

By: Senator(s) Simmons

To: Labor

SENATE BILL NO. 2566

1 AN ACT TO ENACT A MINIMUM WAGE LAW FOR THE STATE OF  
 2 MISSISSIPPI EFFECTIVE JANUARY 1, 2008, WITH ANNUAL INCREMENTAL  
 3 INCREASES OVER A THREE-YEAR PERIOD; TO DEFINE EMPLOYERS AND  
 4 EMPLOYEES SUBJECT TO THE MINIMUM WAGE LAW; TO EMPOWER THE  
 5 MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY, OFFICE OF THE  
 6 GOVERNOR, TO ENFORCE AND ADMINISTER THE PROVISIONS OF THE MINIMUM  
 7 WAGE LAW; TO PROVIDE CRIMINAL PENALTIES AND A CIVIL CAUSE OF  
 8 ACTION AGAINST EMPLOYERS FOR VIOLATIONS OF THE MINIMUM WAGE LAW;  
 9 AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** This act shall be known as the Minimum Wage Act  
 12 of the State of Mississippi.

13 **SECTION 2.** It is declared to be the public policy of the  
 14 State of Mississippi to establish minimum wages for workers in  
 15 order to safeguard their health, efficiency and general well-being  
 16 and to protect them as well as their employers from the effects of  
 17 serious and unfair competition resulting from wage levels  
 18 detrimental to their health, efficiency and well-being.

19 **SECTION 3.** Beginning January 1, 2008, every employer shall  
 20 pay to each of his employees wages at the rate of not less than  
 21 Six Dollars (\$6.00) per hour. Beginning January 1, 2009, every  
 22 employer shall pay to each of his employees wages at the rate of  
 23 not less than Six Dollars and Fifty Cents (\$6.50) per hour.  
 24 Beginning January 1, 2010, every employer shall pay to each of his  
 25 employees wages at the rate of not less than Seven Dollars (\$7.00)  
 26 per hour, except as otherwise provided in this act.

27 **SECTION 4.** As used in this act, unless the context otherwise  
 28 requires:

29 (a) "Director" means the Executive Director of the  
 30 Mississippi Department of Employment Security;

31           (b) "Department" means the Mississippi Department of  
32 Employment Security, Office of the Governor, established under  
33 Section 71-5-101, Mississippi Code of 1972;

34           (c) "Wage" means compensation due to an employee by  
35 reason of his employment, payable in legal tender of the United  
36 States or checks on banks convertible into cash on demand at full  
37 face value, subject to such deductions, charges or allowances as  
38 may be permitted by this act or by regulations of the department  
39 under this act;

40           (d) "Employ" includes to suffer or to permit to work;

41           (e) "Employer" includes any individual, partnership,  
42 association, corporation, business trust, or any person or group  
43 of persons acting directly or indirectly in the interest of an  
44 employer in relation to an employee. "Employer" shall not include  
45 any individual, partnership, association, corporation, business  
46 trust, or any person or group of persons acting directly or  
47 indirectly in the interest of an employer in relation to an  
48 employee that employs fewer than five (5) employees in a regular  
49 employment relationship. Nor shall "employer" or any provisions  
50 of this act be deemed to include or to apply to any person, firm  
51 or corporation, or other entity subject to the provisions of the  
52 federal Fair Labor Standards Act of 1938;

53           (f) "Independent contractor" means any individual who  
54 contracts to perform certain work away from the premises of his  
55 employer, uses his own methods to accomplish the work, and is  
56 subject to the control of the employer only as to the result of  
57 his work;

58           (g) "Employee" includes any individual employed by an  
59 employer but shall not include:

60           (i) Any individual employed in a bona fide  
61 executive, administrative or professional capacity, or as an  
62 outside commission-paid salesman, who customarily performs his

63 services away from his employer's premises, taking orders for  
64 goods or services;

65 (ii) Students performing services for any school,  
66 college or university in which they are enrolled and are regularly  
67 attending classes;

68 (iii) Any individual employed by the United States  
69 or by the state or any political subdivision thereof, except  
70 public schools and school districts;

71 (iv) Any individual engaged in the activities of  
72 any educational, charitable, religious or nonprofit organization  
73 where the employer-employee relationship does not in fact exist or  
74 where the services are rendered to the organizations gratuitously;

75 (v) Any bona fide independent contractor;

