

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 43
99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROMINE.

Offered February 28, 2017.

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ADRIANE D. CROUSE, Secretary.

0524S.07P

AN ACT

To repeal sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.075, 213.101, and 213.111, RSMo, and to enact in lieu thereof ten 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Section A. Sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.075, 213.101, and 213.111, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.075, 213.101, 213.111, and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 the adverse decision

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

12 **or action, the protected criterion was the 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
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, taken because of** race, color, religion, national origin,
36 ancestry, sex, **or** age as it relates to employment, disability, or familial status as
37 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] or operated by religious or
49 sectarian [groups] organizations. "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; or

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);

61 [(8)] (9) "Employment agency" includes any person or agency, public or
62 private, regularly undertaking with or without compensation to procure
63 employees for an employer or to procure for employees opportunities to work for
64 an employer [and includes any person acting in the interest of such a person];

65 [(9)] (10) "Executive director", the executive director of the Missouri
66 commission on human rights;

67 [(10)] (11) "Familial status", one or more individuals who have not
68 attained the age of eighteen years being domiciled with:

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

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

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

80 [(12)] (13) "Labor organization" includes any organization which exists
81 for the purpose, in whole or in part, of collective bargaining or of dealing with
82 employers concerning grievances, terms or conditions of employment, or for other
83 mutual aid or protection in relation to employment;

84 [(13)] **(14)** "Local commissions", any commission or agency established
85 prior to August 13, 1986, by an ordinance or order adopted by the governing body
86 of any city, constitutional charter city, town, village, or county;

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

92 [(15)] **(16)** "Places of public accommodation", all places or businesses
93 offering or holding out to the general public, goods, services, privileges, facilities,
94 advantages or accommodations for the peace, comfort, health, welfare and safety
95 of the general public or such public places providing food, shelter, recreation and
96 amusement, including, but not limited to:

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

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

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

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

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

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

116 [(16)] **(17)** "Rent" includes to lease, to sublease, to let and otherwise to
117 grant for consideration the right to occupy premises not owned by the occupant;

118 [(17)] **(18)** "Respondent", a person who is alleged to have engaged in a
119 prohibited discriminatory practice in a complaint filed with the commission;

120 **(19) "The motivating factor", the employee's protected**
121 **classification actually played a role in the adverse action or decision**
122 **and had a determinative influence on the adverse decision or action;**

123 [(18)] **(20) "Unlawful discriminatory practice", any act that is unlawful**
124 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 **because of** race, color, religion, national origin, ancestry, sex, disability, or
14 familial status, or an intention to make any such preference, limitation, or
15 discrimination;

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

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

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

25 (a) That buyer or renter;

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

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

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

32 (a) That person;

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

35 (c) Any person associated with that person.

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

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

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

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

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

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

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

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

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

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

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

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

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

68 or more elevators; and

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

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

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

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

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

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

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

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

103 8. Nothing in this section and sections 213.045 and 213.050 limits the

104 applicability of any reasonable local or state restriction regarding the maximum
105 number of occupants permitted to occupy a dwelling, nor does any provision in
106 this section and sections 213.045 and 213.050 regarding familial status apply
107 with respect to housing for older persons.

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

110 (1) Provided under any state or federal program that the commission
111 determines is specifically designed and operated to assist elderly persons, as
112 defined in the state or federal program;

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

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

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

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

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

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

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

134 (2) Unoccupied units, provided that such units are reserved for occupancy
135 by persons who meet the age requirements of subdivision (2) or (3) of subsection
136 9 of this section.

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

140 substance, as defined by section 195.010.

141 12. Nothing in this chapter shall prohibit a religious organization,
142 association, or society, or any nonprofit institution or organization operated,
143 supervised or controlled by or in conjunction with a religious organization,
144 association, or society, from limiting the sale, rental or occupancy of dwellings
145 which it owns or operates for other than a commercial purpose to persons of the
146 same religion, or from giving preference to such persons, unless membership in
147 such religion is restricted on account of race, color, or national origin. Nor shall
148 anything in this chapter prohibit a private club not in fact open to the public,
149 which as an incident to its primary purpose or purposes provides lodging which
150 it owns or operates for other than a commercial purpose, from limiting the rental
151 or occupancy of such lodging to its members or from giving preference to its
152 members.

