

By: Senator(s) Walls

To: Labor

SENATE BILL NO. 2638

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 purpose 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. An
122 employer shall not 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, 2006.