

FIRST REGULAR SESSION

# HOUSE BILL NO. 720

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MERIDETH.

Read 1<sup>st</sup> time April 2, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2164L.011

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### AN ACT

To repeal sections 36.010, 36.020, 36.030, 36.031, 36.040, 36.050, 36.060, 36.080, 36.090, 36.150, 36.160, 36.170, 36.390, 36.420, 36.430, 36.460, and 36.500, RSMo, and to enact in lieu thereof seventeen new sections relating to human resources, with penalty provisions.

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

Section A. Sections 36.010, 36.020, 36.030, 36.031, 36.040, 36.050, 36.060, 36.080, 2 36.090, 36.150, 36.160, 36.170, 36.390, 36.420, 36.430, 36.460, and 36.500, RSMo, are repealed 3 and seventeen new sections enacted in lieu thereof, to be known as sections 36.010, 36.020, 4 36.030, 36.031, 36.040, 36.050, 36.060, 36.080, 36.090, 36.150, 36.160, 36.170, 36.390, 36.420, 5 36.430, 36.460, and 36.500, to read as follows:

36.010. This chapter, together with any subsequent amendments thereto, shall be known 2 and may be referred to as "The State [Personnel] **Human Resources** Law".

36.020. Unless the context clearly requires otherwise, the following terms mean:

2 (1) "Agency", "state agency" or "agency of the state", each department, board, 3 commission or office of the state except for offices of the elected officials, the general assembly, 4 the judiciary and academic institutions;

5 (2) "Appointing authority", an officer or agency subject to this chapter having power to 6 make appointments;

7 (3) "Board", the [personnel] **human resources** advisory board as established by section 8 36.050;

9 (4) "Broad classification band", a grouping of positions with similar levels of

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

10 responsibility or expertise;

11 (5) "Class" or "class of positions", a group of positions subject to this chapter sufficiently  
12 alike in duties, authority and responsibilities to justify the same qualifications and the same  
13 schedule of pay to all positions in the group;

14 (6) "Director", the director of the division of [personnel] **human resources** of the office  
15 of administration;

16 (7) "Disabled veteran", a veteran who has served on active duty in the armed forces at  
17 any time who receives compensation as a result of a service-connected disability claim allowed  
18 by the federal agency responsible for the administration of veteran's affairs, or who receives  
19 disability retirement or disability pension benefits from a federal agency as a result of such a  
20 disability or a national guard veteran who was permanently disabled as a result of active service  
21 to the state at the call of the governor;

22 (8) "Division of service" or "division", a state department or any division or branch of  
23 the state, or any agency of the state government, all the positions and employees in which are  
24 under the same appointing authority;

25 (9) "Eligible", a person whose name is on a register or who has been determined to meet  
26 the qualifications for a class or position;

27 (10) "Open competitive examination", a test for positions in a particular class, admission  
28 to which is not limited to persons employed in positions subject to this chapter;

29 (11) "Promotional examination", a test for positions in a particular class, admission to  
30 which is limited to employees with regular status in positions subject to this chapter;

31 (12) "Public hearing", a hearing held after public notice at which any person has a  
32 reasonable opportunity to be heard;

33 (13) "Register of eligibles", a list of persons who have been found qualified by an open  
34 competitive examination for appointment to a position;

35 (14) "Regular employee", an employee who has successfully completed a probationary  
36 period as provided in section 36.250;

37 (15) "Reinstatement register", a list of persons who have been regular employees and  
38 who have been laid off in good standing due to lack of work or funds, or other similar cause, or  
39 who have been demoted in lieu of layoff;

40 (16) "State equal employment opportunity officer", the individual designated by the  
41 governor or the commissioner of administration as having responsibility for monitoring the  
42 compliance of the state as an employer with applicable equal employment opportunity law and  
43 regulation and for leadership in efforts to establish a state workforce which reflects the diversity  
44 of Missouri citizens at all levels of employment;

45 (17) "Surviving spouse", the unmarried surviving spouse of a disabled veteran or any

46 person who was killed while on active duty in the armed forces of the United States or an  
47 unmarried surviving spouse of a national guard veteran who was killed as a result of active  
48 service to the state at the call of the governor;

49 (18) "Veteran", any person who is a citizen of this state who has been separated under  
50 honorable conditions from the armed forces of the United States who served on active duty  
51 during peacetime or wartime for at least six consecutive months, unless released early as a result  
52 of a service-connected disability or a reduction in force at the convenience of the government,  
53 or any member of a reserve or national guard component who has satisfactorily completed at  
54 least six years of service or who was called or ordered to active duty by the President and  
55 participated in any campaign or expedition for which a campaign badge or service medal has  
56 been authorized.