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

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

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

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

167 (2) Rooms or units in dwellings containing living quarters occupied or
168 intended to be occupied by no more than four families living independently of
169 each other, if the owner actually maintains and occupies one of such living
170 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] **because** of race, color,
5 religion, 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 **for an**
2 **employer, employment agency, labor organization, or place of public**
3 **accommodation:**

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

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

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

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

16 **2. This chapter, in addition to chapter 285 and chapter 287, shall**
17 **provide the exclusive remedy for any and all claims for injury or**
18 **damages arising out of an employment relationship.**

213.075. 1. As a jurisdictional condition precedent to filing a civil

2 **action under this chapter**, any person claiming to be aggrieved by an unlawful
3 discriminatory practice [may] **shall** make, sign and file with the commission a
4 verified complaint in writing, within one hundred eighty days of the alleged act
5 of discrimination, which shall state the name and address of the [person]
6 **employer, employment agency, labor organization, or place of public**
7 **accommodation** alleged to have committed the unlawful discriminatory practice
8 and which shall set forth the particulars thereof and such other information as
9 may be required by the commission. The complainant's agent, attorney or the
10 attorney general may, in like manner, make, sign and file such complaint. **The**
11 **failure to timely file a complaint with the commission shall deprive the**
12 **commission of jurisdiction to investigate the complaint. The**
13 **commission shall make a determination as to its jurisdiction with**
14 **respect to all complaints. Notwithstanding any other provision of this**
15 **chapter to the contrary, if a complaint is not filed with the commission**
16 **within one hundred eighty days of the alleged act of discrimination, the**
17 **commission shall lack jurisdiction to take any action on such a**
18 **complaint other than to dismiss the complaint for lack of**
19 **jurisdiction. The failure to timely file a complaint with the commission**
20 **may be raised as a complete defense by a respondent or defendant at**
21 **any time, either during the administrative proceedings before the**
22 **commission, or in subsequent litigation, regardless of whether the**
23 **commission has issued the person claiming to be aggrieved a letter**
24 **indicating his or her right to bring a civil action and regardless of**
25 **whether the employer asserted the defense before the commission.**

26 2. Any complaint which is filed with the federal Equal Employment
27 Opportunity Commission or other federal agencies with which the commission has
28 a work-sharing or deferral agreement, or with a local commission which has been
29 certified as substantially equivalent by the commission, shall be deemed filed
30 with the commission on the date that such complaint is received by such federal
31 agency or local commission. A copy of all complaints filed with a local commission
32 with the authority to enforce the provisions of this chapter is to be forwarded to
33 the commission within seven days of the filing thereof with such local
34 commission. If a local commission has jurisdiction to hear a complaint filed with
35 the commission, such complaint shall be deemed to have been filed with the local
36 commission on the date on which such complaint was filed with the
37 commission. The commission shall, within seven days of the receipt of a

38 complaint which a local commission has jurisdiction to hear, forward a copy
39 thereof to such local commission.

40 3. After the filing of any complaint, the executive director shall, with the
41 assistance of the commission's staff, promptly investigate the complaint, and if
42 the director determines after the investigation that probable cause exists for
43 crediting the allegations of the complaint, the executive director shall
44 immediately endeavor to eliminate the unlawful discriminatory practice
45 complained of by conference, conciliation and persuasion, and shall report the
46 results to the commission. The investigation, determination of probable cause
47 and conciliation shall be conducted according to such rules, regulations and
48 guidelines as the commission shall prescribe.

49 4. A person who is not named as a respondent in a complaint, but who is
50 identified as a respondent in the course of investigation, may be joined as an
51 additional or substitute respondent upon written notice, pursuant to such rules,
52 regulations, and guidelines as the commission shall prescribe. Such notice, in
53 addition to complying with the requirements of such rules, regulations, and
54 guidelines, shall also state the reason why the person to whom the notice is
55 addressed has been joined as a party.

