

By: Fleming

To: Labor

HOUSE BILL NO. 638

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 only
28 for legitimate, bona fide business reasons and not for arbitrary
29 reasons unrelated to the business needs of the employer. A
30 discharge is not in good faith when:

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

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

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

38 (iv) It is in violation of a federal or state
39 statute;

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

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

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

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

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

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

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

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

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

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

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

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

79 (d) In the case of an employer who has more than five
80 hundred (500) employees in each of twenty (20) or more calendar

81 weeks in the current or preceding calendar year, Three Hundred
82 Thousand Dollars(\$300,000.00).

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

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

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

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

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

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

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

109 enforce this act.

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

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