

SCS SB 188 -- UNLAWFUL DISCRIMINATORY PRACTICES

SPONSOR: Lager (Elmer)

COMMITTEE ACTION: Voted "do pass" by the Committee on Workforce Development and Workplace Safety by a vote of 6 to 5.

This substitute changes the laws regarding unlawful discriminatory employment practices under the Missouri Human Rights Law and establishes the Whistleblower Protection Act.

UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES UNDER MISSOURI HUMAN RIGHTS LAWS

The substitute:

- (1) Adds the term "because of" or "because" as it relates to a decision or action to be the protected criterion was a motivating factor;
- (2) Revises the term "employer" by specifying that it is a person engaged in an industry affecting commerce who has six or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and does not include the federal government; a corporation owned by the federal government; an individual employed by an employer; an Indian tribe; certain departments or agencies of the District of Columbia; private membership clubs, excluding labor organizations; and corporations and associations owned and operated by religious or sectarian groups;
- (3) Requires courts to rely heavily upon judicial interpretations of Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act of 1967, and the Americans With Disabilities Act in interpreting and applying the provisions of Chapter 213, RSMo, in employment cases;
- (4) Specifies that the legislature intends expressly to abrogate *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. E.D. 2006) as it relates to the necessity and appropriateness of the issuance of a business judgment instruction;
- (5) Recommends that certain specified frameworks for analysis should be considered highly persuasive if an employer in a Chapter 213 case files a Rule 74.04 of the Missouri Rules of Civil Procedure motion as a tool in removing factually insubstantial cases from crowded dockets;
- (6) Allows any party in an unlawful discriminatory employment practice action to demand a trial by jury. Missouri's common law

regarding presentation of evidence to a jury must apply at trial whether before a judge or jury;

(7) Specifies that the amount of all damages awarded cannot exceed the amount of the actual back pay, interest, other equitable relief, and punitive damages of up to \$50,000 in the case of an employer with six to 99 employees in each of 20 or more weeks in the current or preceding calendar year; up to \$100,000 for an employer with 101 to 200 employees; up to \$200,000 for an employer with 201 to 500 employees; and up to \$300,000 for an employer with more than 500 employees. The maximum award amounts do not apply to unlawful discrimination actions regarding housing, commercial real estate loans, and selling or renting by real estate agencies;

(8) Requires the plaintiff to prove that the protected criterion was a motivating factor in the alleged unlawful decision or action in any employment-related civil action; and

(9) Prohibits punitive damages from being awarded against the state or any of its political subdivisions.

#### WHISTLEBLOWER PROTECTION ACT

The Whistleblower Protection Act is established which places in statute existing common law exceptions to the at-will employment doctrine making it an unlawful employment practice for an employer to discharge or retaliate against an individual who is a protected person. The substitute:

(1) Adds the term "because of" or "because" as it relates to a decision or action to be the protected criterion was a motivating factor;

(2) Defines "proper authorities" as a governmental or law enforcement agency or an officer or the employee's human resources representative employed by the employer;

(3) Defines "protected person" as a person who has reported to the proper authorities an unlawful act of the employer or its agent; a person who reports to an employer serious misconduct of the employer or its agent that violates a state law or regulation or a rule of a governmental entity; a person who has refused to carry out a directive issued by the employer or its agent that if completed would be a violation of the law; or a person who engages in conduct otherwise protected by statute or regulation;

(4) Specifies that the provisions of the act will provide the exclusive remedy for any and all unlawful employment practices and voids any common law causes of action to the contrary;

(5) Requires a protected person aggrieved by a violation to have a private right of action for damages. The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order and may award to the plaintiff actual and punitive damages;

(6) Grants any party to an action the right to demand a trial by jury; and

(7) Specifies that the amount of all damages awarded cannot exceed the amount of the actual back pay, interest, other equitable relief, and punitive damages of up to \$50,000 in the case of an employer with six to 100 employees in each of 20 or more weeks in the current or preceding calendar year; up to \$100,000 for an employer with 101 to 200 employees; up to \$200,000 for an employer with 201 to 500 employees; and up to \$300,000 for an employer with more than 500 employees.

FISCAL NOTE: Estimated Net Cost on General Revenue Fund of \$50,045 in FY 2012, \$57,436 in FY 2013, and \$58,012 in FY 2014. No impact on Other State Funds in FY 2012, FY 2013, and FY 2014.

PROPONENTS: Supporters say that current state employment discrimination laws have been weakened by court actions and the standard to bring discrimination lawsuits has been lowered to the extent that it is no longer in line with federal discrimination laws. The bill makes state employment discrimination laws consistent with federal laws.

Testifying for the bill were Senator Lager; Missouri Restaurant Association; Cooperating School Districts of Greater St. Louis; Missouri Retailers Association; Missouri Grocers' Association; Greater Kansas City Chamber of Commerce; Metropolitan Community College; St. Louis Regional Chamber and Growth Association; Associated Industries of Missouri; Missouri Municipal League; National Federation of Independent Business; Missouri Council of School Administrators; and Missouri Chamber of Commerce and Industry.

OPPONENTS: Those who oppose the bill say that it will make it more difficult for an employee to prove a discrimination suit against his or her employer and will remove liability for the individual employee who discriminates against co-employees.

Testifying against the bill were Donna Harper; Shawn D'Abreu, Missouri Centers for Independent Living; Alisa Warren, Missouri Commission on Human Rights; Missouri Association of Trial Attorneys; Mid American Construction Management, LLC; Wayne Lee; Missouri Association for Social Welfare; American Civil Liberties Union - Eastern Missouri; Missouri National Education

Association; Missouri AFL-CIO; and Carpenters' District Council  
of Greater St. Louis and Vicinity.