MISSISSIPPI LEGISLATURE REGULAR SESSION 2012

By: Representative Gardner

To: Judiciary A

HOUSE BILL NO. 331

AN ACT TO AUTHORIZE EMPLOYERS TO SEEK CIVIL REMEDIES TO PREVENT UNLAWFUL CONDUCT IN THE WORKPLACE; TO DEFINE CERTAIN TERMS; TO PROVIDE PENALTIES FOR VIOLATING ORDERS ISSUED UNDER THIS ACT; TO PROVIDE THAT THE PROVISIONS OF THIS ACT SHALL NOT RESTRICT THE RIGHT TO SEEK OTHER AVAILABLE CIVIL OR CRIMINAL REMEDIES; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) An employer may file a civil action and seek relief, including seeking a temporary restraining order, a preliminary injunction, and/or permanent injunction if the employer, an employee, or any group of employees has suffered unlawful conduct by any person and the employer has reasonable belief that the person may carry out further unlawful conduct at the employer's workplace.

(2) For purposes of this section, the following definitions shall apply:

(a) "Employer" shall mean:

(i) An individual;

(ii) An association;

(iii) A partnership;

(iv) A sole proprietorship;

(v) A limited liability company;

(vi) A corporation;

(vii) A business trust;

(viii) The state;

(ix) A governmental agency; or

(x) A political subdivision.

(b) "Employee" shall mean:

(i) A person employed or permitted to work or perform a service for an employer for remuneration;

(ii) A member of a board of directors for a private, public or quasi-public corporation;

(iii) An elected or appointed public official; or

(iv) A volunteer or an independent contractor who performs services for an employer.

(c) "Workplace" means any location away from an employee's domicile, permanent or temporary, where an employee performs any work-related duty in the course of his or her employment. "Workplace" may also include the domicile of the employer when that domicile is the principal place of business of the employer. "Workplace" may also encompass areas such as parking facilities, break areas or courtyards that are regularly utilized by an employer's employees, and are under the control or ownership of the employer.

(d) "Unlawful conduct" means the commission of one or more of the following acts upon an employer, employee, or group of employees, but does not include acts of self-defense or defense of others:

(i) Assault as defined by Section 97-3-7;

(ii) Rape as defined by Section 97-3-65;

(iii) Sexual battery as defined by Section 97-3-95;

(iv) Stalking as defined by Section 97-3-107;

(v) Cyberstalking as defined by Section 97-45-15; or

(vi) A credible threat of violence.

"Unlawful conduct" does not require that the person has been arrested or convicted for the conduct described herein.

(e) "Credible threat of violence" means a verbal or written statement, including that communicated electronically, or a threat implied by a course of conduct, or combination of

statements and conduct, that would cause a reasonable person to fear for his or her own safety or the safety of others.

(f) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, indicating a continuity of purpose, that includes, but is not limited to, the following or any combination thereof:

(i) Following or stalking an employer or employee to or from the workplace;

(ii) Entering the workplace;

(iii) Following an employer or employee during the hours of employment;

(iv) Making telephone calls to an employer or employee during the hours of employment;

(v) Destruction or defacement of property at the workplace; or

(vi) Sending correspondence to an employer or employee by public or private mail, interoffice mail, fax, or any other electronic means.

(3) (a) Proof by a preponderance of the evidence of any action described in subsection (1) of this section shall constitute irreparable harm or damage to the employer or employer's employee.

(b) In connection with the granting of any restraining order, preliminary injunction, or permanent injunction, the court may, among other appropriate relief:

(i) Order the respondent not to visit, assault, or otherwise interfere with the employer or the employer's operations or the employer's employee at the employer's workplace;

(ii) Order the respondent to cease stalking the employer or employee at the workplace;

(iii) Order the respondent to cease harassment of the employer or the employer's employee at the employer's workplace;

(iv) Order the respondent not to abuse or injure the employer, including the employer's property, or the employer's employee at the employer's workplace;

(v) Order the respondent to cease all contact with the employer or employer's employee at the employer's workplace including, but not limited to, contact by telephone or any other electronic means or electronic mail;

(vi) Order such other necessary and appropriate relief as is deemed appropriate in the discretion of the court; and

(vii) Order the respondent to pay all costs, filing fees, and reasonable attorney's fees.

(4) All restraining orders and injunctions shall contain language directing appropriate law enforcement agencies to enforce the court's orders, and a copy of each order shall be provided to the law enforcement agency or agencies having jurisdiction where the employer's workplace is located.

(5) When necessary to protect the employer or the employer's employee, or property, the court may order that the temporary restraining order, preliminary injunction, or permanent injunction be served upon the respondent by the sheriff or by any other person authorized by law to serve process.

(6) Unless specifically modified or terminated by the issuing court, all orders and injunctions issued under this section shall have statewide validity and may be enforced by the issuing court as a contempt action for any violation occurring anywhere in the state or by any court of competent jurisdiction within the state for violations which may occur within that court's jurisdiction.

(7) A knowing violation of an order issued pursuant to this section shall constitute a misdemeanor, punishable, upon conviction, by a jail term of up to six (6) months or a fine of up to One Thousand Dollars ($1,000.00), or both such jail and fine,

or the issuing court may hold the defendant in contempt. A defendant, however, may not be both criminally prosecuted and held in criminal contempt for the same violation.

(8) This section shall not be construed to authorize the prohibition or prevention of any constitutionally protected activity.

(9) Nothing in this section shall be construed to limit or restrict the rights of the affected parties to seek any other available civil or criminal remedies.

(10) Nothing in this section shall be construed to create any duty to file or to prosecute a civil action authorized by this section.

SECTION 2. This act shall take effect and be in force from and after July 1, 2012.