

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 188

96TH GENERAL ASSEMBLY

2011

0790S.03T

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## AN ACT

To repeal sections 213.010, 213.070, 213.101, and 213.111, RSMo, and to enact in lieu thereof five new sections relating to unlawful discriminatory practices.

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

Section A. Sections 213.010, 213.070, 213.101, and 213.111, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections  
3 213.010, 213.070, 213.101, 213.111, and 1, to read as follows:

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

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

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

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

14 [(3)] (4) "Complainant", a person who has filed a complaint with the  
15 commission alleging that another person has engaged in a prohibited  
16 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 race, color,  
35 religion, national origin, ancestry, sex, age as it relates to employment, disability,  
36 or familial status as it relates to housing;

37            [(6)] (7) "Dwelling", any building, structure or portion thereof which is  
38 occupied as, or designed or intended for occupancy as, a residence by one or more  
39 families, and any vacant land which is offered for sale or lease for the  
40 construction or location thereon of any such building, structure or portion thereof;

41            [(7)] (8) "Employer" [includes], **a person engaged in an industry**  
42 **affecting commerce who has six or more employees for each working**  
43 **day in each of twenty or more calendar weeks in the current or**  
44 **preceding calendar year, and shall include** the state, or any political or civil  
45 subdivision thereof[, or any person employing six or more persons within the  
46 state, and any person directly acting in the interest of an employer, but does not  
47 include corporations and associations owned and operated by religious or  
48 sectarian groups]. **"Employer" shall not include the United States, a**  
49 **corporation wholly owned by the government of the United States, an**  
50 **individual employed by an employer, an Indian tribe, or any**  
51 **department or agency of the District of Columbia subject by statute to**  
52 **procedures of the competitive service, as defined in 5 U.S.C. Section**

53 **2101, or a bona fide private membership club (other than a labor**  
54 **organization) which is exempt from taxation under 26 U.S.C. Section**  
55 **501(c), and shall not include corporations and associations owned and**  
56 **operated by religious or sectarian groups;**

57 [(8)] (9) "Employment agency" includes any person or agency, public or  
58 private, regularly undertaking with or without compensation to procure  
59 employees for an employer or to procure for employees opportunities to work for  
60 an employer and includes any person acting in the interest of such a person;

61 [(9)] (10) "Executive director", the executive director of the Missouri  
62 commission on human rights;

63 [(10)] (11) "Familial status", one or more individuals who have not  
64 attained the age of eighteen years being domiciled with:

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

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

71 [(11)] (12) "Human rights fund", a fund established to receive civil  
72 penalties as required by federal regulations and as set forth by subdivision (2) of  
73 subsection 11 of section 213.075, and which will be disbursed to offset additional  
74 expenses related to compliance with the Department of Housing and Urban  
75 Development regulations;

76 [(12)] (13) "Labor organization" includes any organization which exists  
77 for the purpose, in whole or in part, of collective bargaining or of dealing with  
78 employers concerning grievances, terms or conditions of employment, or for other  
79 mutual aid or protection in relation to employment;

80 [(13)] (14) "Local commissions", any commission or agency established  
81 prior to August 13, 1986, by an ordinance or order adopted by the governing body  
82 of any city, constitutional charter city, town, village, or county;

83 [(14)] (15) "Person" includes one or more individuals, corporations,  
84 partnerships, associations, organizations, labor organizations, legal  
85 representatives, mutual companies, joint stock companies, trusts, trustees,  
86 trustees in bankruptcy, receivers, fiduciaries, or other organized groups of  
87 persons;

88 [(15)] (16) "Places of public accommodation", all places or businesses

89 offering or holding out to the general public, goods, services, privileges, facilities,  
90 advantages or accommodations for the peace, comfort, health, welfare and safety  
91 of the general public or such public places providing food, shelter, recreation and  
92 amusement, including, but not limited to:

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

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

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

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

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

108 (f) Any establishment which is physically located within the premises of  
109 any establishment otherwise covered by this section or within the premises of  
110 which is physically located any such covered establishment, and which holds itself  
111 out as serving patrons of such covered establishment;

112 [(16)] (17) "Rent" includes to lease, to sublease, to let and otherwise to  
113 grant for consideration the right to occupy premises not owned by the occupant;

114 [(17)] (18) "Respondent", a person who is alleged to have engaged in a  
115 prohibited discriminatory practice in a complaint filed with the commission;

116 [(18)] (19) "Unlawful discriminatory practice", any act that is unlawful  
117 under this chapter.