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

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

82 (viii) An individual who:

83 1. Is employed as a hand harvest laborer and  
84 is paid on a piece-rate basis in an operation which has been, and  
85 is customarily and generally recognized as having been, paid on a  
86 piece-rate basis in the region of employment;

87 2. Commutes daily from his permanent  
88 residence to the farm on which he is so employed; and

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

91 (ix) A migrant who:

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

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

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

98                   3. Is employed on the same farm as his  
99 parents; and

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

102                   (x) Any employee principally engaged in the range  
103 production of livestock;

104                   (xi) Any employee employed in planting or tending  
105 trees, cruising, surveying or felling timber, or in preparing or  
106 transporting logs or other forestry products to the mill,  
107 processing plants, or railroad or other transportation terminal if  
108 the number of employees employed by his employer in such forestry  
109 or lumbering operations does not exceed eight (8);

110                   (h) "Occupation" means any occupation, service, trade,  
111 business, industry, or branch or group of industries or employment  
112 or class of employment in which employees are gainfully employed;

113                   (i) "Gratuities" means voluntary monetary contributions  
114 received by an employee from a guest, patron or customer for  
115 services rendered;

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

118                   **SECTION 5.** Nothing in this act shall be deemed to interfere  
119 with, impede, or in any way diminish the right of employers and  
120 employees to bargain collectively through representatives of their  
121 own choosing in order to establish wages or other conditions of  
122 work.

123                   **SECTION 6.** (1) Any employer who willfully hinders or delays  
124 the department or its authorized representative in the performance  
125 of its duties in the enforcement of this act; willfully refuses to  
126 admit the department or its authorized representative to any place  
127 of employment; willfully fails to make, keep and preserve any  
128 records as required under the provisions of this act; willfully

129 falsifies any such record; willfully refuses to make the record  
130 accessible to the department or its authorized representative upon  
131 demand; willfully refuses to furnish a sworn statement of the  
132 record or any other information required for the proper  
133 enforcement of this act to the department or its authorized  
134 representative upon demand; willfully fails to post a summary of  
135 this act or a copy of any applicable regulations as required by  
136 this act; willfully pays or agrees to pay minimum wages at a rate  
137 less than the rate applicable under this act; or otherwise  
138 willfully violates any provision of this act shall be deemed in  
139 violation of this act and shall, upon conviction, be fined not  
140 more than One Hundred Dollars (\$100.00). For the purposes of this  
141 subsection, each violation shall constitute a separate offense.

142 (2) Any employer who willfully discharges or in any other  
143 manner willfully discriminates against any employee because the  
144 employee has made any complaint to his employer, to the  
145 department, or to the director or his authorized representative  
146 that he has not been paid minimum wages in accordance with the  
147 provisions of this act, or because the employee has caused to be  
148 instituted or is about to cause to be instituted any proceeding  
149 under or related to this act, or because the employee has  
150 testified or is about to testify in any such proceeding shall be  
151 deemed in violation of this act and shall, upon conviction, be  
152 fined not more than One Hundred Dollars (\$100.00).

153 **SECTION 7.** (1) For any occupation, the department shall  
154 make and revise such administrative regulations, including  
155 definitions of terms, as they may deem appropriate to carry out  
156 the purposes of this act or necessary to prevent the circumvention  
157 or evasion thereof and to safeguard the minimum wage rates  
158 established.

159 (2) The regulations may include, but are not limited to,  
160 regulations governing:

161 (a) Outside or commission salespeople;

162 (b) Learners and apprentices, their number, proportion  
163 and length of service;

164 (c) Part-time pay, bonuses and fringe benefits;

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

166 (e) Permitted charges to employees or allowances for  
167 board, lodging, apparel, or other facilities or services  
168 customarily furnished by employers to employees;

169 (f) Allowances for gratuities; or

170 (g) Allowances for other special conditions or  
171 circumstances which may be usual in a particular employer-employee  
172 relationship.

173 (3) Regulations or revisions issued by the department  
174 pursuant to this section shall be made only after a public  
175 hearing, at which any person may be heard by the department, at  
176 least ten (10) days subsequent to publication of notice of the  
177 hearing in a newspaper of general circulation throughout the State  
178 of Mississippi.

