services as determined
939 by the division and in a manner consistent with regulations
940 promulgated by the Mississippi State Department of Health.

941 (31) Targeted case management services for children
942 with special needs, under waivers from the United States
943 Department of Health and Human Services, using state funds that
944 are provided from the appropriation to the Mississippi Department



945 of Human Services and used to match federal funds under a
946 cooperative agreement between the division and the department.

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

953 (33) Podiatrist services.

954 (34) Assisted living services as provided through
955 home- and community-based services under Title XIX of the federal
956 Social Security Act, as amended, subject to the availability of
957 funds specifically appropriated for that purpose by the
958 Legislature.

959 (35) Services and activities authorized in Sections
960 43-27-101 and 43-27-103, using state funds that are provided from
961 the appropriation to the Mississippi Department of Human Services
962 and used to match federal funds under a cooperative agreement
963 between the division and the department.

964 (36) Nonemergency transportation services for
965 Medicaid-eligible persons as determined by the division. The PEER
966 Committee shall conduct a performance evaluation of the
967 nonemergency transportation program to evaluate the administration
968 of the program and the providers of transportation services to
969 determine the most cost-effective ways of providing nonemergency



970 transportation services to the patients served under the program.
971 The performance evaluation shall be completed and provided to the
972 members of the Senate Medicaid Committee and the House Medicaid
973 Committee not later than January 1, 2019, and every two (2) years
974 thereafter.

975 (37) [Deleted]

976 (38) Chiropractic services. A chiropractor's manual
977 manipulation of the spine to correct a subluxation, if x-ray
978 demonstrates that a subluxation exists and if the subluxation has
979 resulted in a neuromusculoskeletal condition for which
980 manipulation is appropriate treatment, and related spinal x-rays
981 performed to document these conditions. Reimbursement for
982 chiropractic services shall not exceed Seven Hundred Dollars
983 (\$700.00) per year per beneficiary.

984 (39) Dually eligible Medicare/Medicaid beneficiaries.
985 The division shall pay the Medicare deductible and coinsurance
986 amounts for services available under Medicare, as determined by
987 the division. From and after July 1, 2009, the division shall
988 reimburse crossover claims for inpatient hospital services and
989 crossover claims covered under Medicare Part B in the same manner
990 that was in effect on January 1, 2008, unless specifically
991 authorized by the Legislature to change this method.

992 (40) [Deleted]

993 (41) Services provided by the State Department of
994 Rehabilitation Services for the care and rehabilitation of persons



995 with spinal cord injuries or traumatic brain injuries, as allowed
996 under waivers from the United States Department of Health and
997 Human Services, using up to seventy-five percent (75%) of the
998 funds that are appropriated to the Department of Rehabilitation
999 Services from the Spinal Cord and Head Injury Trust Fund
1000 established under Section 37-33-261 and used to match federal
1001 funds under a cooperative agreement between the division and the
1002 department.

1003 (42) [Deleted]

1004 (43) The division shall provide reimbursement,
1005 according to a payment schedule developed by the division, for
1006 smoking cessation medications for pregnant women during their
1007 pregnancy and other Medicaid-eligible women who are of
1008 child-bearing age.

1009 (44) Nursing facility services for the severely
1010 disabled.

1011 (a) Severe disabilities include, but are not
1012 limited to, spinal cord injuries, closed-head injuries and
1013 ventilator-dependent patients.

1014 (b) Those services must be provided in a long-term
1015 care nursing facility dedicated to the care and treatment of
1016 persons with severe disabilities.

1017 (45) Physician assistant services. Services furnished
1018 by a physician assistant who is licensed by the State Board of
1019 Medical Licensure and is practicing with physician supervision



1020 under regulations adopted by the board, under regulations adopted
1021 by the division. Reimbursement for those services shall not
1022 exceed ninety percent (90%) of the reimbursement rate for
1023 comparable services rendered by a physician. The division may
1024 provide for a reimbursement rate for physician assistant services
1025 of up to one hundred percent (100%) or the reimbursement rate for
1026 comparable services rendered by a physician for physician
1027 assistant services that are provided after the normal working
1028 hours of the physician assistant, as determined in accordance with
1029 regulations of the division.

1030 (46) The division shall make application to the federal
1031 Centers for Medicare and Medicaid Services (CMS) for a waiver to
1032 develop and provide services for children with serious emotional
1033 disturbances as defined in Section 43-14-1(1), which may include
1034 home- and community-based services, case management services or
1035 managed care services through mental health providers certified by
1036 the Department of Mental Health. The division may implement and
1037 provide services under this waived program only if funds for
1038 these services are specifically appropriated for this purpose by
1039 the Legislature, or if funds are voluntarily provided by affected
1040 agencies.

1041 (47) (a) The division may develop and implement
1042 disease management programs for individuals with high-cost chronic
1043 diseases and conditions, including the use of grants, waivers,
1044 demonstrations or other projects as necessary.



1045 (b) Participation in any disease management
1046 program implemented under this paragraph (47) is optional with the
1047 individual. An individual must affirmatively elect to participate
1048 in the disease management program in order to participate, and may
1049 elect to discontinue participation in the program at any time.

1050 (48) Pediatric long-term acute care hospital services.

1051 (a) Pediatric long-term acute care hospital
1052 services means services provided to eligible persons under
1053 twenty-one (21) years of age by a freestanding Medicare-certified
1054 hospital that has an average length of inpatient stay greater than
1055 twenty-five (25) days and that is primarily engaged in providing
1056 chronic or long-term medical care to persons under twenty-one (21)
1057 years of age.

1058 (b) The services under this paragraph (48) shall
1059 be reimbursed as a separate category of hospital services.

1060 (49) The division may establish copayments and/or
1061 coinsurance for any Medicaid services for which copayments and/or
1062 coinsurance are allowable under federal law or regulation.

1063 (50) Services provided by the State Department of
1064 Rehabilitation Services for the care and rehabilitation of persons
1065 who are deaf and blind, as allowed under waivers from the United
1066 States Department of Health and Human Services to provide home-
1067 and community-based services using state funds that are provided
1068 from the appropriation to the State Department of Rehabilitation
1069 Services or if funds are voluntarily provided by another agency.



1070 (51) Upon determination of Medicaid eligibility and in
1071 association with annual redetermination of Medicaid eligibility,
1072 beneficiaries shall be encouraged to undertake a physical
1073 examination that will establish a base-line level of health and
1074 identification of a usual and customary source of care (a medical
1075 home) to aid utilization of disease management tools. This
1076 physical examination and utilization of these disease management
1077 tools shall be consistent with current United States Preventive
1078 Services Task Force or other recognized authority recommendations.

1079 For persons who are determined ineligible for Medicaid, the
1080 division will provide information and direction for accessing
1081 medical care and services in the area of their residence.

1082 (52) Notwithstanding any provisions of this article,
1083 the division may pay enhanced reimbursement fees related to trauma
1084 care, as determined by the division in conjunction with the State
1085 Department of Health, using funds appropriated to the State
1086 Department of Health for trauma care and services and used to
1087 match federal funds under a cooperative agreement between the
1088 division and the State Department of Health. The division, in
1089 conjunction with the State Department of Health, may use grants,
1090 waivers, demonstrations, enhanced reimbursements, Upper Payment
1091 Limits Programs, supplemental payments, or other projects as
1092 necessary in the development and implementation of this
1093 reimbursement program.



1094 (53) Targeted case management services for high-cost
1095 beneficiaries may be developed by the division for all services
1096 under this section.

1097 (54) [Deleted]

1098 (55) Therapy services. The plan of care for therapy
1099 services may be developed to cover a period of treatment for up to
1100 six (6) months, but in no event shall the plan of care exceed a
1101 six-month period of treatment. The projected period of treatment
1102 must be indicated on the initial plan of care and must be updated
1103 with each subsequent revised plan of care. Based on medical
1104 necessity, the division shall approve certification periods for
1105 less than or up to six (6) months, but in no event shall the
1106 certification period exceed the period of treatment indicated on
1107 the plan of care. The appeal process for any reduction in therapy
1108 services shall be consistent with the appeal process in federal
1109 regulations.

1110 (56) Prescribed pediatric extended care centers
1111 services for medically dependent or technologically dependent
1112 children with complex medical conditions that require continual
1113 care as prescribed by the child's attending physician, as
1114 determined by the division.

1115 (57) No Medicaid benefit shall restrict coverage for
1116 medically appropriate treatment prescribed by a physician and
1117 agreed to by a fully informed individual, or if the individual
1118 lacks legal capacity to consent by a person who has legal



1119 authority to consent on his or her behalf, based on an
1120 individual's diagnosis with a terminal condition. As used in this
1121 paragraph (57), "terminal condition" means any aggressive
1122 malignancy, chronic end-stage cardiovascular or cerebral vascular
1123 disease, or any other disease, illness or condition which a
1124 physician diagnoses as terminal.

1125 (58) Treatment services for persons with opioid
1126 dependency or other highly addictive substance use disorders. The
1127 division is authorized to reimburse eligible providers for
1128 treatment of opioid dependency and other highly addictive
1129 substance use disorders, as determined by the division. Treatment
1130 related to these conditions shall not count against any physician
1131 visit limit imposed under this section.

1132 (59) The division shall allow beneficiaries between the
1133 ages of ten (10) and eighteen (18) years to receive vaccines
1134 through a pharmacy venue. The division and the State Department
1135 of Health shall coordinate and notify OB-GYN providers that the
1136 Vaccines for Children program is available to providers free of
1137 charge.

1138 (60) Beginning July 1, 2022, essential health benefits
1139 as described in the federal Patient Protection and Affordable Care
1140 Act of 2010 and as amended, for individuals eligible for Medicaid
1141 under the federal Patient Protection and Affordable Care Act of
1142 2010 as amended, as described in Section 43-13-115(28).

1143 (B) [Deleted]



1144 (C) The division may pay to those providers who participate
1145 in and accept patient referrals from the division's emergency room
1146 redirection program a percentage, as determined by the division,
1147 of savings achieved according to the performance measures and
1148 reduction of costs required of that program. Federally qualified
1149 health centers may participate in the emergency room redirection
1150 program, and the division may pay those centers a percentage of
1151 any savings to the Medicaid program achieved by the centers'
1152 accepting patient referrals through the program, as provided in
1153 this subsection (C).

1154 (D) (1) Notwithstanding any provision of this article,
1155 except as authorized in subsection (E) of this section and in
1156 Section 43-13-139, (a) the limitations on the quantity or
1157 frequency of use of, or the fees or charges for, any of the care
1158 or services available to recipients under this section; and (b)
1159 the payments or rates of reimbursement to providers rendering care
1160 or services authorized under this section to recipients shall not
1161 be increased, decreased or otherwise changed from the levels in
1162 effect on July 1, 2021, unless they are authorized by an amendment
1163 to this section by the Legislature.

1164 (2) When any of the changes described in paragraph (1)
1165 of this subsection are authorized by an amendment to this section
1166 by the Legislature that is effective after July 1, 2021, the
1167 changes made in the later amendment shall not be further changed
1168 from the levels in effect on the effective date of the later



1169 amendment unless those changes are authorized by another amendment
1170 to this section by the Legislature.

1171 (E) Notwithstanding any provision of this article, no new
1172 groups or categories of recipients and new types of care and
1173 services may be added without enabling legislation from the
1174 Mississippi Legislature, except that the division may authorize
1175 those changes without enabling legislation when the addition of
1176 recipients or services is ordered by a court of proper authority.

1177 (F) The executive director shall keep the Governor advised
1178 on a timely basis of the funds available for expenditure and the
1179 projected expenditures. Notwithstanding any other provisions of
1180 this article, if current or projected expenditures of the division
1181 are reasonably anticipated to exceed the amount of funds
1182 appropriated to the division for any fiscal year, the Governor,
1183 after consultation with the executive director, shall take all
1184 appropriate measures to reduce costs, which may include, but are
1185 not limited to:

1186 (1) Reducing or discontinuing any or all services that
1187 are deemed to be optional under Title XIX of the Social Security
1188 Act;

1189 (2) Reducing reimbursement rates for any or all service
1190 types;

1191 (3) Imposing additional assessments on health care
1192 providers; or



1193 (4) Any additional cost-containment measures deemed
1194 appropriate by the Governor.

1195 To the extent allowed under federal law, any reduction to
1196 services or reimbursement rates under this subsection (F) shall be
1197 accompanied by a reduction, to the fullest allowable amount, to
1198 the profit margin and administrative fee portions of capitated
1199 payments to organizations described in paragraph (1) of subsection
1200 (H).

1201 Beginning in fiscal year 2010 and in fiscal years thereafter,
1202 when Medicaid expenditures are projected to exceed funds available
1203 for the fiscal year, the division shall submit the expected
1204 shortfall information to the PEER Committee not later than
1205 December 1 of the year in which the shortfall is projected to
1206 occur. PEER shall review the computations of the division and
1207 report its findings to the Legislative Budget Office not later
1208 than January 7 in any year.

1209 (G) Notwithstanding any other provision of this article, it
1210 shall be the duty of each provider participating in the Medicaid
1211 program to keep and maintain books, documents and other records as
1212 prescribed by the Division of Medicaid in accordance with federal
1213 laws and regulations.

1214 (H) (1) Notwithstanding any other provision of this
1215 article, the division is authorized to implement (a) a managed
1216 care program, (b) a coordinated care program, (c) a coordinated
1217 care organization program, (d) a health maintenance organization



1218 program, (e) a patient-centered medical home program, (f) an
1219 accountable care organization program, (g) provider-sponsored
1220 health plan, or (h) any combination of the above programs. As a
1221 condition for the approval of any program under this subsection
1222 (H)(1), the division shall require that no managed care program,
1223 coordinated care program, coordinated care organization program,
1224 health maintenance organization program, or provider-sponsored
1225 health plan may:

1226 (a) Pay providers at a rate that is less than the
1227 Medicaid All Patient Refined Diagnosis Related Groups (APR-DRG)
1228 reimbursement rate;

1229 (b) Override the medical decisions of hospital
1230 physicians or staff regarding patients admitted to a hospital for
1231 an emergency medical condition as defined by 42 US Code Section
1232 1395dd. This restriction (b) does not prohibit the retrospective
1233 review of the appropriateness of the determination that an
1234 emergency medical condition exists by chart review or coding
1235 algorithm, nor does it prohibit prior authorization for
1236 nonemergency hospital admissions;

1237 (c) Pay providers at a rate that is less than the
1238 normal Medicaid reimbursement rate. It is the intent of the
1239 Legislature that all managed care entities described in this
1240 subsection (H), in collaboration with the division, develop and
1241 implement innovative payment models that incentivize improvements
1242 in health care quality, outcomes, or value, as determined by the



1243 division. Participation in the provider network of any managed
1244 care, coordinated care, provider-sponsored health plan, or similar
1245 contractor shall not be conditioned on the provider's agreement to
1246 accept such alternative payment models;

1247 (d) Implement a prior authorization and
1248 utilization review program for medical services, transportation
1249 services and prescription drugs that is more stringent than the
1250 prior authorization processes used by the division in its
1251 administration of the Medicaid program. Not later than December
1252 2, 2021, the contractors that are receiving capitated payments
1253 under a managed care delivery system established under this
1254 subsection (H) shall submit a report to the Chairmen of the House
1255 and Senate Medicaid Committees on the status of the prior
1256 authorization and utilization review program for medical services,
1257 transportation services and prescription drugs that is required to
1258 be implemented under this subparagraph (d);

1259 (e) [Deleted]

1260 (f) Implement a preferred drug list that is more
1261 stringent than the mandatory preferred drug list established by
1262 the division under subsection (A) (9) of this section;

1263 (g) Implement a policy which denies beneficiaries
1264 with hemophilia access to the federally funded hemophilia
1265 treatment centers as part of the Medicaid Managed Care network of
1266 providers.