36.030. 1. A system of [personnel] **human resource** administration based on merit  
2 principles and designed to secure efficient administration is established for all offices, positions  
3 and employees, except attorneys, of the department of social services, the department of  
4 corrections, the department of health and senior services, the department of natural resources,  
5 the department of mental health, the division of [personnel] **human resources** and other  
6 divisions and units of the office of administration, the division of employment security, mine  
7 safety and on-site consultation sections of the division of labor standards and administration  
8 operations of the department of labor and industrial relations, the division of tourism and job  
9 development and training, the Missouri housing development commission, and the office of  
10 public counsel of the department of economic development, the Missouri state water patrol, the  
11 Missouri veterans commission, capitol police and state emergency management agency of the  
12 department of public safety, such other agencies as may be designated by law, and such other  
13 agencies as may be required to maintain [personnel] **human resource** standards on a merit basis  
14 by federal law or regulations for grant-in-aid programs; except that, the following offices and  
15 positions of these agencies are not subject to this chapter and may be filled without regard to its  
16 provisions:

17 (1) Other provisions of the law notwithstanding, members of boards and commissions,  
18 departmental directors, five principal assistants designated by the departmental directors, division  
19 directors, and three principal assistants designated by each division director; except that, these  
20 exemptions shall not apply to the division of [personnel] **human resources**;

21 (2) One principal assistant for each board or commission, the members of which are  
22 appointed by the governor or by a director of the department;

23 (3) Chaplains and attorneys regularly employed or appointed in any department or  
24 division subject to this chapter, except as provided in section 36.031;

25 (4) Persons employed in work assignments with a geographic location principally outside

26 the state of Missouri and other persons whose employment is such that selection by competitive  
27 examination and standard classification and compensation practices are not practical under all  
28 the circumstances as determined by the board by rule;

29 (5) Patients or inmates in state charitable, penal and correctional institutions who may  
30 also be employees in the institutions;

31 (6) Persons employed in an internship capacity in a state department or institution as a  
32 part of their formal training, at a college, university, business, trade or other technical school;  
33 except that, by appropriate resolution of the governing authorities of any department or  
34 institution, the [personnel] division of **human resources** may be called upon to assist in  
35 selecting persons to be appointed to internship positions;

36 (7) The administrative head of each state medical, penal and correctional institution, as  
37 warranted by the size and complexity of the organization and as approved by the board;

38 (8) Deputies or other policy-making assistants to the exempt head of each division of  
39 service, as warranted by the size or complexity of the organization and in accordance with the  
40 rules promulgated by the [personnel] **human resources** advisory board;

41 (9) Special assistants as designated by an appointing authority; except that, the number  
42 of such special assistants shall not exceed one percent of a department's total authorized full-time  
43 equivalent workforce;

44 (10) Merit status shall be retained by present incumbents of positions identified in this  
45 section which have previously been subject to this chapter.

46 2. All positions in the executive branch transferred to coverage pursuant to this chapter  
47 where incumbents of such positions have at least twelve months' prior service on the effective  
48 date of such transfer shall have incumbency preference and shall be permitted to retain their  
49 positions, provided they meet qualification standards acceptable to the division of [personnel]  
50 **human resources** of the office of administration. An employee with less than twelve months  
51 of prior service on the effective date of such transfer or an employee who is appointed to such  
52 position after the effective date of such transfer and prior to the classification and allocation of  
53 the position by the division of [personnel] **human resources** shall be permitted to retain his or  
54 her position, provided he or she meets acceptable qualification standards and subject to  
55 successful completion of a working test period which shall not exceed twelve months of total  
56 service in the position. After the allocation of any position to an established classification, such  
57 position shall thereafter be filled only in accordance with all provisions of this chapter.

58 3. The system of [personnel] **human resource** administration governs the appointment,  
59 promotion, transfer, layoff, removal and discipline of employees and officers and other incidents  
60 of employment in divisions of service subject to this chapter, and all appointments and  
61 promotions to positions subject to this chapter shall be made on the basis of merit and fitness.

