

SECOND REGULAR SESSION

SENATE BILL NO. 724

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4442S.01I

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Section A. Section 213.055, RSMo, is repealed and one new section
2 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:

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

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

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

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

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

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

41 (4) (a) **For a public employer to inquire into or consider the**
42 **criminal record of an applicant for employment until the employer has**
43 **extended a conditional offer of employment to the applicant. For**
44 **purposes of this subdivision, a conditional offer of employment is an**
45 **offer of employment that is dependent on the successful completion of**
46 **the following: medical examination; drug test; and background**
47 **investigation. Once a conditional offer has been made, the applicant's**
48 **criminal record may be considered as part of the background check**
49 **subject to the following restrictions:**

50 a. **The employer may only consider a finding of guilt for a felony**
51 **offense if no more than ten years have passed from the date the**
52 **applicant was released from custody or completed a term of supervised**
53 **release, whichever occurred later. Employers may only consider**
54 **findings of guilt for misdemeanor offenses if no more than five years**
55 **have passed from the date the applicant was released from custody or**
56 **completed a term of supervised release, whichever occurred later;**

57 **b. The employer may only withdraw an offer of employment**
58 **based on an offense that bears a rational relationship to the duties and**
59 **responsibilities of the position;**

60 **c. Before deciding whether to withdraw an offer of employment**
61 **based on the applicant's criminal record, the employer shall consider**
62 **the following factors in evaluating the applicant and the results of any**
63 **criminal history inquiry:**

64 **(i) The nature of the offense;**

65 **(ii) Any information pertaining to the degree of rehabilitation**
66 **and good conduct, including any information produced by the**
67 **applicant, or produced on his or her behalf;**

68 **(iii) Whether the prospective job provides an opportunity for the**
69 **commission of a similar offense;**

70 **(iv) Whether the circumstances leading to the offense are likely**
71 **to reoccur; and**

72 **(v) The length of time that has elapsed since the offense.**

73 **After considering the above factors, an employer may determine in its**
74 **discretion whether or not to revoke a conditional offer of employment.**

75 **(b) Nothing in this subdivision shall be construed to create a**
76 **protected class of persons under the Fourteenth Amendment of the**
77 **United States Constitution or section 2 of article I of the Missouri**
78 **Constitution.**

79 **(c) This subdivision does not apply to any state, county, or**
80 **municipal law enforcement agency, the department of corrections, or**
81 **any position where federal or state law requires or expressly permits**
82 **the consideration of an applicant's criminal history.**

83 **2. Notwithstanding any other provision of this chapter, it shall not be an**
84 **unlawful employment practice for an employer to apply different standards of**
85 **compensation, or different terms, conditions or privileges of employment pursuant**
86 **to a bona fide seniority or merit system, or a system which measures earnings by**
87 **quantity or quality of production or to employees who work in different locations,**
88 **provided that such differences or such systems are not the result of an intention**
89 **or a design to discriminate, and are not used to discriminate, because of race,**
90 **color, religion, sex, national origin, ancestry, age or disability, nor shall it be an**
91 **unlawful employment practice for an employer to give and to act upon the results**
92 **of any professionally developed ability test, provided that such test, its**
93 **administration, or action upon the results thereof, is not designed, intended or**

94 used to discriminate because of race, color, religion, national origin, sex, ancestry,
95 age or disability.

96 3. Nothing contained in this chapter shall be interpreted to require any
97 employer, employment agency, labor organization, or joint labor-management
98 committee subject to this chapter to grant preferential treatment to any
99 individual or to any group because of the race, color, religion, national origin, sex,
100 ancestry, age or disability of such individual or group on account of an imbalance
101 which may exist with respect to the total number or percentage of persons of any
102 race, color, religion, national origin, sex, ancestry, age or disability employed by
103 any employer, referred for employment by any employment agency
104 or labor organization, admitted to membership or classified by any labor
105 organization, or admitted to or employed in any apprenticeship or other training
106 program, in comparison with the total number or percentage of persons of such
107 race, color, religion, national origin, sex, ancestry, age or disability in any
108 community, state, section, or other area, or in the available workforce in any
109 community, state, section, or other area.

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

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