56 5. In case of failure to eliminate such discriminatory practice as found in
57 the investigation, if in the judgment of the chairperson of the commission
58 circumstances so warrant, there shall be issued and served in the name of the
59 commission, a written notice, together with a copy of the complaint, as it may
60 have been amended, requiring the person named in the complaint, hereinafter
61 referred to as "respondent", to answer the charges of the complaint at a hearing,
62 at a time and place to be specified in the notice, before a panel of at least three
63 members of the commission sitting as the commission or before a hearing
64 examiner licensed to practice law in this state who shall be appointed by the
65 executive director and approved by the commission. The place of the hearing
66 shall be in the office of the commission or such other place designated by it,
67 except that if the respondent so requests, in writing, the hearing shall be held in
68 the county of such person's residence or business location at the time of the
69 alleged unlawful discriminatory practice. A copy of the notice shall also be served
70 on the complainants.

71 6. In all cases where a written notice of hearing has been issued and a
72 party has not elected the option to proceed in circuit court as set forth in section
73 213.076, the procedures set forth for a hearing shall apply.

74 7. The commission shall be a party to the action and shall be represented
75 before the panel or the hearing examiner by the office of the attorney general or,
76 when so delegated by the attorney general, a staff attorney of the
77 commission. Neither the hearing examiner nor any member of the panel shall
78 have participated in the investigation of the complaint. Evidence concerning
79 endeavors at conciliation shall be excluded.

80 8. The respondent may file a written verified answer to the complaint and
81 appear at the hearing in person or otherwise with or without counsel, and submit
82 testimony. At the discretion of the hearing examiner or the panel, the
83 complainant may be allowed to intervene, thereby becoming a party to the action
84 with the right to present testimony in person or by counsel, provided the
85 complainant at all times shall be treated as a party for the purpose of discovery
86 and the taking of depositions. The commission or complainant intervenor shall
87 have the power to reasonably and fairly amend any complaint, and the
88 respondent shall have like power to amend any answer. The testimony taken at
89 the hearing shall be under oath and be transcribed.

90 9. In any contested case before the commission, any party may take and
91 use written interrogatories, requests for production of documents and other
92 materials, and requests for admissions, and all other forms of discovery
93 authorized by rules of civil procedure in the same manner, upon, and under the
94 same conditions, and upon the same notice, as is or may hereafter be provided for
95 with respect to the taking and using of written interrogatories, requests for
96 production of documents and other materials, and requests for admissions, and
97 all other forms of discovery authorized by rules of civil procedure in civil actions
98 in the circuit court. The panel or hearing examiner shall have the authority to
99 impose sanctions in the same manner as set forth in the rules of civil procedure.

100 10. The hearing shall be conducted in the manner provided by chapter
101 536.

102 11. When the case is heard by a panel of the commission, the chairperson
103 of the commission shall select the hearing panel and the presiding officer. The
104 presiding officer shall have full authority to call and examine witnesses, admit
105 or exclude evidence and rule upon all motions and objections. The panel shall
106 state its findings of fact and conclusions of law, and if, upon all the evidence at
107 the hearing, the panel finds:

108 (1) That a respondent has engaged in an unlawful discriminatory practice
109 as defined in this chapter, the commission shall issue and cause to be served on

110 the respondent an order requiring the respondent to cease and desist from the
111 unlawful discriminatory practice. The order shall require the respondent to take
112 such affirmative action, as in the panel's judgment will implement the purposes
113 of this chapter, including, but not limited to, payment of back pay; hiring;
114 reinstatement or upgrading; restoration to membership in any respondent labor
115 organization; the extension of full, equal and unsegregated housing; the extension
116 of full, equal and unsegregated public accommodations; extension of a commercial
117 real estate loan or other financial assistance; extension or restoration of
118 membership or participation in any multiple listing service or other real estate
119 service organization or facility; payment of actual damages; and the submission
120 of a report of the manner of compliance;

121 (2) That a respondent has engaged or is about to engage in a violation of
122 section 213.040, 213.045, 213.050, or 213.070, to the extent that the alleged
123 violation of section 213.070 relates to or involves a violation of one or more of
124 such other sections or relates to or involves the encouraging, aiding, or abetting
125 of a violation of such other sections, the commission may, in addition to the relief
126 provided in subdivision (1) of this subsection, assess a civil penalty against the
127 respondent, for purposes of vindicating the public interest:

128 (a) In an amount not exceeding two thousand dollars if the respondent has
129 not been adjudged to have violated one or more of the sections enumerated in
130 subdivision (2) of this subsection within five years of the date of the filing of the
131 complaint;

132 (b) In an amount not exceeding five thousand dollars if the respondent
133 has been adjudged to have committed one violation of the sections enumerated in
134 subdivision (2) of this subsection within five years of the date on which the
135 complaint is filed;

136 (c) In an amount not exceeding ten thousand dollars if the respondent has
137 been adjudged to have committed two or more prior violations of the sections
138 enumerated in subdivision (2) of this subsection within seven years of the date
139 on which the complaint is filed.

140 All civil penalties set forth in this subsection shall be paid to the human rights
141 fund.

142 12. If, upon all the evidence, the panel finds that a respondent has not
143 engaged in any unlawful discriminatory practice, the panel shall state its findings
144 of fact and conclusions of law and shall issue and cause to be served on the
145 complainant and respondent an order dismissing the complaint.

146 13. When the case is heard by a hearing examiner, the examiner shall
147 have all powers described in subdivision (8) of section 213.030 and subsection 11
148 of this section, for the purpose of the hearing. The hearing examiner shall make
149 findings of fact and conclusions of law and shall recommend to the commission
150 an order granting such relief as provided in subsection 11 of this section or
151 dismissing the complaint as to the respondent as provided in subsection 12 of this
152 section, in accordance with such findings.

153 14. A panel of at least three members of the commission, sitting as the
154 commission, shall review the record, findings and recommended order of the
155 hearing examiner. The panel shall thereafter accept or amend the recommended
156 order which shall become the order of the commission. All orders shall be served
157 on the complainant and respondent, and copies shall be delivered to the attorney
158 general and such other public officers as the commission deems proper.

159 15. No order of the commission issued pursuant to this section shall affect
160 any contract, sale, encumbrance or lease consummated before the issuance of such
161 order and involving a bona fide purchaser without actual notice of the charge
162 filed pursuant to this section.

163 16. Any person aggrieved by an order of the commission may appeal as
164 provided in chapter 536.

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. The general assembly hereby expressly abrogates the case of**
8 ***McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo.App. E.D. 2006),**
9 **and its progeny as it relates to the necessity and appropriateness of the**
10 **issuance of a business judgment instruction. In all civil actions**
11 **brought under this chapter, a jury shall be given an instruction**
12 **expressing the business judgment rule.**

13 **3. If an employer in a case brought under this chapter files a**
14 **motion pursuant to rule 74.04 of the Missouri rules of civil procedure,**
15 **the court shall consider the burden-shifting analysis of *McDonnell***
16 ***Douglas Corp. v. Green*, 411 U.S. 792 (1973), and its progeny to be highly**
17 **persuasive for analysis in cases not involving direct evidence of**

18 **discrimination.**

19 4. The general assembly hereby expressly abrogates by this
20 statute the cases of *Daugherty v. City of Maryland Heights*, 231 S.W.3d
21 814 (Mo. 2007) and its progeny as they relate to the contributing factor
22 standard and abandonment of the burden-shifting framework
23 established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

24 5. The general assembly hereby expressly abrogates by this
25 statute the holding in *Hurst v. Kansas City Mo. School District*, 437
26 S.W.3d 327 (Mo.App. W.D. 2014), that Missouri Approved Instruction
27 19.01 may be applied to actions brought pursuant to this chapter, and
28 the holding in *Thomas v. McKeever's Enterprises, Inc.*, 388 S.W.3d 206
29 (Mo.App. W.D. 2012), that juries shall not be instructed that plaintiffs
30 bear the burden of establishing "but for" causation in actions brought
31 pursuant to this chapter.

32 6. The general assembly hereby abrogates all Missouri approved
33 jury instructions specifically addressing civil actions brought under
34 this chapter which were in effect prior to August 28, 2017.