62           4. To encourage all state employees to improve the quality of state services, increase the  
63 efficiency of state work operations, and reduce the costs of state programs, the director of the  
64 division of [personnel] **human resources** shall establish employee recognition programs,  
65 including a statewide employee suggestion system. The director shall determine reasonable rules  
66 and shall provide reasonable standards for determining the monetary awards, not to exceed five  
67 thousand dollars, under the employee suggestion system. Awards shall be made from funds  
68 appropriated for this purpose.

69           5. At the request of the senate or the house of representatives, the commissioner of  
70 administration shall submit a report on the employee suggestion award program described in  
71 subsection 4 of this section.

          36.031. Any provision of law to the contrary notwithstanding, except for the elective  
2 offices, institutions of higher learning, the department of transportation, the department of  
3 conservation, those positions in the Missouri state highway patrol the compensation of which is  
4 established by subdivision (2) of subsection 2 of section 43.030, RSMo, and section 43.080,  
5 RSMo, and those positions for which the constitution specifically provides the method of  
6 selection, classification, or compensation, and the positions specified in subsection 1 of section  
7 36.030, but including attorneys, those departments, agencies and positions of the executive  
8 branch of state government which have not been subject to these provisions of the state  
9 [personnel] **human resources** law shall be subject to the provisions of sections 36.100, 36.110,  
10 36.120 and 36.130, and the regulations adopted pursuant to sections 36.100, 36.110, 36.120 and  
11 36.130 which relate to the preparation, adoption and maintenance of a position classification  
12 plan, the establishment and allocation of positions within the classification plan and the use of  
13 appropriate class titles in official records, vouchers, payrolls and communications. Any  
14 provision of law which confers upon any official or agency subject to the provisions of this  
15 section the authority to appoint, classify or establish compensation for employees shall mean the  
16 exercise of such authority subject to the provisions of this section. This section shall not extend  
17 coverage of any section of this chapter, except those specifically named in this section, to any  
18 agency or employee. In accordance with sections 36.100, 36.110, 36.120 and 36.130, and after  
19 consultation with appointing authorities, the director of the division of [personnel] **human**  
20 **resources** shall conduct such job studies and job reviews and establish such additional new and  
21 revised job classes as the director finds necessary for appropriate classification of the positions  
22 involved. Such classifications and the allocation of positions to classes shall be maintained on  
23 a current basis by the division of [personnel] **human resources**. The director of the division of  
24 [personnel] **human resources** shall, at the same time, notify all affected agencies of the  
25 appropriate assignment of each job classification to one of the salary ranges within the pay plan  
26 then applicable to merit system agencies. The affected agencies and employees in the

27 classifications set pursuant to this section shall be subject to the pay plan and rates of  
28 compensation established and administered in accordance with the provisions of this section, and  
29 the regulations adopted pursuant to this section, on the same basis as for merit agency employees.  
30 In addition, any elected official, institution of higher learning, the department of transportation,  
31 the department of conservation, the general assembly, or any judge who is the chief  
32 administrative officer of the judicial branch of state government may request the division of  
33 [personnel] **human resources** to study salaries within the requestor's office, department or  
34 branch of state government for classification purposes.

36.040. 1. The division of [personnel] **human resources** of the office of administration,  
2 the administrative head of which is the [personnel] **human resources** director, shall administer  
3 this chapter and render the services to the departments and divisions subject to the provisions of  
4 this chapter that are necessary and desirable to assist the officials in discharging their  
5 responsibility for maintaining and increasing the effectiveness of [personnel] **human resource**  
6 administration. The division shall provide consultation and expertise in [personnel] **human**  
7 **resource** management to all agencies to assist in the accomplishment of the missions of such  
8 agencies.

9 2. The division shall administer this chapter in a manner which complies with equal  
10 opportunity law and shall consult with the state equal employment opportunity officer in various  
11 aspects of the administration of this chapter to ensure such compliance. In particular, the  
12 division shall consult with the state equal employment opportunity officer regarding the  
13 classification plan, the pay plan, qualifications for admittance to examinations, noncompetitive  
14 registration and selection procedures, waiver of competitive examinations, noncompetitive  
15 promotions, alternative promotional procedures, alternatives for filling vacancies, and layoff  
16 actions, for the purpose of ensuring compliance with equal opportunity law and regulations and  
17 on developed plans to establish a state workforce which reflects the diversity of Missouri citizens  
18 at all levels of employment.

