

SECOND REGULAR SESSION

SENATE BILL NO. 745

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROMINE.

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

ADRIANE D. CROUSE, Secretary.

4644S.011

AN ACT

To repeal sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.101, and 213.111, RSMo, and to enact in lieu thereof nine new sections relating to unlawful discriminatory practices.

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

Section A. Sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.101, and 213.111, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.101, 213.111, and 285.575, to read as follows:

213.010. As used in this chapter, the following terms shall mean:

(1) "Age", an age of forty or more years but less than seventy years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of sixty-five and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy-making position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least forty-four thousand dollars;

(2) **"Because" or "because of", as it relates to a decision or action, the protected criterion was a motivating factor;**

(3) "Commission", the Missouri commission on human rights;

~~(3)~~ (4) "Complainant", a person who has filed a complaint with the commission alleging that another person has engaged in a prohibited discriminatory practice;

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

17 [(4)] (5) "Disability", a physical or mental impairment which
18 substantially limits one or more of a person's major life activities, being regarded
19 as having such an impairment, or a record of having such an impairment, which
20 with or without reasonable accommodation does not interfere with performing the
21 job, utilizing the place of public accommodation, or occupying the dwelling in
22 question. For purposes of this chapter, the term "disability" does not include
23 current, illegal use of or addiction to a controlled substance as such term is
24 defined by section 195.010; however, a person may be considered to have a
25 disability if that person:

26 (a) Has successfully completed a supervised drug rehabilitation program
27 and is no longer engaging in the illegal use of, and is not currently addicted to,
28 a controlled substance or has otherwise been rehabilitated successfully and is no
29 longer engaging in such use and is not currently addicted;

30 (b) Is participating in a supervised rehabilitation program and is no
31 longer engaging in illegal use of controlled substances; or

32 (c) Is erroneously regarded as currently illegally using, or being addicted
33 to, a controlled substance;

34 [(5)] (6) "Discrimination", [any unfair treatment based on] **conduct**
35 **proscribed herein, a motivating factor of such conduct being because**
36 **of** race, color, religion, national origin, ancestry, sex, age as it relates to
37 employment, disability, or familial status as it relates to housing;

38 [(6)] (7) "Dwelling", any building, structure or portion thereof which is
39 occupied as, or designed or intended for occupancy as, a residence by one or more
40 families, and any vacant land which is offered for sale or lease for the
41 construction or location thereon of any such building, structure or portion thereof;

42 [(7)] (8) "Employer" [includes], **a person engaged in an industry**
43 **affecting commerce who has six or more employees for each working**
44 **day in each of twenty or more calendar weeks in the current or**
45 **preceding calendar year, and shall include** the state, or any political or civil
46 subdivision thereof[, or any person employing six or more persons within the
47 state, and any person directly acting in the interest of an employer, but does not
48 include corporations and associations owned and operated by religious or
49 sectarian groups]. **"Employer" shall not include:**

50 (a) **The United States;**

51 (b) **A corporation wholly owned by the government of the United**
52 **States;**

53 (c) An individual employed by an employer;

54 (d) An Indian tribe;

55 (e) Any department or agency of the District of Columbia subject
56 by statute to procedures of the competitive service, as defined in 5
57 U.S.C. Section 2101;

58 (f) A bona fide private membership club, other than a labor
59 organization, that is exempt from taxation under 26 U.S.C. Section
60 501(c); or

61 (g) Corporations and associations owned and operated by
62 religious or sectarian groups;

63 [(8)] (9) "Employment agency" includes any person or agency, public or
64 private, regularly undertaking with or without compensation to procure
65 employees for an employer or to procure for employees opportunities to work for
66 an employer and includes any person acting in the interest of such a person;

67 [(9)] (10) "Executive director", the executive director of the Missouri
68 commission on human rights;

69 [(10)] (11) "Familial status", one or more individuals who have not
70 attained the age of eighteen years being domiciled with:

