

SECOND REGULAR SESSION

# SENATE BILL NO. 742

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS BRAY AND DAYS.

Pre-filed December 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

3179S.011

## AN ACT

To repeal sections 290.400, 290.410, 290.440, and 290.450, RSMo, and to enact in lieu thereof five new sections relating to equal employment practices.

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

Section A. Sections 290.400, 290.410, 290.440, and 290.450, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections  
3 290.160, 290.175, 290.400, 290.410, and 290.440, to read as follows:

**290.160. 1. Upon commencement of an individual's employment,**  
2 **and at least annually thereafter, every employer shall provide to each**  
3 **employee a written statement sufficient to inform the employee of his**  
4 **or her job title, wage rate, and how the wage is calculated. This notice**  
5 **shall be supplemented whenever an employee is promoted or**  
6 **reassigned to a different position with the employer, provided that the**  
7 **employer is not required to issue supplemental notifications for**  
8 **temporary reassignments that are of no more than three months in**  
9 **duration.**

10 2. Every employer shall make and preserve records that  
11 document the wages paid to employees, and that document and support  
12 the method, system, calculations, and other bases used to establish,  
13 adjust, and determine the wage rates paid to said employer's  
14 employees. Every employer subject to this section shall preserve  
15 records and make reports from the records as shall be prescribed by  
16 the department of labor and industrial relations.

17 3. The regulations promulgated under this section relating to the  
18 form of reports required shall provide for protection of the

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

19 confidentiality of employees, and shall expressly require that reports  
20 shall not include the names or other identifying information from  
21 which readers could discern the identities of employees. The  
22 regulations may also identify circumstances that warrant a prohibition  
23 on disclosure of reports or information identifying the employer.

24 4. The department of labor and industrial relations may use the  
25 information and data it collects pursuant to this section for statistical  
26 and research purposes, and may compile and publish such studies,  
27 analyses, reports, and surveys based on the information and data, as it  
28 considers appropriate.

29 5. Any rule or portion of a rule, as that term is defined in section  
30 536.010, RSMo, that is created under the authority delegated in this  
31 section shall become effective only if it complies with and is subject to  
32 all of the provisions of chapter 536, RSMo, and, if applicable, section  
33 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
34 and if any of the powers vested with the general assembly pursuant to  
35 chapter 536, RSMo, to review, to delay the effective date, or to  
36 disapprove and annul a rule are subsequently held unconstitutional,  
37 then the grant of rulemaking authority and any rule proposed or  
38 adopted after August 28, 2008, shall be invalid and void.

290.175. 1. Within ninety days of the effective date of this act,  
2 the director of the department of labor and industrial relations shall  
3 appoint a commission of nine members, to be known as the "Equal Pay  
4 Commission".

5 2. Membership of the commission shall be as follows:

6 (1) Two representatives of businesses in the state who are  
7 appointed from among individuals nominated by state business  
8 organizations and business trade associations;

9 (2) Two representatives of labor organizations who have been  
10 nominated by a state labor federation chartered by a federation of  
11 national or international unions, that admits local unions as members,  
12 and exists primarily to carry on educational, legislative, and  
13 coordinating activities;

14 (3) Two representatives of organizations whose objectives  
15 include the elimination of pay disparities between men and women and  
16 between minorities and non-minorities, and who have undertaken  
17 advocacy, educational, or legislative initiatives in pursuit of that

18 **objective;**

19 **(4) Three individuals drawn from higher education or research**  
20 **institutions who have experience and expertise in the collection and**  
21 **analysis of data concerning such pay disparities and whose research**  
22 **has already been used in efforts to promote the elimination of those**  
23 **disparities.**

24 **3. The commission shall make a full and complete study of:**

25 **(1) The extent of wage disparities, in both the public and private**  
26 **sectors, between men and women, and between minorities and non-**  
27 **minorities;**

28 **(2) Those factors that cause, or that tend to cause, such**  
29 **disparities, including segregation of women and men, and of minorities**  
30 **and non-minorities across and within occupations; payment of lower**  
31 **wages for occupations traditionally dominated by women and**  
32 **minorities; child-rearing responsibilities; and education and training;**

33 **(3) The consequences of such disparities on the economy and on**  
34 **affected families;**

35 **(4) Actions, including proposed legislation, that are likely to lead**  
36 **to the elimination and prevention of such disparities.**

37 **4. The commission shall, no later than twelve months after its**  
38 **members are appointed, make its report to the director of the**  
39 **department of labor and industrial relations, who shall in turn transmit**  
40 **it to the governor.**

41 **5. The commission's report shall include the results of its study,**  
42 **as well as recommendations, legislative and otherwise, for the**  
43 **elimination and prevention of disparities in wages between men and**  
44 **women, and between minorities and non-minorities.**

290.400. As used in sections 290.400 to [290.450] **290.440** the following  
2 words have the meanings indicated unless the context clearly requires otherwise:

3 **(1) "Commission", the labor and industrial relations commission of**  
4 **Missouri;**

5 **(2) "Employee", every woman or man in receipt of or entitled to**  
6 **compensation for labor performed for any employer;**