36.050. 1. The [personnel] **human resources** advisory board and its functions, duties  
2 and powers prescribed in this chapter is transferred by type III transfer to the office of  
3 administration.

4 2. The [personnel] **human resources** advisory board shall consist of seven members.  
5 Four members of the board shall be public members, citizens of the state who are not state  
6 employees or officials, of good character and reputation, who are known to be in sympathy with  
7 the application of merit principles to public employment. Two members shall be employees of  
8 state agencies covered by section 36.030 or section 36.031, one a member of executive  
9 management, and one a nonmanagement employee. Members who are employees shall not  
10 participate in disciplinary appeal decisions from their agencies. The state equal employment

11 opportunity officer shall be a member of the board. No member of the board, during the  
12 member's term of office, or for at least one year prior thereto, shall be a member of any local,  
13 state or national committee of a political party or an officer or member of a committee in any  
14 partisan political club or organization, or hold, or be a candidate for, a partisan public office. An  
15 employee member who leaves state employment or otherwise fails to further qualify for the  
16 appointment shall vacate the position.

17         3. The members of the board shall be appointed by the governor by and with the advice  
18 and consent of the senate. The three current members of the board serving terms which expire  
19 July 31, 1998, July 31, 2000, and July 31, 2002, shall continue to serve for the terms for which  
20 they were previously appointed. One new public member shall be appointed for a term ending  
21 July 31, 1998, one employee member shall be appointed for a term ending July 31, 2000, and one  
22 employee member shall be appointed for a term ending July 31, 2002. Thereafter, appointments  
23 of all members shall be for terms of six years. Any vacancy shall be filled by an appointment  
24 for the unexpired term. Each member of the board shall hold office until such member's  
25 successor is appointed and qualified.

26         4. A member of the board is removable by the governor only for just cause, after being  
27 given a written notice setting forth in substantial detail the charges against the member and an  
28 opportunity to be heard publicly on the charges before the governor. A copy of the charges and  
29 a transcript of the record of the hearing shall be filed with the secretary of state.

30         5. Each public member of the board shall be paid an amount for each day devoted to the  
31 work of the board which shall be determined by the commissioner of administration and filed  
32 with the reorganization plan of the office of administration; provided, however, that such amount  
33 shall not exceed that paid to members of boards and commissions with comparable  
34 responsibilities. All board members are entitled to reimbursement for necessary travel and other  
35 expenses pertaining to the duties of the board. Duties performed for the board by any employee  
36 member of the board shall be considered duties in connection with the appointment of the  
37 individual, and such employee member shall suffer no loss of regular compensation by reason  
38 of performance of such duties.

39         6. The board shall elect from among its membership a chairman and vice chairman, who  
40 shall act as chairman in the chairman's absence. It shall meet at the times and places specified  
41 by call of the chairman, the governor, or the director. At least one meeting shall be held every  
42 three months. All regular meetings are open to the public. Notice of each meeting shall be given  
43 in writing to each member by the director. Two members shall constitute a quorum until January  
44 1, 1997, thereafter, four members shall constitute a quorum for the transaction of official  
45 business.

46         7. To assist in the performance of its duties the board may employ staff from funds

47 appropriated for this purpose; provided, however, that this provision shall not be interpreted to  
48 limit the ability of the [personnel] **human resources** director to provide assistance to the board.

36.060. 1. In addition to the duties imposed upon it elsewhere in this chapter, it shall  
2 be the duty of the board:

3 (1) To conduct hearings and render decisions on appeals as provided in this act;

4 (2) To make any investigation which it may consider desirable concerning the  
5 administration of [personnel] **human resources** subject to this law;

6 (3) To hold regular meetings with appointing authorities to propose methods of resolving  
7 general [personnel] **human resource** problems;

8 (4) To make annual reports, and such special reports as it considers desirable, to the  
9 governor and the general assembly regarding [personnel] **human resource** administration in the  
10 state service and recommendations there. These special reports shall evaluate the effectiveness  
11 of the [personnel] division of **human resources** and the appointing authority in their operations  
12 under this law;

13 (5) To make such suggestions and recommendations to the governor and the director  
14 relating to the state's employment policies as will promote morale, efficiency and uniformity in  
15 compensation of the various employees in the state service;

16 (6) To promulgate rules and regulations to ensure that no applicant or employee is  
17 discriminated against on the basis of race, creed, color, religion, national origin, sex, ancestry or  
18 handicap.

