

FIRST REGULAR SESSION

# HOUSE BILL NO. 349

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES NEWMAN (Sponsor), COLONA, CARLSON, McDONALD, PACE, KIRKTON, NICHOLS, SMITH (71), PETERS-BAKER, McNEIL, LAMPE, SCHUPP, WEBB, TALBOY, OXFORD, CARTER, ANDERS, JONES (63), McGEOGHEGAN, MONTECILLO, WALTON GRAY, SPRENG AND SIFTON (Co-sponsors).

0849L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 290.400, 290.410, 290.420, 290.430, 290.440, and 290.450, RSMo, and to enact in lieu thereof seven new sections relating to equal employment practices.

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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Section A. Sections 290.400, 290.410, 290.420, 290.430, 290.440, and 290.450, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 290.160, 290.175, 290.400, 290.410, 290.420, 290.430, and 290.440, to read as follows:

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

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

**3. The regulations promulgated under this section relating to the form of reports required shall provide for protection of the confidentiality of employees, and shall**

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.

15 expressly require that reports shall not include the names or other identifying information  
16 from which readers could discern the identities of employees. The regulations may also  
17 identify circumstances that warrant a prohibition on disclosure of reports or information  
18 identifying the employer.

19 **4. The department of labor and industrial relations may use the information and**  
20 **data it collects under this section for statistical and research purposes, and may compile**  
21 **and publish such studies, analyses, reports, and surveys based on the information and data,**  
22 **as it considers appropriate.**

23 **5. Any rule or portion of a rule, as that term is defined in section 536.010, that is**  
24 **created under the authority delegated in this section shall become effective only if it**  
25 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
26 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**  
27 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
28 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
29 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2011,**  
30 **shall be invalid and void.**

**290.175. 1. Within ninety days of August 28, 2011, the director of the department**  
2 **of labor and industrial relations shall appoint a commission of nine members, to be known**  
3 **as the "Equal Pay Commission".**

4 **2. Membership of the commission shall be as follows:**

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

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

11 **(3) Two representatives of organizations whose objectives include the elimination**  
12 **of pay disparities between men and women and between minorities and nonminorities, and**  
13 **who have undertaken advocacy, educational, or legislative initiatives in pursuit of that**  
14 **objective;**

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

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

20 (1) **The extent of wage disparities, in both the public and private sectors, between**  
 21 **men and women, and between minorities and nonminorities;**

22 (2) **Those factors that cause, or that tend to cause, such disparities, including**  
 23 **segregation of women and men, and of minorities and nonminorities across and within**  
 24 **occupations; payment of lower wages for occupations traditionally dominated by women**  
 25 **and minorities; child-rearing responsibilities; and education and training;**

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

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

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

32 **5. The commission's report shall include the results of its study, as well as**  
 33 **recommendations, legislative and otherwise, for the elimination and prevention of**  
 34 **disparities in wages between men and women, and between minorities and nonminorities.**

290.400. As used in sections 290.400 to [290.450] **290.460** the following words have  
 2 the meanings 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**  
 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 under:**

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.**

290.420. Any affected female employee may register with the commission a complaint  
2 that the wages paid to her are less than the wages to which she is entitled under sections 290.400  
3 to [290.450] **290.440.**

290.430. The commission shall take all proceedings necessary to mediate the dispute  
2 concerning the payment of any sums alleged to be due and unpaid to the female employees. The  
3 commission shall have the power to issue such regulations not inconsistent with the purpose and  
4 provisions of sections 290.400 to [290.450] **290.440**, as it deems necessary or appropriate for the  
5 administration thereof.

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 in an amount to be determined by a judge or**  
11 **jury trial.**

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

20         4. **Any employee prevailing in a civil action brought under sections 290.400 to**  
21 **290.440, in addition to the remedies set forth in this section, may also recover court costs**  
22 **and reasonable attorney's fees, notwithstanding any agreement to work for a lesser wage.**  
23 **Any action brought under sections 290.400 to 290.440 shall be commenced within two years**  
24 **after the alleged violation occurs or the date of the reasonable discovery of such violation.**

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