

# SENATE BILL No. 458

April 26, 2007, Introduced by Senators WHITMER, JACOBS, HUNTER, SCOTT, SCHAUER, CHERRY, OLSHOVE, THOMAS, PRUSI, GLEASON, CLARK-COLEMAN, CLARKE, ANDERSON, BARCIA, BASHAM, BRATER and SWITALSKI and referred to the Committee on Commerce and Tourism.

A bill to prohibit employers from making employment decisions based upon certain physical characteristics or fitness; to prohibit retaliation; and to provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "respect for physical differences act".

3           Sec. 3. As used in this act:

4           (a) "Employee" means an individual who receives compensation  
5 for performing services for an employer under an express or implied  
6 contract of hire.

7           (b) "Employer" means an individual or entity that permits 1 or  
8 more individuals to work, or that accepts applications for  
9 employment, or is an agent of an employer.

10           Sec. 5. (1) Except as provided in this section, an employer

1 shall not fail or refuse to hire or recruit, discharge, or  
2 otherwise discriminate against an individual with respect to  
3 employment, compensation, or a term, condition, or privilege of  
4 employment because of the individual's body type, degree of  
5 physical fitness, or other physical characteristic.

6 (2) The prohibition in subsection (1) does not apply to a body  
7 type, degree of physical fitness, or other physical characteristic  
8 that is an established, bona fide occupational requirement or that  
9 impairs an employment activity or responsibility of a particular  
10 employee or a particular group of an employer's employees. The  
11 employer bears the burden of establishing that the body type,  
12 degree of physical fitness, or other physical characteristic is  
13 reasonably necessary to the position, group, or occupation.

14 Sec. 7. A person shall not retaliate or discriminate against a  
15 person because the person has done or was about to do any of the  
16 following:

17 (a) File a complaint under this act.

18 (b) Testify, assist, or participate in an investigation,  
19 proceeding, or action concerning a violation of this act.

20 (c) Oppose a violation of this act.

21 Sec. 9. An employer shall not require an applicant for  
22 employment or employee to waive any right under this act. An  
23 agreement by an applicant or employee to waive any right under this  
24 act is invalid and unenforceable.

25 Sec. 11. (1) A person who is injured by a violation of this  
26 act may bring a civil suit in a court of competent jurisdiction to  
27 obtain injunctive relief or damages, or both.

1           (2) The court shall award costs and reasonable attorney fees  
2 to a person who prevails as a plaintiff in a suit authorized under  
3 subsection (1).