

SENATE AMENDMENT NO. _____

Offered by _____ Of _____

Amend SS/Senate Bill No. 94, Page 1, Section A, Line 3,

2 by inserting after all of said line the following:

3 "213.010. As used in this chapter, the following terms
4 shall mean:

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

17 (2) "Because" or "because of", as it relates to the
18 adverse decision or action, the protected criterion was the
19 motivating factor;

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

22 (4) "Complainant", a person who has filed a complaint
23 with the commission alleging that another person has engaged
24 in a prohibited discriminatory practice;

25 (5) "Disability", a physical or mental impairment
26 which substantially limits one or more of a person's major

life activities, being regarded as having such an impairment, or a record of having such an impairment, which with or without reasonable accommodation does not interfere with performing the job, utilizing the place of public accommodation, or occupying the dwelling in question. For purposes of this chapter, the term "disability" does not include current, illegal use of or addiction to a controlled substance as such term is defined by section 195.010; however, a person may be considered to have a disability if that person:

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

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

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

(6) "Discrimination", conduct proscribed herein, taken because of race, color, religion, national origin, ancestry, sex, [or] sexual orientation as it relates to employment, gender identity as it relates to employment, age as it relates to employment, disability, or familial status as it relates to housing. Discrimination includes any unfair treatment based on a person's presumed or assumed race, color, religion, national origin, ancestry, sex, sexual orientation as it relates to employment, gender identity as it relates to employment, age as it relates to employment, disability, or familial status as it relates to housing,

59 regardless of whether the presumption or assumption as to
60 such characteristic is correct;

61 (7) "Dwelling", any building, structure or portion
62 thereof which is occupied as, or designed or intended for
63 occupancy as, a residence by one or more families, and any
64 vacant land which is offered for sale or lease for the
65 construction or location thereon of any such building,
66 structure or portion thereof;

67 (8) "Employer", a person engaged in an industry
68 affecting commerce who has six or more employees for each
69 working day in each of twenty or more calendar weeks in the
70 current or preceding calendar year, and shall include the
71 state, or any political or civil subdivision thereof, or any
72 person employing six or more persons within the state but
73 does not include corporations and associations owned or
74 operated by religious or sectarian organizations.

75 "Employer" shall not include:

76 (a) The United States;

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

79 (c) An individual employed by an employer;

80 (d) An Indian tribe;

81 (e) Any department or agency of the District of
82 Columbia subject by statute to procedures of the competitive
83 service, as defined in 5 U.S.C. Section [2101] 2102; or

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

87 (9) "Employment agency" includes any person or agency,
88 public or private, regularly undertaking with or without
89 compensation to procure employees for an employer or to
90 procure for employees opportunities to work for an employer;

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

93 (11) "Familial status", one or more individuals who
94 have not attained the age of eighteen years being domiciled
95 with:

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

98 (b) The designee of such parent or other person having
99 such custody, with the written permission of such parent or
100 other person. The protections afforded against
101 discrimination because of familial status shall apply to any
102 person who is pregnant or is in the process of securing
103 legal custody of any individual who has not attained the age
104 of eighteen years;

105 (12) "Gender identity", the gender-related identity,
106 appearance, mannerisms, or other gender-related
107 characteristics of an individual, with or without regard to
108 the individual's assigned sex at birth;

109 (13) "Human rights fund", a fund established to
110 receive civil penalties as required by federal regulations
111 and as set forth by subdivision (2) of subsection 11 of
112 section 213.075, and which will be disbursed to offset
113 additional expenses related to compliance with the
114 Department of Housing and Urban Development regulations;

115 [(13)] (14) "Labor organization" includes any
116 organization which exists for the purpose, in whole or in
117 part, of collective bargaining or of dealing with employers
118 concerning grievances, terms or conditions of employment, or
119 for other mutual aid or protection in relation to employment;

120 [(14)] (15) "Local commissions", any commission or
121 agency established prior to August 13, 1986, by an ordinance
122 or order adopted by the governing body of any city,
123 constitutional charter city, town, village, or county;

124 [(15)] (16) "Person" includes one or more individuals,
125 corporations, partnerships, associations, organizations,
126 labor organizations, legal representatives, mutual
127 companies, joint stock companies, trusts, trustees, trustees
128 in bankruptcy, receivers, fiduciaries, or other organized
129 groups of persons;

130 [(16)] (17) "Places of public accommodation", all
131 places or businesses offering or holding out to the general
132 public, goods, services, privileges, facilities, advantages
133 or accommodations for the peace, comfort, health, welfare
134 and safety of the general public or such public places
135 providing food, shelter, recreation and amusement,
136 including, but not limited to:

137 (a) Any inn, hotel, motel, or other establishment
138 which provides lodging to transient guests, other than an
139 establishment located within a building which contains not
140 more than five rooms for rent or hire and which is actually
141 occupied by the proprietor of such establishment as [his]
142 the proprietor's residence;

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

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

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

154 (e) Any public facility owned, operated, or managed by
155 or on behalf of this state or any agency or subdivision

thereof, or any public corporation; and any such facility supported in whole or in part by public funds;

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

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

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

(20) "Sexual orientation", one's actual or perceived emotional or physical attraction to, or romantic or physical relationships with, members of the same gender, members of a different gender, or members of any gender; or the lack of any emotional or physical attraction to, or romantic or physical relationships with, anyone. The term "sexual orientation" includes a history of such attraction or relationship or a history of no such attraction or relationship;

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

[(20)] (22) "Unlawful discriminatory practice", any act that is unlawful under this chapter.

