

HCS HB 205 -- UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES

SPONSOR: Fisher (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 THE MISSOURI HUMAN RIGHTS LAW

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; 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.) 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 complaint to demand a trial by jury;

(7) Specifies that the amount of all damages awarded cannot exceed the amount of the actual back pay plus interest 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. 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 a 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 plus interest 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.

PROPOSERS: Supporters say that the bill helps to eliminate frivolous lawsuits and protects employers by making Missouri law consistent with the federal Civil Rights Law. The bill removes provisions which currently make an employer liable for the actions of an employee and establishes a graduated scale for damages based on the number of employees which provides a level of uniformity in awarding damages.

Testifying for the bill were Representative Elmer; National Federation of Independent Business; Missouri United School Insurance Council; Associated Industries of Missouri; Missouri Chamber of Commerce and Industry; Missouri Retailers Association; Missouri Grocers' Association; Missouri Council of School Administrators; Missouri Restaurant Association; St. Louis Regional Chamber and Growth Association; Greater Kansas City Chamber of Commerce; Metropolitan Community College; Associated Builders and Contractors; Missouri Organization of Defense Lawyers; Missouri Municipal League; and Jerry Hunter.

OPPOSERS: Those who oppose the bill say that it removes the ability to bring disparate impact suits by requiring an employee to prove discriminatory characteristic was a motivating factor. Having the ability to hold an individual employee liable is better than holding the employer liable because it creates an incentive for co-employees not to discriminate.

Testifying against the bill were Nimrod Chapel, Jefferson City National Association for the Advancement of Colored People; Clyde Williams, Mar-Saline National Association for the Advancement of Colored People; American Cancer Society; Missouri AFL-CIO; United

Steelworkers District 11; Missouri Association of Trial Attorneys; Missouri Association for Social Welfare; The Whole Person, Incorporated; Roy Miller, Missouri Commission for the Deaf and Hard of Hearing; Alvin Plummer; Deanna Noriega, Services for Independent Living; Dr. Alisa Warren, Missouri Commission on Human Rights; Mikey Dean, Kansas City Human Relations; Wayne Lee; and Paraquad, Incorporated.