1267 Each health maintenance organization, coordinated care
1268 organization, provider-sponsored health plan, or other
1269 organization paid for services on a capitated basis by the
1270 division under any managed care program or coordinated care
1271 program implemented by the division under this section shall use a
1272 clear set of level of care guidelines in the determination of
1273 medical necessity and in all utilization management practices,
1274 including the prior authorization process, concurrent reviews,
1275 retrospective reviews and payments, that are consistent with
1276 widely accepted professional standards of care. Organizations
1277 participating in a managed care program or coordinated care
1278 program implemented by the division may not use any additional
1279 criteria that would result in denial of care that would be
1280 determined appropriate and, therefore, medically necessary under
1281 those levels of care guidelines.

1282 (2) Notwithstanding any provision of this section, the
1283 recipients eligible for enrollment into a Medicaid Managed Care
1284 Program authorized under this subsection (H) may include only
1285 those categories of recipients eligible for participation in the
1286 Medicaid Managed Care Program as of January 1, 2021, the
1287 Children's Health Insurance Program (CHIP), and the CMS-approved
1288 Section 1115 demonstration waivers in operation as of January 1,
1289 2021. No expansion of Medicaid Managed Care Program contracts may
1290 be implemented by the division without enabling legislation from
1291 the Mississippi Legislature.



1292 (3) (a) Any contractors receiving capitated payments
1293 under a managed care delivery system established in this section
1294 shall provide to the Legislature and the division statistical data
1295 to be shared with provider groups in order to improve patient
1296 access, appropriate utilization, cost savings and health outcomes
1297 not later than October 1 of each year. Additionally, each
1298 contractor shall disclose to the Chairmen of the Senate and House
1299 Medicaid Committees the administrative expenses costs for the
1300 prior calendar year, and the number of full-equivalent employees
1301 located in the State of Mississippi dedicated to the Medicaid and
1302 CHIP lines of business as of June 30 of the current year.

1303 (b) The division and the contractors participating
1304 in the managed care program, a coordinated care program or a
1305 provider-sponsored health plan shall be subject to annual program
1306 reviews or audits performed by the Office of the State Auditor,
1307 the PEER Committee, the Department of Insurance and/or independent
1308 third parties.

1309 (c) Those reviews shall include, but not be
1310 limited to, at least two (2) of the following items:

1311 (i) The financial benefit to the State of
1312 Mississippi of the managed care program,

1313 (ii) The difference between the premiums paid
1314 to the managed care contractors and the payments made by those
1315 contractors to health care providers,



1316 (iii) Compliance with performance measures
1317 required under the contracts,
1318 (iv) Administrative expense allocation
1319 methodologies,
1320 (v) Whether nonprovider payments assigned as
1321 medical expenses are appropriate,
1322 (vi) Capitated arrangements with related
1323 party subcontractors,
1324 (vii) Reasonableness of corporate
1325 allocations,
1326 (viii) Value-added benefits and the extent to
1327 which they are used,
1328 (ix) The effectiveness of subcontractor
1329 oversight, including subcontractor review,
1330 (x) Whether health care outcomes have been
1331 improved, and
1332 (xi) The most common claim denial codes to
1333 determine the reasons for the denials.

1334 The audit reports shall be considered public documents and
1335 shall be posted in their entirety on the division's website.

1336 (4) All health maintenance organizations, coordinated
1337 care organizations, provider-sponsored health plans, or other
1338 organizations paid for services on a capitated basis by the
1339 division under any managed care program or coordinated care
1340 program implemented by the division under this section shall



1341 reimburse all providers in those organizations at rates no lower
1342 than those provided under this section for beneficiaries who are
1343 not participating in those programs.

1344 (5) No health maintenance organization, coordinated
1345 care organization, provider-sponsored health plan, or other
1346 organization paid for services on a capitated basis by the
1347 division under any managed care program or coordinated care
1348 program implemented by the division under this section shall
1349 require its providers or beneficiaries to use any pharmacy that
1350 ships, mails or delivers prescription drugs or legend drugs or
1351 devices.

1352 (6) (a) Not later than December 1, 2021, the
1353 contractors who are receiving capitated payments under a managed
1354 care delivery system established under this subsection (H) shall
1355 develop and implement a uniform credentialing process for
1356 providers. Under that uniform credentialing process, a provider
1357 who meets the criteria for credentialing will be credentialed with
1358 all of those contractors and no such provider will have to be
1359 separately credentialed by any individual contractor in order to
1360 receive reimbursement from the contractor. Not later than
1361 December 2, 2021, those contractors shall submit a report to the
1362 Chairmen of the House and Senate Medicaid Committees on the status
1363 of the uniform credentialing process for providers that is
1364 required under this subparagraph (a).



1365 (b) If those contractors have not implemented a
1366 uniform credentialing process as described in subparagraph (a) by
1367 December 1, 2021, the division shall develop and implement, not
1368 later than July 1, 2022, a single, consolidated credentialing
1369 process by which all providers will be credentialed. Under the
1370 division's single, consolidated credentialing process, no such
1371 contractor shall require its providers to be separately
1372 credentialed by the contractor in order to receive reimbursement
1373 from the contractor, but those contractors shall recognize the
1374 credentialing of the providers by the division's credentialing
1375 process.

1376 (c) The division shall require a uniform provider
1377 credentialing application that shall be used in the credentialing
1378 process that is established under subparagraph (a) or (b). If the
1379 contractor or division, as applicable, has not approved or denied
1380 the provider credentialing application within sixty (60) days of
1381 receipt of the completed application that includes all required
1382 information necessary for credentialing, then the contractor or
1383 division, upon receipt of a written request from the applicant and
1384 within five (5) business days of its receipt, shall issue a
1385 temporary provider credential/enrollment to the applicant if the
1386 applicant has a valid Mississippi professional or occupational
1387 license to provide the health care services to which the
1388 credential/enrollment would apply. The contractor or the division
1389 shall not issue a temporary credential/enrollment if the applicant



1390 has reported on the application a history of medical or other
1391 professional or occupational malpractice claims, a history of
1392 substance abuse or mental health issues, a criminal record, or a
1393 history of medical or other licensing board, state or federal
1394 disciplinary action, including any suspension from participation
1395 in a federal or state program. The temporary
1396 credential/enrollment shall be effective upon issuance and shall
1397 remain in effect until the provider's credentialing/enrollment
1398 application is approved or denied by the contractor or division.
1399 The contractor or division shall render a final decision regarding
1400 credentialing/enrollment of the provider within sixty (60) days
1401 from the date that the temporary provider credential/enrollment is
1402 issued to the applicant.

1403 (d) If the contractor or division does not render
1404 a final decision regarding credentialing/enrollment of the
1405 provider within the time required in subparagraph (c), the
1406 provider shall be deemed to be credentialed by and enrolled with
1407 all of the contractors and eligible to receive reimbursement from
1408 the contractors.

1409 (7) (a) Each contractor that is receiving capitated
1410 payments under a managed care delivery system established under
1411 this subsection (H) shall provide to each provider for whom the
1412 contractor has denied the coverage of a procedure that was ordered
1413 or requested by the provider for or on behalf of a patient, a
1414 letter that provides a detailed explanation of the reasons for the



1415 denial of coverage of the procedure and the name and the
1416 credentials of the person who denied the coverage. The letter
1417 shall be sent to the provider in electronic format.

1418 (b) After a contractor that is receiving capitated
1419 payments under a managed care delivery system established under
1420 this subsection (H) has denied coverage for a claim submitted by a
1421 provider, the contractor shall issue to the provider within sixty
1422 (60) days a final ruling of denial of the claim that allows the
1423 provider to have a state fair hearing and/or agency appeal with
1424 the division. If a contractor does not issue a final ruling of
1425 denial within sixty (60) days as required by this subparagraph
1426 (b), the provider's claim shall be deemed to be automatically
1427 approved and the contractor shall pay the amount of the claim to
1428 the provider.

1429 (c) After a contractor has issued a final ruling
1430 of denial of a claim submitted by a provider, the division shall
1431 conduct a state fair hearing and/or agency appeal on the matter of
1432 the disputed claim between the contractor and the provider within
1433 sixty (60) days, and shall render a decision on the matter within
1434 thirty (30) days after the date of the hearing and/or appeal.

1435 (8) It is the intention of the Legislature that the
1436 division evaluate the feasibility of using a single vendor to
1437 administer pharmacy benefits provided under a managed care
1438 delivery system established under this subsection (H). Providers



1439 of pharmacy benefits shall cooperate with the division in any
1440 transition to a carve-out of pharmacy benefits under managed care.

1441 (9) It is the intention of the Legislature that the
1442 division evaluate the feasibility of using a single vendor to
1443 administer dental benefits provided under a managed care delivery
1444 system established in this subsection (H). Providers of dental
1445 benefits shall cooperate with the division in any transition to a
1446 carve-out of dental benefits under managed care.

1447 (10) It is the intent of the Legislature that any
1448 contractor receiving capitated payments under a managed care
1449 delivery system established in this section shall implement
1450 innovative programs to improve the health and well-being of
1451 members diagnosed with prediabetes and diabetes.

1452 (11) It is the intent of the Legislature that any
1453 contractors receiving capitated payments under a managed care
1454 delivery system established under this subsection (H) shall work
1455 with providers of Medicaid services to improve the utilization of
1456 long-acting reversible contraceptives (LARCs). Not later than
1457 December 1, 2021, any contractors receiving capitated payments
1458 under a managed care delivery system established under this
1459 subsection (H) shall provide to the Chairmen of the House and
1460 Senate Medicaid Committees and House and Senate Public Health
1461 Committees a report of LARC utilization for State Fiscal Years
1462 2018 through 2020 as well as any programs, initiatives, or efforts
1463 made by the contractors and providers to increase LARC



1464 utilization. This report shall be updated annually to include
1465 information for subsequent state fiscal years.

1466 (12) The division is authorized to make not more than
1467 one (1) emergency extension of the contracts that are in effect on
1468 July 1, 2021, with contractors who are receiving capitated
1469 payments under a managed care delivery system established under
1470 this subsection (H), as provided in this paragraph (12). The
1471 maximum period of any such extension shall be one (1) year, and
1472 under any such extensions, the contractors shall be subject to all
1473 of the provisions of this subsection (H). The extended contracts
1474 shall be revised to incorporate any provisions of this subsection
1475 (H).

1476 (I) [Deleted]

1477 (J) There shall be no cuts in inpatient and outpatient
1478 hospital payments, or allowable days or volumes, as long as the
1479 hospital assessment provided in Section 43-13-145 is in effect.
1480 This subsection (J) shall not apply to decreases in payments that
1481 are a result of: reduced hospital admissions, audits or payments
1482 under the APR-DRG or APC models, or a managed care program or
1483 similar model described in subsection (H) of this section.

1484 (K) In the negotiation and execution of such contracts
1485 involving services performed by actuarial firms, the Executive
1486 Director of the Division of Medicaid may negotiate a limitation on
1487 liability to the state of prospective contractors.

1488 (L) This section shall stand repealed on July 1, 2024.



1489 **SECTION 5.** Section 37-153-7, Mississippi Code of 1972, is
1490 amended as follows:

1491 37-153-7. (1) There is created the Mississippi Office of
1492 Workforce Development and the Mississippi State Workforce
1493 Investment Board, which shall serve as the advisory board for the
1494 office. The Mississippi State Workforce Investment Board shall be
1495 composed of * * * twenty-eight (28) voting members, of which a
1496 majority shall be representatives of business and industry in
1497 accordance with the federal Workforce Innovation and Opportunity
1498 Act, or any successive acts.

1499 (2) The members of the State Workforce Investment Board
1500 shall include:

1501 (a) The Governor, or his designee;

1502 (b) * * * Sixteen (16) members, appointed by the
1503 Governor, of whom:

1504 (i) A majority shall be representatives of
1505 businesses in the state, who:

1506 1. Are owners of businesses, chief executives
1507 or operating officers of businesses, or other business executives
1508 or employers with optimum policymaking or hiring authority, and
1509 who, in addition, may be members of a local board described in
1510 Section 3122(b)(2)(A)(i) of the federal Workforce Innovation and
1511 Opportunity Act. At least two (2) of the members appointed under
1512 this item 1. shall be small business owners, chief executives or



1513 operating officers of businesses with less than fifty (50)
1514 employees;

1515 2. Represent businesses, including small
1516 businesses, or organizations representing businesses, which
1517 provide employment opportunities that, at a minimum, include
1518 high-quality, work-relevant training and development in
1519 high-demand industry sectors or occupations in the state; and

1520 3. Are appointed from among individuals
1521 nominated by state business organizations and business trade
1522 associations;

1523 (ii) Not less than twenty percent (20%) shall
1524 consist of representatives of the workforce within the state,
1525 which:

1526 1. Includes labor organization
1527 representatives who have been nominated by state labor
1528 federations;

1529 2. Includes a labor organization member or
1530 training director from an apprenticeship program in the state,
1531 which shall be a joint labor-management apprenticeship program if
1532 such a program exists in the state;

1533 3. May include representatives of
1534 community-based organizations, including organizations serving
1535 veterans or providing or supporting competitive, integrated
1536 employment for individuals with disabilities, who have
1537 demonstrated experience and expertise in addressing employment,



1538 training or education needs of individuals with barriers to
1539 employment; and

1540 4. May include representatives of
1541 organizations, including organizations serving out-of-school
1542 youth, who have demonstrated experience or expertise in addressing
1543 the employment, training or education needs of eligible youth;

1544 (5) Includes at least one (1) woman with
1545 expertise in assisting women in job training and securing
1546 employment in nontraditional occupations;

1547 (iii) The balance shall include government
1548 representatives, including the lead state officials with primary
1549 responsibility for core programs, and chief elected officials
1550 (collectively representing both cities and counties, where
1551 appropriate);

1552 (c) Two (2) representatives of businesses in the state
1553 appointed by the Lieutenant Governor;

1554 (d) Two (2) representatives of businesses in the state
1555 appointed by the Governor from a list of three (3) recommendations
1556 from the Speaker of the House; and

1557 (e) The following state officials:

1558 (i) The Executive Director of the Mississippi
1559 Department of Employment Security;

1560 (ii) The Executive Director of the Department of
1561 Rehabilitation Services;



1562 (iii) The State Superintendent of Public
1563 Education;
1564 (iv) The Executive Director of the Mississippi
1565 Development Authority;
1566 (v) The Executive Director of the Mississippi
1567 Community College Board; and
1568 * * *
1569 (* * *vi) The Commissioner of the Institutions of
1570 Higher Learning.
1571 (f) One (1) senator, appointed by the Lieutenant
1572 Governor, and one (1) representative, appointed by the Speaker of
1573 the House, shall serve on the state board in a nonvoting capacity.
1574 (g) The Governor may appoint additional members if
1575 required by the federal Workforce Innovation and Opportunity Act,
1576 or any successive acts.
1577 (h) Members of the board shall serve a term of four (4)
1578 years, and shall not serve more than three (3) consecutive terms.
1579 (i) The membership of the board shall reflect the
1580 diversity of the State of Mississippi.
1581 (j) The Governor shall designate the Chairman of the
1582 Mississippi State Workforce Investment Board from among the
1583 business and industry voting members of the board, and a quorum of
1584 the board shall consist of a majority of the voting members of the
1585 board.



1586 (k) The voting members of the board who are not state
1587 employees shall be entitled to reimbursement of their reasonable
1588 expenses in the manner and amount specified in Section 25-3-41 and
1589 shall be entitled to receive per diem compensation as authorized
1590 in Section 25-3-69.

1591 (3) Members of the state board may be recalled by their
1592 appointing authority for cause, including a felony conviction,
1593 fraudulent or dishonest acts or gross abuse of discretion, failure
1594 to meet board member qualifications, or chronic failure to attend
1595 board meetings.

1596 (4) The Mississippi Department of Employment Security shall
1597 establish limits on administrative costs for each portion of
1598 Mississippi's workforce development system consistent with the
1599 federal Workforce Investment Act or any future federal workforce
1600 legislation. The Mississippi Department of Employment Security
1601 shall be responsible for providing necessary administrative,
1602 clerical and budget support for the State Workforce Investment
1603 Board.