213.070. 1. **Except as provided in subsection 2 of this section**, it  
2 shall be an unlawful discriminatory practice:

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

5 (2) To retaliate or discriminate in any manner against any other person  
6 because such person has opposed any practice prohibited by this chapter or  
7 because such person has filed a complaint, testified, assisted, or participated in

8 any manner in any investigation, proceeding or hearing conducted pursuant to  
9 this chapter;

10 (3) For the state or any political subdivision of this state to discriminate  
11 on the basis of race, color, religion, national origin, sex, ancestry, age, as it  
12 relates to employment, disability, or familial status as it relates to housing; 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. In an employment action alleging a violation of section**  
16 **213.055, subdivisions (1), (2), and (4) of subsection 1 of this section shall**  
17 **only apply when an employer commits the proscribed acts as stated in**  
18 **those subdivisions and shall not provide a basis for any individual**  
19 **liability.**

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. **This chapter is intended to be consistent with**  
7 **Title VII of the Civil Rights Act of 1964, (42 U.S.C Section 2000e, et seq.)**  
8 **as amended, in accordance with the work sharing agreement between**  
9 **the Missouri commission on human rights and the United States Equal**  
10 **Employment Opportunity Commission.**

11 **2. Except as provided in subsection 3 of section 213.111, relating**  
12 **to the presentation of evidence to a jury, in interpreting and applying**  
13 **this chapter in employment cases, courts shall rely heavily upon**  
14 **judicial interpretations of Title VII of the Civil Rights Act of 1964, (42**  
15 **U.S.C. Section 2000e, et seq.) as amended, the Age Discrimination in**  
16 **Employment Act of 1967, (29 U.S.C. Section 621, et seq.) as amended,**  
17 **and the Americans With Disabilities Act, (42 U.S.C. Section 12101, et**  
18 **seq.) as amended.**

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

23 **4. Rule 74.04, Missouri rules of civil procedure, is an integral**  
24 **part of the rules as a whole and can be a tool of great utility in**

25 removing factually insubstantial cases under this chapter from crowded  
26 dockets. If an employer in a case under this chapter files a rule 74.04  
27 motion, there are two frameworks for analysis that should be  
28 considered highly persuasive:

29 (1) Plaintiff may submit direct evidence of discrimination, in  
30 which case the analysis of *Price Waterhouse v. Hopkins*, 490 U.S. 228,  
31 258 (1989) and its progeny including the 1991 Amendments to Title VII  
32 of the Civil Rights Act, are highly persuasive;

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

37 5. The general assembly intends expressly to abrogate by this  
38 statute the cases of *Daugherty v. City of Maryland Heights*, 231 S.W.3d  
39 814(Mo. banc 2007), *Korando v. Mallinckrodt, Inc.*, 239 S.W.3d 647 (Mo.  
40 App. E.D. 2007), *Lomax v. Daimler Chrysler Corp.*, 243 S.W.3d 474 (Mo.  
41 App. E.D. 2008), and their progeny, as they relate to the contributing  
42 factor standard and abandonment of the burden shifting framework  
43 established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 800-01  
44 (1973) and the mixed motive framework established in *Price*  
45 *Waterhouse v. Hopkins*, 490 U.S. 228, 258 (1989). The general assembly  
46 also intends to abrogate MAI 31.24, MAI 31.25, MAI 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. If such trial occurs in the circuit courts of the**  
36 **state of Missouri, the Missouri common law relating to the presentation**  
37 **of evidence to a jury shall apply at trial, whether before a judge or**  
38 **jury.**