71 (a) A parent or another person having legal custody of such individual; or

72 (b) The designee of such parent or other person having such custody, with
73 the written permission of such parent or other person. The protections afforded
74 against discrimination on the basis of familial status shall apply to any person
75 who is pregnant or is in the process of securing legal custody of any individual
76 who has not attained the age of eighteen years;

77 [(11)] (12) "Human rights fund", a fund established to receive civil
78 penalties as required by federal regulations and as set forth by subdivision (2) of
79 subsection 11 of section 213.075, and which will be disbursed to offset additional
80 expenses related to compliance with the Department of Housing and Urban
81 Development regulations;

82 [(12)] (13) "Labor organization" includes any organization which exists
83 for the purpose, in whole or in part, of collective bargaining or of dealing with
84 employers concerning grievances, terms or conditions of employment, or for other
85 mutual aid or protection in relation to employment;

86 [(13)] (14) "Local commissions", any commission or agency established
87 prior to August 13, 1986, by an ordinance or order adopted by the governing body
88 of any city, constitutional charter city, town, village, or county;

89 [(14)] (15) "Person" includes one or more individuals, corporations,
90 partnerships, associations, organizations, labor organizations, legal
91 representatives, mutual companies, joint stock companies, trusts, trustees,
92 trustees in bankruptcy, receivers, fiduciaries, or other organized groups of
93 persons;

94 [(15)] (16) "Places of public accommodation", all places or businesses
95 offering or holding out to the general public, goods, services, privileges, facilities,
96 advantages or accommodations for the peace, comfort, health, welfare and safety
97 of the general public or such public places providing food, shelter, recreation and
98 amusement, including, but not limited to:

99 (a) Any inn, hotel, motel, or other establishment which provides lodging
100 to transient guests, other than an establishment located within a building which
101 contains not more than five rooms for rent or hire and which is actually occupied
102 by the proprietor of such establishment as his residence;

103 (b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or
104 other facility principally engaged in selling food for consumption on the premises,
105 including, but not limited to, any such facility located on the premises of any
106 retail establishment;

107 (c) Any gasoline station, including all facilities located on the premises of
108 such gasoline station and made available to the patrons thereof;

109 (d) Any motion picture house, theater, concert hall, sports arena, stadium,
110 or other place of exhibition or entertainment;

111 (e) Any public facility owned, operated, or managed by or on behalf of this
112 state or any agency or subdivision thereof, or any public corporation; and any
113 such facility supported in whole or in part by public funds;

114 (f) Any establishment which is physically located within the premises of
115 any establishment otherwise covered by this section or within the premises of
116 which is physically located any such covered establishment, and which holds itself
117 out as serving patrons of such covered establishment;

118 [(16)] (17) "Rent" includes to lease, to sublease, to let and otherwise to
119 grant for consideration the right to occupy premises not owned by the occupant;

120 [(17)] (18) "Respondent", a person who is alleged to have engaged in a
121 prohibited discriminatory practice in a complaint filed with the commission;

122 [(18)] (19) "Unlawful discriminatory practice", any act that is unlawful
123 under this chapter.

213.040. 1. It shall be an unlawful housing practice:

2 (1) To refuse to sell or rent after the making of a bona fide offer, to refuse
3 to negotiate for the sale or rental of, to deny or otherwise make unavailable, a
4 dwelling to any person because of race, color, religion, national origin, ancestry,
5 sex, disability, or familial status;

6 (2) To discriminate against any person in the terms, conditions, or
7 privileges of sale or rental of a dwelling, or in the provision of services or
8 facilities in connection therewith, because of race, color, religion, national origin,
9 ancestry, sex, disability, or familial status;

10 (3) To make, print, or publish, or cause to be made, printed, or published
11 any notice, statement or advertisement, with respect to the sale or rental of a
12 dwelling that indicates any preference, limitation, or discrimination based on
13 race, color, religion, national origin, ancestry, sex, disability, or familial status,
14 or an intention to make any such preference, limitation, or discrimination;

