

SENATE BILL 398

By Rose

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 21; Title 9; Title 62 and Title 63, relative to
state entities.

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

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 76, Part 1, is amended by
adding the following new section:

62-76-108.

(a) As used in this section, "board" means the governing body of any state entity
created under this title.

(b) A person must not be excluded from membership on a board on the basis of
race, color, ethnicity, or national origin. A person must not be subjected to discrimination
on the basis of race, color, ethnicity, or national origin as a member of a board.

(c) A board shall not establish or operate under race-based policies pertaining to
the composition of such entities, including policies on affirmative action, racial
preferences, or racial quotas.

(d) A board shall not use a person's race, color, ethnicity, or national origin to
determine the person's participation as a member of the board. The use of aggregated
data concerning the race, color, ethnicity, or national origin of such persons to make
such decisions is prohibited.

(e) There is established a private cause of action against a board that violates
this section.

(f) There is established a private cause of action against any officer, employee,
or agent of a board for violating this section. However if such officer, employee, or agent

can establish by clear and convincing evidence that they acted at the direction of the board, or any superior officer, employee, or agent thereof, then the cause of action must lie against the board, the officer, the employee, the agent, or a combination of such parties.

(g)

(1) A plaintiff may seek to recover the following damages for a violation of this section:

(A) Actual or compensatory damages sustained by the plaintiff;

and

(B) Punitive damages, if the plaintiff demonstrates that the board or other parties discriminated against the person intentionally or with reckless indifference to the protected rights of the plaintiff.

(2) The plaintiff must prove damages by a preponderance of the evidence.

(h) In an award of damages resulting from an action brought by a plaintiff under this section, the defendant is strictly liable to the plaintiff for a minimum of four thousand dollars (\$4,000) in statutory damages, independent of any actual or compensatory damages sustained by the plaintiff as a result of a violation of this section.

(i) In an action brought under this section:

(1) The plaintiff may seek injunctive and declaratory relief; and

(2) The state waives sovereign immunity.

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 1, Part 1, is amended by adding the following new section:

63-1-177.

(a) As used in this section, "board" means the governing body of any state entity created under this title.

(b) A person must not be excluded from membership on a board on the basis of race, color, ethnicity, or national origin. A person must not be subjected to discrimination on the basis of race, color, ethnicity, or national origin as a member of a board.

(c) A board shall not establish or operate under race-based policies pertaining to the composition of such entities, including policies on affirmative action, racial preferences, or racial quotas.

(d) A board shall not use a person's race, color, ethnicity, or national origin to determine the person's participation as a member of the board. The use of aggregated data concerning the race, color, ethnicity, or national origin of such persons to make such decisions is prohibited.

(e) There is established a private cause of action against a board that violates this section.

(f) There is established a private cause of action against any officer, employee, or agent of a board for violating this section. However if such officer, employee, or agent can establish by clear and convincing evidence that they acted at the direction of the board, or any superior officer, employee, or agent thereof, then the cause of action shall lie against the board, the officer, the employee, the agent, or a combination of such parties.

(g)

(1) A plaintiff may seek to recover the following damages for a cause of action established under this section:

(A) Actual or compensatory damages sustained by the plaintiff;

and

(B) Punitive damages if the plaintiff demonstrates that the board or other persons discriminated against the person intentionally or with reckless indifference to the protected rights of the plaintiff.

(2) The plaintiff must prove such damages by a preponderance of the evidence.

(h) In an award of damages resulting from an action brought by a plaintiff under this section, the defendant is strictly liable to the plaintiff for a minimum of four thousand dollars (\$4,000) in statutory damages, independent of any actual or compensatory damages sustained by the plaintiff as a result of a violation of this section.

(i) In an action brought under this section:

(1) The plaintiff may seek injunctive and declaratory relief; and

(2) The state waives sovereign immunity.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.