1604 (5) The Mississippi State Workforce Investment Board shall
1605 have the following duties. These duties are intended to be
1606 consistent with the scope of duties provided in the federal
1607 Workforce Innovation and Opportunity Act, amendments and successor
1608 legislation to this act, and other relevant federal law:

1609 (a) Through the office, develop and submit to the
1610 Governor, Lieutenant Governor and Speaker of the House a strategic



1611 plan for an integrated state workforce development system that
1612 aligns resources and structures the system to more effectively and
1613 efficiently meet the demands of Mississippi's employers and job
1614 seekers. This plan will comply with the federal Workforce
1615 Investment Act of 1998, as amended, the federal Workforce
1616 Innovation and Opportunity Act of 2014 and amendments and
1617 successor legislation to these acts;

1618 (b) Assist the Governor, Lieutenant Governor and
1619 Speaker of the House in the development and continuous improvement
1620 of the statewide workforce investment system that shall include:

1621 (i) Development of linkages in order to assure
1622 coordination and nonduplication among programs and activities; and

1623 (ii) Review local workforce development plans that
1624 reflect the use of funds from the federal Workforce Investment
1625 Act, * * * the Wagner-Peyser Act and the * * * Mississippi
1626 Comprehensive Workforce Training and Education Consolidation Act;

1627 (c) Recommend to the office the designation of local
1628 workforce investment areas as required in Section 116 of the
1629 federal Workforce Investment Act of 1998 and the Workforce
1630 Innovation and Opportunity Act of 2014. There shall be four (4)
1631 workforce investment areas that are generally aligned with the
1632 planning and development district structure in Mississippi.
1633 Planning and development districts will serve as the fiscal agents
1634 to manage Workforce Investment Act funds, oversee and support the
1635 local workforce investment boards aligned with the area and the



1636 local programs and activities as delivered by the one-stop
1637 employment and training system. The planning and development
1638 districts will perform this function through the provisions of the
1639 county cooperative service districts created under Sections
1640 19-3-101 through 19-3-115; however, planning and development
1641 districts currently performing this function under the Interlocal
1642 Cooperation Act of 1974, Sections 17-13-1 through 17-13-17, may
1643 continue to do so;

1644 (d) Assist the Governor in the development of an
1645 allocation formula for the distribution of funds for adult
1646 employment and training activities and youth activities to local
1647 workforce investment areas;

1648 (e) Recommend comprehensive, results-oriented measures
1649 that shall be applied to all of Mississippi's workforce
1650 development system programs;

1651 (f) Assist the Governor in the establishment and
1652 management of a one-stop employment and training system conforming
1653 to the requirements of the federal Workforce Investment Act of
1654 1998 and the Workforce Innovation and Opportunity Act of 2014, as
1655 amended, recommending policy for implementing the Governor's
1656 approved plan for employment and training activities and services
1657 within the state. In developing this one-stop career operating
1658 system, the Mississippi State Workforce Investment Board, in
1659 conjunction with local workforce investment boards, shall:



- 1660 (i) Design broad guidelines for the delivery of
1661 workforce development programs;
- 1662 (ii) Identify all existing delivery agencies and
1663 other resources;
- 1664 (iii) Define appropriate roles of the various
1665 agencies to include an analysis of service providers' strengths
1666 and weaknesses;
- 1667 (iv) Determine the best way to utilize the various
1668 agencies to deliver services to recipients; and
- 1669 (v) Develop a financial plan to support the
1670 delivery system that shall, at a minimum, include an
1671 accountability system;
- 1672 (g) To provide authority, in accordance with any
1673 executive order of the Governor, for developing the necessary
1674 collaboration among state agencies at the highest level for
1675 accomplishing the purposes of this chapter;
- 1676 (h) To monitor the effectiveness of the workforce
1677 development centers and WIN job centers;
- 1678 (i) To advise the Governor, public schools,
1679 community/junior colleges and institutions of higher learning on
1680 effective school-to-work transition policies and programs that
1681 link students moving from high school to higher education and
1682 students moving between community colleges and four-year
1683 institutions in pursuit of academic and technical skills training;



1684 (j) To work with industry to identify barriers that
1685 inhibit the delivery of quality workforce education and the
1686 responsiveness of educational institutions to the needs of
1687 industry;

1688 (k) To provide periodic assessments on effectiveness
1689 and results of the overall Mississippi comprehensive workforce
1690 development system and district councils;

1691 (l) Develop broad statewide development goals,
1692 including a goal to raise the state's labor force participation
1693 rate;

1694 (m) Perform a comprehensive review of Mississippi's
1695 workforce development efforts, including the amount spent and
1696 effectiveness of programs supported by state or federal money; and

1697 (n) To assist the Governor in carrying out any other
1698 responsibility required by the federal Workforce Investment Act of
1699 1998, as amended and the Workforce Innovation and Opportunity Act,
1700 successor legislation and amendments.

1701 (6) The Mississippi State Workforce Investment Board shall
1702 coordinate all training programs and funds within its purview,
1703 consistent with the federal Workforce Investment Act, Workforce
1704 Innovation and Opportunity Act, amendments and successor
1705 legislation to these acts, and other relevant federal law.

1706 Each state agency director responsible for workforce training
1707 activities shall advise the Mississippi Office of Workforce
1708 Development and the State Workforce Investment Board of



1709 appropriate federal and state requirements. Each state agency,
1710 department and institution shall report any monies received for
1711 workforce training activities or career and technical education
1712 and a detailed itemization of how those monies were spent to the
1713 state board. The board shall compile the data and provide a
1714 report of the monies and expenditures to the Chairs of the House
1715 and Senate Appropriations Committee, the Chair of the House
1716 Workforce Development Committee and the Chair of the Senate
1717 Economic and Workforce Development Committee by October 1 of each
1718 year. Each such state agency director shall remain responsible
1719 for the actions of his agency; however, each state agency and
1720 director shall work cooperatively to fulfill the state's goals.

1721 (7) The State Workforce Investment Board shall establish an
1722 executive committee, which shall consist of the following State
1723 Workforce Investment Board members:

1724 (a) The Chair of the State Workforce Investment Board;

1725 (b) Two (2) business representatives currently serving
1726 on the state board selected by the Governor;

1727 (c) The two (2) business representatives currently
1728 serving on the state board appointed by the Lieutenant Governor;

1729 (d) The two (2) business representatives currently
1730 serving on the state board appointed by the Governor from a list
1731 of three (3) recommendations from the Speaker of the House;

1732 (e) The two (2) legislators, who shall serve in a
1733 nonvoting capacity, one (1) of whom shall be appointed by the



1734 Lieutenant Governor from the membership of the Mississippi Senate
1735 and one (1) of whom shall be appointed by the Speaker of the House
1736 of Representatives from the membership of the Mississippi House of
1737 Representatives.

1738 (8) The executive committee shall select an executive
1739 director of the Office of Workforce Development, with the advice
1740 and consent of a majority of the State Workforce Investment Board.
1741 The executive committee shall seek input from economic development
1742 organizations across the state when selecting the executive
1743 director. The executive director shall:

1744 (a) Be a person with extensive experience in
1745 development of economic, human and physical resources, and
1746 promotion of industrial and commercial development. The executive
1747 director shall have a bachelor's degree from a state-accredited
1748 institution and no less than eight (8) years of professional
1749 experience related to workforce or economic development;

1750 (b) Perform the functions necessary for the daily
1751 operation and administration of the office, with oversight from
1752 the executive committee and the State Workforce Investment Board,
1753 to fulfill the duties of the state board as described in Chapter
1754 476, Laws of 2020;

1755 (c) Hire staff needed for the performance of his or her
1756 duties under Chapter 476, Laws of 2020. The executive director,
1757 with approval from the executive committee, shall set the



1758 compensation of any hired employees from any funds made available
1759 for that purpose;

1760 (d) Enter any part of the Mississippi Community College
1761 Board, individual community and junior colleges, or other
1762 workforce training facilities operated by the state or its
1763 subdivisions;

1764 (e) Serve at the will and pleasure of the executive
1765 committee;

1766 (f) Promulgate rules and regulations, subject to
1767 oversight by the executive committee, not inconsistent with this
1768 chapter, as may be necessary to enforce the provisions in Chapter
1769 476, Laws of 2020; and

1770 (g) Perform any other actions he or she, in
1771 consultation with the executive committee, deems necessary to
1772 fulfill the duties under Chapter 476, Laws of 2020.

1773 (9) The Office of Workforce Development and Mississippi
1774 Community College Board shall collaborate in the administration
1775 and oversight of the Mississippi Workforce Enhancement Training
1776 Fund and Mississippi Works Fund, as described in Section 71-5-353.
1777 The executive director shall maintain complete and exclusive
1778 operational control of the office's functions.

1779 (10) The office shall file an annual report with the
1780 Governor, Secretary of State, President of the Senate, Secretary
1781 of the Senate, Speaker of the House, and Clerk of the House not
1782 later than October 1 of each year regarding all funds approved by



1783 the office to be expended on workforce training during the prior
1784 calendar year. The report shall include:

1785 (a) Information on the performance of the Mississippi
1786 Workforce Enhancement Training Fund and the Mississippi Works
1787 Fund, in terms of adding value to the local and state economy, the
1788 contribution to future growth of the state economy, and movement
1789 toward state goals, including increasing the labor force
1790 participation rate; and

1791 (b) With respect to specific workforce training
1792 projects:

1793 (i) The location of the training;

1794 (ii) The amount allocated to the project;

1795 (iii) The purpose of the project;

1796 (iv) The specific business entity that is the
1797 beneficiary of the project; and

1798 (v) The number of employees intended to be trained
1799 and actually trained, if applicable, in the course of the project.

1800 (c) All information concerning a proposed project which
1801 is provided to the executive director shall be kept confidential.

1802 Such confidentiality shall not limit disclosure under the
1803 Mississippi Public Records Act of 1983 of records describing the
1804 nature, quantity, cost or other pertinent information related to
1805 the activities of, or services performed using, the Mississippi
1806 Workforce Enhancement Training Fund or the Mississippi Works Fund.



1807 (11) Nothing in Chapter 476, Laws of 2020 [Senate Bill No.
1808 2564] shall void or otherwise interrupt any contract, lease, grant
1809 or other agreement previously entered into by the State Workforce
1810 Investment Board, Mississippi Community College Board, individual
1811 community or junior colleges, or other entities.

1812 **SECTION 6.** Section 7-1-355, Mississippi Code of 1972, is
1813 amended as follows:

1814 7-1-355. (1) The Mississippi Department of Employment
1815 Security, Office of the Governor, is designated as the sole
1816 administrator of all programs for which the state is the prime
1817 sponsor under Title 1(B) of Public Law 105-220, Workforce
1818 Investment Act of 1998, and the Workforce Innovation Opportunity
1819 Act (Public Law 113-128) and the regulations promulgated
1820 thereunder, and may take all necessary action to secure to this
1821 state the benefits of that legislation. The Mississippi
1822 Department of Employment Security, Office of the Governor, may
1823 receive and disburse funds for those programs that become
1824 available to it from any source.

1825 (2) The Mississippi Department of Employment Security,
1826 Office of the Governor, shall establish guidelines on the amount
1827 and/or percentage of indirect and/or administrative expenses by
1828 the local fiscal agent or the Workforce Development Center
1829 operator. The Mississippi Department of Employment Security,
1830 Office of the Governor, shall develop an accountability system and
1831 make an annual report to the Legislature before December 31 of



1832 each year on Workforce Investment Act activities. The report
1833 shall include, but is not limited to, the following:

1834 (a) The total number of individuals served through the
1835 Workforce Development Centers and the percentage and number of
1836 individuals for which a quarterly follow-up is provided;

1837 (b) The number of individuals who receive core services
1838 by each center;

1839 (c) The number of individuals who receive intensive
1840 services by each center;

1841 (d) The number of Workforce Investment Act vouchers
1842 issued by the Workforce Development Centers including:

1843 (i) A list of schools and colleges to which these
1844 vouchers were issued and the average cost per school of the
1845 vouchers; and

1846 (ii) A list of the types of programs for which
1847 these vouchers were issued;

1848 (e) The number of individuals placed in a job through
1849 Workforce Development Centers;

1850 (f) The monies and the amount retained for
1851 administrative and other costs received from Workforce Investment
1852 Act or Workforce Innovation Opportunity Act funds for each agency
1853 or organization that Workforce Investment Act or Workforce
1854 Innovation Opportunity Act funds flow through as a percentage and
1855 actual dollar amount of all Workforce Investment Act or Workforce
1856 Innovation Opportunity Act funds received.



1857 (3) The Mississippi Department of Employment Security shall
1858 achieve gender pay equity in the Workforce Investment Act or
1859 Workforce Innovation Opportunity Act workforce development system.
1860 The department shall include in the annual report required by
1861 subsection (2) of this section:

1862 (a) The gender and race of those seeking employment
1863 services;

1864 (b) Training by training provider extended to each
1865 participant by gender; and

1866 (c) Earnings for each participant by gender as
1867 verification of pay equity in the workforce system.

1868 **SECTION 7. Equal pay certificate.** (1) No department or
1869 agency of the state shall execute a contract or agreement in
1870 excess of One Hundred Thousand Dollars (\$100,000.00) with a
1871 business that has forty (40) or more full-time employees in this
1872 state or a state where the business has its primary place of
1873 business on a single day during the prior twelve (12) months,
1874 unless the business has an equal pay certificate or it has
1875 certified in writing that it is exempt. A certificate is valid
1876 for four (4) years.

1877 (2) This section does not apply to a business with respect
1878 to a specific contract if the Executive Director of the Department
1879 of Finance and Administration determines that application of this
1880 section would cause undue hardship to the contracting entity.



1881 (3) A business shall apply for an equal pay certificate by
1882 paying a One Hundred Fifty Dollar (\$150.00) filing fee and
1883 submitting an equal pay compliance statement to the Department of
1884 Finance and Administration. The proceeds from the fees collected
1885 under this section shall be deposited in an equal pay certificate
1886 special revenue account. The Department of Finance and
1887 Administration shall issue an equal pay certificate of compliance
1888 to a business that submits to the department a statement signed by
1889 the chairperson of the board or chief executive officer of the
1890 business:

1891 (a) That the business is in compliance with Title VII
1892 of the Civil Rights Act of 1964;

1893 (b) That the average compensation for its female
1894 employees is not consistently below the average compensation for
1895 its male employees within each of the major job categories in the
1896 EEO-1 Employer Information Report for which an employee is
1897 expected to perform work under the contract, taking into account
1898 factors such as length of service, requirements of specific jobs,
1899 experience, skill, effort, responsibility, working conditions of
1900 the job, or other mitigating factors;

1901 (c) That the business does not restrict employees of
1902 one (1) sex to certain job classifications and makes retention and
1903 promotion decisions without regard to sex;



1904 (d) That wage and benefit disparities are corrected
1905 when identified to ensure compliance with the laws cited in
1906 paragraph (a) and with paragraph (b) of this subsection; and

1907 (e) How often wages and benefits are evaluated to
1908 ensure compliance with the laws cited in paragraph (a) and with
1909 paragraph (b) of this subsection.

1910 (4) The equal pay compliance statement shall also indicate
1911 whether the business, in setting compensation and benefits, uses:

1912 (a) A market pricing approach;

1913 (b) State prevailing wage or union contract
1914 requirements;

1915 (c) A performance pay system;

1916 (d) An internal analysis; or

1917 (e) An alternative approach to determine what level of
1918 wages and benefits to pay its employees. If the business uses an
1919 alternative approach, the business must provide a description of
1920 its approach.

1921 Receipt of the equal pay compliance statement by the
1922 commissioner does not establish compliance with the laws set forth
1923 in subsection (3) (a) of this section.

1924 (5) The Department of Finance and Administration must issue
1925 an equal pay certificate, or a statement of why the application
1926 was rejected, within fifteen (15) days of receipt of the
1927 application. An application may be rejected only if it does not
1928 comply with the requirements of subsection (3) of this section.