213.030. 1. The powers and duties of the commission shall be:

(1) To seek to eliminate and prevent discrimination because of race, color, religion, national origin, ancestry,

sex, sexual orientation as it relates to employment, gender identity as it relates to employment, age as it relates to employment, disability, or familial status as it relates to housing and to take other actions against discrimination because of race, color, religion, national origin, ancestry, sex, sexual orientation as it relates to employment, gender identity as it relates to employment, age, disability, or familial status as provided by law; and the commission is hereby given general jurisdiction and power for such purposes;

(2) To implement the purposes of this chapter first by conference, conciliation and persuasion so that persons may be guaranteed their civil rights and goodwill be fostered;

(3) To formulate policies to implement the purposes of this chapter and to make recommendations to agencies and officers of the state and political subdivisions in aid of such policies and purposes;

(4) To appoint such employees as it may deem necessary, fix their compensation within the appropriations provided and in accordance with the wage structure established for other state agencies, and prescribe their duties;

(5) To obtain upon request and utilize the services of all governmental departments and agencies to be paid from appropriations to this commission;

(6) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this chapter and the policies and practices of the commission in connection therewith;

(7) To receive, investigate, initiate, and pass upon complaints alleging discrimination in employment, housing or in places of public accommodations because of race, color, religion, national origin, ancestry, sex, sexual orientation

222 as it relates to employment, gender identity as it relates
223 to employment, age as it relates to employment, disability,
224 or familial status as it relates to housing and to require
225 the production for examination of any books, papers,
226 records, or other materials relating to any matter under
227 investigation;

228 (8) To hold hearings, subpoena witnesses, compel their
229 attendance, administer oaths, to take the testimony of any
230 person under oath, and, in connection therewith, to require
231 the production for examination of any books, papers or other
232 materials relating to any matter under investigation or in
233 question before the commission;

234 (9) To issue publications and the results of studies
235 and research which will tend to promote goodwill and
236 minimize or eliminate discrimination in housing, employment
237 or in places of public accommodation because of race, color,
238 religion, national origin, ancestry, sex, sexual orientation
239 as it relates to employment, gender identity as it relates
240 to employment, age as it relates to employment, disability,
241 or familial status as it relates to housing;

242 (10) To provide each year to the governor and to the
243 general assembly a full written report of all its activities
244 and of its recommendations;

245 (11) To adopt an official seal;

246 (12) To cooperate, act jointly, enter into cooperative
247 or work-sharing agreements with the United States Equal
248 Employment Opportunity Commission, the United States
249 Department of Housing and Urban Development, and other
250 federal agencies and local commissions or agencies to
251 achieve the purposes of this chapter;

252 (13) To accept grants, private gifts, bequests, and
253 establish funds to dispose of such moneys so long as the
254 conditions of the grant, gift, or bequest are not

inconsistent with the purposes of this chapter and are used to achieve the purposes of this chapter;

(14) To establish a human rights fund as defined in section 213.010, for the purposes of administering sections 213.040, 213.045, 213.050, 213.070, 213.075, and 213.076.

2. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of [section 536.024] chapter 536.

213.055. 1. It shall be an unlawful employment practice:

(1) For an employer, because of the race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, age or disability of any individual:

(a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to [his] such individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, age or disability;

(b) To limit, segregate, or classify [his] employees or [his] employment applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect [his] such individual's status as an employee, because of such individual's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, age or disability;

(2) For a labor organization to exclude or to expel from its membership any individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer because of race,

color, religion, national origin, sex, sexual orientation,
gender identity, ancestry, age or disability of any
individual; or to limit, segregate, or classify its
membership, or to classify or fail or refuse to refer for
employment any individual, in any way which would deprive or
tend to deprive any individual of employment opportunities,
or would limit such employment opportunities or otherwise
adversely affect [his] such individual's status as an
employee or as an applicant for employment, because of such
individual's race, color, religion, national origin, sex,
sexual orientation, gender identity, ancestry, age or
disability; or for any employer, labor organization, or
joint labor-management committee controlling apprenticeship
or other training or retraining, including on-the-job
training programs to discriminate against any individual
because of [his] such individual's race, color, religion,
national origin, sex, sexual orientation, gender identity,
ancestry, age or disability in admission to, or employment
in, any program established to provide apprenticeship or
other training;

