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HOUSE BILL NO. 470

1. AN ACT TO PROHIBIT EMPLOYMENT DISCRIMINATION AGAINST PERSONS
2. WITH DISABILITIES; TO CREATE A CAUSE OF ACTION ARISING AGAINST
3. PERSONS IN VIOLATION OF THIS ACT; AND FOR RELATED PURPOSES.

4. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5. SECTION 1. This act shall be known and may be cited as
6. the "Mississippi Fair Employment for Individuals with Disabilities
7. Act of 1992."

8. SECTION 2. The following words and phrases shall have
9. the meanings ascribed in this section unless the context clearly
10. indicates otherwise:

11. (a) "Disability" means a physical or mental impairment,
12. whether congenital or acquired, that substantially limits one or
13. more of the major life activities of an individual and that is
14. determinable by medically accepted clinical or laboratory
15. diagnostic techniques, or a record of such an impairment, or being
16. regarded as such an impairment. The term "disability" does not
17. include homosexuality, bisexuality, transvestism, transsexualism,
18. pedophilia, exhibitionism, voyeurism, gender identity disorders
19. not resulting from physical impairments, other sexual behavior
20. disorders, compulsive gambling, kleptomania, pyromania, or
21. psychoactive substance use disorders resulting from current
22. illegal use of drugs.

23. (b) "Qualified individual with a disability" means an
24. employee or prospective employee with a disability that does not
25. or would not pose a direct threat of harm to the health or safety

26. of other individuals in the workplace, who can perform the
27. essential functions of the employment position that such
28. individual holds or desires, with or without reasonable
29. accommodation. This definition does not include (i) an individual
30. who is currently engaging in the illegal use of drugs, when the
31. employer acts on the basis of such use; (ii) an individual who is
32. addicted to the use of alcohol, when the employer acts on the
33. basis of such addition; or (iii) an individual with a communicable
34. disease that would disqualify an individual without a disability
35. from similar employment. The term "illegal use of drugs" means
36. the use of drugs, the possession or distribution of which is
37. unlawful under the Uniform Controlled Substances Law (Section
38. 41-29-101 et seq). Such term does not include the use of a drug
39. taken under supervision by a licensed health care professional, or
40. other uses authorized by the Uniform Controlled Substance Law or
41. other provisions of state or federal law. The term "drug" means a
42. controlled substance as defined in Section 41-29-105.

43. (c) "Person" includes an individual, association,
44. corporation, partnership, or employment agency, or any agent of
45. the above.

46. (d) "Employee" means an individual employed by an
47. employer, but does not include an individual employee (i) in
48. domestic service of any person, or (ii) by a spouse, parent or
49. child.

50. (e) "Employer" means a person (i) who has six (6) or
51. more employees, or (ii) who, as a contractor or subcontractor,
52. furnishes material or performs work for the state, a political
53. subdivision of the state, or any agency of the state.

54. (f) "Employment agency" means a person who regularly
55. undertakes, with or without compensation, to procure employees for
56. an employer or to procure for employees opportunities to work for
57. an employer.

58. SECTION 3. (1) An employer shall make reasonable
59. accommodation for a qualified individual with a disability for the
60. purposes of employment unless the employer demonstrates that the
61. accommodation would impose an undue hardship.

62. (2) For the purposes of this act, "reasonable accommodation"
63. means making reasonable changes in the work place or the job,
64. including, but not limited to, making existing facilities used by
65. employees readily accessible to a usable by individuals with
66. disabilities, acquiring or modifying equipment or devices or
67. providing mechanical aids to assist individuals with disabilities
68. in operating equipment or devices, making reasonable changes in
69. the duties of the job in question that would accommodate the known
70. disabilities to enable the individual with a disability to
71. satisfactorily perform the duties of that job, establishing
72. part-time or modified work schedules for individuals with
73. disabilities, reassignment of individuals with disabilities to
74. vacant positions, making appropriate adjustment or modifications
75. of examinations, training materials or policies, providing
76. qualified readers or interpreters, and making other similar
77. accommodations for individuals with disabilities. However,
78. "reasonable accommodation" does not require that an employer:

79. (a) Hire one or more employees, other than the
80. individual with a disability, for the purpose, in whole or in
81. part, of enabling the individual with a disability to be employed;
82. or

83. (b) Reassign duties of the job in question to other
84. employees without assigning to the individual with a disability
85. duties that would compensate for those reassigned; or

86. (c) Reassign duties of the job in question to one or
87. more other employees when such reassignment would increase the
88. skill, effort or responsibility required of such other employee or
89. employees from that required before the change in duties; or

90. (d) Alter, modify, change or deviate from bona fide
91. seniority policies or practices; or

92. (e) Provide accommodations of a personal nature, except
93. under the same terms and conditions as such items are provided to
94. the employees generally.