1929 (6) An equal pay certificate for a business may be suspended
1930 or revoked by the Department of Finance and Administration when
1931 the business fails to make a good-faith effort to comply with the
1932 laws identified in subsection (3) of this section, fails to make a
1933 good-faith effort to comply with this section, or has multiple
1934 violations of this section or the laws identified in subsection
1935 (3) of this section. Before suspending or revoking a certificate,
1936 the Department of Finance and Administration must first have
1937 sought to conciliate with the business regarding wages and
1938 benefits due to employees.

1939 (7) If a contract is awarded to a business that does not
1940 have an equal pay certificate as required under this section, or
1941 that is not in compliance with subsection (3) of this section, the
1942 Department of Finance and Administration may void the contract on
1943 behalf of the state. The contract award entity that is a party to
1944 the agreement must be notified by the Department of Finance and
1945 Administration before the Department of Finance and Administration
1946 takes action to void the contract.

1947 A contract may be abridged or terminated by the contract
1948 award entity identified upon notice that the Department of Finance
1949 and Administration has suspended or revoked the certificate of the
1950 business.

1951 (8) A business may obtain an administrative hearing before
1952 the suspension or revocation of its certificate is effective by
1953 filing a written request for a hearing twenty (20) days after



1954 service of notice by the Department of Finance and Administration.
1955 A business may obtain an administrative hearing before the
1956 contract award entity's abridgement or termination of a contract
1957 is effective by filing a written request for a hearing twenty (20)
1958 days after service of notice by the contract award entity.

1959 (9) The Department of Finance and Administration must
1960 provide technical assistance to any business that requests
1961 assistance regarding this section.

1962 (10) The State Auditor may audit the business's compliance
1963 with this section. As part of an audit, upon request, a business
1964 must provide the State Auditor the following information with
1965 respect to employees expected to perform work under the contract
1966 in each of the major job categories in the EEO-1 Employer
1967 Information Report:

1968 (a) Number of male employees;

1969 (b) Number of female employees;

1970 (c) Average annualized salaries paid to male employees
1971 and to female employees, in the manner most consistent with the
1972 employer's compensation system, within each major job category;

1973 (d) Information on performance payments, benefits, or
1974 other elements of compensation, in the manner most consistent with
1975 the employer's compensation system, if requested by the State
1976 Auditor as part of a determination as to whether these elements of
1977 compensation are different for male and female employees;



1978 (e) Average length of service for male and female
1979 employees in each major job category; and

1980 (f) Other information identified by the business or by
1981 the Department of Finance and Administration, as needed, to
1982 determine compliance.

1983 (11) Data submitted to the Department of Finance and
1984 Administration related to equal pay certificates are private data
1985 on individuals or nonpublic data with respect to persons other
1986 than department employees. The Department of Finance and
1987 Administration's decision to issue, not issue, revoke or suspend
1988 an equal pay certificate is public data.

1989 (12) The Department of Finance and Administration shall
1990 report to the Governor and the Legislature by January 31 of every
1991 year, beginning January 31, 2023. The report shall indicate the
1992 number of equal pay certificates issued, the number of audits
1993 conducted, the processes used by contractors to ensure compliance
1994 with subsection (3) of this section, and a summary of its auditing
1995 efforts. The Department of Finance and Administration shall
1996 consult with the Committee on the Status of Women in preparing the
1997 report.

1998 **SECTION 8.** It is declared to be the public policy of the
1999 State of Mississippi to establish fair minimum wages for workers
2000 in order to safeguard their health, efficiency and general
2001 well-being and to protect those workers as well as their employers



2002 from the effects of unfair competition resulting from wage levels
2003 detrimental to their health, efficiency and well-being.

2004 **SECTION 9.** (1) Except as otherwise provided in this act,
2005 every employer shall pay each of its employees a fair minimum wage
2006 as provided in this section.

2007 (2) The state minimum wage shall be as follows:

2008 (a) Beginning January 1, 2023, the rate of not less
2009 than Seven Dollars and Fifty Cents (\$7.50) per hour;

2010 (b) Beginning January 1, 2024, the rate of not less
2011 than Seven Dollars and Seventy-five Cents (\$7.75) per hour;

2012 (c) Beginning January 1, 2025, the rate of not less
2013 than Eight Dollars (\$8.00) per hour; and

2014 (d) Beginning January 1, 2026, the rate of not less
2015 than Ten Dollars (\$10.00) per hour.

2016 (3) Whenever the highest federal minimum wage is increased,
2017 the minimum wage established under this section shall be increased
2018 to the amount of the federal minimum wage plus one-half of one
2019 percent (1/2 of 1%) more than the federal rate, rounded to the
2020 nearest whole cent, effective on the same date as the increase in
2021 the highest federal minimum wage, and shall apply to all wage
2022 orders and administrative regulations then in force.

2023 (4) The rates for learners, beginners, and persons under the
2024 age of eighteen (18) years shall be not less than eighty-five
2025 percent (85%) of the state minimum wage for the first two hundred
2026 (200) hours of their employment and equal to the applicable state



2027 minimum wage thereafter, except institutional training programs
2028 specifically exempted by the director.

2029 **SECTION 10.** As used in this act, the following words shall
2030 have the meanings ascribed herein unless the context clearly
2031 requires otherwise:

2032 (a) "Director" means the Executive Director of the
2033 Mississippi Department of Employment Security.

2034 (b) "Department" means the Mississippi Department of
2035 Employment Security, Office of the Governor, established under
2036 Section 71-5-101.

2037 (c) "Wage" means compensation due to an employee by reason
2038 of his or her employment, payable in legal tender of the United
2039 States or checks on banks convertible into cash on demand at full
2040 face value, subject to any deductions, charges or allowances as
2041 may be permitted by this act or by regulations of the department
2042 under this act.

2043 (d) "Employ" means to suffer or to permit to work.

2044 (e) "Employer" means any individual, partnership,
2045 association, corporation, business trust, or any person or group
2046 of persons acting directly or indirectly in the interest of an
2047 employer in relation to an employee. The term "employer" does not
2048 mean:

2049 (i) Any individual, partnership, association,
2050 corporation, business trust, or any person or group of persons
2051 acting directly or indirectly in the interest of an employer in



2052 relation to an employee that employs fewer than five (5) employees
2053 in a regular employment relationship; or

2054 (ii) Any person, firm or corporation, or other
2055 entity subject to the provisions of the federal Fair Labor
2056 Standards Act of 1938.

2057 (f) "Independent contractor" means any individual who
2058 contracts to perform certain work away from the premises of his or
2059 her employer, uses his or her own methods to accomplish the work,
2060 and is subject to the control of the employer only as to the
2061 result of his or her work.

2062 (g) "Employee" means any individual employed by an
2063 employer but does not mean:

2064 (i) Any individual employed in a bona fide
2065 executive, administrative or professional capacity, or as an
2066 outside commission-paid salesperson, who customarily performs his
2067 or her services away from his or her employer's premises, taking
2068 orders for goods or services;

2069 (ii) Any student performing services for any
2070 school, college or university in which he or she is enrolled and
2071 is regularly attending classes;

2072 (iii) Any individual employed by the United States
2073 or by the state or any political subdivision of the state, except
2074 public schools and school districts;

2075 (iv) Any individual engaged in an activity of any
2076 educational, charitable, religious or nonprofit organization where



2077 the employer/employee relationship does not in fact exist or where
2078 the service is rendered to the organization gratuitously;

2079 (v) Any bona fide independent contractor;

2080 (vi) Any individual employed by an agricultural
2081 employer who did not use more than five hundred (500) man-days of
2082 agricultural labor in any calendar quarter of the preceding
2083 calendar year;

2084 (vii) The parent, spouse, child or other member of
2085 an agricultural employer's immediate family;

2086 (viii) An individual who:

2087 1. Is employed as a hand harvest laborer and
2088 is paid on a piece-rate basis in an operation that has been, and
2089 is customarily and generally recognized as having been, paid on a
2090 piece-rate basis in the region of employment;

2091 2. Commutes daily from his or her permanent
2092 residence to the farm on which he or she is so employed; and

2093 3. Has been employed in agriculture less than
2094 thirteen (13) weeks during the preceding calendar year;

2095 (ix) A migrant who:

2096 1. Is sixteen (16) years of age or under and
2097 is employed as a hand harvest laborer;

2098 2. Is paid on a piece-rate basis in an
2099 operation which has been, and is customarily and generally
2100 recognized as having been, paid on a piece-rate basis in the
2101 region of employment;



2102 3. Is employed on the same farm as his or her
2103 parents; and

2104 4. Is paid the same piece-rate as employees
2105 over age sixteen (16) are paid on the same farm;

2106 (x) Any employee principally engaged in the range
2107 production of livestock; or

2108 (xi) Any employee employed in planting or tending
2109 trees, cruising, surveying or felling timber, or in preparing or
2110 transporting logs or other forestry products to the mill,
2111 processing plants, or railroad or other transportation terminal if
2112 the number of employees employed by his or her employer in the
2113 forestry or lumbering operations does not exceed eight (8).

2114 (h) "Occupation" means any occupation, service, trade,
2115 business, industry, or branch or group of industries or employment
2116 or class of employment in which employees are gainfully employed.

2117 (i) "Gratuities" means voluntary monetary contributions
2118 received by an employee from a guest, patron or customer for
2119 services rendered.

2120 (j) "Man-day" means any day during any portion of which
2121 an employee performs any agricultural labor.

2122 **SECTION 11.** Nothing in this act shall be deemed to interfere
2123 with, impede, or in any way diminish the right of employers and
2124 employees to bargain collectively through representatives of their
2125 own choosing in order to establish wages or other conditions of
2126 work.



2127 **SECTION 12.** (1) Any employer who willfully:
2128 (a) Hinders or delays the department or its authorized
2129 representative in the performance of its duties in the enforcement
2130 of this act;
2131 (b) Refuses to admit the department or its authorized
2132 representative to any place of employment;
2133 (c) Fails to make, keep and preserve any records as
2134 required under the provisions of this act or to make the record
2135 accessible to the department or its authorized representative upon
2136 demand;
2137 (d) Refuses to furnish a sworn statement of the record
2138 or any other information required for the proper enforcement of
2139 this act to the department or its authorized representative upon
2140 demand; or
2141 (e) Fails to post a summary of this act or a copy of
2142 any applicable regulations as required by this act shall be deemed
2143 in violation of this act and shall, upon conviction, be fined not
2144 less than One Hundred Dollars (\$100.00) nor more than Four Hundred
2145 Dollars (\$400.00). For the purposes of this subsection, each
2146 violation shall constitute a separate offense.
2147 (2) Any employer who pays or agrees to pay minimum wages at
2148 a rate less than the rate applicable under this act shall be
2149 guilty of a felony and the employer shall:
2150 (a) Be fined not less than Four Thousand Dollars
2151 (\$4,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for



2152 each offense if the total amount of all unpaid wages owed to an
2153 employee is more than Two Thousand Dollars (\$2,000.00);

2154 (b) Be fined not less than Two Thousand Dollars
2155 (\$2,000.00) nor more than Four Thousand Dollars (\$4,000.00) or the
2156 agent or officer of the employer shall be imprisoned not more than
2157 one (1) year, or both, for each offense if the total amount of all
2158 unpaid wages owed to an employee is more than One Thousand Dollars
2159 (\$1,000.00) but not more than Two Thousand Dollars (\$2,000.00);

2160 (c) Be fined not less than One Thousand Dollars
2161 (\$1,000.00) nor more than Two Thousand Dollars (\$2,000.00) or the
2162 agent or officer of the employer shall be imprisoned not more than
2163 six (6) months, or both, for each offense if the total amount of
2164 all unpaid wages owed to an employee is more than Five Hundred
2165 Dollars (\$500.00) but not more than One Thousand Dollars
2166 (\$1,000.00); or

2167 (d) Be fined not less than Four Hundred Dollars
2168 (\$400.00) nor more than One Thousand Dollars (\$1,000.00) or the
2169 agent or officer of the employer shall be imprisoned not more than
2170 three (3) months, or both, for each offense if the total amount of
2171 all unpaid wages owed to an employee is Five Hundred Dollars
2172 (\$500.00) or less.

2173 (3) Any employer who willfully discharges or in any other
2174 manner willfully discriminates against any employee because:

2175 (a) The employee has made any complaint to his or her
2176 employer, to the department, or to the director or his or her



2177 authorized representative that he or she has not been paid minimum
2178 wages in accordance with the provisions of this act;

2179 (b) The employee has caused to be instituted or is
2180 about to cause to be instituted any proceeding under or related to
2181 this act; or

2182 (c) The employee has testified or is about to testify
2183 in any such proceeding;

2184 Shall be deemed in violation of this act and shall, upon
2185 conviction, be fined not more than One Hundred Dollars (\$100.00).

2186 **SECTION 13.** (1) For any occupation, the department shall
2187 make and revise any administrative regulations, including
2188 definitions of terms, as it may deem appropriate to carry out the
2189 purposes of this act or necessary to prevent the circumvention or
2190 evasion of those purposes and to safeguard the minimum wage rates
2191 established.

2192 (2) The regulations may include, but are not limited to,
2193 regulations governing:

2194 (a) Outside or commission salespeople;

2195 (b) Learners and apprentices, their number, proportion
2196 or length of service;

2197 (c) Part-time pay, bonuses or fringe benefits;

2198 (d) Special pay for special or extra work;

2199 (e) Permitted charges to employees or allowances for
2200 board, lodging, apparel or other facilities or services
2201 customarily furnished by employers to employees;



2202 (f) Allowances for gratuities; or
2203 (g) Allowances for other special conditions or
2204 circumstances that may be usual in a particular employer/employee
2205 relationship.

2206 (3) Regulations or revisions issued by the department under
2207 this section shall be made only after a public hearing, at which
2208 any person may be heard by the department, at least ten (10) days
2209 subsequent to publication of notice of the hearing in a newspaper
2210 of general circulation throughout the State of Mississippi.

2211 **SECTION 14.** The director or his or her authorized
2212 representatives shall:

2213 (a) Have authority to enter and inspect the place of
2214 business or employment of any employer in the state for the
2215 purpose of examining and inspecting any books, registers, payrolls
2216 and other records of any employer that in any way relate to or
2217 have a bearing upon the question of wages, hours or other
2218 conditions of employment of any employees; copy any of the books,
2219 registers, payrolls or other records as he or she may deem
2220 necessary or appropriate; and question employees to ascertain
2221 whether the provisions of this act and regulations issued under
2222 this act have been and are being complied with;

2223 (b) Have authority to require from the employer full
2224 and correct statements in writing, including sworn statements,
2225 with respect to wages, hours, names, addresses and any information



2226 pertaining to his or her employees as the director or his or her
2227 authorized representative may deem necessary or appropriate;

2228 (c) Publish all regulations made by the department; and

2229 (d) Otherwise implement and enforce the regulations and
2230 decisions of the department.

2231 **SECTION 15.** Except as otherwise provided in this section, no
2232 employer shall employ any of his or her employees for a workweek
2233 longer than forty (40) hours unless the employee receives
2234 compensation for his or her employment in excess of the hours
2235 above specified at a rate not less than one and one-half (1-1/2)
2236 times the regular rate of pay at which he or she is employed.

2237 **SECTION 16.** (1) Every employer of an employee engaged in
2238 any occupation in which gratuities have been customarily and
2239 usually constituted and have been recognized as a part of
2240 remuneration for hiring purposes shall be entitled to an allowance
2241 for gratuities as a part of the hourly wage rate provided in
2242 Section 9 of this act in an amount not to exceed fifty percent
2243 (50%) of the minimum wage established by Section 9 of this act,
2244 provided that the employee actually received that amount in
2245 gratuities and that the application of the foregoing gratuity
2246 allowances results in payment of wages other than gratuities to
2247 tipped employees, including full-time students, subject to the
2248 provisions of this act, of not less than fifty percent (50%) of
2249 the minimum wage prescribed by this act.



2250 (2) In determining whether an employee received in
2251 gratuities the amount claimed, the director may require the
2252 employee to show to the satisfaction of the director that the
2253 actual amount of gratuities received by him or her during any
2254 workweek was less than the amount determined by the employer as
2255 the amount by which the wage paid the employee was deemed to be
2256 increased under this section.

