

By: Representative Summers

To: Judiciary A

HOUSE BILL NO. 1141

1 AN ACT TO AMEND SECTION 71-17-3, MISSISSIPPI CODE OF 1972, TO
 2 DEFINE "WAGE HISTORY"; TO AMEND SECTION 71-17-5, MISSISSIPPI CODE
 3 OF 1972, TO PROVIDE HOW A PERSON'S WAGE HISTORY MAY AND MAY NOT BE
 4 USED WHILE THAT PERSON IS AN APPLICANT FOR EMPLOYMENT; TO PROVIDE
 5 PENALTIES FOR THOSE EMPLOYERS WHO VIOLATE THE PROVISIONS RELATED
 6 TO WAGE HISTORY; TO AMEND SECTION 71-17-7, MISSISSIPPI CODE OF
 7 1972, TO PROVIDE THAT CERTAIN PRECEDENTS SHALL NOT BE CONSIDERED
 8 MANDATORY AUTHORITY FOR CLAIMS THAT ARE BROUGHT AS A RESULT OF
 9 VIOLATIONS OF THE PROVISIONS RELATED TO WAGE HISTORY; AND FOR
 10 RELATED PURPOSES.

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

12 **SECTION 1.** Section 71-17-3, Mississippi Code of 1972, is
 13 amended as follows:

14 71-17-3. For the purposes of this chapter, the following
 15 words and phrases shall have the meanings as defined in this
 16 section unless the context clearly indicates otherwise:

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

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



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

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

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

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

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

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

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

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

46 (ii) The hazards of the job.



47 (j) "Wage history" means the wages paid to an applicant
48 for employment by the applicant's current employer and/or previous
49 employer or employers.

50 **SECTION 2.** Section 71-17-5, Mississippi Code of 1972, is
51 amended as follows:

52 71-17-5. (1) No employer may pay an employee a wage at a
53 rate less than the rate at which an employee of the opposite sex
54 in the same establishment is paid for equal work on a job, the
55 performance of which requires equal skill, education, effort and
56 responsibility, and which is performed under similar working
57 conditions, except where payment is made pursuant to differential
58 based on:

59 (a) A seniority system;

60 (b) A merit system;

61 (c) A system which measures earnings by quantity or
62 quality of production; or

63 (d) Any other factor other than sex. "Any other factor
64 other than sex" shall include, but not be limited to, the
65 following factors:

66 * * *

67 (* * *i) The extent to which there was
68 competition with other employers for the employee's services as
69 compared to employees of the opposite sex in the same
70 establishment; and



71 (* * *ii) The extent to which the employee
72 attempted to negotiate for higher wages as compared to employees
73 of the opposite sex in the same establishment.

74 (2) (a) Except as otherwise provided in this subsection, no
75 employer shall:

76 (i) Rely on the wage history of an applicant for
77 employment in considering the applicant for employment.

78 (ii) Rely on the wage history of an applicant for
79 employment in determining the wages such applicant is to be paid
80 by the employer upon hire; or

81 (iii) Seek the wage history of an applicant.

82 (b) After an employer makes an initial offer of
83 employment with an offer of compensation to an applicant for
84 employment, an employer may:

85 (i) Rely on wage history to support a wage higher
86 than the wage offered by the employer, if wage history is
87 voluntarily provided by the applicant for employment without
88 prompting from the employer; and

89 (ii) Seek to confirm the wage history of the
90 applicant for employment to support a wage higher than the wage
91 offered by the employer when relying on wage history as permitted
92 above.

93 (c) An employer may rely on wage history as permitted
94 in this subsection to the extent that the higher wage does not



95 create an unlawful pay differential based on sex as provided in
96 federal law and this chapter.

97 (* * *3) (a) The provisions of this chapter may be
98 enforced by private action in a civil suit in the circuit court in
99 the county in Mississippi where the cause of action occurred
100 pursuant to the Mississippi Rules of Civil Procedure.

101 (b) If an employer is found to have violated the
102 provisions of subsection (1) or (2) of this section, the employee
103 shall be awarded reasonable attorney's fees, prejudgment interest,
104 back pay and costs of the action.

105 (c) If an employer is found to have violated the
106 provisions of subsection (2) of this section, the employee shall
107 be awarded statutory damages not to exceed Ten Thousand Dollars
108 (\$10,000.00) and shall be subject to such injunctive relief as may
109 be appropriate.

110 (* * *4) An employer who is paying a wage differential in
111 violation of this chapter shall not, in order to comply with this
112 chapter, reduce the wage rate of any employee.

113 (* * *5) No employer may discharge, discriminate or in any
114 way retaliate against any employee by reason of any action taken
115 by the employee to invoke or assist in any manner the enforcement
116 of this chapter, including an employee or applicant's refusal to
117 provided wage history.

118 **SECTION 3.** Section 71-17-7, Mississippi Code of 1972, is
119 amended as follows:



120 71-17-7. (1) A civil action brought under this chapter may
121 be commenced no later than two (2) years from the day the employee
122 knew or should have known his or her employer was in violation of
123 this chapter.

124 (2) If an employee brings a claim under the Equal Pay Act of
125 1963, a separate action may not be maintained under this chapter.
126 If an employee brings a claim under this chapter, then later
127 initiates a claim under the Equal Pay Act of 1963, the action
128 brought under this chapter shall be dismissed with prejudice. An
129 employee who seeks relief under this chapter must first waive any
130 right to relief under the Equal Pay Act of 1963.

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

141 (b) If any section, paragraph, sentence, clause, phrase
142 or any part of this chapter passed is declared to be
143 unconstitutional or void, or if for any reason is declared to be
144 invalid or of no effect, the remaining sections, paragraphs,



145 sentences, clauses, phrases or parts thereof shall be in no manner
146 affected thereby but shall remain in full force and effect.

147 (c) This subsection (3) shall not apply to claims
148 brought under Section 71-17-5(2).

149 **SECTION 4.** This act shall take effect and be in force from
150 and after July 1, 2024.

