

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 592
96TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, January 12, 2012, with recommendation that the Senate Committee Substitute do pass.

4933S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 213.010, 213.101, and 213.111, RSMo, and to enact in lieu thereof four 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Section A. Sections 213.010, 213.101, and 213.111, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 213.010,
3 213.101, 213.111, and 213.200, 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;

17 [(4)] (5) "Disability", a physical or mental impairment which

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

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 the twenty or more calendar weeks in a 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 **an individual employed by an employer, or a bona fide private**
48 **membership club, other than a labor organization, which is exempt**
49 **from taxation under 26 U.S.C. Section 501(c), or** corporations and
50 associations owned and operated by religious or sectarian groups;

51 [(8)] (9) "Employment agency" includes any person or agency, public or
52 private, regularly undertaking with or without compensation to procure
53 employees for an employer or to procure for employees opportunities to work for

54 an employer and includes any person acting in the interest of such a person;

55 [(9)] (10) "Executive director", the executive director of the Missouri
56 commission on human rights;

57 [(10)] (11) "Familial status", one or more individuals who have not
58 attained the age of eighteen years being domiciled with:

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

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

65 [(11)] (12) "Human rights fund", a fund established to receive civil
66 penalties as required by federal regulations and as set forth by subdivision (2) of
67 subsection 11 of section 213.075, and which will be disbursed to offset additional
68 expenses related to compliance with the Department of Housing and Urban
69 Development regulations;

70 [(12)] (13) "Labor organization" includes any organization which exists
71 for the purpose, in whole or in part, of collective bargaining or of dealing with
72 employers concerning grievances, terms or conditions of employment, or for other
73 mutual aid or protection in relation to employment;

74 [(13)] (14) "Local commissions", any commission or agency established
75 prior to August 13, 1986, by an ordinance or order adopted by the governing body
76 of any city, constitutional charter city, town, village, or county;

77 [(14)] (15) "Person" includes one or more individuals, corporations,
78 partnerships, associations, organizations, labor organizations, legal
79 representatives, mutual companies, joint stock companies, trusts, trustees,
80 trustees in bankruptcy, receivers, fiduciaries, or other organized groups of
81 persons;

82 [(15)] (16) "Places of public accommodation", all places or businesses
83 offering or holding out to the general public, goods, services, privileges, facilities,
84 advantages or accommodations for the peace, comfort, health, welfare and safety
85 of the general public or such public places providing food, shelter, recreation and
86 amusement, including, but not limited to:

87 (a) Any inn, hotel, motel, or other establishment which provides lodging
88 to transient guests, other than an establishment located within a building which
89 contains not more than five rooms for rent or hire and which is actually occupied

90 by the proprietor of such establishment as his residence;

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

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

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

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

102 (f) Any establishment which is physically located within the premises of
103 any establishment otherwise covered by this section or within the premises of
104 which is physically located any such covered establishment, and which holds itself
105 out as serving patrons of such covered establishment;

106 [(16)] (17) "Rent" includes to lease, to sublease, to let and otherwise to
107 grant for consideration the right to occupy premises not owned by the occupant;

108 [(17)] (18) "Respondent", a person who is alleged to have engaged in a
109 prohibited discriminatory practice in a complaint filed with the commission;

110 [(18)] (19) "Unlawful discriminatory practice", any act that is unlawful
111 under this chapter.

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.

7 **2. It is a duty of the judicial branch to reduce the cost of**
8 **litigation and end disputes timely. If a party to litigation files a motion**
9 **for summary judgment pursuant to the Missouri rules of civil procedure**
10 **in a case pursuant to this chapter, then the court shall analyze the**
11 **merits of the motion for summary judgment.**

12 **(1) When considering a motion for summary judgment where the**
13 **plaintiff submits direct evidence of discrimination, the burden shifts to**
14 **the employer to provide evidence that the same employment decision**

15 **would have occurred regardless of the direct evidence presented by the**
16 **plaintiff. If the court determines that the employer would have taken**
17 **the same action regardless of the evidence submitted by the plaintiff,**
18 **then the court shall rule in favor of the employer.**

19 **(2) When considering a motion for summary judgment, the**
20 **burden shall be on the plaintiff to establish an allegation of**
21 **discrimination where the plaintiff does not have direct evidence of**
22 **discrimination. The employer may then produce evidence of non-**
23 **discriminatory reasons for the employment decision. If the employer**
24 **produces evidence of non-discriminatory reasons for the employment**
25 **decision, then the plaintiff shall present facts to show the employer's**
26 **explanation is a pretext for discrimination.**

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, either
19 before a circuit or associate circuit judge. Upon issuance of this notice, the
20 commission shall terminate all proceedings relating to the complaint. No person
21 may file or reinstate a complaint with the commission after the issuance of a
22 notice under this section relating to the same practice or act. Any action brought
23 in court under this section shall be filed within ninety days from the date of the
24 commission's notification letter to the individual but no later than two years after

25 the alleged cause occurred or its reasonable discovery by the alleged injured
26 party.