15 (4) To represent to any person because of race, color, religion, national
16 origin, ancestry, sex, disability, or familial status that any dwelling is not
17 available for inspection, sale, or rental when such dwelling is in fact so available;

18 (5) To induce or attempt to induce any person to sell or rent any dwelling
19 by representations regarding the entry or prospective entry into the neighborhood
20 of a person or persons **because** of a particular race, color, religion, national
21 origin, ancestry, sex, disability, or familial status;

22 (6) To discriminate in the sale or rental of, or to otherwise make
23 unavailable or deny, a dwelling to any buyer or renter because of a disability of:

24 (a) That buyer or renter;

25 (b) A person residing in or intending to reside in that dwelling after it is
26 so sold, rented, or made available; or

27 (c) Any person associated with that buyer or renter;

28 (7) To discriminate against any person in the terms, conditions, or
29 privileges of sale or rental of a dwelling, or in the provision of services or
30 facilities in connection with such dwelling, because of a disability of:

31 (a) That person;

32 (b) A person residing in or intending to reside in that dwelling after it is
33 so sold, rented, or made available; or

34 (c) Any person associated with that person.

35 2. For purposes of this section and sections 213.045 and 213.050,
36 discrimination includes:

37 (1) A refusal to permit, at the expense of the person with the disability,

38 reasonable modifications of existing premises occupied or to be occupied by such
39 person if such modifications may be necessary to afford such person full
40 enjoyment of the premises, except that, in the case of a rental, the landlord may,
41 where it is reasonable to do so, condition permission for a modification on the
42 renter's agreeing to restore the interior of the premises to the condition that
43 existed before the modification, reasonable wear and tear excepted;

44 (2) A refusal to make reasonable accommodations in rules, policies,
45 practices, or services, when such accommodations may be necessary to afford such
46 person equal opportunity to use and enjoy a dwelling; or

47 (3) In connection with the design and construction of covered multifamily
48 dwellings for first occupancy after March 13, 1991, a failure to design and
49 construct those dwellings in such a manner that:

50 (a) The public use and common use portions of such dwellings are readily
51 accessible to and usable by persons with a disability;

52 (b) All the doors designed to allow passage into and within all premises
53 within such dwellings are sufficiently wide to allow passage by persons with a
54 disability in wheelchairs; and

55 (c) All premises within such dwellings contain the following features of
56 adaptive design:

57 a. An accessible route into and through the dwelling;

58 b. Light switches, electrical outlets, thermostats, and other environmental
59 controls in accessible locations;

60 c. Reinforcements in bathroom walls to allow later installation of grab
61 bars; and

62 d. Usable kitchens and bathrooms such that an individual in a wheelchair
63 can maneuver about the space.

64 3. As used in subdivision (3) of subsection 2 of this section, the term
65 "covered multifamily dwelling" means:

66 (1) Buildings consisting of four or more units if such buildings have one
67 or more elevators; and

68 (2) Ground floor units in other buildings consisting of four or more units.

69 4. Compliance with the appropriate requirements of the American
70 National Standard for Buildings and Facilities providing accessibility and
71 usability for people with physical disabilities, commonly cited as "ANSI A117.1",
72 suffices to satisfy the requirements of paragraph (a) of subdivision (3) of
73 subsection 2 of this section.