19 2. No rule or portion of a rule promulgated under the authority of this chapter shall  
20 become effective unless it has been promulgated pursuant to the provisions of section 536.024,  
21 RSMo.

36.080. 1. The director shall be a person who is experienced in the [principals]  
2 **principles** and methods of [personnel] **human resource** administration, who is familiar with and  
3 in sympathy with the application of merit principles and efficient methods of public  
4 administration. He **or she** shall be appointed for a term of four years beginning on July first  
5 following the election of a governor, which term may be renewed at its expiration at the option  
6 of the governor; except that the provisions of this section shall not apply to the incumbent  
7 personnel director on September 28, 1979, who shall retain such merit system status as has been  
8 previously attained.

9 2. The [personnel] **human resources** director shall not during his **or her** term of office,  
10 or for one year prior thereto:

11 (1) Be a member of any local, state or national committee of a political party;

12 (2) Be a member of any partisan political club or organization;

13 (3) Actively participate in any partisan political campaign; or



14 (4) Hold or be a candidate for any partisan public office.

15 3. Upon an impending or actual vacancy in the position of director, the board shall  
16 publicly solicit applications for the position and prepare and submit to the governor a list of the  
17 five most qualified applicants. In the course of preparing such a list the board may engage the  
18 services of persons experienced in [personnel] **human resource** administration as consultants  
19 to assist it in examining and determining the best qualified available persons for appointment as  
20 director. The board shall be authorized to pay, out of the funds appropriated to it, the necessary  
21 travel and other expenses of any consultants engaged under the provisions of this section, and  
22 may also defray the travel expenses of candidates for the position who are requested to report for  
23 an interview.

24 4. The provisions of subdivision (2) of subsection 5 of section 1 of the Reorganization  
25 Act of 1974 notwithstanding, the total compensation of any director appointed after September  
26 28, 1979, shall not exceed the statutory salary of department heads.

27 5. The provisions of subsection 8 of section 15 of the Reorganization Act of 1974  
28 notwithstanding, the governor shall appoint to the position of director, without regard to his **or**  
29 **her** political affiliation and subject to the advice and consent of the senate, one of the persons  
30 named on the list submitted by the board.

31 6. The director may be removed by the board for just cause after being given a notice  
32 setting forth in substantial detail the charges before the board. A copy of the charges and a  
33 transcript of the record of the hearing shall be filed with the secretary of state.

36.090. 1. The director, as executive head of the [personnel] division **of human**  
2 **resources**, shall direct and supervise all its administrative and technical activities. In addition  
3 to the duties imposed upon him **or her** elsewhere in this chapter, it shall be his **or her** duty:

4 (1) To require the development of effective [personnel] **human resource** administration  
5 and to make available the facilities of the division to this end;

6 (2) To develop in cooperation with appointing authorities a management training  
7 program, a recruiting program, and a system of performance appraisals, and to assist appointing  
8 authorities in the setting of productivity goals.

9 2. The director shall assist the board in the performance of its functions and attend board  
10 meetings.

11 3. The director shall:

12 (1) Establish and maintain a roster of all officers and employees subject to this law, in  
13 which there shall be set forth, as to each employee, a record of the class title of the position held;  
14 the salary or pay; any change in class title, pay or status, and such other data as may be deemed  
15 desirable to produce significant facts pertaining to [personnel] **human resources** administration;

16 (2) Appoint, under the provisions of this chapter, and, with the approval of the board,

17 fix the compensation of such experts and special assistants as may be necessary to carry out  
18 effectively the provisions of this chapter, such employees to be selected upon the basis of merit  
19 and fitness and as other employees subject to this law unless otherwise directed under the  
20 provisions of this chapter;

21 (3) Investigate the effects of this law, the rules promulgated under this law and the  
22 operation of the merit system and report his **or her** finding and recommendations to the board  
23 and the governor;

24 (4) Make annual reports concerning the work of the division, problems in [personnel]  
25 **human resource** management, and actions taken or to be taken by the division to resolve those  
26 problems;

27 (5) Perform any other lawful act which he **or she** may consider necessary or desirable  
28 to carry out the purposes and provisions of this law.