2257 **SECTION 17.** (1) Every employer subject to any provisions of
2258 this act shall keep a summary of this act, approved by the
2259 department, and copies of any applicable regulations issued under
2260 this act posted in a conspicuous and accessible place in or about
2261 the premises where any person subject to this act is employed.

2262 (2) Employers shall be furnished copies of the summaries of
2263 this statute and regulations by the director on request without
2264 charge.

2265 **SECTION 18.** (1) Every employer subject to any provision of
2266 this act or of any regulation issued under this act shall make and
2267 keep for a period of not less than three (3) years, in or about
2268 the premises where any employee is employed, a record of the name,
2269 address and occupation of each of his or her employees, the rate
2270 of pay and the amount paid each pay period to each employee and
2271 any other information as the department prescribes by regulation
2272 as necessary or appropriate for the enforcement of the provisions
2273 of this act or of the regulations under this act.



2274 (2) The records shall be open for inspection or
2275 transcription by the director or his or her authorized
2276 representative at any reasonable time.

2277 (3) Every employer shall furnish to the director or to his
2278 or her authorized representative on demand a sworn statement of
2279 the records and information upon forms prescribed or approved by
2280 the director.

2281 **SECTION 19.** (1) Any employer who pays any employee less
2282 than minimum wages to which the employee is entitled under or by
2283 virtue of this act shall be liable to the employee affected for
2284 the full amount of the wages, less any amount actually paid to the
2285 employee by the employer, and for costs and reasonable attorney's
2286 fees as may be allowed by the court.

2287 (2) Any agreement between the employee and employer to work
2288 for less than minimum wages shall be no defense to the action.

2289 (3) The venue of the action shall lie in the circuit court
2290 of any county in which the services which are the subject of the
2291 employment were performed.

2292 (4) The director shall have the authority to fully enforce
2293 this act by instituting legal action to recover any wages which he
2294 or she determines to be due to employees under this act.

2295 **SECTION 20.** Section 17-1-51, Mississippi Code of 1972, is
2296 amended as follows:

2297 17-1-51. (1) No county, board of supervisors of a county,
2298 municipality or governing authority of a municipality is



2299 authorized to establish a mandatory, minimum living wage rate that
2300 is lower than the rate provided in this act, minimum number of
2301 vacation or sick days, whether paid or unpaid, that would regulate
2302 how a private employer pays its employees. Each county, board of
2303 supervisors of a county, municipality or governing authority of a
2304 municipality shall be prohibited from establishing a mandatory,
2305 minimum living wage rate that is lower than the rate provided in
2306 this act, minimum number of vacation or sick days, whether paid or
2307 unpaid, that would regulate how a private employer pays its
2308 employees.

2309 (2) The Legislature finds that the prohibitions of
2310 subsection (1) of this section are necessary to ensure an economic
2311 climate conducive to new business development and job growth in
2312 the State of Mississippi while protecting the health and
2313 well-being of workers. * * *

2314 * * *

2315 (* * *3) The Legislature concludes from * * * this finding
2316 that, in order for a business to remain competitive and yet
2317 attract and retain the highest possible caliber of employees, and
2318 thereby remain sound, an enterprise must work in * * * an
2319 environment * * * that respects its workers and that encourages
2320 the payment of fair minimum wage rates * * *. The net impact of
2321 any local * * * wages that are greater than the rate provided in
2322 this act * * * will be economically * * * stable and create



2323 a * * * rise and * * * increase in the standard of living for the
2324 citizens of the state. * * *

2325 **SECTION 21.** Section 25-3-40, Mississippi Code of 1972, is
2326 amended as follows:

2327 25-3-40. On July 1, 1978, and each year thereafter, the
2328 Mississippi Compensation Plan shall be amended to provide salary
2329 increases in such amounts and percentages as might be recommended
2330 by the Legislative Budget Office and as may be authorized by funds
2331 appropriated by the Legislature for the purpose of granting
2332 incentive salary increases as deemed possible dependent upon the
2333 availability of general and special funds.

2334 It is hereby declared to be the intent of the Mississippi
2335 Legislature to implement the minimum wage as enacted by statutory
2336 law of the United States Congress subject to funds being available
2337 for that purpose. It is further the intent of the Legislature to
2338 implement the state minimum wage as provided in this act. It is
2339 the intent and purpose of this section to maximize annual salary
2340 increases consistent with the availability of funds as might be
2341 determined by the Mississippi Legislature at its regular annual
2342 session and that all salary increases hereafter be made consistent
2343 with the provisions of this section.

2344 **SECTION 22.** (1) **Definitions.** The following words and
2345 phrases shall have the meanings as defined in this section unless
2346 the context clearly indicates otherwise:



2347 (a) "Child" means a biological, adopted, or foster
2348 child, a stepchild, a legal ward, or a child of a person standing
2349 in loco parentis, who is: (i) Under eighteen (18) years of age;
2350 (ii) or eighteen (18) years of age or older and incapable of
2351 self-care because of a mental or physical disability.

2352 (b) "Department" means the Mississippi Department of
2353 Employment Security.

2354 (c) "Director" means the director of the department.

2355 (d) "Employee" means a person who has been employed:
2356 (i) for at least twelve (12) months by the employer with respect
2357 to whom leave is requested; and (ii) for at least one thousand two
2358 hundred fifty (1,250) hours of service with the employer during
2359 the previous twelve-month period.

2360 "Employee" does not mean a person who is employed at a
2361 worksite at which the employer employs less than fifty (50)
2362 employees if the total number of employees employed by that
2363 employer within seventy-five (75) miles of that worksite is less
2364 than fifty (50).

2365 (e) "Employer" means: (i) any person, firm,
2366 corporation, partnership, business trust, legal representative, or
2367 other business entity which engages in any business, industry,
2368 profession, or activity in this state and includes any unit of
2369 local government including, but not limited to, a county, city,
2370 town, municipal corporation, quasi-municipal corporation, or
2371 political subdivision, which employs fifty (50) or more employees



2372 for each working day during each of twenty (20) or more calendar
2373 workweeks in the current or preceding calendar year; (ii) the
2374 state, state institutions, and state agencies; and (iii) any unit
2375 of local government including, but not limited to, a county, city,
2376 town, municipal corporation, quasi-municipal corporation, or
2377 political subdivision.

2378 (f) "Employment benefits" means all benefits provided
2379 or made available to employees by an employer, including group
2380 life insurance, health insurance, disability insurance, sick
2381 leave, annual leave, educational benefits, and pensions except
2382 benefits that are provided by a practice or written policy of an
2383 employer or through an employee benefit plan as defined in 29 USC
2384 Section 1002(3).

2385 (g) "Family member" means a child, parent, spouse, or
2386 state registered domestic partner of an employee.

2387 (h) "Health care provider" means: (i) a person
2388 licensed as a physician or an osteopathic physician and surgeon;
2389 (ii) a person licensed as an advanced registered nurse
2390 practitioner; or (iii) any other person determined by the director
2391 to be capable of providing health care services.

2392 (i) "Intermittent leave" is leave taken in separate
2393 blocks of time due to a single qualifying reason.

2394 (j) "Leave for a family member's serious health
2395 condition" means leave as defined in subsection (3) of this
2396 section.



2397 (k) "Leave for the birth or placement of a child" means
2398 leave as defined in subsection (3) of this section.

2399 (l) "Leave for the employee's serious health condition"
2400 means leave as defined in subsection (3) of this section.

2401 (m) "Parent" means the biological or adoptive parent of
2402 an employee or an individual who stood in loco parentis to an
2403 employee when the employee was a child.

2404 (n) "Period of incapacity" means an inability to work,
2405 attend school, or perform other regular daily activities because
2406 of the serious health condition, treatment of that condition or
2407 recovery from it, or subsequent treatment in connection with such
2408 inpatient care.

2409 (o) "Reduced leave schedule" means a leave schedule
2410 that reduces the usual number of hours per workweek, or hours per
2411 workday, of an employee.

2412 (p) (i) "Serious health condition" means an illness,
2413 injury, impairment, or physical or mental condition that involves:
2414 inpatient care in a hospital, hospice, or residential medical care
2415 facility, including any period of incapacity; or continuing
2416 treatment by a health care provider. A serious health condition
2417 involving continuing treatment by a health care provider includes
2418 any one or more of the following:

2419 1. A period of incapacity of more than three
2420 (3) consecutive calendar days, and any subsequent treatment or



2421 period of incapacity relating to the same condition, that also
2422 involves:

2423 a. Treatment two (2) or more times by a
2424 health care provider, by a nurse or physician's assistant under
2425 direct supervision of a health care provider, or by a provider of
2426 health care services under orders of, or on referral by, a health
2427 care provider; or

2428 b. Treatment by a health care provider
2429 on at least one (1) occasion which results in a regimen of
2430 continuing treatment under the supervision of the health care
2431 provider;

2432 2. Any period of incapacity due to pregnancy,
2433 or for prenatal care;

2434 3. Any period of incapacity or treatment for
2435 such incapacity due to a chronic serious health condition. A
2436 chronic serious health condition is one which:

2437 a. Requires periodic visits for
2438 treatment by a health care provider, or by a nurse or physician's
2439 assistant under direct supervision of a health care provider;

2440 b. Continues over an extended period of
2441 time, including recurring episodes of a single underlying
2442 condition; and

2443 c. May cause episodic rather than a
2444 continuing period of incapacity;



2445 4. A period of incapacity which is permanent
2446 or long-term due to a condition for which treatment may not be
2447 effective. The employee or family member must be under the
2448 continuing supervision of, but need not be receiving active
2449 treatment by, a health care provider; or

2450 5. Any period of absence to receive multiple
2451 treatments, including any period of recovery from the treatments,
2452 by a health care provider or by a provider of health care services
2453 under orders of, or on referral by, a health care provider, either
2454 for restorative surgery after an accident or other injury, or for
2455 a condition that would likely result in a period of incapacity of
2456 more than three (3) consecutive calendar days in the absence of
2457 medical intervention or treatment, such as cancer, severe
2458 arthritis, or kidney disease.

2459 (ii) Treatment for purposes of subparagraph (i) of
2460 this paragraph (p) includes, but is not limited to, examinations
2461 to determine if a serious health condition exists and evaluations
2462 of the condition.

2463 Treatment does not include routine physical examinations, eye
2464 examinations, or dental examinations. Under subparagraph (i)1.b.
2465 of this paragraph (p), a regimen of continuing treatment includes,
2466 but is not limited to, a course of prescription medication or
2467 therapy requiring special equipment to resolve or alleviate the
2468 health condition. A regimen of continuing treatment that includes
2469 taking over-the-counter medications, such as aspirin,



2470 antihistamines, or salves, or bed rest, drinking fluids, exercise,
2471 and other similar activities that can be initiated without a visit
2472 to a health care provider, is not, by itself, sufficient to
2473 constitute a regimen of continuing treatment for purposes of this
2474 act.

2475 (iii) Conditions for which cosmetic treatments are
2476 administered are not "serious health conditions" unless inpatient
2477 hospital care is required or unless complications develop. Unless
2478 complications arise, the common cold, the flu, earaches, upset
2479 stomach, minor ulcers, headaches other than migraine, routine
2480 dental or orthodontia problems, and periodontal disease are
2481 examples of conditions that do not meet the definition of a
2482 "serious health condition" and do not qualify for leave under this
2483 act. Restorative dental or plastic surgery after an injury or
2484 removal of cancerous growths are serious health conditions
2485 provided all the other conditions of this section are met.

2486 Mental illness resulting from stress or allergies may be
2487 serious health conditions provided all the other conditions of
2488 this section are met.

2489 (iv) Substance abuse may be a serious health
2490 condition if the conditions of this section are met. However,
2491 leave may only be taken for treatment for substance abuse by a
2492 health care provider or by a provider of health care services upon
2493 referral by a health care provider. Absence from work because of



2494 the employee's use of the substance, rather than for treatment,
2495 does not qualify for leave under this act.

2496 (v) Absences attributable to incapacity under
2497 subparagraph (i)1. or 3. of this paragraph (p) qualify for leave
2498 under this act even though the employee or the immediate family
2499 member does not receive treatment from a health care provider
2500 during the absence, and even if the absence does not last more
2501 than three (3) days.

2502 (q) "Spouse" means a husband or wife, as the case may
2503 be, or state registered domestic partner.

2504 (2) **Administration.** The Mississippi Department of
2505 Employment Security shall administer the provisions of this act.

2506 (3) **Entitlement to paid leave.** (a) An employee is entitled
2507 to a total of twelve (12) workweeks of paid leave during any
2508 twelve-month period for one or more of the following:

2509 (i) Because of the birth of a child of the
2510 employee and in order to care for the child;

2511 (ii) Because of the placement of a child with the
2512 employee for adoption or foster care;

2513 (iii) In order to care for a family member of the
2514 employee, if the family member has a serious health condition; or

2515 (iv) Because of a serious health condition that
2516 makes the employee unable to perform the functions of the position
2517 of the employee.



2518 (b) The entitlement to leave for the birth or placement
2519 of a child expires at the end of the twelve-month period beginning
2520 on the date of such birth or placement.

2521 (4) **Leave taken intermittently or on reduced leave schedule.**

2522 (a) When paid leave is taken after the birth or
2523 placement of a child for adoption or foster care, an employee may
2524 take paid leave intermittently or on a reduced paid leave schedule
2525 with the employers' agreement. The employers' agreement is not
2526 required, however, for paid leave during which the employee has a
2527 serious health condition in connection with the birth of a child
2528 or if the newborn child has a serious health condition.

2529 (b) Paid leave may be taken intermittently or on a
2530 reduced leave schedule when medically necessary for medical
2531 treatment of a serious health condition by or under the
2532 supervision of a health care provider, or for recovery from
2533 treatment or recovery from a serious health condition. It may
2534 also be taken to provide care or psychological comfort to an
2535 immediate family member with a serious health condition.

2536 (i) Intermittent paid leave may be taken for a
2537 serious health condition that requires treatment by a health care
2538 provider periodically, rather than for one (1) continuous period
2539 of time, and may include leave of periods from an hour or more to
2540 several weeks.

2541 (ii) Intermittent or reduced schedule paid leave
2542 may be taken for absences where the employee or family member is



2543 incapacitated or unable to perform the essential functions of the
2544 position because of a chronic serious health condition even if he
2545 or she does not receive treatment by a health care provider.

2546 (c) There is no limit on the size of an increment of
2547 paid leave when an employee takes intermittent paid leave or paid
2548 leave on a reduced paid leave schedule. However, an employer may
2549 limit leave increments to the shortest period of time that the
2550 employer's payroll system uses to account for absences or use of
2551 leave, provided it is one (1) hour or less.

2552 (d) The taking of paid leave intermittently or on a
2553 reduced leave schedule under this section may not result in a
2554 reduction in the total amount of leave to which the employee is
2555 entitled beyond the amount of leave actually taken.

2556 (e) If an employee requests intermittent paid leave, or
2557 leave on a reduced leave schedule, for a family member's serious
2558 health condition or the employees' serious health condition when
2559 the condition is foreseeable based on planned medical treatment,
2560 the employer may require such employee to transfer temporarily to
2561 an available alternative position offered by the employer for
2562 which the employee is qualified and that:

2563 (i) Has equivalent pay and benefits; and
2564 (ii) Better accommodates recurring periods of
2565 leave than the regular employment position of the employee.

2566 (5) **Foreseeable paid leave.** (a) If the necessity for paid
2567 leave for the birth or placement of a child is foreseeable based



2568 on an expected birth or placement, the employee shall provide the
2569 employer with not less than thirty (30) days notice, before the
2570 date the leave is to begin, of the employee's intention to take
2571 leave for the birth or placement of a child, except that if the
2572 date of the birth or placement requires leave to begin in less
2573 than thirty (30) days, the employee shall provide such notice as
2574 is practicable.

