

HB 552 -- UNLAWFUL DISCRIMINATORY PRACTICES

SPONSOR: Austin

This bill changes the laws regarding unlawful discriminatory employment practices and establishes the "Whistleblower's Protection Act."

UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES

The bill specifies that the term "because" or "because of," as it relates to a decision or action, means that the protected criterion was the motivating factor. The bill also revises the term "employer" by specifying that, with certain exceptions, 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.

Chapter 213, RSMo, human rights; Chapter 285, employers and employees generally; and Chapter 287, workers' compensation law, provide the exclusive remedies for all unlawful employment practices described in the bill.

The bill establishes a presumption that, for a fair presentation of a case, a jury must be given an instruction expressing the business judgment rule. The General Assembly expressly intends to abrogate the case of *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. E.D. 2006), and its progeny as it relates to the necessity and appropriateness of the issuance of a business judgment instruction.

The bill further requires the courts to rely heavily on 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 deciding Missouri Human Rights Act employment discrimination cases.

The bill recommends as highly persuasive two methods to the courts for analyzing employment discrimination cases as a basis for granting summary judgment. The mixed motive and burden shifting analyses are based on court rulings interpreting federal law and the bill abrogates numerous Missouri cases and certain approved jury instructions as specified in the bill.

The bill specifies that 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. The amount of damages awarded for each plaintiff cannot exceed the amount of the actual back pay plus

interest, and other 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 provisions regarding damage awards do not apply to an alleged violation of Section 213.040, unlawful housing practices; Section 213.045, discrimination in commercial real estate loans; or Section 213.050, discrimination in real estate sales and rental organizations; and Section 213.070, other specified unlawful discriminatory practices by an employer as it relates to housing. Punitive damages shall not be awarded against the state or any of its political subdivisions.

The bill specifies that in an employment-related action brought under Chapter 213, the plaintiff bears the burden of proving that the protected criterion was the motivating factor in the alleged unlawful decision or action. Any party to an action under this section may demand a trial by jury.

WHISTLEBLOWER'S PROTECTION ACT

This bill establishes the Whistleblower's Protection Act which codifies existing common law exceptions to the at-will employment doctrine. The provisions of this bill provide the exclusive remedy for all unlawful employment practices specified in the bill.

The bill provides that it is an unlawful employment practice for an employer to discharge or retaliate against an individual because of his or her status as a protected person. The bill defines a "protected person" as a person who has reported to the proper authorities an unlawful act or serious misconduct of the employer that violates a clear mandate of public policy. A "protected person" also includes a person who has refused to carry out a directive issued by the employer that if completed would be a violation of the law, or a person who engages in conduct otherwise protected by statute or regulation. Specified persons are excluded from the definition of a "protected person."

The term "employer" is defined as an entity that has six or more employees, excluding the state and other public bodies, an individual employed by an employer, and certain religious or sectarian groups. The term "proper authorities" is defined as a governmental or law enforcement agency or officer, or the employee's human resources representative employed by the employer.

A protected person aggrieved by a violation of these provisions shall have a private right of action for actual damages, unless a private right of action for damages exists under other statutes or regulations, either federal or state. The only remedies available

are back pay, and, if the protected person proves outrageous conduct, an additional double amount as liquidated damages. The court may also award the prevailing party court costs and reasonable attorney fees. Any party to an action under these provisions may demand a trial by jury.

This bill is similar to HB 550 (2017) and SB 43 (2017).