SENATE BILL NO. 2631

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

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

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

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

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

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

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

(c) "Employer" means any state or local governmental entity or a private employer who has twenty (20) or more employees in each of twenty (20) or more calendar weeks in the current or preceding year.
(d) "Good faith" means a discharge of an employee who has completed his probationary period, only for legitimate, bona fide business reasons and not for arbitrary reasons unrelated to the business needs of the employer. A discharge is not in good faith when:

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

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

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

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

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

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

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

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

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

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

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

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

(xiii) It is based on conduct unrelated to the employee's work ability or work performance.
(e) "Probationary period" means the first ninety (90) days of employment.

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

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

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

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

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

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

(d) In the case of an employer who has more than five hundred (500) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year, Three Hundred Thousand Dollars ($300,000.00).
SECTION 6. (1) If an employer discharges an employee who has completed his probationary period not in good faith, the employee shall have a remedy through jury trial in the circuit or county court. The employee shall be entitled to recover in this action the following:

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

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

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

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

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

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

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

circumvent or limit the protection of this act by adopting any

provision for administrative remedies nor should this act be

construed as repealing any statutes which already exist for the

protection of employees from wrongful termination.

SECTION 9. This act shall take effect and be in force from

and after July 1, 2001.