

SECOND REGULAR SESSION

SENATE BILL NO. 585

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4454S.02I

AN ACT

To repeal sections 213.010, 213.070, 213.075, 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, 213.070, 213.075, and 213.111, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 213.010, 213.070, 213.075, and 213.111, 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 the adverse decision or
12 action, the protected criterion was the motivating factor;

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

14 (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 (5) "Disability", a physical or mental impairment which substantially
18 limits one or more of a person's major life activities, being regarded as having

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

19 such an impairment, or a record of having such an impairment, which with or
20 without reasonable accommodation does not interfere with performing the job,
21 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 (6) "Discrimination", conduct proscribed herein, taken because of race,
35 color, religion, national origin, ancestry, sex, or age as it relates to employment,
36 disability, or familial status as it relates to housing;

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

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

48 (a) The United States;

49 (b) A corporation wholly owned by the government of the United States;

50 (c) An individual employed by an employer, **unless said individual was**
51 **directly involved in the alleged unlawful discriminatory practice;**

52 (d) An Indian tribe;

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

55 [2101] **2102**; or

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

58 (9) "Employment agency" includes any person or agency, public or private,
59 regularly undertaking with or without compensation to procure employees for an
60 employer or to procure for employees opportunities to work for an employer;

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

63 (11) "Familial status", one or more individuals who have not attained the
64 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 because of familial status shall apply to any person who
69 is pregnant or is in the process of securing legal custody of any individual who
70 has not attained the age of eighteen years;

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

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

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

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

87 (16) "Places of public accommodation", all places or businesses offering or
88 holding out to the general public, goods, services, privileges, facilities, advantages
89 or accommodations for the peace, comfort, health, welfare and safety of the
90 general public or such public places providing food, shelter, recreation and

91 amusement, including, but not limited to:

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

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

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

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

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

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

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

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

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

118 (20) "Unlawful discriminatory practice", any act that is unlawful under
119 this chapter.

213.070. 1. It shall be an unlawful discriminatory practice for an
2 employer, employment agency, labor organization, **a person or other entity**
3 **accused in a complaint of an unfair housing practice**, or place of public
4 accommodation:

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

7 (2) To retaliate or discriminate in any manner against any other person

8 because such person has opposed any practice prohibited by this chapter or
9 because such person has filed a complaint, testified, assisted, or participated in
10 any manner in any investigation, proceeding or hearing conducted pursuant to
11 this chapter;

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

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

17 2. This chapter, in addition to [chapter 285 and chapter] **chapters 285**
18 **and 287**, shall provide the exclusive remedy for any and all [claims for injury or
19 damages arising out of an employment relationship] **unlawful employment**
20 **practices articulated herein.**

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

24 employer asserted the defense before the commission.

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

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

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

55 5. In case of failure to eliminate such discriminatory practice as found in
56 the investigation, if in the judgment of the chairperson of the commission
57 circumstances so warrant, there shall be issued and served in the name of the
58 commission, a written notice, together with a copy of the complaint, as it may
59 have been amended, requiring the person named in the complaint, hereinafter

60 referred to as "respondent", to answer the charges of the complaint at a hearing,
61 at a time and place to be specified in the notice, before a panel of at least three
62 members of the commission sitting as the commission or before a hearing
63 examiner licensed to practice law in this state who shall be appointed by the
64 executive director and approved by the commission. The place of the hearing
65 shall be in the office of the commission or such other place designated by it,
66 except that if the respondent so requests, in writing, the hearing shall be held in
67 the county of such person's residence or business location at the time of the
68 alleged unlawful discriminatory practice. A copy of the notice shall also be served
69 on the complainants.

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

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

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

89 9. In any contested case before the commission, any party may take and
90 use written interrogatories, requests for production of documents and other
91 materials, and requests for admissions, and all other forms of discovery
92 authorized by rules of civil procedure in the same manner, upon, and under the
93 same conditions, and upon the same notice, as is or may hereafter be provided for
94 with respect to the taking and using of written interrogatories, requests for
95 production of documents and other materials, and requests for admissions, and

96 all other forms of discovery authorized by rules of civil procedure in civil actions
97 in the circuit court. The panel or hearing examiner shall have the authority to
98 impose sanctions in the same manner as set forth in the rules of civil procedure.

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

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

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

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

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

131 (b) In an amount not exceeding five thousand dollars if the respondent

132 has been adjudged to have committed one violation of the sections enumerated in
133 subdivision (2) of this subsection within five years of the date on which the
134 complaint is filed;

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

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

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

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

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

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

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

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 subsection 1 of section 213.070 as it relates to employment and
6 public accommodations, the commission has not completed its administrative
7 processing and the person aggrieved so requests in writing, the commission shall
8 issue to the person claiming to be aggrieved a letter indicating his or her right
9 to bring a civil action within ninety days of such notice against the respondent
10 named in the complaint. If, after the filing of a complaint pursuant to sections
11 213.040, 213.045, 213.050 and 213.070, to the extent that the alleged violation of
12 section 213.070 relates to or involves a violation of sections 213.040, 213.045 and
13 213.050, or subdivision (3) of subsection 1 of section 213.070 as it relates to
14 housing, and the person aggrieved so requests in writing, the commission shall
15 issue to the person claiming to be aggrieved a letter indicating his or her right
16 to bring a civil action within ninety days of such notice against the respondent
17 named in the complaint. The commission may not at any other time or for any
18 other 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 been committed,
21 either before a circuit or associate circuit judge. Upon issuance of this notice, the
22 commission shall terminate all proceedings relating to the complaint. No person
23 may file or reinstate a complaint with the commission after the issuance of a
24 notice under this section relating to the same practice or act. Any action brought
25 in court under this section shall be filed within ninety days from the date of the
26 commission's notification letter to the individual but no later than two years after
27 the alleged cause occurred or its reasonable discovery by the alleged injured
28 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 reasonable attorney fees only upon a showing that the case was without
35 foundation.

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

38 4. The sum of the amount of actual damages, including damages for future
39 pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss
40 of enjoyment of life, and other nonpecuniary losses, and punitive damages

41 awarded under this section shall not exceed for each complaining party:

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

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

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

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

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

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

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

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