

By: Senator(s) Turner-Ford

To: Judiciary, Division A

SENATE BILL NO. 2452

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

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

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

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

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

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



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

25 (d) Burdens commerce and the free flow of goods in
26 commerce; and

27 (e) Constitutes an unfair method of competition.

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

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

39 (b) A merit system;

40 (c) A system which measures earnings by quantity or
41 quality of production; or

42 (d) A differential based on any bona fide factor other
43 than sex, race, or ethnicity if the factor:

44 (i) Is not based on or derived from a differential
45 in wage based on sex, race, or ethnicity;

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



48 (iii) Accounts for the entire differential.

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

53 An individual's wage history cannot, by itself, justify an
54 otherwise unlawful wage rate differential.

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

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

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

70 (4) (a) An employer that has been charged with unlawful
71 sex, race, or ethnicity discrimination under subsection (1) of
72 this section may file a motion to disallow an award of liquidated,



73 compensatory, and punitive damages if within three (3) years
74 before the date that the employee filed the action, the employer:

75 (i) Completed a self-evaluation of its pay
76 practices in good faith that was related to the protected class
77 asserted by the employee in the action; and

78 (ii) Eliminated the wage differentials for the
79 employee and has made reasonable and substantial progress toward
80 eliminating wage differentials for the protected class asserted by
81 the employee.

82 (b) For purposes of this subsection, an employer's
83 self-evaluation may be of the employer's own design, so long as
84 the scope and detail in the analysis reflects the exercise of due
85 diligence to identify, prevent, and mitigate actual and potential
86 violations in light of the size of the employer.

87 (i) In determining if a self-evaluation reflects
88 the exercise of due diligence, the factors the court may consider
89 include, but are not limited to, whether the evaluation includes
90 all relevant jobs and employees; whether an employer's analysis
91 makes a reasonable effort to identify similar jobs and employees
92 using a consistent fact-based approach; whether the employer has
93 tested explanatory factors for an unbiased and relevant
94 relationship to pay; whether the evaluation takes into account all
95 reasonably relevant and available information; and whether the
96 evaluation is reasonably sophisticated in its analysis of
97 potentially comparable work, employee compensation, and the



98 application of the permissible reasons for compensation
99 differentials set forth in subsection (1) of this section. If an
100 employer fails to retain the records necessary to show how it
101 evaluated and applied these factors, it may give rise to an
102 inference the employer did not exercise due diligence in
103 conducting the analysis; and

104 (ii) Evidence that a self-evaluation was conducted
105 or remedial steps undertaken in accordance with this subsection
106 (4) is not sufficient evidence, standing alone, to find a
107 violation of subsection (1) of this section occurred prior to the
108 date the self-evaluation was completed.

109 (5) It shall be an unlawful employment practice for an
110 employer to:

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

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

117 (c) Discharge, formally discipline or otherwise
118 discriminate against an employee for inquiring about, discussing
119 or disclosing his or her wages or the wages of another employee;
120 however, nothing in this subsection (5) creates an obligation for
121 an employer or employee to disclose wages;



122 (d) Rely on the wage history of an applicant for
123 employment in considering the applicant for employment;

124 (e) Rely on the wage history of an applicant for
125 employment in determining the wages such applicant is to be paid
126 by the employer upon hire;

127 (f) To seek the wage history of an applicant; provided,
128 however, that after the employer makes an initial offer of
129 employment with an offer of compensation to an applicant for
130 employment, an employer may:

131 (i) Rely on wage history to support a wage higher
132 than the wage offered by the employer, if wage history is
133 voluntarily provided by the applicant for employment without
134 prompting from the employer;

135 (ii) Seek to confirm the wage history of the
136 applicant for employment to support a wage higher than the wage
137 offered by the employer when relying on wage history as permitted
138 in subparagraph (i) of this paragraph.

139 An employer may rely on wage history in these circumstances
140 to the extent that the higher wage does not create an unlawful
141 wage differential based on a protected characteristic as set out
142 in Section 3(1) of this act;

143 (g) Retaliate or in any other manner discriminate
144 against an employee or applicant for employment because that
145 individual has opposed a practice made unlawful by this act,
146 including refusing to provide his or her wage history, or because



147 that individual has made a charge, filed a complaint, or
148 instituted or caused to be instituted any investigation,
149 proceeding, hearing, or action under or related to this act,
150 including an investigation conducted by the employer, or has
151 testified or is planning to testify, or has assisted, or
152 participated in any manner in any such investigation, proceeding,
153 or hearing under this act.

154 (6) (a) A civil action asserting a violation of this
155 section may be maintained against any employer in any court of
156 competent jurisdiction by any one or more employees for or on
157 behalf of the employee, a group of employees, and other employees
158 similarly situated. Any such action shall commence no later than
159 two (2) years after the discriminatory practice declared unlawful
160 by this section has occurred. A discriminatory practice occurs
161 when a discriminatory compensation decision or other practice is
162 adopted, when an employee is subjected to a discriminatory
163 compensation decision or other practice, or when an employee is
164 affected by the application of a discriminatory compensation
165 decision or other practice, including each time wages, benefits,
166 or other compensation is paid based on the discriminatory
167 compensation decision or other practice.

168 (b) If an employer is found in violation of this
169 section, the employee may recover in a civil action the amount of
170 their unpaid wages; liquidated damages; compensatory damages or,
171 for a violation of subsection (5) (a) through (c) of this section,



172 compensatory or statutory damages not to exceed Ten Thousand
173 Dollars (\$10,000.00), whichever is greater; punitive damages as
174 may be appropriate, where the employee demonstrates that the
175 employer acted with malice or reckless indifference; other
176 equitable relief as may be appropriate; and the costs of the
177 action and reasonable attorney's fees.

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