95. (3) For the purposes of this act, "Undue hardship" means an
96. action requiring significant difficulty or expense, when
97. considered in light of the factors listed in the following
98. sentence. In determining whether an accommodation would
99. constitute an undue hardship on the employer, the factors to be
100. considered include but are not limited to:

101. (a) The nature and cost of the accommodation needed;

102. (b) The effect on expenses and resources, or other
103. impact of such accommodation, on the conduct of the employer's
104. business, considering the type of operation or operations of the
105. employer, including the composition, structure and functions of
106. the employer's work force;

107. (c) The overall financial resources of the employer,
108. the overall size of the business of the employer with respect to
109. the number of its employees, and the number, type, and location of
110. its facilities;

111. (d) The size of the facility and the number of
112. individuals employed at the facility involved in the provision of
113. reasonable accommodation;

114. (e) The possibility that the same accommodations may be
115. used by other prospective employees; and

116. (f) Safety and health considerations of the individual
117. with a disability, other employees and the public.

118. SECTION 4. (1) An employer shall not discriminate
119. against a qualified individual with a disability because of the
120. disability of that individual in regard to job application
121. procedures, the hiring, advancement or discharge of employees,

122. employee compensation, job training, and other terms, conditions,
123. and privileges of employment.

124. (2) For the purposes of this act, the term "discriminate"
125. includes, but is not limited to:

126. (a) Limiting, segregating, or classifying a qualified
127. job applicant or employee in a way that adversely affects the
128. opportunities or status of the applicant or employee because of
129. the disability of the applicant or employee;

130. (b) Participating in a contractual or other arrangement
131. or relationship that has the effect of subjecting a qualified
132. applicant or employee with with a disability to the discrimination
133. prohibited by this act; such relationship includes a relationship
134. with an employment agency, referral agency, labor union, an
135. organization providing fringe benefits to an employee of the
136. employer, or an organization providing training and apprenticeship
137. programs;

138. (c) Utilizing standards, criteria, or methods of
139. administration that have the effect of discrimination on the basis
140. of disability, or that perpetuate the discrimination of others who
141. are subject to common administrative control;

142. (d) Excluding or otherwise denying equal jobs or
143. benefits to a qualified individual because of the known disability
144. of an individual with whom the qualified individual is known to
145. have a relationship or association;

146. (e) (i) Not making reasonable accommodation for the
147. known physical or mental limitations of an otherwise qualified
148. individual with a disability who is an applicant or employee,
149. unless the employer can demonstrate that the accommodation would
150. impose an undue hardship on the operation of the business of the
151. employer; or

152. (ii) Denying employment opportunities to a job
153. applicant or employee who is an otherwise qualified individual

154. with a disability, if such denial is based on the need of the
155. employer to make reasonable accommodation to the physical or
156. mental impairments of the employee or applicant;

157. (f) Using qualification standards, test or other
158. selection criteria that screen out or tend to screen out or
159. otherwise deny a job or benefit to an individual with a disability
160. or a class of individuals with disabilities unless the standard,
161. test or other selection criteria, as used by the employer, is
162. shown to be job-related for the position in question and
163. consistent with business necessity; and

164. (g) Failing to select and administer tests concerning
165. employment in the most effective manner to ensure that, when such
166. a test is administered to a job applicant or employee who has a
167. disability that impairs sensory, manual, or speaking skills, the
168. test results accurately reflect the skills, aptitude, or whatever
169. other factor of the applicant or employee that the test purports
170. to measure, rather than reflecting the impaired sensory, manual,
171. or speaking skills of the employee or applicant, except where such
172. skills are the factors that the test purports to measure.

173. (3) This act may not be interpreted to require a person
174. subject to this act to grant preferential treatment to an
175. individual or to a group on the basis of a disability of that
176. individual or group because an imbalance exists between the total
177. number or percentage of individuals with that individual's or
178. group's disability employed by an employer and the total number or
179. percentage of individuals with that disability in any community,
180. the state, region or other area, or in the available work force in
181. any community, the state, region or other area.