7 **(3) "Employer", every person, firm, corporation, agent, manager,**  
8 **representative, contractor, subcontractor, principal or other person having control**  
9 **or direction of any woman or man employed at any labor, or responsible directly**  
10 **or indirectly for the wages of another;**

11 (4) ["Female", a woman of eighteen years or over;

12 (5) "Wage rates" or "wages", [any compensation for labor measured by  
13 time, piece, or otherwise] **all compensation in any form that an employer**  
14 **provides to employees in payment for work done or services rendered,**  
15 **including but not limited to base pay, overtime bonuses, stock options,**  
16 **awards or tips, or various forms of nonmonetary compensation if**  
17 **provided in lieu of or in addition to monetary compensation, provided**  
18 **that such compensation has economic value to an employee.**

290.410. 1. Notwithstanding any other provisions of the law, no employer  
2 shall pay any [female in his employ at] **employee** wage rates less than the wage  
3 rates paid to [male] employees [in the same establishment for the same quantity  
4 and quality of the same classification of work, provided that nothing herein shall  
5 prohibit a variation of rates of pay for male and female employees engaged in the  
6 same classification of work based upon a difference in seniority, length of service,  
7 ability, skill, difference in duties or services performed, difference in the shift or  
8 time of day worked, hours of work, or restrictions or prohibitions on lifting or  
9 moving objects in excess of specified weight, or other reasonable differentiation,  
10 or factors other than sex, when exercised in good faith] **of the opposite gender,**  
11 **for equal work, the performance of which requires equal skill, effort,**  
12 **and responsibility, and which is performed under similar working**  
13 **conditions.**

14 2. Notwithstanding the provisions of subsection 1 of this section,  
15 it shall not be unlawful for an employer to pay different wage rates to  
16 employees if such payments are made pursuant to:

17 (1) A bona fide seniority or merit system;

18 (2) A system that measures earnings by quantity or quality of  
19 production;

20 (3) Any bona fide factor other than gender, provided that wage  
21 differentials based on varying market rates for equal jobs shall not be  
22 considered differentials based on bona fide factors other than gender;  
23 or

24 (4) Bona fide regional economic differentials.

25 3. An employer who is paying wages in violation of this section  
26 shall not, in order to comply with this section, reduce the wage of any  
27 employee.

28 4. No employer may discharge or take any adverse action or

29 otherwise discriminate against any individual because such individual  
30 has:

31 (1) Opposed any act or practice made unlawful by this section;  
32 or

33 (2) Testified, assisted, or participated in any manner in an  
34 investigation, hearing, or other proceeding to enforce this section.

35 5. No employer may discharge or take any adverse action or  
36 otherwise discriminate against, coerce, intimidate, threaten, or  
37 interfere with any employee because such employee either inquired  
38 about, compared, or otherwise discussed the employee's wages or the  
39 wages of another employee; or exercised, enjoyed, aided, or encouraged  
40 any other person to exercise or enjoy any right granted or protected by  
41 this section.

290.440. 1. Any employer who violates section 290.410 is liable to the  
2 [female] employee affected in the amount of the wages of which the [female]  
3 employee is deprived by reason of the violation **and an additional amount in**  
4 **compensatory damages, such additional amount not to exceed twice the**  
5 **wages awarded.**

6 2. [Any female employee receiving less than the wage to which she is  
7 entitled under sections 290.400 to 290.450 may recover in a civil action the  
8 balance of the wages, together with the costs of suit, notwithstanding any  
9 agreement to work for a lesser wage.] **Any employer who violates subsection**  
10 **4 or 5 of section 290.410 is liable to any individual affected in the**  
11 **amount of all wages and benefits lost as a result of the retaliation and,**  
12 **if awarded, an additional amount of compensatory damages in an**  
13 **amount to be determined by a judge or jury trial.**

14 3. [The burden of proof shall be upon the person bringing the claim to  
15 establish that the differentiation in rate of pay is based upon the factor of sex and  
16 not upon other differences or factors.] **In the event of a finding that an**  
17 **employer has violated section 290.410, a court may enjoin such**  
18 **employer from future violations of section 290.410, and may order the**  
19 **employer to take such additional steps as are necessary, including**  
20 **reclassification of affected workers to ensure the cessation of the**  
21 **employer's gender-based pay practices or, if the employer has engaged**  
22 **in unlawful retaliation prohibited herein, the court may order such**  
23 **relief as to make the employee whole, including reinstatement.**

24 4. Any employee prevailing in a civil action brought pursuant to

25 sections 290.400 to 290.440, in addition to the remedies set forth in this  
26 section, may also recover court costs and reasonable attorney's fees,  
27 notwithstanding any agreement to work for a lesser wage. Any action  
28 brought pursuant to sections 290.400 to 290.440 shall be commenced  
29 within two years after the alleged violation occurs or the date of the  
30 reasonable discovery of such violation.

[290.450. Any action based upon or arising under sections  
2 290.400 to 290.450 shall be instituted in the circuit court within six  
3 months after the date of the alleged violation, but in no event shall  
4 any employer be liable for any pay due under sections 290.400 to  
5 290.450 for more than thirty days prior to receipt by the employer  
6 of written notice of claim thereof from the female employee.]

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Bill

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