

FIRST REGULAR SESSION

# HOUSE BILL NO. 720

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BRAY (Sponsor), HILGEMANN, HOLLINGSWORTH,  
HAGAN-HARRELL, KENNEDY, WILLIAMS, BOUCHER, GRAHAM, McKENNA, BARRY, REYNOLDS,  
LOWE, HARLAN, HOSMER AND KELLY (36).

Read 1<sup>st</sup> time February 8, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1752L.011

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### AN ACT

To repeal sections 290.400, 290.410 and 290.440, RSMo 2000, relating to employment practices affecting women, and to enact in lieu thereof three new sections relating to the same subject.

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

Section A. Sections 290.400, 290.410 and 290.440, RSMo 2000, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 290.400, 290.410 and 290.440, to  
3 read as follows:

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

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

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

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

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

10 (5)] "Wage rates" or "wages", [any compensation for labor measured by time, piece, or  
11 otherwise] **all compensation in any form that an employer provides to employees in**  
12 **payment for work done or services rendered, including but not limited to base pay,**  
13 **overtime bonuses, stock options, awards or tips or various forms of nonmonetary**

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

14 **compensation if provided in lieu of or in addition to monetary compensation, provided that**  
15 **such compensation has economic value to an employee.**

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

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

- 15 (1) A bona fide seniority or merit system;  
16 (2) A system that measures earnings by quantity or quality of production;  
17 (3) Any bona fide factor other than gender, provided that wage differentials based  
18 on varying market rates for equal jobs shall not be considered differentials based on bona  
19 fide factors other than gender; or  
20 (4) Bona fide regional economic differentials.

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

23 4. No employer may discharge or take any adverse action or otherwise discriminate  
24 against any individual because such individual has:

- 25 (1) Opposed any act or practice made unlawful by this section; or  
26 (2) Testified, assisted or participated in any manner in an investigation, hearing,  
27 or other proceeding to enforce this section.

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

290.440. 1. Any employer who violates section 290.410 is liable to the [female]  
2 employee affected in the amount of the wages of which the [female] employee is deprived by

3 reason of the violation **and an additional amount in compensatory damages, such additional**  
4 **amount not to exceed twice the wages awarded.**

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

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

19 4. **Any employee prevailing in a civil action brought pursuant to sections 290.400**  
20 **to 290.450, in addition to the remedies set forth in this section, may also recover court costs**  
21 **and reasonable attorney's fees, notwithstanding any agreement to work for a lesser wage.**