179 **SECTION 8.** The director or his authorized representatives  
180 shall:

181 (a) Have authority to enter and inspect the place of  
182 business or employment of any employer in the state for the  
183 purpose of examining and inspecting any or all books, registers,  
184 payrolls and other records of any employer that in any way relate  
185 to or have a bearing upon the question of wages, hours and other  
186 conditions of employment of any employees; copy any or all of the  
187 books, registers, payrolls and other records as he may deem  
188 necessary or appropriate; and question employees for the purpose  
189 of ascertaining whether the provisions of this act and regulations  
190 issued thereunder have been and are being complied with;

191 (b) Have authority to require from the employer full  
192 and correct statements in writing, including sworn statements,  
193 with respect to wages, hours, names, addresses and such

194 information pertaining to his employees as the director or his  
195 authorized representative may deem necessary or appropriate;

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

197 (d) Otherwise implement and enforce the regulations and  
198 decisions of the department.

199 **SECTION 9.** (1) Except as otherwise provided in this  
200 section, no employer shall employ any of his employees for a  
201 workweek longer than forty (40) hours unless the employee receives  
202 compensation for his employment in excess of the hours above  
203 specified at a rate not less than one and one-half (1-1/2) times  
204 the regular rate of pay at which he is employed.

205 (2) The provisions regarding the payment of wages at one and  
206 one-half (1-1/2) times the regular rate of pay for overtime  
207 services shall not be applicable with respect to agricultural  
208 employees.

209 **SECTION 10.** (1) Every employer of an employee engaged in  
210 any occupation in which gratuities have been customarily and  
211 usually constituted and have been recognized as a part of  
212 remuneration for hiring purposes shall be entitled to an allowance  
213 for gratuities as a part of the hourly wage rate provided in  
214 Section 3 of this act in an amount not to exceed fifty percent  
215 (50%) of the minimum wage established by Section 3, provided that  
216 the employee actually received that amount in gratuities and that  
217 the application of the foregoing gratuity allowances results in  
218 payment of wages other than gratuities to tipped employees,  
219 including full-time students subject to the provisions of this  
220 act, of no less than fifty percent (50%) of the minimum wage  
221 prescribed by this act.

222 (2) In determining whether an employee received in  
223 gratuities the amount claimed, the director may require the  
224 employee to show to the satisfaction of the director that the  
225 actual amount of gratuities received by him during any workweek  
226 was less than the amount determined by the employer as the amount

227 by which the wage paid the employee was deemed to be increased  
228 under this section.

229 **SECTION 11.** (1) Every employer subject to any provisions of  
230 this act shall keep a summary of this act, approved by the  
231 department, and copies of any applicable regulations issued under  
232 this act posted in a conspicuous and accessible place in or about  
233 the premises wherein any person subject thereto is employed.

234 (2) Employers shall be furnished copies of the summaries of  
235 this statute and regulations by the director on request without  
236 charge.

237 **SECTION 12.** (1) Every employer subject to any provision of  
238 this act or of any regulation issued under this act shall make and  
239 keep for a period of not less than three (3) years, in or about  
240 the premises wherein any employee is employed, a record of the  
241 name, address and occupation of each of his employees, the rate of  
242 pay and the amount paid each pay period to each employee and such  
243 other information as the department shall prescribe by regulation  
244 as necessary or appropriate for the enforcement of the provisions  
245 of this act or of the regulations thereunder.

246 (2) The records shall be open for inspection or  
247 transcription by the director or his authorized representative at  
248 any reasonable time.

249 (3) Every employer shall furnish to the director or to his  
250 authorized representative on demand a sworn statement of the  
251 records and information upon forms prescribed or approved by the  
252 director.

253 **SECTION 13.** (1) Any employer who pays any employee less  
254 than minimum wages to which the employee is entitled under or by  
255 virtue of this act shall be liable to the employee affected for  
256 the full amount of the wages, less any amount actually paid to the  
257 employee by the employer, and for costs and such reasonable  
258 attorney's fees as may be allowed by the court.



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

261           (3) The venue of the action shall lie in the circuit court  
262 of any county in which the services which are the subject of the  
263 employment were performed.

264           (4) The Executive Director of the Mississippi Department of  
265 Employment Security, Office of the Governor, shall have the  
266 authority to fully enforce this act by instituting legal action to  
267 recover any wages which he determines to be due to employees under  
268 this act.

269           **SECTION 14.** This act shall take effect and be in force from  
270 and after July 1, 2007.