2575 (b) If the necessity for paid leave for a family
2576 member's serious health condition or the employee's serious health
2577 condition is foreseeable based on planned medical treatment, the
2578 employee:

2579 (i) Must make a reasonable effort to schedule the
2580 treatment so as not to unduly disrupt the operations of the
2581 employer, subject to the approval of the health care provider of
2582 the employee or the health care provider of the family member, as
2583 appropriate; and

2584 (ii) Must provide the employer with not less than
2585 thirty (30) days notice, before the date the leave is to begin, of
2586 the employee's intention to take leave for a family member's
2587 serious health condition or the employee's serious health
2588 condition, except that if the date of the treatment requires leave
2589 to begin in less than thirty (30) days, the employee must provide
2590 such notice as is practicable.

2591 (6) **Spouses employed by same employer.** If spouses entitled
2592 to leave under this act are employed by the same employer, the



2593 aggregate number of workweeks of paid leave to which both may be
2594 entitled may be limited to twelve (12) workweeks during any
2595 twelve-month period, if such leave is taken: (a) for the birth or
2596 placement of a child; or (b) for a parent's serious health
2597 condition.

2598 (7) **Certification.** (a) An employer may require that a
2599 request for paid leave for a family member's serious health
2600 condition or the employee's serious health condition be supported
2601 by a certification issued by the health care provider of the
2602 employee or of the family member, as appropriate. The employee
2603 must provide, in a timely manner, a copy of the certification to
2604 the employer.

2605 (b) Certification provided under paragraph (a) of this
2606 subsection is sufficient if it states:

2607 (i) The date on which the serious health condition
2608 commenced;

2609 (ii) The probable duration of the condition;

2610 (iii) The appropriate medical facts within the
2611 knowledge of the health care provider regarding the condition;

2612 (iv) 1. For purposes of leave for a family
2613 member's serious health condition, a statement that the employee
2614 is needed to care for the family member and an estimate of the
2615 amount of time that such employee is needed to care for the family
2616 member; and



2617 2. For purposes of leave for the employee's
2618 serious health condition, a statement that the employee is unable
2619 to perform the functions of the position of the employee;

2620 (v) In the case of certification for intermittent
2621 leave, or leave on a reduced leave schedule, for planned medical
2622 treatment, the dates on which the treatment is expected to be
2623 given and the duration of the treatment;

2624 (vi) In the case of certification for intermittent
2625 leave, or leave on a reduced leave schedule, for the employee's
2626 serious health condition, a statement of the medical necessity for
2627 the intermittent leave or leave on a reduced leave schedule, and
2628 the expected duration of the intermittent leave or reduced leave
2629 schedule; and

2630 (vii) In the case of certification for
2631 intermittent leave, or leave on a reduced leave schedule, for a
2632 family member's serious health condition, a statement that the
2633 employee's intermittent leave or leave on a reduced leave schedule
2634 is necessary for the care of the family member who has a serious
2635 health condition, or will assist in their recovery, and the
2636 expected duration and schedule of the intermittent leave or
2637 reduced leave schedule.

2638 (c) If the employer has reason to doubt the validity of
2639 the certification provided under paragraph (a) of this subsection
2640 (7) for leave for a family member's serious health condition or
2641 the employee's serious health condition, the employer may require,



2642 at the expense of the employer, that the employee obtain the
2643 opinion of a second health care provider designated or approved by
2644 the employer concerning any information certified under paragraph
2645 (b) of this subsection (7) for the leave. The second health care
2646 provider may not be employed on a regular basis by the employer.

2647 (d) If the second opinion described in paragraph (c) of
2648 this subsection (7) differs from the opinion in the original
2649 certification provided under paragraph (a) of this subsection (7),
2650 the employer may require, at the expense of the employer, that the
2651 employee obtain the opinion of a third health care provider
2652 designated or approved jointly by the employer and the employee
2653 concerning the information certified under paragraph (b) of this
2654 subsection (7). The opinion of the third health care provider
2655 concerning the information certified under paragraph (b) of this
2656 subsection (7) is considered to be final and is binding on the
2657 employer and the employee.

2658 (e) The employer may require that the employee obtain
2659 subsequent recertifications on a reasonable basis.

2660 (8) **Employment protection.** (a) Except as provided in
2661 paragraph (b) of this subsection, any employee who takes paid
2662 leave for the intended purpose of the leave is entitled, on return
2663 from the leave:

2664 (i) To be restored by the employer to the position
2665 of employment held by the employee when the leave commenced; or



2666 (ii) To be restored to an equivalent position with
2667 equivalent employment benefits, pay, and other terms and
2668 conditions of employment at a workplace within twenty (20) miles
2669 of the employee's workplace when leave commenced.

2670 (b) The taking of leave may not result in the loss of
2671 any employment benefits accrued before the date on which the leave
2672 commenced.

2673 (c) Nothing in this section entitles any restored
2674 employee to (i) the accrual of any seniority or employment
2675 benefits during any period of leave; or (ii) any right, benefit,
2676 or position of employment other than any right, benefit, or
2677 position to which the employee would have been entitled had the
2678 employee not taken the leave.

2679 (d) As a condition of restoration under paragraph (a)
2680 of this subsection for an employee who has taken leave for the
2681 employee's serious health condition, the employer may have a
2682 uniformly applied practice or policy that requires each such
2683 employee to receive certification from the health care provider of
2684 the employee that the employee is able to resume work, except that
2685 nothing in this paragraph (d) supersedes a valid local law or a
2686 collective bargaining agreement that governs the return to work of
2687 such employees.

2688 (e) Nothing in this subsection prohibits an employer
2689 from requiring an employee on leave to report periodically to the



2690 employer on the status and intention of the employee to return to
2691 work.

2692 An employer may deny restoration under this subsection to any
2693 salaried employee who is among the highest paid ten percent (10%)
2694 of the employees employed by the employer within seventy-five (75)
2695 miles of the facility at which the employee is employed if:

2696 (i) Denial is necessary to prevent substantial and
2697 grievous economic injury to the operations of the employer;

2698 (ii) The employer notifies the employee of the
2699 intent of the employer to deny restoration on such basis at the
2700 time the employer determines that the injury would occur; and

2701 (iii) The leave has commenced and the employee
2702 elects not to return to employment after receiving the notice.

2703 (9) **Employment benefits.** During any period of paid leave
2704 taken, if the employee is not eligible for any employer
2705 contribution to medical or dental benefits under an applicable
2706 collective bargaining agreement or employer policy during any
2707 period of leave, an employer shall allow the employee to continue,
2708 at the employee's expense, medical or dental insurance coverage,
2709 including any spouse and dependent coverage, in accordance with
2710 state or federal law. The premium to be paid by the employee
2711 shall not exceed one hundred two percent (102%) of the applicable
2712 premium for the leave period.

2713 (10) **Prohibited acts.** (a) It is unlawful for any employer
2714 to:



2715 (i) Interfere with, restrain, or deny the exercise
2716 of, or the attempt to exercise, any right provided under this act;
2717 or

2718 (ii) Discharge or in any other manner discriminate
2719 against any individual for opposing any practice made unlawful by
2720 this act.

2721 (b) It is unlawful for any person to discharge or in
2722 any other manner discriminate against any individual because the
2723 individual has:

2724 (i) Filed any charge, or has instituted or caused
2725 to be instituted any proceeding, under or related to this act;

2726 (ii) Given, or is about to give, any information
2727 in connection with any inquiry or proceeding relating to any right
2728 provided under this act; or

2729 (iii) Testified, or is about to testify, in any
2730 inquiry or proceeding relating to any right provided under this
2731 act.

2732 (11) **Complaint investigations by director.** Upon complaint
2733 by an employee, the director shall investigate to determine if
2734 there has been compliance with this act and the rules adopted
2735 under this act. If the investigation indicates that a violation
2736 may have occurred, a hearing must be held. The director must
2737 issue a written determination including his or her findings after
2738 the hearing. A judicial appeal from the director's determination



2739 may be taken, with the prevailing party entitled to recover
2740 reasonable costs and attorney's fees.

2741 (12) **Civil penalty.** An employer who is found to have
2742 violated a requirement of this act and the rules adopted under
2743 this act, is subject to a civil penalty of not less than One
2744 Thousand Dollars (\$1,000.00) for each violation. Civil penalties
2745 must be collected by the department and deposited into the family
2746 and medical leave enforcement account.

2747 (13) **Civil action by employees.** (a) Any employer who
2748 violates a requirement of this act is liable:

2749 (i) For damages equal to:

2750 1. The amount of:

2751 a. Any wages, salary, employment
2752 benefits, or other compensation denied or lost to such employee by
2753 reason of the violation; or

2754 b. In a case in which wages, salary,
2755 employment benefits, or other compensation have not been denied or
2756 lost to the employee, any actual monetary losses sustained by the
2757 employee as a direct result of the violation, such as the cost of
2758 providing care, up to a sum equal to twelve (12) weeks of wages or
2759 salary for the employee;

2760 2. The interest on the amount described in
2761 subparagraph (i)1 of this paragraph (a) calculated at the
2762 prevailing rate; and



2763 3. An additional amount as liquidated damages
2764 equal to the sum of the amount described in subparagraph (i)1 of
2765 this paragraph (a) and the interest described in subparagraph (i)2
2766 of this paragraph (a), except that if an employer who has violated
2767 proves to the satisfaction of the court that the act or omission
2768 which violated was in good faith and that the employer had
2769 reasonable grounds for believing that the act or omission was not
2770 a violation of, the court may, in the discretion of the court,
2771 reduce the amount of the liability to the amount and interest
2772 determined under subparagraph (i)1 and 2 of this paragraph (a),
2773 respectively; and

2774 (ii) For such equitable relief as may be
2775 appropriate, including employment, reinstatement and promotion.

2776 (b) An action to recover the damages or equitable
2777 relief prescribed in subsection (1) of this section may be
2778 maintained against any employer in any court of competent
2779 jurisdiction by any one or more employees for and on behalf of:

2780 (i) The employees; or

2781 (ii) The employees and other employees similarly
2782 situated.

2783 (c) The court in such an action shall, in addition to
2784 any judgment awarded to the plaintiff, allow reasonable attorney's
2785 fees, reasonable expert witness fees and other costs of the action
2786 to be paid by the defendant.



2787 (14) **Notice-Penalties.** Each employer shall post and keep
2788 posted, in conspicuous places on the premises of the employer
2789 where notices to employees and applicants for employment are
2790 customarily posted, a notice, to be prepared or approved by the
2791 director, setting forth excerpts from, or summaries of, the
2792 pertinent provisions of this act and information pertaining to the
2793 filing of a charge. Any employer that willfully violates this
2794 section may be subject to a civil penalty of not more than One
2795 Hundred Dollars (\$100.00) for each separate offense. Any
2796 penalties collected by the department under this subsection shall
2797 be deposited into the family and medical leave enforcement
2798 account.

2799 (15) **Effect on other laws.** Nothing in this act shall be
2800 construed to: (a) modify or affect any state or local law
2801 prohibiting discrimination on the basis of race, religion, color,
2802 national origin, sex, age, or disability; or (b) supersede any
2803 provision of any local law that provides greater family or medical
2804 leave rights than the rights established under this act.

2805 (16) **Effect on existing employment benefits.** Nothing in
2806 this act diminishes the obligation of an employer to comply with
2807 any collective bargaining agreement or any employment benefit
2808 program or plan that provides greater family or medical leave
2809 rights to employees than the rights established under this act.
2810 The rights established for employees under this act may not be



2811 diminished by any collective bargaining agreement or any
2812 employment benefit program or plan.

2813 (17) **Encouragement of more generous leave policies.** Nothing
2814 in this act shall be construed to discourage employers from
2815 adopting or retaining leave policies more generous than any
2816 policies that comply with the requirements under this act.

2817 (18) **Relationship to federal Family and Medical Leave Act.**

2818 (a) Leave under this section and leave under the
2819 federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993,
2820 Public Law 103-3, 107 Stat. 6) is in addition to any leave for
2821 sickness or temporary disability because of pregnancy or
2822 childbirth;

2823 (b) Leave taken under this act must be taken
2824 concurrently with any leave taken under the federal Family and
2825 Medical Leave Act of 1993 (Act Feb. 5, 1993, Public Law 103-3, 107
2826 Stat. 6).

2827 (19) **Construction.** This must be construed to the extent
2828 possible in a manner that is consistent with similar provisions,
2829 if any, of the federal Family and Medical Leave Act of 1993 (Act
2830 Feb. 5, 1993, Public Law 103-3, 107 Stat. 6), and that gives
2831 consideration to the rules, precedents and practices of the
2832 federal Department of Labor relevant to the federal act.

2833 **SECTION 23. Women in High-Wage, High-Demand, Nontraditional**
2834 **Jobs Grant Program.** (1) The following words and phrases shall



2835 have the meanings as defined in this section unless the context
2836 clearly indicates otherwise:

2837 (a) "Commissioner" means the Executive Director of the
2838 Mississippi Department of Employment Security.

2839 (b) "Eligible organization" includes, but is not
2840 limited to:

2841 (i) Community-based organizations experienced in
2842 serving women;

2843 (ii) Employers;

2844 (iii) Business and trade associations;

2845 (iv) Labor unions and employee organizations;

2846 (v) Registered apprenticeship programs;

2847 (vi) Secondary and postsecondary education
2848 institutions located in Mississippi; and

2849 (vii) Workforce and economic development agencies.

2850 (c) "High-wage, high-demand" means occupations that
2851 represent at least one-tenth of one percent (0.1%) of total
2852 employment in the base year, have an annual median salary which is
2853 higher than the average for the current year, and are projected to
2854 have more total openings as a share of employment than the
2855 average.

2856 (d) "Low-income" means income less than two hundred
2857 percent (200%) of the federal poverty guideline adjusted for a
2858 family size of four (4).



2859 (e) "Nontraditional occupations" mean those occupations
2860 in which women make up less than twenty-five percent (25%) of the
2861 workforce as defined under United States Code, Title 20, Section
2862 2302.

2863 (2) **Grant program.** The Executive Director of the
2864 Mississippi Department of Employment Security shall establish the
2865 Women in High-Wage, High-Demand, Nontraditional Jobs Grant Program
2866 to increase the number of women in high-wage, high-demand,
2867 nontraditional occupations. The Executive Director of the
2868 Mississippi Department of Employment Security shall make grants to
2869 eligible organizations for programs that encourage and assist
2870 women to enter high-wage, high-demand, nontraditional occupations,
2871 including, but not limited to, those in the skilled trades,
2872 science, technology, engineering and math (STEM) occupations.

2873 (3) **Use of funds.** Grant funds awarded under this section
2874 may be used for:

2875 (a) Recruitment, preparation, placement and retention
2876 of women, including low-income women and women over fifty (50)
2877 years old, in registered apprenticeships, postsecondary education
2878 programs, on-the-job training and permanent employment in
2879 high-wage, high-demand, nontraditional occupations;

2880 (b) Secondary or postsecondary education or other
2881 training to prepare women to succeed in high-wage, high-demand,
2882 nontraditional occupations. Activities under this section may be
2883 conducted by the grantee or in collaboration with another



2884 institution, including, but not limited to, a public or private
2885 secondary or postsecondary school;

2886 (c) Innovative, hands-on best practices that stimulate
2887 interest in high-wage, high-demand, nontraditional occupations
2888 among women, increase awareness among women about opportunities in
2889 high-wage, high-demand, nontraditional occupations or increase
2890 access to secondary programming leading to jobs in high-wage,
2891 high-demand, nontraditional occupations. Best practices include,
2892 but are not limited to, mentoring, internships or apprenticeships
2893 for women in high-wage, high-demand, nontraditional occupations;

2894 (d) Training and other staff development for job seeker
2895 counselors and Mississippi Family Investment Program (MFIP)
2896 caseworkers on opportunities in high-wage, high-demand,
2897 nontraditional occupations;

2898 (e) Incentives for employers and sponsors of registered
2899 apprenticeship programs to retain women in high-wage, high-demand,
2900 nontraditional occupations for more than one (1) year;

2901 (f) Training and technical assistance for employers to
2902 create a safe and healthy workplace environment designed to retain
2903 and advance women, including best practices for addressing sexual
2904 harassment, and to overcome gender inequity among employers and
2905 registered apprenticeship programs;

2906 (g) Public education and outreach activities to
2907 overcome stereotypes about women in high-wage, high-demand,



2908 nontraditional occupations, including the development of
2909 educational and marketing materials; and

2910 (h) Support for women in high-wage, high-demand,
2911 nontraditional occupations including, but not limited to,
2912 assistance with workplace issues resolution and access to advocacy
2913 assistance and services.