29 4. The director shall appoint, in full conformity with all the provisions of this chapter,  
30 a deputy or deputies. In case of the absence of the director or his **or her** inability from any cause  
31 to discharge the powers and duties of his **or her** office, such powers and duties shall devolve  
32 upon his **or her** deputy.

33 **5. The director shall work with the appointing authorities and may delegate any**  
34 **of his or her duties as he or she deems appropriate for the purpose of promoting economy,**  
35 **efficiency, and improved services in human resource administration.**

36.150. 1. Every appointment or promotion to a position covered by this chapter shall  
2 be made on the basis of merit as provided in this chapter. Demotions in and dismissals from  
3 employment shall be made for cause under rules and regulations of the board uniformly  
4 applicable to all positions of employment. No appointment, promotion, demotion or dismissal  
5 shall be made because of favoritism, prejudice or discrimination. The regulations shall prohibit  
6 discrimination in other phases of employment and [personnel] **human resource** administration  
7 and shall provide such remedy as is required by federal merit system standards for grant-in-aid  
8 programs and is not provided in chapter 296, RSMo.

9 2. Political endorsements shall not be considered in connection with any such  
10 appointment.

11 3. No person shall use or promise to use, directly or indirectly, for any consideration  
12 whatsoever, any official authority or influence to secure or attempt to secure for any person an  
13 appointment or advantage in appointment to any such position or an increase in pay, promotion  
14 or other advantage in employment.

15 4. No person shall in any manner levy or solicit any financial assistance or subscription  
16 for any political party, candidate, political fund, or publication, or for any other political purpose,  
17 from any employee in a position subject to this chapter, and no such employee shall act as agent

18 in receiving or accepting any such financial contribution, subscription, or assignment of pay. No  
19 person shall use, or threaten to use, coercive means to compel an employee to give such  
20 assistance, subscription, or support, nor in retaliation for the employee's failure to do so.

21 5. No such employee shall be a candidate for nomination or election to any partisan  
22 public office or nonpartisan office in conflict with that employee's duties unless such person  
23 resigns, or obtains a regularly granted leave of absence, from such person's position.

24 6. No person elected to partisan public office shall, while holding such office, be  
25 appointed to any position covered by this chapter.

26 7. Any officer or employee in a position subject to this chapter who purposefully violates  
27 any of the provisions of this section shall forfeit such office or position. If an appointing  
28 authority finds that such a violation has occurred, or is so notified by the director, this shall  
29 constitute cause for dismissal pursuant to section 36.390 and a final determination by the board  
30 as to the occurrence of a violation.

36.160. 1. No person shall make any false statement, certificate, mark, rating or report  
2 with regard to any test, certification or appointment made under any provision of this chapter or  
3 in any manner commit or attempt to commit any fraud preventing the impartial execution of this  
4 law and the regulations. **No person shall seek, offer, or provide assistance in the completion**  
5 **of an examination conducted for the purpose of consideration for employment to a position**  
6 **subject to this law.**

7 2. No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any  
8 money, service or other valuable consideration for or on account of any appointment, proposed  
9 appointment, promotion or proposed promotion to, or any advantage in, a position subject to this  
10 law.

11 3. No employee of the [personnel division] **state**, examiner, or other person shall defeat,  
12 deceive or obstruct any person in this right to examination, eligibility, certification or  
13 appointment under this law, or furnish to any person any special or secret information for the  
14 purpose of affecting the rights or prospects of any person with respect to employment in a  
15 division of service subject to this law. Any person who shall violate any provision of this section  
16 shall be guilty of a **class A** misdemeanor.

36.170. 1. The director shall from time to time conduct such open competitive and  
2 promotional examinations as the director considers necessary. The examinations shall be of such  
3 character as to determine the relative qualifications, fitness and ability of the persons tested to  
4 perform the duties of the class for which a register is to be established. No question shall be so  
5 framed as to elicit information concerning the political or religious opinions or affiliations of an  
6 applicant.

7 2. Agencies may request authority from the director to administer examinations for all

8 positions, in accordance with rules adopted by the board. When such a request is approved, the  
9 director, in accordance with rules established by the board, shall establish standards and  
10 guidelines to be followed.

