

FIRST REGULAR SESSION

SENATE BILL NO. 498

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR YECKEL.

Read 1st time February 13, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1673S.011

AN ACT

To repeal sections 494.400, 494.425, 494.430, 494.431, 494.445, 494.450, and 494.460, RSMo, and to enact in lieu thereof eight new sections relating to juries, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 494.400, 494.425, 494.430, 494.431, 494.445, 494.450, and 494.460, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 494.400, 494.425, 494.430, 494.431, 494.445, 494.450, 494.457, and 494.460, to read as follows:

494.400. All persons qualified for grand or petit jury service shall be citizens of the state and shall be selected at random from a fair cross section of the citizens of the county or of a city not within a county for which the jury may be impaneled, and all such citizens shall have the opportunity to be considered for jury service and an obligation to serve as jurors when summoned for that purpose **unless excused**. A citizen of the county or of a city not within a county for which the jury may be impaneled shall not be excluded from selection for possible grand or petit jury service on account of race, color, religion, sex, national origin, or economic status.

494.425. The following persons shall be disqualified from serving as a petit or grand juror:

- (1) Any person who is less than twenty-one years of age;
- (2) Any person not a citizen of the United States;
- (3) Any person not a resident of the county or city not within a county served by the court issuing the summons;
- (4) Any person who has been convicted of a felony, unless such person has been restored to his civil rights;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

- (5) Any person unable to read, speak and understand the English language;
- (6) Any person on active duty in the armed forces of the United States or any member of the organized militia on active duty under order of the governor;
- (7) [Any licensed attorney at law;
- (8)] Any judge of a court of record;
- [(9)] **(8)** Any person who, in the judgment of the court [or the board of jury commissioners], is incapable of performing the duties of a juror because of mental [or physical] illness or infirmity.

494.430. [Upon timely application to the court, the following persons shall be excused from service as a petit or grand juror:

- (1) Any person actually performing the duties of a clergyman;
- (2)] **1.** Any person who has served on a state or federal petit or grand jury within the preceding year[;
- (3) Any person whose absence from his regular place of employment would, in the judgment of the court, tend materially and adversely to affect the public safety, health, welfare or interest;

(4) Any person upon whom service as a juror would in the judgment of the court impose an extreme hardship;

(5) Any person licensed to engage in and actively engaged in the practice of medicine, osteopathy, chiropractic, dentistry or pharmacy.] **shall be excused from service as a petit or grand juror.**

2. An individual may apply to be excused from jury service for a period of up to twenty-four months when either:

(1) The prospective juror has a mental or physical condition that causes him or her to be incapable of performing jury service. The juror, or the juror's personal representative, shall provide the court with documentation from a physician licensed to practice medicine verifying that a mental or physical condition renders the person unfit for jury service for a period of up to twenty-four months; or

(2) Jury service would cause undue or extreme physical or financial hardship to the prospective juror or a person under his or her care or supervision.

3. A judge of the court for which the individual was called to jury service shall make undue or extreme physical or financial hardship determinations. The authority to make these determinations is delegable only to court officials or personnel who are authorized by the laws of this state to function as members of the judiciary.

4. A person seeking to be excused based on a finding of undue or extreme physical or financial hardship must take all actions necessary to obtain a ruling on that request by no later than the date on which the individual is scheduled to appear

for jury duty.

5. For purposes of this section, "undue or extreme physical or financial hardship" is limited to circumstances in which an individual would:

(1) Be required to abandon a person under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury; or

(2) Incur costs that would have a substantial adverse impact on the payment of the individual's necessary daily living expenses or on those for whom he or she provides the principal means of support; or

(3) Suffer physical hardship that would result in illness or disease.

6. Undue or extreme physical or financial hardship does not exist solely based on the fact that a prospective juror will be required to be absent from his or her place of employment.

7. A person asking a judge to grant an excuse based on undue or extreme physical or financial hardship shall be required to provide the judge with documentation, such as, but not limited to, federal and state income tax returns, medical statements from licensed physicians, proof of dependency or guardianship, and similar documents, which the judge finds to clearly support the request to be excused. Failure to provide satisfactory documentation shall result in a denial of the request to be excused.

8. After twenty-four months, a person excused from jury service shall become eligible once again for qualification as a juror unless the person was excused from service permanently. A person is excused from jury service permanently only when the deciding judge determines that the underlying grounds for being excused are of a permanent nature.

494.431. [Any police officer subject to section 84.160, RSMo, shall be excused from service as a juror, either grand or petit.] 1. Individuals scheduled to appear for jury service have the right to postpone the date of their initial appearance for jury service one time only. When requested, postponements shall be granted, provided that:

(1) The juror has not previously been granted a postponement;

(2) The prospective juror appears in person or contacts the board of jury commissioners by telephone, electronic mail, or in writing to request a postponement; and

(3) Prior to the grant of a postponement with the concurrence of the board of jury commissioners, the prospective juror fixes a date certain on which he or she will appear for jury service that is not more than six months after the date on which the prospective juror originally was called to serve and on which date the court will be

in session.

2. A subsequent request to postpone jury service may be approved by a judicial officer only in the event of an extreme emergency, such as a death in the family, sudden grave illness, a natural disaster, or a national emergency in which the prospective juror is personally involved, that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a second postponement, the prospective juror must fix a date certain on which the individual will appear for jury service within six months of the postponement on a date when the court will be in session.