2914 (4) Grant applications must include detailed information
2915 about how the applicant plans to:

2916 (a) Increase women's participation in high-wage,
2917 high-demand occupations in which women are currently
2918 underrepresented in the workforce;

2919 (b) Comply with the requirements under subsection (3)
2920 of this section; and

2921 (c) Use grant funds in conjunction with funding from
2922 other public or private sources.

2923 (5) In awarding grants under this section, the executive
2924 director shall give priority to eligible organizations:

2925 (a) With demonstrated success in recruiting and
2926 preparing women, especially low-income women and women over fifty
2927 (50) years old, for high-wage, high-demand, nontraditional
2928 occupations; and

2929 (b) That leverage additional public and private
2930 resources.



2931 (6) At least fifty percent (50%) of total grant funds must
2932 be awarded to programs providing services and activities targeted
2933 to low-income women.

2934 (7) The executive director shall monitor the use of funds
2935 under this section, collect and compile information on the
2936 activities of other state agencies and public or private entities
2937 that have purposes similar to those under this section, and
2938 identify other public and private funding available for these
2939 purposes.

2940 **SECTION 24.** Sections 24 through 28 of this act shall be
2941 known and may be cited as the "Mississippi Pregnant Workers
2942 Fairness Act."

2943 **SECTION 25.** It is the intent of the Legislature to combat
2944 pregnancy discrimination, promote public health and ensure full
2945 and equal participation for women in the labor force by requiring
2946 employers to provide reasonable accommodations to employees with
2947 conditions related to pregnancy, childbirth or a related
2948 condition. Mississippi currently has no current workplace laws to
2949 protect pregnant women from being forced out or fired when they
2950 need a simple, reasonable accommodation in order to stay on the
2951 job. Many pregnant women are single mothers or the primary
2952 breadwinners for their families – if they lose their jobs then the
2953 whole family will suffer. This is not an outcome that families
2954 can afford in today's difficult economy.

2955 **SECTION 26.** (1) No employer may:



2956 (a) Refuse to make reasonable accommodations for any
2957 condition of a job applicant or employee related to pregnancy,
2958 childbirth, or a related condition, including, but not limited to,
2959 the need to express breast milk for a nursing child, if the
2960 employee or applicant so requests, unless the employer can
2961 demonstrate that the accommodation would impose an undue hardship
2962 on the employer's program, enterprise or business;

2963 (b) Take adverse action against an employee who
2964 requests or uses an accommodation in terms, conditions or
2965 privileges of employment, including, but not limited to, failing
2966 to reinstate the employee to her original job or to an equivalent
2967 position with equivalent pay and accumulated seniority,
2968 retirement, fringe benefits and other applicable service credits
2969 when her need for reasonable accommodations ceases;

2970 (c) Deny employment opportunities to an otherwise
2971 qualified job applicant or employee, if such denial is based on
2972 the need of the employer to make reasonable accommodations to the
2973 known conditions related to the pregnancy, childbirth or related
2974 conditions of the applicant or employee; or

2975 (d) Require an employee to take leave if another
2976 reasonable accommodation can be provided to the known conditions
2977 related to the pregnancy, childbirth or related conditions of an
2978 employee.



2979 (2) The employer shall engage in a timely, good faith and
2980 interactive process with the employee to determine effective
2981 reasonable accommodations.

2982 (3) The following words and phrases shall have the meanings
2983 as defined in this section unless the context clearly indicates
2984 otherwise:

2985 (a) "Reasonable accommodations" shall include, but not
2986 be limited to: more frequent or longer breaks, time off to
2987 recover from childbirth, acquisition or modification of equipment,
2988 seating, temporary transfer to a less strenuous or hazardous
2989 position, job restructuring, light duty, break time and private
2990 nonbathroom space for expressing breast milk, assistance with
2991 manual labor, or modified work schedules, provided that:

2992 (i) No employer shall be required by this section
2993 to create additional employment that the employer would not
2994 otherwise have created, unless the employer does so or would do so
2995 for other classes of employees who need accommodation, and

2996 (ii) The employer shall not be required to
2997 discharge any employee, transfer any employee with more seniority,
2998 or promote any employee who is not qualified to perform the job,
2999 unless the employer does so or would do so to accommodate other
3000 classes of employees who need it.

3001 (b) "Related conditions" includes, but is not limited
3002 to, lactation or the need to express breast milk for a nursing
3003 child.



3004 (c) "Undue hardship" means an action requiring
3005 significant difficulty or expense, when considered in light of the
3006 factors set forth as follows:

3007 (i) The employer shall have the burden of proving
3008 undue hardship. In making a determination of undue hardship, the
3009 factors that may be considered include, but shall not be limited
3010 to:

3011 1. The nature and cost of the accommodation;
3012 2. The overall financial resources of the
3013 employer;

3014 3. The overall size of the business of the
3015 employer with respect to the number of employees;

3016 4. The number, type and location of the
3017 facilities of the employer; and

3018 5. The effect on expenses and resources or
3019 the impact otherwise of such accommodation upon the operation of
3020 the employer.

3021 (ii) The fact that the employer provides or would
3022 be required to provide a similar accommodation to other classes of
3023 employees who need it shall create a rebuttable presumption that
3024 the accommodation does not impose an undue hardship on the
3025 employer.

3026 **SECTION 27.** An employer shall provide written notice of the
3027 right to be free from discrimination in relation to pregnancy,
3028 childbirth and related conditions, including the right to



3029 reasonable accommodations for conditions related to pregnancy,
3030 childbirth or related conditions, pursuant to the Mississippi
3031 Pregnant Workers Fairness Act to:

- 3032 (a) New employees at the commencement of employment;
- 3033 (b) Existing employees within one hundred twenty (120)
3034 days after July 1, 2023; and
- 3035 (c) Any employee who notifies the employer of her
3036 pregnancy within ten (10) days of such notification.

3037 Such notice must also be conspicuously posted at an
3038 employer's place of business in an area accessible to employees.

3039 **SECTION 28.** (1) An actionable right is hereby created for
3040 any person who is an employee and who believes that such person's
3041 employer has violated the provisions of the Mississippi Pregnant
3042 Workers Fairness Act. Any such employee who is aggrieved under
3043 the act may file a petition in the proper circuit court in
3044 Mississippi.

3045 (2) If an employer is found to have violated the provisions
3046 of the Mississippi Pregnant Workers Fairness Act, the employee
3047 shall be awarded reasonable remedies, which shall include
3048 attorney's fees, prejudgment interest, back pay, liquidated
3049 damages and one hundred percent (100%) of the difference of unpaid
3050 wages. If the employer is found to have willfully violated the
3051 provisions of subsection (1), the employee shall be awarded three
3052 hundred percent (300%) of reasonable remedies.



3053 **SECTION 29.** (1) This section shall be known and cited as
3054 the "Mississippi Sick and Safe Leave Act."

3055 (2) The following words and phrases shall have the meanings
3056 as defined in this section unless the context clearly indicates
3057 otherwise:

3058 (a) "Department" means the Mississippi Department of
3059 Employment Security.

3060 (b) "Domestic violence" means the same as defined in
3061 Section 97-3-7.

3062 (c) "Earned paid sick time" means time that is
3063 compensated at the same hourly rate and with the same benefits,
3064 including health care benefits, as the employee normally earns
3065 during hours worked and is provided by an employer to an employee
3066 for the purposes described in subsection (3) of this section but
3067 in no case shall this hourly amount be less than that provided
3068 under 29 USC Section 206(a)(1).

3069 (d) "Employee" is as defined in the Fair Labor
3070 Standards Act 29 USC Section 203(e).

3071 (e) "Employer" is as defined in the Fair Labor
3072 Standards Act 29 USC Section 203(d).

3073 (f) "Family member" means:

3074 (i) Regardless of age, a biological, adopted or
3075 foster child, stepchild or legal ward, a child of a domestic
3076 partner, a child to whom the employee stands in loco parentis, or



3077 an individual to whom the employee stood in loco parentis when the
3078 individual was a minor;

3079 (ii) A biological, foster, stepparent or adoptive
3080 parent or legal guardian of an employee or an employee's spouse or
3081 domestic partner or a person who stood in loco parentis when the
3082 employee or employee's spouse or domestic partner was a minor
3083 child;

3084 (iii) A person to whom the employee is legally
3085 married under the laws of any state, or a domestic partner of an
3086 employee as registered under the laws of any state or political
3087 subdivision;

3088 (iv) A grandparent, grandchild or sibling (whether
3089 of a biological, foster, adoptive or step relationship) of the
3090 employee or the employee's spouse or domestic partner;

3091 (v) A person for whom the employee is responsible
3092 for providing or arranging care, including, but not limited to,
3093 helping that individual obtain diagnostic, preventive, routine or
3094 therapeutic health treatment; or

3095 (vi) Any other individual related by blood or
3096 whose close association with the employee is the equivalent of a
3097 family relationship.

3098 (g) "Health care professional" means any person
3099 licensed under federal or state law to provide medical or
3100 emergency services, including, but not limited to, doctors, nurses
3101 and emergency room personnel.



3102 (h) "Retaliatory personnel action" means denial of any
3103 right guaranteed under this section and any threat, discharge,
3104 suspension, demotion, reduction of hours, reporting or threatening
3105 to report an employee's suspected citizenship or immigration
3106 status, or the suspected citizenship or immigration status of a
3107 family member of the employee to a federal, state or local agency,
3108 or any other adverse action against an employee for the exercise
3109 of any right guaranteed herein including any sanctions against an
3110 employee who is the recipient of public benefits for rights
3111 guaranteed under this section. Retaliation shall also include
3112 interference with or punishment for in any manner participating in
3113 or assisting an investigation, proceeding or hearing under this
3114 section.

3115 (i) "Sexual assault" means the same as defined in
3116 Section 97-3-95.

3117 (j) "Stalking" means the same as defined in Section
3118 97-3-107.

3119 (k) "Year" means a regular and consecutive twelve-month
3120 period as determined by the employer.

3121 (3) (a) All employees shall accrue a minimum of one (1)
3122 hour of earned paid sick time for every thirty (30) hours worked.
3123 Employees shall not use more than forty (40) hours of earned paid
3124 sick time in a year, unless the employer selects a higher limit.

3125 (b) Employees who are exempt from overtime requirements
3126 under 29 USC Section 213(a)(1) of the Federal Fair Labor Standards



3127 Act will be assumed to work forty (40) hours in each work week for
3128 purposes of earned paid sick time accrual unless their normal work
3129 week is less than forty (40) hours, in which case earned paid sick
3130 time accrues based upon that normal work week.

3131 (c) Earned paid sick time as provided in this section
3132 shall begin to accrue at the commencement of employment or on the
3133 date this law goes into effect, whichever is later. An employer
3134 may provide all paid sick time that an employee is expected to
3135 accrue in a year at the beginning of the year.

3136 (d) Employees shall not be entitled to use accrued
3137 earned paid sick time until the ninetieth calendar day following
3138 commencement of their employment unless otherwise permitted by the
3139 employer. On and after the ninetieth calendar day of employment,
3140 employees may use earned paid sick time as it is accrued.

3141 (e) Earned paid sick time shall be carried over to the
3142 following year. Alternatively, in lieu of carryover of unused
3143 earned paid sick time from one (1) year to the next, an employer
3144 may pay an employee for unused earned paid sick time at the end of
3145 a year and provide the employee with an amount of paid sick time
3146 that meets or exceeds the requirements of this section that is
3147 available for the employee's immediate use at the beginning of the
3148 next year.

3149 (f) Any employer with a paid leave policy, such as a
3150 paid time off policy, who makes available an amount of paid leave
3151 sufficient to meet the accrual requirements of this section that



3152 may be used for the same purposes and under the same conditions as
3153 earned paid sick time under this section is not required to
3154 provide additional paid sick time.

3155 (g) Nothing in this section shall be construed as
3156 requiring financial or other reimbursement to an employee from an
3157 employer upon the employee's termination, resignation, retirement
3158 or other separation from employment for accrued earned paid sick
3159 time that has not been used.

3160 (h) If an employee is transferred to a separate
3161 division, entity or location, but remains employed by the same
3162 employer, the employee is entitled to all earned paid sick time
3163 accrued at the prior division, entity or location and is entitled
3164 to use all earned paid sick time as provided in this section. When
3165 there is a separation from employment and the employee is rehired
3166 within six (6) months of separation by the same employer,
3167 previously accrued earned paid sick time that had not been used
3168 shall be reinstated. Further, the employee shall be entitled to
3169 use accrued earned paid sick time and accrue additional earned
3170 paid sick time at the re-commencement of employment.

3171 (i) When a different employer succeeds or takes the
3172 place of an existing employer, all employees of the original
3173 employer who remain employed by the successor employer are
3174 entitled to all earned paid sick time they accrued when employed
3175 by the original employer, and are entitled to use earned paid sick
3176 time previously accrued.



3177 (j) At its discretion, an employer may loan earned paid
3178 sick time to an employee in advance of accrual by such employee.

3179 (4) (a) Earned paid sick time shall be provided to an
3180 employee by an employer for:

3181 (i) An employee's mental or physical illness,
3182 injury or health condition; an employee's need for medical
3183 diagnosis, care or treatment of a mental or physical illness,
3184 injury or health condition; an employee's need for preventive
3185 medical care;

3186 (ii) Care of a family member with a mental or
3187 physical illness, injury or health condition; care of a family
3188 member who needs medical diagnosis, care or treatment of a mental
3189 or physical illness, injury or health condition; care of a family
3190 member who needs preventive medical care; or in the case of a
3191 child, to attend a school meeting or a meeting at a place where
3192 the child is receiving care necessitated by the child's health
3193 condition or disability, domestic violence, sexual assault,
3194 harassment or stalking;

3195 (iii) Closure of the employee's place of business
3196 by order of a public official due to a public health emergency or
3197 an employee's need to care for a child whose school or place of
3198 care has been closed by order of a public official due to a public
3199 health emergency, or care for oneself or a family member when it
3200 has been determined by the health authorities having jurisdiction
3201 or by a health care provider that the employee's or family



3202 member's presence in the community may jeopardize the health of
3203 others because of his or her exposure to a communicable disease,
3204 whether or not the employee or family member has actually
3205 contracted the communicable disease; or

3206 (iv) Absence necessary due to domestic violence,
3207 sexual assault or stalking, provided the leave is to allow the
3208 employee to obtain for the employee or the employee's family
3209 member:

3210 1. Medical attention needed to recover from
3211 physical or psychological injury or disability caused by domestic
3212 violence, sexual assault, harassment or stalking;

3213 2. Services from a victim services
3214 organization;

3215 3. Psychological or other counseling;

3216 4. Relocation or taking steps to secure an
3217 existing home due to the domestic violence, sexual assault,
3218 harassment or stalking; or

3219 5. Legal services, including preparing for or
3220 participating in any civil or criminal legal proceeding related to
3221 or resulting from the domestic violence, sexual assault,
3222 harassment or stalking.

3223 (b) Earned paid sick time shall be provided upon the
3224 request of an employee. Such request may be made orally, in
3225 writing, by electronic means or by any other means acceptable to



3226 the employer. When possible, the request shall include the
3227 expected duration of the absence.

3228 (c) When the use of earned paid sick time is
3229 foreseeable, the employee shall make a good faith effort to
3230 provide notice of the need for such time to the employer in
3231 advance of the use of the earned paid sick time and shall make a
3232 reasonable effort to schedule the use of earned paid sick time in
3233 a manner that does not unduly disrupt the operations of the
3234 employer.