(3) For any employer or employment agency to print or
circulate or cause to be printed or circulated any
statement, advertisement or publication, or to use any form
of application for employment or to make any inquiry in
connection with prospective employment, which expresses,
directly or indirectly, any limitation, specification, or
discrimination, because of race, color, religion, national
origin, sex, sexual orientation, gender identity, ancestry,
age or disability unless based upon a bona fide occupational
qualification or for an employment agency to fail or refuse
to refer for employment, or otherwise to discriminate
against, any individual because of his or her race, color,
religion, national origin, sex, sexual orientation, gender

321 identity, ancestry, age as it relates to employment, or
322 disability, or to classify or refer for employment any
323 individual because of his or her race, color, religion,
324 national origin, sex, sexual orientation, gender identity,
325 ancestry, age or disability.

326 2. Notwithstanding any other provision of this
327 chapter, it shall not be an unlawful employment practice for
328 an employer to apply different standards of compensation, or
329 different terms, conditions or privileges of employment
330 pursuant to a bona fide seniority or merit system, or a
331 system which measures earnings by quantity or quality of
332 production or to employees who work in different locations,
333 provided that such differences or such systems are not the
334 result of an intention or a design to discriminate, and are
335 not used to discriminate, because of race, color, religion,
336 sex, sexual orientation, gender identity, national origin,
337 ancestry, age or disability, nor shall it be an unlawful
338 employment practice for an employer to give and to act upon
339 the results of any professionally developed ability test,
340 provided that such test, its administration, or action upon
341 the results thereof, is not designed, intended or used to
342 discriminate because of race, color, religion, national
343 origin, sex, sexual orientation, gender identity, ancestry,
344 age or disability.

345 3. Nothing contained in this chapter shall be
346 interpreted to require any employer, employment agency,
347 labor organization, or joint labor-management committee
348 subject to this chapter to grant preferential treatment to
349 any individual or to any group because of the race, color,
350 religion, national origin, sex, sexual orientation, gender
351 identity, ancestry, age or disability of such individual or
352 group on account of an imbalance which may exist with
353 respect to the total number or percentage of persons of any

354 race, color, religion, national origin, sex, sexual
355 orientation, gender identity, ancestry, age or disability
356 employed by any employer, referred or classified for
357 employment by any employment agency or labor organization,
358 admitted to membership or classified by any labor
359 organization, or admitted to or employed in any
360 apprenticeship or other training program, in comparison with
361 the total number or percentage of persons of such race,
362 color, religion, national origin, sex, sexual orientation,
363 gender identity, ancestry, age or disability in any
364 community, state, section, or other area, or in the
365 available workforce in any community, state, section, or
366 other area.

367 4. Notwithstanding any other provision of this
368 chapter, it shall not be an unlawful employment practice for
369 the state or any political subdivision of the state to
370 comply with the provisions of 29 U.S.C. Section 623 relating
371 to employment as firefighters or law enforcement officers.

372 213.070. 1. It shall be an unlawful discriminatory
373 practice for an employer, employment agency, labor
374 organization, or place of public accommodation:

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

378 (2) To retaliate or discriminate in any manner against
379 any other person because such person has opposed any
380 practice prohibited by this chapter or because such person
381 has filed a complaint, testified, assisted, or participated
382 in any manner in any investigation, proceeding or hearing
383 conducted pursuant to this chapter;

384 (3) For the state or any political subdivision of this
385 state to discriminate on the basis of race, color, religion,
386 national origin, sex, sexual orientation as it relates to

employment, gender identity as it relates to employment,
ancestry, age, as it relates to employment, disability, or
familial status as it relates to housing; or

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

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

213.101. 1. The provisions of this chapter shall be
construed to accomplish the purposes thereof and any law
inconsistent with any provision of this chapter shall not
apply. Nothing contained in this chapter shall be deemed to
repeal any of the provisions of any law of this state
relating to discrimination because of race, color, religion,
national origin, sex, sexual orientation as it relates to
employment, gender identity as it relates to employment,
ancestry, age, disability, or familial status.

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

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

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

426 5. The general assembly hereby expressly abrogates by
427 this statute the holding in *Hurst v. Kansas City Mo. School*
428 *District*, 437 S.W.3d 327 (Mo.App. W.D. 2014), that Missouri
429 Approved Instruction 19.01 may be applied to actions brought
430 pursuant to this chapter, and the holding in *Thomas v.*
431 *McKeever's Enterprises, Inc.*, 388 S.W.3d 206 (Mo.App. W.D.
432 2012), that juries shall not be instructed that plaintiffs
433 bear the burden of establishing "but for" causation in
434 actions brought pursuant to this chapter.

435 6. The general assembly hereby abrogates all Missouri-
436 approved jury instructions specifically addressing civil
437 actions brought under this chapter which were in effect
438 prior to August 28, 2017."; and

439 Further amend the title and enacting clause accordingly.