

HCS SS SCS SB 592 -- WHISTLEBLOWER'S PROTECTION ACT

SPONSOR: Lager (Elmer)

COMMITTEE ACTION: Voted "do pass" by the Committee on Workforce Development and Workplace Safety by a vote of 8 to 1.

This substitute establishes the Whistleblower Protection Act 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) Defines the term "because of" or "because," as it relates to a decision or action, to mean 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 or 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 described in the act and voids any common law causes of action to the contrary;

(5) Specifies that a protected person aggrieved by a violation will have a private right of action for damages in a circuit court. The Missouri Human Rights Commission will not have jurisdiction to review or adjudicate claims brought under these provisions. 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) Specifies that any party to an action under these provisions may demand a trial by jury; and

(7) Specifies that the court may award the plaintiff actual and punitive damages. An award of damages may include all future pecuniary losses, emotional pain, suffering, inconvenience,

mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and punitive damages awarded. The amount of punitive damages awarded for each complainant cannot exceed \$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: No impact on state funds in FY 2013, FY 2014, and FY 2015.

PROPOSERS: Supporters say that the bill simply places into statute the common law "public policy" exception to the employment-at-will doctrine.

Testifying for the bill were Representative Elmer for Senator Lager; Associated Industries of Missouri; Missouri Chamber of Commerce and Industry; Missouri Retailers Association; Missouri Grocers' Association; Missouri Merchants and Manufacturers Association; and Greater Kansas City Chamber of Commerce.

OPPOSERS: Those who oppose the bill say that it puts too much burden on an employee to prove that the conduct reported is criminal.

Testifying against the bill were Wayne Lee; Lynne Bratcher, Missouri Association of Trial Attorneys; Erick Krekel, Missouri Commission on Human Rights; and Missouri AFL-CIO.

OTHERS: Others testifying on the bill say placing caps on punitive damages is the only fair thing to do.

Testifying on the bill was Todd Spencer.