74 5. Where a unit of general local government has incorporated into its laws
75 the requirements set forth in subdivision (3) of subsection 2 of this section,
76 compliance with such laws shall be deemed to satisfy the requirements of that
77 subdivision. Such compliance shall be subject to the following provisions:

78 (1) A unit of general local government may review and approve newly
79 constructed covered multifamily dwellings for the purpose of making
80 determinations as to whether the design and construction requirements of
81 subdivision (3) of subsection 2 of this section are met;

82 (2) The commission shall encourage, but may not require, the units of
83 local government to include in their existing procedures for the review and
84 approval of newly constructed covered multifamily dwellings, determinations as
85 to whether the design and construction of such dwellings are consistent with
86 subdivision (3) of subsection 2 of this section, and shall provide technical
87 assistance to units of local government and other persons to implement the
88 requirements of subdivision (3) of subsection 2 of this section;

89 (3) Nothing in this chapter shall be construed to require the commission
90 to review or approve the plans, designs or construction of all covered dwellings,
91 to determine whether the design and construction of such dwellings are consistent
92 with the requirements of subdivision (3) of subsection 2 of this section.

93 6. Nothing in this chapter shall be construed to invalidate or limit any
94 law of the state or political subdivision of the state, or other jurisdiction in which
95 this chapter shall be effective, that requires dwellings to be designed and
96 constructed in a manner that affords persons with disabilities greater access than
97 is required by this chapter.

98 7. Nothing in this section and sections 213.045 and 213.050 requires that
99 a dwelling be made available to an individual whose tenancy would constitute a
100 direct threat to the health or safety of other individuals or whose tenancy would
101 result in substantial physical damage to the property of others.

102 8. Nothing in this section and sections 213.045 and 213.050 limits the
103 applicability of any reasonable local or state restriction regarding the maximum
104 number of occupants permitted to occupy a dwelling, nor does any provision in
105 this section and sections 213.045 and 213.050 regarding familial status apply
106 with respect to housing for older persons.

107 9. As used in this section and sections 213.045 and 213.050, "housing for
108 older persons" means housing:

109 (1) Provided under any state or federal program that the commission

110 determines is specifically designed and operated to assist elderly persons, as
111 defined in the state or federal program;

112 (2) Intended for, and solely occupied by, persons sixty-two years of age or
113 older; or

114 (3) Intended and operated for occupancy by at least one person fifty-five
115 years of age or older per unit. In determining whether housing qualifies as
116 housing for older persons under this subsection, the commission shall develop
117 regulations which require at least the following factors:

118 (a) The existence of significant facilities and services specifically designed
119 to meet the physical or social needs of older persons, or if the provision of such
120 facilities and services is not practicable, that such housing is necessary to provide
121 important housing opportunities for older persons; and

122 (b) That at least eighty percent of the units are occupied by at least one
123 person fifty-five years of age or older per unit; and

124 (c) The publication of, and adherence to, policies and procedures which
125 demonstrate an intent by the owner or manager to provide housing for persons
126 fifty-five years of age or older.

127 10. Housing shall not fail to meet the requirements for housing for older
128 persons by reason of:

129 (1) Persons residing in such housing as of August 28, 1992, who do not
130 meet the age requirements of subdivision (2) or (3) of subsection 9 of this section,
131 provided that new occupants of such housing meet the age requirements of
132 subdivision (2) or (3) of subsection 9 of this section; or

133 (2) Unoccupied units, provided that such units are reserved for occupancy
134 by persons who meet the age requirements of subdivision (2) or (3) of subsection
135 9 of this section.

136 11. Nothing in this section or section 213.045 or 213.050 shall prohibit
137 conduct against a person because such person has been convicted by any court of
138 competent jurisdiction of the illegal manufacture or distribution of a controlled
139 substance, as defined by section 195.010.

140 12. Nothing in this chapter shall prohibit a religious organization,
141 association, or society, or any nonprofit institution or organization operated,
142 supervised or controlled by or in conjunction with a religious organization,
143 association, or society, from limiting the sale, rental or occupancy of dwellings
144 which it owns or operates for other than a commercial purpose to persons of the
145 same religion, or from giving preference to such persons, unless membership in

146 such religion is restricted on account of race, color, or national origin. Nor shall
147 anything in this chapter prohibit a private club not in fact open to the public,
148 which as an incident to its primary purpose or purposes provides lodging which
149 it owns or operates for other than a commercial purpose, from limiting the rental
150 or occupancy of such lodging to its members or from giving preference to its
151 members.