27 **2. Any party to any action initiated under this section may**
28 **demand a trial by jury. If such trial occurs in the circuit courts of the**
29 **state of Missouri, the Missouri common law relating to the presentation**
30 **of evidence to a jury shall apply at trial, whether before a judge or**
31 **jury.**

32 **3. The court may grant as relief, as it deems appropriate, any permanent**
33 **or temporary injunction, temporary restraining order, or other order[, and may**
34 **award to the plaintiff actual and punitive damages, and may award court costs**
35 **and reasonable attorney fees to the prevailing party, other than a state agency**
36 **or commission or a local commission; except that, a prevailing respondent may be**
37 **awarded court costs and reasonable attorney fees only upon a showing that the**
38 **case is without foundation].**

39 **4. The court may award to the plaintiff actual and punitive**
40 **damages and may award court costs and reasonable attorney fees to the**
41 **prevailing party, other than a state agency or commission or a local**
42 **commission; except that, a prevailing respondent may be awarded court**
43 **costs and reasonable attorney fees upon a showing that a case is**
44 **without foundation. An award of damages may include all future**
45 **pecuniary losses, emotional pain, suffering, inconvenience, mental**
46 **anguish, loss of enjoyment of life, and other nonpecuniary losses, and**
47 **punitive damages awarded under this section.**

48 **5. The total amount of damages awarded by the court for each**
49 **plaintiff shall not exceed:**

50 **(1) Actual back pay, interest on back pay, other equitable relief,**
51 **court costs and reasonable attorney fees if granted by the court, and**
52 **other damages up to the limits in subdivision (2) of this subsection; and**

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

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

60 **(c) In the case of a respondent who has more than two hundred**
61 **and fewer than five hundred employees in each of twenty or more**

62 calendar weeks in the current or preceding calendar year, two hundred
63 thousand dollars;

64 (d) In the case of a respondent who has more than five hundred
65 employees in each of twenty or more calendar weeks in the current or
66 preceding calendar year, three hundred thousand dollars;

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

70 7. Notwithstanding subsection 5 of this section, punitive damages
71 shall not be awarded against the state of Missouri or any other of its
72 political subdivisions; except in claims for discriminatory housing
73 practices as authorized in section 213.040.

213.200. 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", a person engaged in an industry affecting
7 commerce who has six or more employees for each working day in each
8 of twenty or more calendar weeks in a current or preceding calendar
9 year, and shall include the state, or any political or civil subdivision
10 thereof but does not include an individual employed by an employer,
11 or a bona fide private membership club, other than a labor
12 organization, which is exempt from taxation under 26 U.S.C. Section
13 501(c), or corporations and associations owned and operated by
14 religious or sectarian groups;

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

18 (4) "Protected person", a person who has reported to the proper
19 authorities an unlawful act of the employer or its agent or serious
20 misconduct of the employer or its agent that violates a clear mandate
21 of public policy as articulated in a constitutional provision, statute,
22 regulation promulgated under statute, or rule created by a
23 governmental body; or a person who has refused to carry out a
24 directive issued by an employer or its agent that if completed would be
25 a violation of the law. Additionally, a person who engages in conduct

26 otherwise protected by statute or regulation is a protected person.

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

33 4. It shall be an unlawful employment practice for an employer,
34 as defined in subdivision (2) of subsection 2 of this section, to discharge
35 or retaliate against an individual defined as a protected person in this
36 section, because of that person's status as a protected person.

37 5. A protected person aggrieved by a violation of this section
38 shall have a private right of action for damages for violations of this
39 section which may be filed in a circuit court of competent
40 jurisdiction. The Missouri human rights commission shall not have
41 jurisdiction to review or adjudicate claims brought pursuant to this
42 section. The court may grant as relief, as it deems appropriate, any
43 permanent or temporary injunction, temporary restraining order, or
44 other order, and may award to the plaintiff actual and punitive
45 damages.

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

48 7. The court may award to the plaintiff actual and punitive
49 damages. An award of damages shall include all future pecuniary
50 losses, emotional pain, suffering, inconvenience, mental anguish, loss
51 of enjoyment of life, and other nonpecuniary losses, and punitive
52 damages awarded under this section.

53 8. The total amount of damages awarded by the court for each
54 complainant shall not exceed:

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

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

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

63 and fewer than two hundred one employees in each of twenty or more
64 calendar weeks in the current or preceding calendar year, one hundred
65 thousand dollars;

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

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

73 9. The limits set forth in subsection 8 of this section shall
74 increase or decrease in the same amounts as any corresponding limits
75 are increased or decreased in Section 42 U.S.C. 1981a(b)(3).

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