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. **The commission may not at any other time or for any other**
18 **reason issue a letter indicating a complainant's right to bring a civil**
19 **action.** Such an action may be brought in any circuit court in any county in

20 which the unlawful discriminatory practice is alleged to have [occurred] **been**
21 **committed**, either before a circuit or associate circuit judge. Upon issuance of
22 this notice, the commission shall terminate all proceedings relating to the
23 complaint. No person may file or reinstate a complaint with the commission after
24 the issuance of a notice under this section relating to the same practice or
25 act. Any action brought in court under this section shall be filed within ninety
26 days from the date of the commission's notification letter to the individual but no
27 later than two years after the alleged cause occurred or its reasonable discovery
28 by the alleged injured party.

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

36 **3. Any party to any action initiated under this section has a right**
37 **to a trial by jury.**

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

43 **(1) Actual back pay and interest on back pay; and**

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

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

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

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

59 5. In any employment-related civil action brought under this
60 chapter, the plaintiff shall bear the burden of proving the alleged
61 unlawful decision or action was made or taken because of his or her
62 protected classification and was the direct proximate cause of the
63 claimed damages.

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 the adverse decision
5 or action, the person's status as a protected person was the motivating
6 factor;

7 (2) "Employer", an entity that has six or more employees for each
8 working day in each of twenty or more calendar weeks in the current
9 or preceding calendar year. "Employer" shall not include the state of
10 Missouri or its agencies, instrumentalities, or political subdivisions,
11 including but not limited to any public institution of higher education,
12 a corporation wholly owned by the state of Missouri, an individual
13 employed by an employer, or corporations and associations owned or
14 operated by religious or sectarian organizations;

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

19 (4) "Protected person", an employee of an employer who has
20 reported to the proper authorities an unlawful act of his or her
21 employer; an employee of an employer who reports to his or her
22 employer serious misconduct of the employer that violates a clear
23 mandate of public policy as articulated in a constitutional provision,
24 statute, or regulation promulgated under statute; or an employee of an
25 employer who has refused to carry out a directive issued by his or her
26 employer that if completed would be a violation of the law. An
27 employee of an employer is not a "protected person" if:

28 (a) The employee is a supervisory, managerial, or executive
29 employee or an officer of his or her employer and the unlawful act or

30 serious misconduct reported concerns matters upon which the
31 employee is employed to report or provide professional opinion; or

32 (b) The proper authority or person to whom the employee makes
33 his or her report is the person whom the employee claims to have
34 committed the unlawful act or violation of a clear mandate of public
35 policy;

36 (5) "The motivating factor", the employee's protected
37 classification actually played a role in the adverse decision or action
38 and had a determinative influence on the adverse decision or action.

39 3. This section is intended to codify the existing common law
40 exceptions to the at-will employment doctrine and to limit their future
41 expansion by the courts. This section, in addition to chapter 213 and
42 chapter 287, shall provide the exclusive remedy for any and all claims
43 of unlawful employment practices.

44 4. It shall be an unlawful employment practice for an employer
45 to discharge an individual defined as a protected person in this section
46 because of that person's status as a protected person.

47 5. A protected person aggrieved by a violation of this section
48 shall have a private right of action for actual damages for violations of
49 this section but not for punitive damages. However, if a private right
50 of action for damages exists under another statutory or regulatory
51 scheme, whether under state or federal law, no private right of action
52 shall exist under this statute.

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

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

59 (1) Back pay;

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

62 (3) Additionally, if a protected person proves, by clear and
63 convincing evidence, that the conduct of the employer was outrageous
64 because of the employer's evil motive or reckless indifference to the
65 rights of others, then, such person may receive double the amount
66 awarded under subdivisions (1) and (2) of this subsection, as liquidated

67 **damages. In applying this subdivision, the provisions of section 510.263**
68 **shall be applied as though liquidated damages were punitive damages**
69 **and as though the amounts referenced in subdivisions (1) and (2) of this**
70 **subsection were compensatory damages.**

71 **8. The court, in addition to the damages set forth in subsection**
72 **7 of this section, may award the prevailing party court costs and**
73 **reasonable attorney fees; except that a prevailing respondent may be**
74 **awarded reasonable attorney fees only upon a showing that the case**
75 **was without foundation.**

Section B. If any provision of this act or the application thereof to anyone
2 or to any circumstance is held invalid, the remainder of those sections and the
3 application of such provisions to others or other circumstances shall not be
4 affected thereby.

✓

Bill

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