152 13. Nothing in this chapter, other than the prohibitions against
153 discriminatory advertising in subdivision (3) of subsection 1 of this section, shall
154 apply to:

155 (1) The sale or rental of any single family house by a private individual
156 owner, provided the following conditions are met:

157 (a) The private individual owner does not own or have any interest in
158 more than three single family houses at any one time; and

159 (b) The house is sold or rented without the use of a real estate broker,
160 agent or salesperson or the facilities of any person in the business of selling or
161 renting dwellings and without publication, posting or mailing of any
162 advertisement. If the owner selling the house does not reside in it at the time of
163 the sale or was not the most recent resident of the house prior to such sale, the
164 exemption in this section applies to only one such sale in any twenty-four-month
165 period; or

166 (2) Rooms or units in dwellings containing living quarters occupied or
167 intended to be occupied by no more than four families living independently of
168 each other, if the owner actually maintains and occupies one of such living
169 quarters as his or her residence.

213.050. It shall be unlawful to deny any person access to or membership
2 or participation in any multiple listing service, real estate brokers' organization
3 or other service organization, or facility relating to the business of selling or
4 renting dwellings, [on account] **because** of race, color, religion, national origin,
5 ancestry, sex, disability, or familial status.

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 **or her** 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] because** of his **or her** race, color, religion, national origin, sex,
40 ancestry, age or disability.

41 2. Notwithstanding any other provision of this chapter, it shall not be an
42 unlawful employment practice for an employer to apply different standards of
43 compensation, or different terms, conditions or privileges of employment pursuant

44 to a bona fide seniority or merit system, or a system which measures earnings by
45 quantity or quality of production or to employees who work in different locations,
46 provided that such differences or such systems are not the result of an intention
47 or a design to discriminate, and are not used to discriminate, because of race,
48 color, religion, sex, national origin, ancestry, age or disability, nor shall it be an
49 unlawful employment practice for an employer to give and to act upon the results
50 of any professionally developed ability test, provided that such test, its
51 administration, or action upon the results thereof, is not designed, intended or
52 used to discriminate because of race, color, religion, national origin, sex, ancestry,
53 age or disability.

54 3. Nothing contained in this chapter shall be interpreted to require any
55 employer, employment agency, labor organization, or joint labor-management
56 committee subject to this chapter to grant preferential treatment to any
57 individual or to any group because of the race, color, religion, national origin, sex,
58 ancestry, age or disability of such individual or group on account of an imbalance
59 which may exist with respect to the total number or percentage of persons of any
60 race, color, religion, national origin, sex, ancestry, age or disability employed by
61 any employer, referred or classified for employment by any employment agency
62 or labor organization, admitted to membership or classified by any labor
63 organization, or admitted to or employed in any apprenticeship or other training
64 program, in comparison with the total number or percentage of persons of such
65 race, color, religion, national origin, sex, ancestry, age or disability in any
66 community, state, section, or other area, or in the available workforce in any
67 community, state, section, or other area.

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

213.065. 1. All persons within the jurisdiction of the state of Missouri are
2 free and equal and shall be entitled to the full and equal use and enjoyment
3 within this state of any place of public accommodation, as hereinafter defined,
4 without discrimination or segregation on the grounds of race, color, religion,
5 national origin, sex, ancestry, or disability.

6 2. It is an unlawful discriminatory practice for any person, directly or
7 indirectly, to refuse, withhold from or deny any other person, or to attempt to
8 refuse, withhold from or deny any other person, any of the accommodations,

9 advantages, facilities, services, or privileges made available in any place of public
10 accommodation, as defined in section 213.010 and this section, or to segregate or
11 discriminate against any such person in the use thereof [on the grounds]
12 **because** of race, color, religion, national origin, sex, ancestry, or disability.

