

SENATE BILL 940

By Kelsey

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 50, relative to claims for employment discrimination and retaliatory discharge.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

(a) The general assembly finds that:

(1) The United States Supreme Court in *McDonnell Douglas Corp. vs. Green*, 411 U.S. 792 (1973), and subsequent decisions, established an allocation of the burden of production and an order for the presentation of proof in employment discrimination cases. Under the *McDonnell Douglas* framework, a plaintiff's prima facie case of discrimination may be rebutted if the defendant articulates a legitimate, nondiscriminatory reason for an adverse employment action, and the burden then shifts to the plaintiff to demonstrate that the defendant's proffered reason was not the real reason for the action taken but was a pretext for illegal discrimination. The *McDonnell Douglas* framework has been held applicable to motions for summary judgment in subsequent decisions of the United States Supreme Court and in decisions of federal courts in every circuit in the United States, including federal courts in the state of Tennessee.

(2) In *Gossett vs. Tractor Supply Co., Inc.*, 320 S.W.3d 777 (Tenn. 2010), the Tennessee Supreme Court, in a 3-2 decision, held that the *McDonnell Douglas* framework was inapplicable at the summary judgment stage in Tennessee employment discrimination and retaliatory discharge cases.

(3) The *McDonnell Douglas* framework serves to sharpen the inquiry into the critical question of whether intentional discrimination or retaliation has occurred, provides an orderly structure for managing the complexities of employment discrimination and retaliation cases, and is an appropriate framework for the consideration of evidence offered in employment discrimination and retaliation cases at all stages of the proceedings, including motions for summary judgment and trial.

(b) The purposes of this act are:

(1) To establish the *McDonnell Douglas* framework as the appropriate and legally required framework for the consideration of evidence offered during all stages of the proceedings in employment discrimination and retaliation cases;

(2) To expressly reject and legislatively overrule the decision of the three-justice majority in *Gossett vs. Tractor Supply Co., Inc.*, 320 S.W.3d 777 (Tenn. 2010), that the *McDonnell Douglas* framework is inapplicable at the summary judgment stage in Tennessee employment discrimination and retaliation cases; and

(3) To revise the Tennessee common law with respect to claims for employment discrimination and retaliatory discharge.

SECTION 2. Tennessee Code Annotated, Section 4-21-311, is amended by adding the following language as a new subsection (e) which shall read as follows:

(e) In any civil cause of action alleging a violation of this chapter or of § 8-50-103, the plaintiff shall have the burden of establishing a prima facie case of intentional discrimination or retaliation. If the plaintiff satisfies this burden, the burden shall then be on the defendant to produce evidence that one (1) or more legitimate, nondiscriminatory reasons existed for the challenged employment action. The burden on the defendant is

one of production and not persuasion. If the defendant produces such evidence, the presumption of discrimination or retaliation raised by the plaintiff's prima facie case is rebutted, and the burden shifts to the plaintiff to demonstrate that the reason given by the defendant was not the true reason for the challenged employment action and that the stated reason was a pretext for illegal discrimination or retaliation. The foregoing allocations of burdens of proof shall apply at all stages of the proceedings, including motions for summary judgment and trial. The plaintiff at all times retains the burden of persuading the trier of fact that the plaintiff has been the victim of intentional discrimination or retaliation.

SECTION 3. Tennessee Code Annotated, Section 50-1-304, is amended by adding the following language as a new subsection (g) which shall read as follows:

(g) In any civil cause of action for retaliatory discharge brought pursuant to this section or the common law of the state of Tennessee, the plaintiff shall have the burden of establishing a prima facie case of retaliatory discharge. If the plaintiff satisfies this burden, the burden shall then be on the defendant to produce evidence that one (1) or more legitimate, nondiscriminatory reasons existed for the plaintiff's discharge. The burden on the defendant is one of production and not persuasion. If the defendant produces such evidence, the presumption of discrimination raised by the plaintiff's prima facie case is rebutted, and the burden shifts to the plaintiff to demonstrate that the reason given by the defendant was not the true reason for the plaintiff's discharge and that the stated reason was a pretext for unlawful retaliation. The foregoing allocations of burdens of proof shall apply at all stages of the proceedings, including motions for summary judgment and trial. The plaintiff at all times retains the burden of persuading the trier of fact that the plaintiff has been the victim of unlawful retaliation.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.