

By: Representative Fleming

To: Labor

HOUSE BILL NO. 459

1 AN ACT TO ABOLISH EMPLOYMENT AT WILL AND TO REQUIRE THAT  
2 EMPLOYMENT TERMINATION DECISIONS ARE 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 are to abolish  
8 employment at will and to require that decisions to terminate the  
9 employment of employees are made for good faith business reasons  
10 only and it is the intent of the Legislature that this act shall  
11 be interpreted as liberally as necessary to accomplish these  
12 purposes.

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

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

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

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

28           (d) "Good faith" means a discharge of an employee for  
29 legitimate, bona fide business reasons only and not for arbitrary  
30 reasons unrelated to the business needs of the employer. A  
31 discharge is not in good 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 in violation of a federal or state  
40 statute;

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

43                   (vi) It is because the worker was hurt at work or  
44 because the worker files a workers' compensation claim or  
45 other lawful claim;

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

48                   (viii) It is for conduct that did not occur at the  
49 workplace; or

50                   (ix) It is made contrary to any oral or written  
51 promises of future employment.

52           (e) "Probationary period" means the first ninety (90)  
53 days of employment.

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

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

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

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

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

75           (c) In the case of an employer who has more that two  
76 hundred (200) and fewer than five hundred one (501) employees in  
77 each of twenty (20) or more calendar weeks in the current or  
78 preceding calendar year, Two Hundred Thousand Dollars  
79 (\$200,000.00); and

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

84           **SECTION 6.** (1) If an employer discharges, not in good  
85 faith, an employee, who has completed his probationary period, the  
86 employee shall have a remedy through jury trial in the circuit or  
87 county court. The employee shall be entitled to recover in this  
88 action the following:

89           (a) Lost wages from the date of the discharge decision,  
90 reduced by any wages the employee earned, or reasonably could have  
91 earned, in other employment;

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

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

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

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

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

111 **SECTION 8.** The protections afforded employees under this act  
112 may not be waived or disclaimed by the employer before the  
113 employee's being dismissed or being constructively discharged.  
114 Nor shall any employer be allowed to avoid any portion of this act  
115 through an arbitration agreement, an agreement to limit damages or  
116 in any other manner. Nor shall an employer be allowed to  
117 circumvent or limit the protection of this act by adopting any  
118 provision for administrative remedies nor should this act be  
119 construed as repealing any statutes which already exist for the  
120 protection of employees from wrongful termination.

121 **SECTION 9.** This act shall take effect and be in force from  
122 and after July 1, 2005.