39       4. **The sum of the amount of actual damages, including damages**  
40 **for future pecuniary losses, emotional pain, suffering, inconvenience,**  
41 **mental anguish, loss of enjoyment of life, and other nonpecuniary**  
42 **losses, and punitive damages awarded under this section shall not**  
43 **exceed for each complaining party:**

44       (1) **Actual back pay, interest on back pay, other equitable relief,**  
45 **and other damages up to the limits in subdivision (2) of this subsection;**  
46 **and**

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

50       (b) **In the case of a respondent who has more than one hundred**

51 and fewer than two hundred one employees in each of twenty or more  
52 calendar weeks in the current or preceding calendar year, one hundred  
53 thousand dollars;

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

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

61 5. The limits set forth in subsection 4 of this section shall  
62 increase or decrease in the same amounts as any corresponding limits  
63 are increased or decreased in section 42 U.S.C. 1981a(b)(3).

64 6. Subsection 4 of this section shall not apply to actions filed for  
65 violations of sections 213.040, 213.045, 213.050, and 213.070, to the extent  
66 that the alleged violation of section 213.070 relates to or involves a  
67 violation of sections 213.040, 213.045, and 213.050, or subsection 3 of  
68 section 213.070 as it relates to housing.

69 7. In any employment-related civil action brought under this  
70 chapter, the plaintiff shall bear the burden of proving that the  
71 protected criterion was a motivating factor in the alleged unlawful  
72 decision or action.

73 8. Notwithstanding subsection 4 of this section, punitive damages  
74 shall not be awarded against the state of Missouri or any of its political  
75 subdivisions.

Section 1. 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) "Proper authorities", a governmental or law enforcement  
7 agency, or an officer or the employee's human resources representative  
8 employed by the employer;

9 (3) "Protected person", a person who has reported to the proper  
10 authorities an unlawful act of the employer or its agent or who reports  
11 to an employer serious misconduct of the employer or its agent that  
12 violates a clear mandate of public policy as articulated in a



13 constitutional provision, statute, regulation promulgated under statute,  
14 or rule created by a governmental body, or a person who has refused  
15 to carry out a directive issued by an employer or its agent that if  
16 completed would be a violation of the law. Additionally, a person who  
17 engages in conduct otherwise protected by statute or regulation is a  
18 protected person.

19 3. This section is intended to codify the existing common law  
20 exceptions to the at-will employment doctrine, and to limit their future  
21 expansion by the courts. This section shall provide the exclusive  
22 remedy for any and all unlawful employment practices articulated  
23 herein and hereby abrogates any common law causes of action to the  
24 contrary.

25 4. It shall be an unlawful employment practice for an employer,  
26 as defined in section 213.010, to discharge or retaliate against an  
27 individual defined as a protected person in this section, because of that  
28 person's status as a protected person.

29 5. A protected person aggrieved by a violation of this section  
30 shall have a private right of action for damages for violations of this  
31 section. The court may grant as relief, as it deems appropriate, any  
32 permanent or temporary injunction, temporary restraining order, or  
33 other order, and may award to the plaintiff actual and punitive  
34 damages.

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

37 7. The sum of the amount of actual damages, including damages  
38 for future pecuniary losses, emotional pain, suffering, inconvenience,  
39 mental anguish, loss of enjoyment of life, and other nonpecuniary  
40 losses, and punitive damages awarded under this section shall not  
41 exceed for each complaining party:

42 (1) Actual back pay, interest on back pay, other equitable relief,  
43 and other damages up to the limits in subdivision (2) of this subsection;  
44 and

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

49 (b) In the case of a respondent who has more than one hundred

50 and fewer than two hundred one employees in each of twenty or more  
51 calendar weeks in the current or preceding calendar year, one hundred  
52 thousand dollars;

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

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

60 8. The limits set forth in subsection 7 of this section shall  
61 increase or decrease in the same amounts as any corresponding limits  
62 are increased or decreased in section 42 U.S.C. 1981a(b)(3).

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President of the Senate

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Speaker of the House of Representatives

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Governor

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