11 3. Pursuant to rules promulgated by the board, appointing authorities may request that  
12 the division of [personnel] **human resources** administer promotional examinations limited to  
13 those already employed by the state or within the department or division of service involved.

14 4. All examinations conducted by the director shall be conducted in a location which is  
15 fully accessible to persons with disabilities or if such a facility is not available in a given location  
16 for such regular examinations, a special examination will be arranged upon request of an  
17 applicant with a disability in a facility which is fully accessible.

36.390. 1. An applicant whose request for admission to any examination has been  
2 rejected by the director may appeal to the board in writing within fifteen days of the mailing of  
3 the notice of rejection by the director, and in any event before the holding of the examination.  
4 The board's decision on all matters of fact shall be final.

5 2. Applicants may be admitted to an examination pending a consideration of the appeal,  
6 but such admission shall not constitute the assurance of a passing grade in education and  
7 experience.

8 3. Any applicant who has taken an examination and who feels that he or she has not been  
9 dealt with fairly in any phase of the examination process may request that the director review his  
10 or her case. Such request for review of any examination shall be filed in writing with the director  
11 within thirty days after the date on which notification of the results of the examination was  
12 mailed to the applicant. A candidate may appeal the decision of the director in writing to the  
13 board. This appeal shall be filed with the board within thirty days after date on which  
14 notification of the decision of the director was mailed to the applicant. The board's decision with  
15 respect to any changes shall be final, and shall be entered in the minutes. A correction in the  
16 rating shall not affect a certification or appointment which may have already been made from the  
17 register.

18 4. An eligible whose name has been removed from a register for any of the reasons  
19 specified in section 36.180 or in section 36.240 may appeal to the board for reconsideration.  
20 Such appeal shall be filed in writing at the office of the director within thirty days after the date  
21 on which notification was mailed to the board. The board, after investigation, shall make its  
22 decision which shall be recorded in the minutes and the eligible shall be notified accordingly by  
23 the director.

24 5. Any regular employee who is dismissed or involuntarily demoted for cause or  
25 suspended for more than five working days may appeal in writing to the board within thirty days  
26 after the effective date thereof, setting forth in substance the employee's reasons for claiming that

27 the dismissal, suspension or demotion was for political, religious, or racial reasons, or not for the  
28 good of the service. Upon such appeal, both the appealing employee and the appointing  
29 authority whose action is reviewed shall have the right to be heard and to present evidence at a  
30 hearing which, at the request of the appealing employee, shall be public. At the hearing of such  
31 appeals, technical rules of evidence shall not apply. After the hearing and consideration of the  
32 evidence for and against a suspension or demotion, the board shall approve or disapprove such  
33 action and in the event of a disapproval the board shall order the reinstatement of the employee  
34 to the employee's former position and the payment to the employee of such salary as the  
35 employee has lost by reason of such suspension or demotion. After the hearing and  
36 consideration of the evidence for and against a dismissal, the board shall approve or disapprove  
37 such action and may make any one of the following appropriate orders:

38 (1) Order the reinstatement of the employee to the employee's former position and the  
39 payment to the employee of part or all of such salary as has been lost by reason of such dismissal;

40 (2) Sustain the dismissal of such employee, unless the board finds that the dismissal was  
41 based upon political, social, or religious reason, in which case it shall order the reinstatement of  
42 the employee to the employee's former position and the payment to the employee of such salary  
43 as has been lost by reason of such dismissal;

44 (3) Except as provided in subdivisions (1) and (2) of this subsection, the board may  
45 sustain the dismissal, but may order the director to recognize reemployment rights for the  
46 dismissed employee pursuant to section 36.240, in an appropriate class or classes, or may take  
47 steps to effect the transfer of such employee to an appropriate position in the same or another  
48 division of service.

