

FIRST REGULAR SESSION

# SENATE BILL NO. 353

97TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR LAGER.

Read 1st time February 20, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1567S.01I

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## AN ACT

To repeal sections 213.010 and 213.111, RSMo, and to enact in lieu thereof three 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Section A. Sections 213.010 and 213.111, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 213.010, 213.111,  
3 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 unless the decision or**  
13 **action has an adverse impact on the protected criterion. In which case,**  
14 **courts shall rely heavily upon judicial interpretations of Title VII of the**  
15 **Civil Rights Act of 1964, 42 U.S.C. Section 2000e, et. seq., as amended;**  
16 **the Age Discrimination Employment Act of 1967, 29 U.S.C. Section 621,**  
17 **et. seq., as amended; and the Americans With Disabilities Act, 42 U.S.C.**  
18 **Section 12101, et. seq., as amended;**

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

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

20           [(3)] (4) "Complainant", a person who has filed a complaint with the  
21 commission alleging that another person has engaged in a prohibited  
22 discriminatory practice;

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

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

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

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

40           [(5)] (6) "Discrimination", any unfair treatment based on race, color,  
41 religion, national origin, ancestry, sex, age as it relates to employment, disability,  
42 or familial status as it relates to housing;

43           [(6)] (7) "Dwelling", any building, structure or portion thereof which is  
44 occupied as, or designed or intended for occupancy as, a residence by one or more  
45 families, and any vacant land which is offered for sale or lease for the  
46 construction or location thereon of any such building, structure or portion thereof;

47           [(7)] (8) "Employer" [includes], **a person engaged in an industry**  
48 **affecting commerce who has six or more employees for each working**  
49 **day in each of the twenty or more calendar weeks in a current or**  
50 **preceding calendar year, and shall include** the state, or any political or civil  
51 subdivision thereof[, or any person employing six or more persons within the  
52 state, and any person directly acting in the interest of an employer], but does not  
53 include **an individual employed by an employer, or a bona fide private**  
54 **membership club, other than a labor organization, which is exempt**  
55 **from taxation under 26 U.S.C. Section 501(c), or corporations and**  
56 **associations owned and 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.

213.111. 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 one employees in each of twenty or more  
55 calendar weeks in the current or preceding calendar year, fifty  
56 thousand dollars.

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

61 (c) In the case of a respondent who has more than two hundred  
62 and fewer than five hundred one employees in each of twenty or more  
63 calendar weeks in the current or preceding calendar year, two hundred  
64 thousand dollars.

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

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

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

75 8. Subsections 4, 5, and 6 of this section shall not apply when  
76 there is an alleged violation of section 213.040, 213.045, or  
77 213.050. Subsections 4, 5, and 6 of this section shall apply when there  
78 is an alleged violation of section 213.070 against an employer, but not  
79 otherwise.

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 42 U.S.C. Section 1981a(b)(3).

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