

HCS HB 799 -- UNLAWFUL DISCRIMINATORY PRACTICES IN EMPLOYMENT

SPONSOR: Fisher, 125 (Jones, 89)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on Workforce Development and Workplace Safety by a vote of 7 to 5.

This substitute changes the laws regarding unlawful discriminatory practices in employment. In its main provisions, the substitute:

- (1) Adds the definition of "because" or "because of" as it relates to a decision or action to be the protected criterion was the motivating factor;
- (2) Revises the definition of "employer" by specifying that an employer 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. The federal government, an Indian tribe, and private membership clubs, excluding labor organizations, are not considered employers covered under the Missouri Human Rights Law;
- (3) Specifies that it is an unlawful discriminatory practice for an employer to retaliate or discriminate in any manner against an employee because the employee refused to violate the law at the request of someone employed by the employer with supervisory authority over the employee or because the employee reported a violation of the law to an authority of the federal, state, or local government;
- (4) Specifies that remedies for all unlawful employment practices articulated in the Missouri Human Rights Law are exclusive and abrogates any common law causes of action to the contrary;
- (5) Allows any party to demand a trial by jury after notice by the Missouri Commission on Human Rights within the Department of Labor and Industrial Relations of the right to bring a civil action against the respondent named in a complaint;
- (6) 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; 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;

(7) Requires the plaintiff to prove the protected criterion was the motivating factor in the alleged unlawful decision or action in any employment-related civil action brought under the Missouri Human Rights Law;

(8) Prohibits punitive damages from being awarded against the state or any of its political subdivisions in any employment-related civil action brought under the Missouri Human Rights Law;

(9) Requires the plaintiff in any civil action for damages for exercising his or her rights under the Workers' Compensation Law that resulted in the discharge of or discrimination against the employee to prove the employer's decision or action was motivated exclusively by the employee exercising his or her rights under the Workers' Compensation Law; and

(10) Specifies that the amount of compensatory damages and punitive damages awarded in any action brought by an employee for discharge or discrimination against an employer or former employer cannot exceed \$50,000 for an employer with fewer than 101 employees; \$100,000 for an employer with 101 to 200 employees; \$200,000 for an employer with 201 to 500 employees; and \$300,000 for an employer with more than 500 employees. Compensatory damages do not include back pay or interest on back pay.

FISCAL NOTE: No impact on state funds in FY 2010, FY 2011, and FY 2012.

PROPOSERS: Supporters say that the bill creates an exception to at-will employment by providing whistleblowers with protection from employer retaliation. Punitive damages awarded against a public entity for discharging or discriminating against an employee punishes taxpayers. Capping compensatory and punitive damages against a private employer guilty of discharging or discriminating against an employee is consistent with federal law.

Testifying for the bill were Representative Jones (89); Associated Industries of Missouri; William Lawson; Missouri Chamber of Commerce and Industry; Missouri Retailers Association; and Tom Rackers.

OPPOSERS: Those who oppose the bill say that abrogating common law is bad public policy. Capping punitive damages removes a key deterrent from the law. Supervisors working in the public sector should be subject to litigation for discriminatory management practices. Suing the supervisor aids in obtaining the truth about the employer's discriminatory practices.

Testifying against the bill were Missouri AFL-CIO; Missouri Human Rights Commission, Department of Labor and Industrial Relations; Paragard; United Steel Workers District 11; American Civil Liberties Union of Eastern Missouri; Missouri Association for Social Welfare; and Ken Vuylsteke, Missouri Association of Trial Attorneys.