49 **6. An order by the board pursuant to subsection 5 of this section shall be a final**  
50 **decision subject to judicial review as provided in sections 536.100 to 536.140, RSMo.**

51 **7. An order of reinstatement by the board pursuant to subsection 5 of this section**  
52 **shall include guidelines specifying the proper calculation of back pay. If the parties are not**  
53 **able to reach an agreement on the amount of back pay owed based on the board's**  
54 **guidelines, either party may request in writing that the board hold a separate hearing to**  
55 **determine the amount of back pay owed. Upon such request, both the employee and the**  
56 **appointing authority shall have the right to be heard and to present evidence at a hearing**  
57 **which, at the request of the employee, shall be public. After the hearing and consideration**  
58 **of the evidence regarding the amount of back pay owed, the board shall issue an order**  
59 **specifying the amount of back pay owed to the employee that has been lost by reason of**  
60 **suspension exceeding five days, involuntary demotion, or dismissal. Upon request from**  
61 **either party following the filing of an appeal of the order of reinstatement, back pay**  
62 **hearings shall be stayed pending the final disposition of proceedings for review pursuant**

63 to sections 536.100 to 536.140, RSMo.

64 8. The board shall establish such rules as may be necessary to give effect to the  
65 provisions of this section. The rules may provide that the board or the chairman of the board  
66 may delegate responsibility for the conduct of investigations and the hearing of appeals provided  
67 pursuant to any section of this chapter to a member of the board or to a hearing officer designated  
68 by the board. Such hearing officer shall have the power to administer oaths, subpoena witnesses,  
69 compel the production of records pertinent to any hearing, and take any action in connection with  
70 such hearing which the board itself is authorized to take by law other than making the final  
71 decision and appropriate order. When the hearing has been completed, the individual board  
72 member or the hearing officer who conducted the hearing shall prepare a summary thereof and  
73 recommend a findings of fact, conclusions of law, decision and appropriate order for approval  
74 of the board. The board may adopt such recommendations in whole or in part, require the  
75 production of additional testimony, reassign the case for rehearing, or may itself conduct such  
76 new or additional hearing as is deemed necessary prior to rendering a final decision. The board  
77 may also establish rules which provide for alternative means of resolving one or more of the  
78 types of appeals outlined in this section.

79 [7.] 9. The provisions for appeals provided in subsection 5 of this section for dismissals  
80 of regular merit employees may be adopted by nonmerit agencies of the state for any or all  
81 employees of such agencies.

82 [8.] 10. Agencies not adopting the provisions for appeals provided in subsection 5 of this  
83 section shall adopt dismissal procedures substantially similar to those provided for merit  
84 employees. However, these procedures need not apply to employees in policy-making positions,  
85 or to members of military or law enforcement agencies.

86 [9.] 11. The hearing pursuant to this section shall be deemed to be a contested case and  
87 the procedures applicable to the processing of such hearings and determinations shall be those  
88 established by chapter 536, RSMo. Decisions of the [personnel] human resources advisory  
89 board shall be final and binding subject to appeal by either party. Final decisions of the  
90 [personnel] human resources advisory board pursuant to this subsection shall be subject to  
91 review on the record by the circuit court pursuant to chapter 536, RSMo.

36.420. The records of the [personnel] division of human resources, except such  
2 records as the regulations may require to be held confidential for reasons of public policy, shall  
3 be public records and shall be open to public inspection, subject to regulations as to the time and  
4 manner of inspection which may be prescribed by the board.

36.430. All officers and employees of the state and of municipalities and political  
2 subdivisions of the state shall allow the [personnel] division of human resources the reasonable  
3 use of public buildings under their control, and furnish heat, light and furniture, for any

4 examination, hearing, or investigation authorized by this law. The [personnel] division **of**  
5 **human resources** shall pay to a municipality or political subdivision the reasonable cost of any  
6 such facilities furnished by it.

36.460. Any person holding any position of employment covered by the provisions of  
2 this chapter who shall [willfully] **knowingly** violate any provision hereof shall forfeit his or her  
3 position as well as his or her eligibility rating and for a period of at least five years from and after  
4 the date of such violation shall be ineligible for appointment to or employment in any position  
5 covered by this law.

36.500. The [personnel] division **of human resources** shall collect information, provide  
2 services, make studies and analyses as directed by the commissioner of administration of  
3 [personnel] **human resources** covered by the provisions of this chapter and other systems in the  
4 executive branch of state government and to perform any other service as directed by the  
5 commissioner or the governor to promote uniformity in employment conditions and  
6 compensation of state employees, provide aid to departments in [personnel] **human resources**  
7 matters and to develop a career system of state service that will enable the state to utilize all its  
8 [personnel] **human resources** in as efficient and effective a manner as possible without  
9 restrictions of department, agency, or other entity of the executive branch of state government.