

HB 1219 -- UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES

SPONSOR: Elmer

COMMITTEE ACTION: Voted "do pass" by the Committee on Workforce Development and Workplace Safety by a vote of 8 to 5.

This bill 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 bill:

- (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) 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 an individual employed by an employer; certain tax-exempt private membership clubs, excluding labor organizations; and corporations and associations owned and operated by religious or sectarian groups;
- (3) Specifies that it is a duty of the judicial branch to reduce the cost of litigation and end disputes timely;
- (4) Specifies that any party to certain unlawful discriminatory practice actions may demand a trial by jury;
- (5) Specifies that an award of damages must include all future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and punitive damages awarded;
- (6) Specifies that the amount of damages awarded for each plaintiff cannot exceed the amount of the actual back pay plus interest, court costs, reasonable attorney fees, 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 199 employees; up to \$200,000 for an employer with 201 to 499 employees; and up to \$300,000 for an employer with more than 500 employees; and
- (7) Prohibits punitive damages from being awarded against the state

or any of its political subdivisions except for claims for discriminatory housing practices authorized in Section 213.040, RSMo.

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 bill:

(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; 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 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 must 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 all damages awarded for

each complainant cannot exceed the amount of the actual back pay plus interest, 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 199 employees; up to \$200,000 for an employer with 201 to 499 employees; and up to \$300,000 for an employer with more than 500 employees.

FISCAL NOTE: Estimated Net Cost on General Revenue Fund of \$49,818 in FY 2013, \$57,169 in FY 2014, and \$57,750 in FY 2015. No impact on Other State Funds in FY 2013, FY 2014, and FY 2015.

PROPOSERS: Supporters say that the bill 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. Court cases need to be handled more quickly and efficiently, and the bill reinstates the summary judgment standards in order to help courts accomplish this objective.

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; Missouri Propane Gas Association; St. Louis Regional Chamber and Growth Association; Greater Kansas City Chamber of Commerce; Metropolitan Community College; Associated Builders and Contractors; BJC Health Care Systems; and Robert Stewart.

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. Mirroring federal law enacted in the 1960s is not necessarily a good thing; in this case, it is a step backward for Missouri. The bill is likely to have unintended consequences for certain individuals such as cancer patients. The exclusion of private membership clubs from the definition of "employer" is too wide open.

Testifying against the bill were Missouri Commission on Human Rights; American Cancer Society; American Civil Liberties Union of Eastern Missouri; Missouri National Education Association; Alvin Plummer, Missouri Conference of the National Association for the Advancement of Colored People; Mid American Construction Management,

LLC; Mark Jess, National Employment Lawyers Association; Amy Coopman; and Missouri Association for Social Welfare.