

SECOND REGULAR SESSION

# HOUSE BILL NO. 1459

## 98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BUTLER.

4382H.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

To repeal section 213.055, RSMo, and to enact in lieu thereof one new section relating to criminal history inquiries of applicants for employment.

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

Section A. Section 213.055, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 213.055, to read as follows: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

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

18 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; **and**

35 (4) **For an employer to inquire into or consider the criminal record of an applicant**  
36 **for employment until the employer has extended a conditional offer of employment to the**  
37 **applicant. Once the employer has extended a conditional offer of employment to the**  
38 **applicant, the applicant's criminal record may be considered subject to the following**  
39 **restrictions:**

40 (a) **The employer may consider a finding of guilt for a felony offense only if no**  
41 **more than ten years have passed from the date the applicant was released from custody or**  
42 **completed a term of supervised release for such offense, whichever occurred later. The**  
43 **employer may consider a finding of guilt for a misdemeanor offense only if no more than**  
44 **five years have passed from the date the applicant was released from custody or completed**  
45 **a term of supervised release for such offense, whichever occurred later;**

46 (b) **The employer may withdraw an offer of employment only based on an offense**  
47 **that bears a rational relationship to the duties and responsibilities of the position; and**

48 (c) **Before deciding whether to withdraw an offer of employment based on the**  
49 **applicant's criminal record, the employer shall consider the following factors in evaluating**  
50 **the applicant and the results of any criminal history inquiry:**

51 a. **The nature of the offense;**

52 b. **Any information pertaining to the degree of rehabilitation and good conduct,**  
53 **including any information produced by the applicant or produced on his or her behalf;**

54           **c. Whether the prospective job provides an opportunity for the commission of a**  
55 **similar offense;**

56           **d. Whether the circumstances leading to the offense are likely to reoccur; and**

57           **e. The length of time that has elapsed since the offense.**

58           2. Notwithstanding any other provision of this chapter, it shall not be an unlawful  
59 employment practice for an employer to apply different standards of compensation, or different  
60 terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system,  
61 or a system which measures earnings by quantity or quality of production or to employees who  
62 work in different locations, provided that such differences or such systems are not the result of  
63 an intention or a design to discriminate, and are not used to discriminate, because of race, color,  
64 religion, sex, national origin, ancestry, age or disability, nor shall it be an unlawful employment  
65 practice for an employer to give and to act upon the results of any professionally developed  
66 ability test, provided that such test, its administration, or action upon the results thereof, is not  
67 designed, intended or used to discriminate because of race, color, religion, national origin, sex,  
68 ancestry, age or disability.

69           3. Nothing contained in this chapter shall be interpreted to require any employer,  
70 employment agency, labor organization, or joint labor-management committee subject to this  
71 chapter to grant preferential treatment to any individual or to any group because of the race,  
72 color, religion, national origin, sex, ancestry, age or disability of such individual or group on  
73 account of an imbalance which may exist with respect to the total number or percentage of  
74 persons of any race, color, religion, national origin, sex, ancestry, age or disability employed by  
75 any employer, referred or classified for employment by any employment agency or labor  
76 organization, admitted to membership or classified by any labor organization, or admitted to or  
77 employed in any apprenticeship or other training program, in comparison with the total number  
78 or percentage of persons of such race, color, religion, national origin, sex, ancestry, age or  
79 disability in any community, state, section, or other area, or in the available workforce in any  
80 community, state, section, or other area.

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

84           **5. Subdivision (4) of subsection 1 of this section does not apply to any state, county,**  
85 **or municipal law enforcement agency; the department of corrections; or any position if**  
86 **federal or state law requires or expressly permits the consideration of an applicant's**  
87 **criminal history.**

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