13 3. The provisions of this section shall not apply to a private club, a place
14 of accommodation owned by or operated on behalf of a religious corporation,
15 association or society, or other establishment which is not in fact open to the
16 public, unless the facilities of such establishments are made available to the
17 customers or patrons of a place of public accommodation as defined in section
18 213.010 and this section.

213.070. 1. It shall be an unlawful discriminatory practice:

2 (1) To aid, abet, incite, compel, or coerce the commission of acts prohibited
3 under this chapter or to attempt to do so;

4 (2) To retaliate or discriminate in any manner against any other person
5 because such person has opposed any practice prohibited by this chapter or
6 because such person has filed a complaint, testified, assisted, or participated in
7 any manner in any investigation, proceeding or hearing conducted pursuant to
8 this chapter;

9 (3) For the state or any political subdivision of this state to discriminate
10 [on the basis] **because** of race, color, religion, national origin, sex, ancestry, age,
11 as it relates to employment, disability, or familial status as it relates to housing;
12 or

13 (4) To discriminate in any manner against any other person because of
14 such person's association with any person protected by this chapter.

15 **2. This chapter, in addition to chapter 285 and chapter 287, shall**
16 **provide the exclusive remedy for any and all unlawful employment**
17 **practices articulated herein and hereby abrogates any common law**
18 **causes of action not specifically articulated herein.**

213.101. 1. The provisions of this chapter shall be construed to
2 accomplish the purposes thereof and any law inconsistent with any provision of
3 this chapter shall not apply. Nothing contained in this chapter shall be deemed
4 to repeal any of the provisions of any law of this state relating to [the]
5 discrimination because of race, color, religion, national origin, sex, ancestry, age,
6 disability, or familial status. **It shall be the presumption that for a fair**
7 **presentation of the case, a jury shall be given an instruction expressing**
8 **the business judgment rule.**

9 2. In interpreting and applying chapter 213 in employment cases,
10 courts shall rely heavily upon judicial interpretations of Title VII of the
11 Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) as amended, the Age
12 Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), and
13 the Americans with Disabilities Act (42 U.S.C. 12101 et seq.), as
14 amended.

15 3. The general assembly intends expressly to abrogate by this
16 statute the case of *McBryde v. Ritenour School District*, 207 S.W.3d 162
17 (Mo. App. E.D. 2006), and its progeny as it relates to the necessity and
18 appropriateness of the issuance of a business judgment instruction.

19 4. Rule 74.04 of the Missouri rules of civil procedure is an
20 integral part of the rules as a whole and can be a tool of great utility
21 in removing factually insubstantial cases under this chapter from
22 crowded dockets. If an employer in a case under this chapter files a
23 rule 74.04 motion, there are two frameworks for analysis that shall be
24 considered highly persuasive:

25 (1) Plaintiff may submit direct evidence of discrimination, in
26 which case the analysis of *Price Waterhouse v. Hopkins*, 490 U.S. 228,
27 258 (1989), and its progeny is highly persuasive;

28 (2) If plaintiff submits no direct evidence of discrimination, then
29 the burden-shifting analysis of *McDonnell Douglas Corp. v. Green*, 411
30 U.S. 792, 800-01 (1973), and its progeny presents a highly persuasive
31 framework for analysis.

32 5. The general assembly hereby expressly abrogates by this
33 statute the cases of *Daugherty v. City of Maryland Heights*, 231 S.W.3d
34 814 (Mo. 2007), *Korando v. Mallinckrodt, Inc.*, 239 S.W.3d 647 (Mo. App.
35 E.D. 2007), *Lomax v. Daimler Chrysler Corp.*, 243 S.W.3d 474 (Mo. App.
36 E.D. 2007), and *Francin v. Mosby, Inc.*, 248 S.W.3d 619 (Mo. App. E.D.
37 2008) and their progeny as they relate to the contributing factor
38 standard and abandonment of the burden-shifting framework
39 established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 800-01
40 (1973), and the mixed-motive framework established in *Price*
41 *Waterhouse v. Hopkins*, 490 U.S. 228, 258 (1989). The general assembly
42 also intends to abrogate Missouri approved jury instruction 31.24,
43 Missouri approved jury instruction 31.25, and Missouri approved jury
44 instruction 31.27.