3. An individual who fails to appear in person on the date scheduled for jury service and who has failed to obtain a postponement in compliance with the provisions for requesting a postponement, or who fails to appear on the date set pursuant to subdivision (3) of subsection 1 of this section or subsection 2 of this section, shall have be guilty of a class C misdemeanor and shall be subject to imprisonment or fines in accordance with the laws of this state.

494.445. 1. [Subsequent to January 1, 2005,] No petit juror shall be required to attend court for prospective jury service for more than [two days] **one day** pursuant to a jury summons unless selected to a panel of prospective jurors for jury service pursuant to subsection 2 of section 494.420, or selected to serve as a petit juror in one particular case.

2. No petit juror shall be required to serve as a juror for more than twenty days in any one-year period except as is necessary to complete service in a particular case.

494.450. A person who is summoned for jury service and who willfully fails to appear **without having properly obtained a postponement or exemption**, or to respond to the juror qualification form **without good cause** is guilty of [criminal contempt, enforceable by an order directing him to show cause for his failure to comply with the summons and the juror qualification form] **a class C misdemeanor**, and upon conviction may be fined not more than two hundred and fifty dollars **and imprisoned not more than thirty days**.

494.457. 1. The executive council of the judicial conference of this state shall promulgate rules to establish a "Lengthy Trial Fund" that shall be used to provide full or partial wage replacement or wage supplementation to jurors who serve as petit jurors for more than ten days.

2. The court rules shall provide for the following:

- (1) The selection and appointment of an administrator for the fund;
- (2) Procedures for the administration of the fund, including payments of salaries of the administrator and other necessary personnel;
- (3) Procedures for the accounting, auditing, and investment of money in the lengthy trial fund;

(4) A report by the supreme court on the administration of the lengthy trial fund in its annual report on the judicial branch, setting forth the money collected for and disbursed from the fund.

3. Notwithstanding any other fees required pursuant to state law, each trial court in this state shall collect from each attorney who files a civil case, unless otherwise exempted under the provisions of this section, a fee of twenty dollars per case to be paid into the lengthy trial fund. A lawyer will be deemed to have filed a case at the time the first pleading or other filing on which an individual lawyer's name appears is submitted to the court for filing and opens a new case. All such fees shall be forwarded to the administrator of the lengthy trial fund for deposit.

4. The court may pay replacement or supplemental wages of up to three hundred dollars per day per juror beginning on the eleventh day of jury service. In addition, for any jurors who qualify for payment by virtue of having served on a jury for more than ten days, the court may, upon finding that such service posed a significant financial hardship to a juror, even in light of payments made with respect to jury service after the tenth day, award replacement or supplemental wages of up to one hundred dollars per day from the fourth to the tenth day of jury service.

5. Any juror who is serving or has served on a jury that qualifies for payment from the lengthy trial fund, provided the service commenced on or after August 28, 2003, may submit a request for payment from the lengthy trial fund on a form that the administrator provides. Payment shall be limited to the difference between the state paid jury fee and the actual amount of wages a juror earns, up to the maximum level payable, minus any amount the juror actually receives from the employer during the same time period.

(1) The form shall disclose the juror's regular wages, the amount the employer will pay during the term of jury service starting on the eleventh day and thereafter, the amount of replacement or supplemental wages requested, and any other information the administrator deems necessary for proper payment.

(2) The juror also shall be required to submit verification from the employer as to the wage information provided to the administrator, including the employee's most recent earnings statement or similar document, prior to initiation of payment from the fund.

(3) If an individual is self-employed or receives compensation other than wages, the individual may provide a sworn affidavit attesting to his or her approximate gross weekly income, together with some other information as the administrator may require, in order to verify weekly income.

6. The following attorneys and causes of action are exempt from payment of

the lengthy trial fund fee:

(1) Government attorneys entering appearances in the course of their official duties;

(2) Pro se litigants;

(3) Cases in small claims court or the state equivalent thereof; or

(4) Claims seeking social security disability determinations; veterans' compensation or disability determinations; recoupment actions for government-backed educational loans or mortgages; child custody and support cases; actions brought in forma pauperis; and any other filings designated by rule that involve minimal use of court resources and that customarily are not afforded the opportunity for a trial by jury.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

494.460. 1. An employer shall not terminate, discipline, threaten or take adverse actions against an employee on account of that employee's receipt of or response to a jury summons. An employee may not be required or requested to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or time spent actually serving on a jury. Nothing in this section shall be construed to require an employer to provide annual, vacation, or sick leave to employees pursuant to this section who otherwise are not entitled to such benefits under company policies.

2. An employee discharged in violation of this section may bring civil action against his employer within ninety days of discharge for recovery of lost wages and other damages caused by the violation and for an order directing reinstatement of the employee. If he prevails, the employee shall be entitled to receive a reasonable attorney's fee.

3. A court shall automatically postpone and reschedule the service of a summoned juror of an employer with five or fewer full-time employees, or their equivalent, if another employee of that employer is summoned to appear during the same period. Such postponement will not effect an individual's right to one automatic postponement pursuant to section 494.431.

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