3235 (d) An employer that requires notice of the need to use
3236 earned paid sick time shall provide a written policy that contains
3237 procedures for the employee to provide notice. An employer that
3238 has not provided to the employee a copy of its written policy for
3239 providing such notice shall not deny earned paid sick time to the
3240 employee based on noncompliance with such a policy.

3241 (e) An employer may not require, as a condition of an
3242 employee's taking earned paid sick time, that the employee search
3243 for or find a replacement worker to cover the hours during which
3244 the employee is using earned paid sick time.

3245 (f) Earned paid sick time may be used in the smaller of
3246 hourly increments or the smallest increment that the employer's
3247 payroll system uses to account for absences or use of other time.

3248 (g) For earned paid sick time of three (3) or more
3249 consecutive work days, an employer may require reasonable
3250 documentation that the earned paid sick time has been used for a



3251 purpose covered by paragraph (a) of this subsection.
3252 Documentation signed by a health care professional indicating that
3253 earned paid sick time is necessary shall be considered reasonable
3254 documentation for purposes of this section. In cases of domestic
3255 violence, sexual assault, or stalking, one (1) of the following
3256 types of documentation selected by the employee shall be
3257 considered reasonable documentation: (i) a police report
3258 indicating that the employee or the employee's family member was a
3259 victim of domestic violence, sexual assault, harassment or
3260 stalking; (ii) a signed statement from a victim and witness
3261 advocate affirming that the employee or employee's family member
3262 is receiving services from a victim services organization; or
3263 (iii) a court document indicating that the employee or employee's
3264 family member is involved in legal action related to domestic
3265 violence, sexual assault, harassment or stalking. An employer may
3266 not require that the documentation explain the nature of the
3267 illness or the details of the domestic violence, sexual assault,
3268 harassment or stalking.

3269 (5) It shall be unlawful for an employer or any other person
3270 to interfere with, restrain, or deny the exercise of, or the
3271 attempt to exercise, any right protected under this section. An
3272 employer shall not take retaliatory personnel action or
3273 discriminate against an employee or former employee because the
3274 person has exercised rights protected under this section. Such
3275 rights include, but are not limited to, the right to request or



3276 use earned paid sick time pursuant to this section; the right to
3277 file a complaint with the agency or courts or inform any person
3278 about any employer's alleged violation of this section; the right
3279 to participate in an investigation, hearing or proceeding or
3280 cooperate with or assist the agency in its investigations of
3281 alleged violations of this section; and the right to inform any
3282 person of his or her potential rights under this section. It
3283 shall be unlawful for an employer's absence control policy to
3284 count earned paid sick time taken under this section as an absence
3285 that may lead to or result in discipline, discharge, demotion,
3286 suspension or any other adverse action. Protections of this
3287 section shall apply to any person who mistakenly but in good faith
3288 alleges violations of this section.

3289 (6) (a) Employers shall give employees written notice of
3290 the following at the commencement of employment: employees are
3291 entitled to earned paid sick time and the amount of earned paid
3292 sick time, the terms of its use guaranteed under this section,
3293 that retaliatory personnel action against employees who request or
3294 use earned paid sick time is prohibited, that each employee has
3295 the right to file a complaint or bring a civil action if earned
3296 paid sick time as required by this section is denied by the
3297 employer or the employee is subjected to retaliatory personnel
3298 action for requesting or taking earned paid sick time, and the
3299 contact information for the agency where questions about rights
3300 and responsibilities under this section can be answered.



3301 (b) The amount of earned paid sick time available to
3302 the employee, the amount of earned paid sick time taken by the
3303 employee to date in the year and the amount of pay the employee
3304 has received as earned paid sick time shall be recorded in, or on
3305 an attachment to, the employee's regular paycheck.

3306 (7) Employers shall retain records documenting hours worked
3307 by employees and earned paid sick time taken by employees, for a
3308 period of three (3) years and shall allow the department access to
3309 such records, with appropriate notice and at a mutually agreeable
3310 time, to monitor compliance with the requirements of this section.
3311 When an issue arises as to an employee's entitlement to earned
3312 paid sick time under this section, if the employer does not
3313 maintain or retain adequate records documenting hours worked by
3314 the employee and earned paid sick time taken by the employee, or
3315 does not allow the department reasonable access to such records,
3316 it shall be presumed that the employer has violated the section,
3317 absent clear and convincing evidence otherwise.

3318 (8) The department shall be authorized to coordinate
3319 implementation and enforcement of this section and shall
3320 promulgate appropriate guidelines or regulations for such
3321 purposes.

3322 (9) (a) The department shall have the authority to take
3323 complaints, investigate those complaints and seek penalties under
3324 this section and to bring charges for noncompliance against any
3325 employer or employee.



3326 (b) (i) The department, the Attorney General, any
3327 person aggrieved by a violation of this section, or any entity a
3328 member of which is aggrieved by a violation of this section may
3329 bring a civil action in a court of competent jurisdiction against
3330 an employer violating this section. Such action may be brought by
3331 a person aggrieved by a violation of this section without first
3332 filing an administrative complaint.

3333 (ii) Upon prevailing in an action brought pursuant
3334 to this section, aggrieved persons shall recover the full amount
3335 of any unpaid earned sick time plus any actual damages suffered as
3336 the result of the employer's violation of this section plus an
3337 equal amount of liquidated damages. Aggrieved persons shall also
3338 be entitled to reasonable attorney's fees.

3339 (iii) Upon prevailing in an action brought
3340 pursuant to this section, aggrieved persons shall be entitled to
3341 such legal or equitable relief as may be appropriate to remedy the
3342 violation, including, without limitation, reinstatement to
3343 employment, back pay and injunctive relief.

3344 (iv) Any person aggrieved by a violation of this
3345 section may file a complaint with the Attorney General. The
3346 filing of a complaint with the Attorney General will not preclude
3347 the filing of a civil action.

3348 (v) The Attorney General may bring a civil action
3349 to enforce this section.



3350 (10) An employer may not require disclosure of details
3351 relating to domestic violence, sexual assault or stalking or the
3352 details of an employee's or an employee's family member's health
3353 information as a condition of providing earned paid sick time
3354 under this section. If an employer possesses health information
3355 or information pertaining to domestic violence, sexual assault, or
3356 stalking about an employee or employee's family member, such
3357 information shall be treated as confidential and not disclosed
3358 except to the affected employee or with the permission of the
3359 affected employee.

3360 (11) (a) Nothing in this section shall be construed to
3361 discourage or prohibit an employer from the adoption or retention
3362 of an earned paid sick time policy more generous than the one
3363 required herein.

3364 (b) Nothing in this section shall be construed as
3365 diminishing the obligation of an employer to comply with any
3366 contract, collective bargaining agreement, employment benefit plan
3367 or other agreement providing more generous paid sick time to an
3368 employee than required herein. Nothing in this section shall be
3369 construed as diminishing the rights of public employees regarding
3370 paid sick time or use of paid sick time as provided in
3371 Mississippi.

3372 (12) This section provides minimum requirements pertaining
3373 to earned paid sick time and shall not be construed to preempt,
3374 limit, or otherwise affect the applicability of any other law,



3375 regulation, requirement, policy or standard that provides for
3376 greater accrual or use by employees of earned paid sick time or
3377 that extends other protections to employees.

3378 (13) If any provision of this section or application thereof
3379 to any person or circumstance is judged invalid, the invalidity
3380 shall not affect other provisions or applications of this section
3381 which can be given effect without the invalid provision or
3382 application, and to this end the provisions of this section are
3383 declared severable.

3384 **SECTION 30.** Sections 30 through 32 shall be known and may be
3385 cited as the "Evelyn Gandy Fair Pay Act."

3386 **SECTION 31.** The Mississippi Legislature finds that the
3387 existence of wage differentials based on sex in industries engaged
3388 in commerce or in the production of goods for commerce:

3389 (a) Depresses the wages and living standards for
3390 employees that are necessary for their health and efficiency,
3391 thereby increasing the poverty rate in Mississippi;

3392 (b) Prevents the maximum utilization of the available
3393 labor resources, thereby depressing the growth of the state GDP;

3394 (c) Tends to cause labor disputes, thereby burdening,
3395 affecting and obstructing commerce;

3396 (d) Burdens commerce and the free flow of goods in
3397 commerce; and

3398 (e) Constitutes an unfair method of competition.



3399 SECTION 32. (1) No employer shall discriminate in any way
3400 against any employee on the basis of sex by paying a salary or
3401 wage to any employee at a rate less than the rate paid to its
3402 employees of the opposite sex for equal work on jobs that require
3403 equal skill, effort and responsibility to perform, and which are
3404 performed under similar working conditions, except where such
3405 payment is made pursuant to:

3406 (a) A seniority system; however, time spent on leave
3407 due to a pregnancy-related condition and parental, family and
3408 medical leave, shall not reduce the seniority-level of an
3409 employee;

3410 (b) A merit system;

3411 (c) A system which measures earnings by quantity or
3412 quality of production; or

3413 (d) A differential based on any bona fide factor other
3414 than sex if the factor:

3415 (i) Is not based on or derived from a differential
3416 in wage based on sex;

3417 (ii) Is job-related with respect to the position
3418 and necessary for the business; and

3419 (iii) Accounts for the entire differential.

3420 An employer who is paying a wage rate differential in
3421 violation of this subsection shall not, in order to comply with
3422 the provisions of this subsection, reduce the wage rate of any
3423 employee.



3424 (2) (a) No labor organization, or its agents, representing
3425 employees of an employer whose employees are subject to the
3426 provisions of this section, shall cause or attempt to cause the
3427 employer to discriminate against an employee in violation of
3428 subsection (1) of this section.

3429 (b) As used in this subsection (2), the term "labor
3430 organization" means any organization of any kind, or any agency or
3431 employee representation committee or plan, in which employees
3432 participate and which exists for the purpose, in whole or in part,
3433 of dealing with employers concerning grievances, labor disputes,
3434 wages, rates of pay, hours of employment or conditions of work.

3435 (3) For purposes of administration and enforcement, any
3436 amounts owed to an employee that have been withheld in violation
3437 of this section shall be deemed to be unpaid minimum wages or
3438 unpaid overtime compensation.

3439 (4) (a) An employer that has been charged with unlawful sex
3440 discrimination under this section shall be entitled to a
3441 rebuttable presumption that the employer has not engaged in
3442 unlawful sex discrimination in violation of this section if:

3443 (i) The charge is made by an employee who holds a
3444 job predominantly occupied by members of one (1) sex, which means
3445 that at least seventy-five percent (75%) of the occupants of the
3446 job are of the same sex, and the employee alleges he or she is
3447 being paid less than an employee who does a different job;



3448 (ii) The employer has, within two (2) years of the
3449 commencement of the action, completed a self-evaluation that meets
3450 the standards set forth in paragraph (d) of this subsection; and

3451 (iii) The employer makes an affirmative showing
3452 that it has made reasonable and substantial progress towards
3453 eliminating wage differentials, including implementing any
3454 required remediation plan, between jobs of equivalent value,
3455 including the job of the employee making the charge, in accordance
3456 with the self-evaluation required in subparagraph (ii) of this
3457 paragraph.

3458 (b) In such cases, the court must give the aggrieved
3459 party an opportunity to rebut this presumption through evidence
3460 that reasonably demonstrates that, notwithstanding the employer's
3461 self-evaluation, the employer has violated this section. In
3462 rebutting this presumption, the aggrieved party may provide all
3463 relevant information including, but not limited to, evidence that:

3464 (i) The employer's job analysis devalues
3465 attributes associated with jobs occupied predominantly by members
3466 of one (1) sex and/or over-values attributes associated with jobs
3467 occupied predominantly by members of the opposite sex;

3468 (ii) The job the aggrieved party occupies was not
3469 adequately evaluated; or

3470 (iii) A job evaluation process has been completed
3471 and, if necessary, a remediation process is in progress or has
3472 been completed, but the self-evaluation has not been reviewed and



3473 updated at reasonable intervals to adjust for changes in the work
3474 environment over time.

3475 (c) An employer wishing to be availed of this
3476 presumption must produce documentation that describes the
3477 self-evaluation process in detail sufficient to show that the
3478 employer has met the standards under paragraph (d).

3479 (d) In order to be eligible for the presumption of
3480 compliance, the self-evaluation must:

3481 (i) Clearly define the employer's establishment;

3482 (ii) Analyze the employee population to identify
3483 differentials in wages, including raises, bonuses, incentive
3484 payments and other forms of remuneration, based on sex;

3485 (iii) Establish a job evaluation plan to determine
3486 the value of jobs within the establishment. The plan must:

3487 1. Be free of any bias based on a person's
3488 sex;

3489 2. Allow for the comparison of all jobs; and

3490 3. Fully and accurately measure the skill,
3491 effort, responsibility and working conditions of each job based on
3492 the actual work performance requirements of the jobs evaluated;

3493 (iv) Apply the job evaluation plan to all jobs;

3494 (v) Create a salary structure or have an
3495 identifying salary group system where jobs of equal value are
3496 placed in the same level or grouping;



3497 (vi) Determine for each salary grouping, or for
3498 each total job evaluation score, the pay differential between jobs
3499 that are predominantly occupied by one (1) sex and other jobs,
3500 including those predominantly occupied by the opposite sex, in
3501 order to identify any wage rate discrimination; and

3502 (vii) Remedy any pay differential identified in
3503 subsection (vi); however, such remediation may not reduce the pay
3504 of any employee or class of employees.

3505 The presumption of compliance may be strengthened where,
3506 through the self-evaluation, including any needed remediation, the
3507 employer maintains communication with and keeps employees apprised
3508 of the process. The method and procedure for that communication
3509 may vary according to the size and organizational structure of the
3510 establishment, but any method or procedure chosen should be
3511 adequate to reach all employees at the establishment.

3512 (5) It shall be an unlawful employment practice for an
3513 employer to:

3514 (a) Require, as a condition of employment, that an
3515 employee refrain from inquiring about, discussing or disclosing
3516 his or her wages or the wages of another employee;

3517 (b) Require an employee to sign a waiver or other
3518 document which purports to deny an employee the right to disclose
3519 or discuss his or her wages;

3520 (c) Discharge, formally discipline or otherwise
3521 discriminate against an employee for inquiring about, discussing



3522 or disclosing his or her wages or the wages of another employee;
3523 however, nothing in this subsection (5) creates an obligation for
3524 an employer or employee to disclose wages;

3525 (d) Retaliate or in any other manner discriminate
3526 against an employee or applicant for employment because that
3527 individual has opposed a practice made unlawful by this act or
3528 because that individual has made a charge, filed a complaint or
3529 instituted or caused to be instituted any investigation,
3530 proceeding, hearing or action under or related to this act,
3531 including an investigation conducted by the employer, or has
3532 testified or is planning to testify, or has assisted, or
3533 participated in any manner in any such investigation, proceeding,
3534 or hearing under this act.

3535 (6) (a) A civil action asserting a violation of this
3536 section may be maintained against any employer in any court of
3537 competent jurisdiction by any one (1) or more employees for or on
3538 behalf of the employee, a group of employees and other employees
3539 similarly situated. Any such action shall commence no later than
3540 two (2) years after the discriminatory practice declared unlawful
3541 by this section has occurred. A discriminatory practice occurs
3542 when a discriminatory compensation decision or other practice is
3543 adopted, when an employee is subjected to a discriminatory
3544 compensation decision or other practice, or when an employee is
3545 affected by the application of a discriminatory compensation
3546 decision or other practice, including each time wages, benefits,



3547 or other compensation is paid based on the discriminatory
3548 compensation decision or other practice.

3549 (b) If an employer is found in violation of this
3550 section, the employee may recover in a civil action the amount of
3551 their unpaid wages; liquidated damages; compensatory damages;
3552 punitive damages as may be appropriate, where the employee
3553 demonstrates that the employer acted with malice or reckless
3554 indifference; other equitable relief as may be appropriate; and
3555 the costs of the action and reasonable attorney's fees.

3556 **SECTION 33.** This act shall take effect and be in force from
3557 and after July 1, 2023.