213.111. 1. If, after one hundred eighty days from the filing of a

2 complaint alleging an unlawful discriminatory practice pursuant to section
3 213.055, 213.065 or 213.070 to the extent that the alleged violation of section
4 213.070 relates to or involves a violation of section 213.055 or 213.065, or
5 subdivision (3) of section 213.070 as it relates to employment and public
6 accommodations, the commission has not completed its administrative processing
7 and the person aggrieved so requests in writing, the commission shall issue to the
8 person claiming to be aggrieved a letter indicating his or her right to bring a civil
9 action within ninety days of such notice against the respondent named in the
10 complaint. If, after the filing of a complaint pursuant to sections 213.040,
11 213.045, 213.050 and 213.070, to the extent that the alleged violation of section
12 213.070 relates to or involves a violation of sections 213.040, 213.045 and
13 213.050, or subdivision (3) of section 213.070 as it relates to housing, and the
14 person aggrieved so requests in writing, the commission shall issue to the person
15 claiming to be aggrieved a letter indicating his or her right to bring a civil action
16 within ninety days of such notice against the respondent named in the
17 complaint. Such an action may be brought in any circuit court in any county in
18 which the unlawful discriminatory practice is alleged to have [occurred] **been**
19 **committed**, either before a circuit or associate circuit judge. Upon issuance of
20 this notice, the commission shall terminate all proceedings relating to the
21 complaint. No person may file or reinstate a complaint with the commission after
22 the issuance of a notice under this section relating to the same practice or
23 act. Any action brought in court under this section shall be filed within ninety
24 days from the date of the commission's notification letter to the individual but no
25 later than two years after the alleged cause occurred or its reasonable discovery
26 by the alleged injured party.

27 2. The court may grant as relief, as it deems appropriate, any permanent
28 or temporary injunction, temporary restraining order, or other order, and may
29 award to the plaintiff actual and punitive damages, and may award court costs
30 and reasonable attorney fees to the prevailing party, other than a state agency
31 or commission or a local commission; except that, a prevailing respondent may be
32 awarded court costs and reasonable attorney fees only upon a showing that the
33 case is without foundation.

34 **3. Any party to any action initiated under this section may**
35 **demand a trial by jury.**

36 **4. The sum of the amount of actual damages, including damages**
37 **for future pecuniary losses, emotional pain, suffering, inconvenience,**

38 mental anguish, loss of enjoyment of life, and other nonpecuniary
39 losses, and punitive damages awarded under this section shall not
40 exceed for each complaining party:

41 (1) Actual back pay and interest on back pay; and

42 (2) (a) In the case of a respondent who has more than five and
43 fewer than one hundred one employees in each of twenty or more
44 calendar weeks in the current or preceding calendar year, fifty
45 thousand dollars;

46 (b) In the case of a respondent who has more than one hundred
47 and fewer than two hundred one employees in each of twenty or more
48 calendar weeks in the current or preceding calendar year, one hundred
49 thousand dollars;

50 (c) In the case of a respondent who has more than two hundred
51 and fewer than five hundred one employees in each of twenty or more
52 calendar weeks in the current or preceding calendar year, two hundred
53 thousand dollars; or

54 (d) In the case of a respondent who has more than five hundred
55 employees in each of twenty or more calendar weeks in the current or
56 preceding calendar year, three hundred thousand dollars.