182. SECTION 5. An employment agency shall not fail or refuse
183. to refer for employment, or otherwise discriminate against, a
184. qualified individual with a disability because of the disability
185. of that individual.

186. SECTION 6. An employer or employment agency shall not
187. make or use a written or oral inquiry or form of application that
188. elicits or attempts to elicit information from a job applicant or
189. employee as to whether the applicant or employee is an individual
190. with a disability or as to the nature or severity of the
191. disability, unless the inquiry or application is shown to be
192. job-related for the position in question and consistent with
193. business necessity.

194. SECTION 7. No person shall:

195. (a) Retaliate or discriminate against any individual
196. because the individual has opposed any act or practice made
197. unlawful by this act, or because the individual has made a charge,
198. testified, assisted or participated in any manner in an
199. investigation, judicial proceeding or hearing conducted as a
200. result of an alleged violation of this act;

201. (b) Aid, abet, incite, compel or coerce any person to
202. engage in any violation of this act;

203. (c) Attempt, directly or indirectly, to commit an act
204. prohibited by this act; or

205. (d) Coerce, intimidate, threaten or interfere with any
206. individual in the exercise or enjoyment of, or on account of his
207. having exercised or enjoyed, or on account of his having aided or
208. encouraged any other individual in the exercise or enjoyment of
209. any right granted or protected by the act.

210. SECTION 8. Any individual with a disability claiming to
211. be aggrieved by an alleged violation of this act shall be entitled
212. to bring a civil action seeking relief in the chancery court of
213. the county where the alleged violation occurred or in the county
214. where the person against whom the action is filed resides or has
215. his or its principal place of business. The action must be
216. brought within one hundred eighty (180) days after the date on
217. which the aggrieved individual became aware or, with reasonable

218. diligence should have become aware, of the alleged discriminatory
219. act prohibited by this act. If, in any such action the court
220. finds that a violation of this act has occurred, the court may
221. enjoin the employer or employment agency from engaging in any
222. further violation of this act, and may order such other equitable
223. relief as it deems appropriate, including, but not limited to,
224. reinstatement or hiring of employees, with or without back pay.
225. Back pay liability shall not accrue from a date more than two (2)
226. years before to the filing of the complaint in the chancery court.
227. Interim earnings or amounts earnable with reasonable diligence by
228. the individual or individuals discriminated against shall operate
229. to reduce back pay otherwise allowable. In its discretion, the
230. court may award to the prevailing party reasonable attorney's
231. fees, except that a defendant shall not be entitled to an award of
232. attorney's fees unless the court finds that the claim was
233. frivolous, unreasonable or groundless, or brought in bad faith.

234. SECTION 9. Every employer and employment agency subject to
235. this act shall post notices in an accessible format to applicants
236. and employees describing the applicable provisions of this act.

237. SECTION 10. This act is supplemental to the
238. Rehabilitation Action of 1973 (29 U.S.C.S. 790 et seq.), as
239. amended, and the Americans with Disabilities Act of 1990 (Public
240. Law 101-336), as amended, and nothing in this act shall be
241. construed to conflict with the provisions of those federal acts.
242. Any provision of those federal acts that provides greater
243. protection for the rights of individuals with disabilities than
244. are provided by this act shall supercede the applicable provisions
245. of this act, and any provision of this act that provides greater
246. protection for the rights of individuals with disabilities than
247. are provided by those acts shall supercede the applicable
248. provisions of those acts, to the extent that is allowed or not
249. prohibited by those acts. In addition, nothing in this act shall

250. be construed to amend or repeal the provisions of any other law
251. establishing or providing programs or services for individuals
252. with disabilities.

253. SECTION 11. It is a defense to a charge of
254. discrimination under this act that an alleged application of
255. qualification standards, tests, or other selection criteria that
256. screen out or tend to screen out or otherwise deny a job or
257. benefit to an individual with a disability or a class of
258. individuals with disabilities has been shown to be job-related for
259. the position in question and consistent with business necessity,
260. and such performance cannot be accomplished by reasonable
261. accommodation as required under this act.

262. SECTION 12. This act shall take effect and be in force from
263. and after July 1, 1992.

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ST: Prohibit employment discrimination
against persons with disabilities.

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