MR. SPEAKER AND MR. PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 770: Mississippi Equal Pay for Equal Work Act; create.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

    Amend by striking all after the enacting clause and inserting in lieu thereof the following:

    SECTION 1. The provisions of this act shall be known and may be cited as the "Mississippi Equal Pay for Equal Work Act".

    SECTION 2. For the purposes of this act, the following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

    (a) "Employee" means any individual who is employed to work forty (40) or more hours a week and who is employed by an employer, including individuals employed by the state or any of its political subdivisions or instrumentalities of subdivisions.

    (b) "Employer" means any person who employs five (5) or more employees.

    (c) "Wage" means and includes all compensation paid by an employer or his or her agent for the performance of service by
an employee, including the cash value of all compensation paid in any medium other than cash.

(d) "Rate" with reference to wages means the basis of compensation for services by an employee for an employer and includes compensation based on time spent in the performance of such services, on the number of operations accomplished, or on the quality produced or handled.

(e) "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required to be paid to an employee as provided in this act.

(f) "Skill" means and shall be measured by factors such as experience, ability, education and training that are required to perform a job.

(g) "Effort" means the amount of physical or mental exertion needed to perform a job.

(h) "Responsibility" means the degree of accountability required to perform the job.

(i) "Working Conditions" means and includes the following two (2) factors:

(i) The physical surroundings of a job including, but not limited to, temperature, fumes and ventilation; and

(ii) The hazards of the job.

SECTION 3. (1) No employer may pay an employee a wage at a rate less than the rate at which an employee of the opposite sex in the same establishment is paid for equal work on a job, the
performance of which requires equal skill, education, effort and
responsibility, and which is performed under similar working
conditions, except where payment is made pursuant to differential
based on:

(a) A seniority system;
(b) A merit system;
(c) A system which measures earnings by quantity or
quality of production; or
(d) Any other factor other than sex. "Any other factor
other than sex" shall include, but not be limited to, the
following factors:

(i) The salary history or continuity of employment
history demonstrated by the employee as compared to employees of
the opposite sex in the same establishment;
(ii) The extent to which there was competition
with other employers for the employee's services as compared to
employees of the opposite sex in the same establishment; and
(iii) The extent to which the employee attempted
to negotiate for higher wages as compared to employees of the
opposite sex in the same establishment.

(2) (a) The provisions of this act may be enforced by
private action in a civil suit in the circuit court in the county
in Mississippi where the cause of action occurred pursuant to the
Mississippi Rules of Civil Procedure.
(b) If an employer is found to have violated the provisions of subsection (1) of this section, the employee shall be awarded reasonable attorney's fees, prejudgment interest, back pay and costs of the action.

(3) An employer who is paying a wage differential in violation of this act shall not, in order to comply with this act, reduce the wage rate of any employee.

(4) No employer may discharge, discriminate or in any way retaliate against any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of this act.

SECTION 4. (1) A civil action brought under this act may be commenced no later than two (2) years from the day the employee knew or should have known his or her employer was in violation of this act.

(2) If an employee brings a claim under the Equal Pay Act of 1963, a separate action may not be maintained under this act. If an employee brings a claim under this act, then later initiates a claim under the Equal Pay Act of 1963, the action brought under this act shall be dismissed with prejudice. An employee who seeks relief under this act must first waive any right to relief under the Equal Pay Act of 1963.

(3) (a) For any action under this act, published precedents of the United States Supreme Court, the United States Court of Appeals for the Fifth Circuit and federal district courts
embracing the circuit court in which any action under this act is pending, deciding cases under the Equal Pay Act of 1963, after which this act is patterned, shall be considered mandatory authority and shall be followed by the circuit court in which the action is pending, until there is a contrary ruling interpreting this act by the Mississippi Supreme Court or the Mississippi Court of Appeals.

(b) If any section, paragraph, sentence, clause, phrase or any part of this act passed is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

SECTION 5. This act shall take effect and be in force from and after July 1, 2022.

Further, amend by striking the title in its entirety and inserting in lieu thereof the following:

AN ACT TO CREATE THE MISSISSIPPI EQUAL PAY ACT; TO PROVIDE DEFINITIONS FOR "EMPLOYEE", "EMPLOYER", "WAGE", "RATE", AND "UNPAID WAGES"; TO PROVIDE THAT NO EMPLOYER SHALL PAY AN EMPLOYEE A WAGE AT A RATE LESS THAN THE RATE AT WHICH AN EMPLOYEE OF THE OPPOSITE SEX IN THE SAME ESTABLISHMENT IS PAID FOR EQUAL WORK ON A JOB, THE PERFORMANCE OF WHICH REQUIRES EQUAL SKILL, EFFORT AND RESPONSIBILITY, AND WHICH IS PERFORMED UNDER SIMILAR WORKING CONDITIONS; TO PROVIDE REMEDIES; TO PROVIDE THE TIME IN WHICH A CIVIL ACTION MUST BE FILED; AND FOR RELATED PURPOSES.
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