57 5. Subsection 4 of this section shall not apply to actions filed for
58 violations of sections 213.040, 213.045, 213.050, and 213.070, to the extent
59 that the alleged violation of section 213.070 relates to or involves a
60 violation of sections 213.040, 213.045, and 213.050, or subsection 3 of
61 section 213.070 as it relates to housing.

62 6. In any employment-related civil action brought under this
63 chapter, the plaintiff shall bear the burden of proving that the
64 protected criterion was a motivating factor in the alleged unlawful
65 decision or action.

66 7. Notwithstanding subsection 4 of this section, punitive damages
67 shall not be awarded against the state of Missouri or any of its political
68 subdivisions.

285.575. 1. This section shall be known and may be cited as the
2 "Whistleblower's Protection Act".

3 2. As used in this section, the following terms shall mean:

4 (1) "Because" or "because of", as it relates to a decision or action,
5 the person's status as a protected person was a motivating factor;

6 (2) "Employer", an entity that has six or more employees for each

7 working day in each of twenty or more calendar weeks in the current
8 or preceding calendar year. "Employer" shall not include the state of
9 Missouri or its political subdivisions, a corporation wholly owned by
10 the state of Missouri, an individual employed by an employer, or
11 corporations and associations owned and operated by religious or
12 sectarian groups;

13 (3) "Proper authorities", a governmental or law enforcement
14 agency, an officer, the employee's supervisor, or the employee's human
15 resources representative employed by the employer;

16 (4) "Protected person", a person who has reported to the proper
17 authorities an unlawful act of the employer or its agent; a person who
18 reports to an employer serious misconduct of the employer or its agent
19 that violates a clear mandate of public policy as articulated in a
20 constitutional provision, statute, or regulation promulgated under
21 statute; a person who has refused to carry out a directive issued by an
22 employer or its agent that if completed would be a violation of the law;
23 or a person who has engaged in conduct otherwise protected by statute
24 or regulation. A person is not a "protected person" if:

25 (a) The person is a supervisory, managerial, or executive
26 employee or an officer of the employer; and

27 (b) The unlawful act or serious misconduct reported concerns
28 matters upon which the person is employed to report or provide
29 professional opinion.

30 3. This section is intended to codify the existing common law
31 exceptions to the at-will employment doctrine and to limit their future
32 expansion by the courts. This section, in addition to chapter 213 and
33 chapter 287, shall provide the exclusive remedy for any and all
34 unlawful employment practices articulated herein and hereby
35 abrogates any common law causes of action to the contrary.

36 4. It shall be an unlawful employment practice for an employer
37 to discharge or retaliate against an individual defined as a protected
38 person in this section because of that person's status as a protected
39 person.

40 5. A protected person aggrieved by a violation of this section
41 shall have a private right of action for actual damages for violations of
42 this section but not for punitive damages. However, if a private right
43 of action for damages exists under another statutory or regulatory

44 scheme, whether under state or federal law, no private right of action
45 shall exist under this statute.

46 6. Any party to any action initiated under this section may
47 demand a trial by jury.

48 7. A protected person aggrieved by a violation of this section
49 shall have a private right of action that may be filed in a court of
50 competent jurisdiction. The only remedies available in such an action
51 shall be:

52 (1) Back pay;

53 (2) Reimbursement of medical bills directly related to a violation
54 of this section; and

55 (3) If a protected person proves, by clear and convincing
56 evidence, that the conduct of the employer was outrageous because of
57 the employer's evil motive or reckless indifference to the rights of
58 others, then, in addition to the amounts referenced in subdivisions (1)
59 and (2) of this subsection, an additional double amount as liquidated
60 damages may be awarded. In applying this subdivision, the provisions
61 of section 510.263 shall be applied as though liquidated damages were
62 punitive damages and as though the amounts referenced in
63 subdivisions (1) and (2) of this subsection were compensatory damages.

64 8. The court, in addition to the damages set forth herein, may
65 award the prevailing party court costs and reasonable attorney fees.

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