

FIRST REGULAR SESSION

HOUSE BILL NO. 771

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SECREST AND CUNNINGHAM (Co-sponsors).

Read 1st time February 14, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1812L.011

AN ACT

To repeal section 213.055, RSMo 2000, relating to unlawful employment practices, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 213.055, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 213.055, to read as follows:

213.055. 1. It shall be an unlawful employment practice:

(1) For an employer, because of the race, color, religion, national origin, sex, ancestry, age or disability of any individual:

(a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, national origin, sex, ancestry, age or disability;

(b) To limit, segregate, or classify his employees or his employment applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, national origin, sex, ancestry, age or disability;

(2) For a labor organization to exclude or to expel from its membership any individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer because of race, color, religion, national origin, sex, ancestry, age or disability of any individual; or to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an

19 applicant for employment, because of such individual's race, color, religion, national origin, sex,
20 ancestry, age or disability; or for any employer, labor organization, or joint labor-management
21 committee controlling apprenticeship or other training or retraining, including on-the-job training
22 programs to discriminate against any individual because of his race, color, religion, national
23 origin, sex, ancestry, age or disability in admission to, or employment in, any program
24 established to provide apprenticeship or other training;

25 (3) For any employer or employment agency to print or circulate or cause to be printed
26 or circulated any statement, advertisement or publication, or to use any form of application for
27 employment or to make any inquiry in connection with prospective employment, which
28 expresses, directly or indirectly, any limitation, specification, or discrimination, because of race,
29 color, religion, national origin, sex, ancestry, age or disability unless based upon a bona fide
30 occupational qualification or for an employment agency to fail or refuse to refer for employment,
31 or otherwise to discriminate against, any individual because of his race, color, religion, national
32 origin, sex, ancestry, age as it relates to employment, or disability, or to classify or refer for
33 employment any individual on the basis of his race, color, religion, national origin, sex, ancestry,
34 age or disability.

35 2. Notwithstanding any other provision of this chapter, it shall not be an unlawful
36 employment practice for an employer to apply different standards of compensation, or different
37 terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system,
38 or a system which measures earnings by quantity or quality of production or to employees who
39 work in different locations, provided that such differences or such systems are not the result of
40 an intention or a design to discriminate, and are not used to discriminate, because of race, color,
41 religion, sex, national origin, ancestry, age or disability, nor shall it be an unlawful employment
42 practice for an employer to give and to act upon the results of any professionally developed
43 ability test, provided that such test, its administration, or action upon the results thereof, is not
44 designed, intended or used to discriminate because of race, color, religion, national origin, sex,
45 ancestry, age or disability.

46 3. Nothing contained in this chapter shall be interpreted to require any employer,
47 employment agency, labor organization, or joint labor-management committee subject to this
48 chapter to grant preferential treatment to any individual or to any group because of the race,
49 color, religion, national origin, sex, ancestry, age or disability of such individual or group on
50 account of an imbalance which may exist with respect to the total number or percentage of
51 persons of any race, color, religion, national origin, sex, ancestry, age or disability employed by
52 any employer, referred or classified for employment by any employment agency or labor
53 organization, admitted to membership or classified by any labor organization, or admitted to or
54 employed in any apprenticeship or other training program, in comparison with the total number

55 or percentage of persons of such race, color, religion, national origin, sex, ancestry, age or
56 disability in any community, state, section, or other area, or in the available workforce in any
57 community, state, section, or other area.

58 4. Notwithstanding any other provision of this chapter, it shall not be an unlawful
59 employment practice for the state or any political subdivision of the state to comply with the
60 provisions of 29 U.S.C. 623 relating to employment as firefighters or law enforcement officers.

61 **5. An employer shall be vicariously liable for harassment of an employee which is**
62 **prohibited by this section by a supervisor with immediate or successively higher authority**
63 **over the employee. No affirmative defense may be raised by an employer when harassment**
64 **by a supervisor results in a tangible employment action, including discharge or demotion,**
65 **or when the employer knew or should have known of the harassment and failed to respond**
66 **appropriately. When no tangible employment action is taken, the employer may raise an**
67 **affirmative defense that:**

68 (1) The employer has written policies prohibiting harassment and the employer
69 exercised reasonable care to prevent and promptly correct any harassing behavior; or

70 (2) The employee unreasonably failed to take advantage of any preventive or
71 corrective opportunities provided by the employer or otherwise avoid harm.

72 6. The rulemaking authority granted in section 213.030 shall not extend to the
73 establishment of any standard of employer liability.