

By: Turner

To: Judiciary

SENATE BILL NO. 3173

1 AN ACT TO ABOLISH EMPLOYMENT AT WILL AND TO REQUIRE  
2 EMPLOYMENT TERMINATION DECISIONS BE MADE IN GOOD FAITH; AND FOR  
3 RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 SECTION 1. This act shall be known and may be cited as the  
6 "Good Faith in Employment Act."

7 SECTION 2. The purposes of this act is to abolish employment  
8 at will and to require that decisions to terminate the employment  
9 of employees be made for good faith business reasons only and it  
10 is the intent of the Legislature that this act be interpreted as  
11 liberally as necessary to accomplish these purposes.

12 SECTION 3. The following terms when used in this act shall  
13 have the following meaning:

14 (a) "Constructive discharge" means the voluntary  
15 termination of employment by an employee, because of a situation  
16 created by an act or omission of the employer which an objective,  
17 reasonable person would find so intolerable that voluntary  
18 termination is the employee's only reasonable alternative.

19 (b) "Discharge" includes a constructive discharge as  
20 defined in paragraph (a) of this section and also includes any  
21 other termination of employment, including being fired, being laid  
22 off or being "cut back."

23 (c) "Employer" means any state or local governmental  
24 entity or a private employer who has twenty (20) or more employees  
25 in each of twenty (20) or more calendar weeks in the current or  
26 preceding year.

27           (d) "Good faith" means a discharge of an employee, who  
28 has completed his probationary period, only for legitimate, bona  
29 fide business reasons and not for arbitrary reasons unrelated to  
30 the business needs of the employer. A discharge is not in good  
31 faith when:

32                   (i) It is based on personal dislike, envy,  
33 jealousy or other reasons unrelated to the legitimate business  
34 needs of the employer;

35                   (ii) It is in retaliation for the exercise of  
36 rights protected by a federal or state Constitution or statute;

37                   (iii) It is in violation of statements made in the  
38 employee handbook;

39                   (iv) It is based on race, sex, refusing to engage  
40 in sex, age, national origin or religion;

41                   (v) It is in retaliation for protesting improper  
42 or illegal conduct or for reporting improper or illegal conduct;

43                   (vi) It is because the worker was hurt at work or  
44 becomes ill;

45                   (vii) It is because the worker files a workers'  
46 compensation claim or a grievance;

47                   (viii) It is because of an employee's personal  
48 taste, association or beliefs;

49                   (ix) It is for conduct that did not occur at the  
50 workplace;

51                   (x) It is made contrary to any oral or written  
52 promises of future employment;

53                   (xi) It is for alleged misconduct that did not  
54 occur;

55                   (xii) It is the product of unequal application of  
56 disciplinary rules; or

57                   (xiii) It is based on conduct unrelated to the  
58 employee's work ability or work performance.

59           (e) "Probationary period" means the first ninety (90)

60 days of employment.

61 SECTION 4. (1) The Legislature finds and declares that all  
62 commercial relationships contain an implied obligation of good  
63 faith. This obligation of good faith applies in the  
64 employer-employee relationship, just as it does in any other  
65 commercial relationship.

66 (2) An employer shall not discharge an employee who has  
67 completed his probationary period except in good faith.

68 SECTION 5. It is the intent of the Legislature that no  
69 judgments in this action shall be of such amount as to be damaging  
70 to a business. The total amount of damages that may be awarded by  
71 a jury for punitive damages and damages for mental distress,  
72 stress and loss of enjoyment of life shall not exceed, for each  
73 wrongfully discharged employee:

74 (a) In the case of an employer who has more than twenty  
75 (20) but less than one hundred one (101) employees in each of  
76 twenty (20) or more calendar weeks in the current or preceding  
77 year, Fifty Thousand Dollars (\$50,000.00);

78 (b) In the case of an employer who has more than one  
79 hundred (100) and fewer than two hundred one (201) employees in  
80 each of twenty (20) or more calendar weeks in the current or  
81 preceding year, One Hundred Thousand Dollars (\$100,000.00);

82 (c) In the case of an employer who has more than two  
83 hundred (200) and fewer than five hundred one (501) employees in  
84 each of twenty (20) or more calendar weeks in the current or  
85 preceding calendar year, Two Hundred Thousand Dollars  
86 (\$200,000.00); and

87 (d) In the case of an employer who has more than five  
88 hundred (500) employees in each of twenty (20) or more calendar  
89 weeks in the current or preceding calendar year, Three Hundred  
90 Thousand Dollars (\$300,000.00).

91 SECTION 6. (1) If an employer discharges an employee who  
92 has completed his probationary period not in good faith, the

93 employee shall have a remedy through jury trial in the circuit or  
94 county court. The employee shall be entitled to recover in this  
95 action the following:

96 (a) Lost wages from the date of the discharge decision  
97 to the date of trial, reduced by any wages the employee earned, or  
98 reasonably could have earned in other employment, and unemployment  
99 benefits received;

100 (b) Compensatory damages for any mental anxiety, stress  
101 or loss of enjoyment of life suffered by the wrongfully discharged  
102 employee;

103 (c) Punitive damages, should the jury determine that  
104 the employer intentionally acted in reckless disregard of the  
105 employee's rights under this act.

106 (2) Furthermore, if the judge, on post-trial motion timely  
107 filed by the employee, determines that the employee has not  
108 obtained other employment, after diligent efforts to obtain other  
109 employment, then the judge may add as additional "front pay" up to  
110 one (1) year of lost wages to the employee's damages.

111 (3) The trial judge on post-trial motions shall reduce any  
112 damages awarded to conform with the statutory limits stated  
113 herein.

114 SECTION 7. Any action to enforce this act shall be brought  
115 within one (1) year after the employee is notified of the  
116 termination decision. The circuit and county courts shall have  
117 jurisdiction over these actions and shall grant a jury trial to  
118 enforce this act.

119 SECTION 8. The protections afforded employees under this act  
120 may not be waived or disclaimed by the employer before the  
121 employee's being dismissed or being constructively discharged.  
122 Nor shall any employer be allowed to avoid any portion of this act  
123 through an arbitration agreement, an agreement to limit damages or  
124 in any other manner. Nor shall an employer be allowed to  
125 circumvent or limit the protection of this act by adopting any

126 provision for administrative remedies nor should this act be  
127 construed as repealing any statutes which already exist for the  
128 protection of employees from wrongful termination.

129 SECTION 9. This act shall take effect and be in force from  
130 and after July 1, 2000.