

SCS SB 188 -- UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES

(Vetoed by the Governor)

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

UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES UNDER THE MISSOURI HUMAN RIGHTS LAW

The bill:

- (1) Adds the term "because" or "because of" 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 weeks in the current or preceding year and does not include the federal government; a corporation wholly owned by the federal government; an individual employed by an employer; an Indian tribe; certain departments or agencies of the District of Columbia; certain private membership clubs, excluding labor organizations; and corporations and associations owned and operated by religious or sectarian groups;
- (3) Specifies that in an employment action alleging an unlawful employment practice under Section 213.055, RSMo, certain specified provisions of Section 213.070 will only apply when an employer commits the specified acts in these provisions and cannot provide a basis for any individual liability;
- (4) Specifies that the provisions of Chapter 213 are intended to be consistent with Title VII of the Civil Rights Act of 1964, as amended, in accordance with the work sharing agreement between the Missouri Commission on Human Rights and the United States Equal Employment Opportunity Commission;
- (5) Requires a court to rely heavily upon judicial interpretations of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans With Disabilities Act when interpreting and applying the provisions of Chapter 213 in an employment case with certain specified exceptions;
- (6) 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;

(7) Recommends that certain specified frameworks for the analysis of an employment discrimination case 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;

(8) Allows any party in an unlawful discriminatory employment practice action to demand a trial by jury. If the trial occurs in the circuit courts of the State of Missouri, the Missouri common law regarding the presentation of evidence to a jury must apply at trial whether before a judge or jury;

(9) Specifies that the amount of all damages awarded cannot exceed the amount of the actual back pay, interest on back pay, other equitable relief, and other 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. The limits will increase or decrease in the same amounts as any corresponding limits are increased or decreased in Section 42 U.S.C. 1981 a(b) (3);

(10) 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

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

#### WHISTLEBLOWER'S PROTECTION ACT

The Whistleblower's 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 bill:

(1) Adds the term "because" or "because of" 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 on back pay, other equitable relief, and other 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. The limits will increase or decrease in the same amounts as any corresponding limits are increased or decreased in Section 42 U.S.C. 1981 a(b) (3).