

**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

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

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

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

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

48 (6) "Discrimination", conduct proscribed herein, taken  
49 because of race, color, religion, national origin, ancestry,  
50 sex, [or] sexual orientation as it relates to employment,  
51 gender identity as it relates to employment, age as it  
52 relates to employment, disability, or familial status as it  
53 relates to housing. Discrimination includes any unfair  
54 treatment based on a person's presumed or assumed race,  
55 color, religion, national origin, ancestry, sex, sexual  
56 orientation as it relates to employment, gender identity as  
57 it relates to employment, age as it relates to employment,  
58 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

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

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

164 [(17)] (18) "Rent" includes to lease, to sublease, to  
165 let and otherwise to grant for consideration the right to  
166 occupy premises not owned by the occupant;

167 [(18)] (19) "Respondent", a person who is alleged to  
168 have engaged in a prohibited discriminatory practice in a  
169 complaint filed with the commission;

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

179 [(19)] (21) "The motivating factor", the employee's  
180 protected classification actually played a role in the  
181 adverse action or decision and had a determinative influence  
182 on the adverse decision or action;

183 [(20)] (22) "Unlawful discriminatory practice", any  
184 act that is unlawful under this chapter.

185 213.030. 1. The powers and duties of the commission  
186 shall be:

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

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

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

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

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

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

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

218 (7) To receive, investigate, initiate, and pass upon  
219 complaints alleging discrimination in employment, housing or  
220 in places of public accommodations because of race, color,  
221 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



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

257 (14) To establish a human rights fund as defined in  
258 section 213.010, for the purposes of administering sections  
259 213.040, 213.045, 213.050, 213.070, 213.075, and 213.076.

260 2. No rule or portion of a rule promulgated under the  
261 authority of this chapter shall become effective unless it  
262 has been promulgated pursuant to the provisions of [section  
263 536.024] chapter 536.

264 213.055. 1. It shall be an unlawful employment  
265 practice:

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

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

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

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

288 color, religion, national origin, sex, sexual orientation,  
289 gender identity, ancestry, age or disability of any  
290 individual; or to limit, segregate, or classify its  
291 membership, or to classify or fail or refuse to refer for  
292 employment any individual, in any way which would deprive or  
293 tend to deprive any individual of employment opportunities,  
294 or would limit such employment opportunities or otherwise  
295 adversely affect [his] such individual's status as an  
296 employee or as an applicant for employment, because of such  
297 individual's race, color, religion, national origin, sex,  
298 sexual orientation, gender identity, ancestry, age or  
299 disability; or for any employer, labor organization, or  
300 joint labor-management committee controlling apprenticeship  
301 or other training or retraining, including on-the-job  
302 training programs to discriminate against any individual  
303 because of [his] such individual's race, color, religion,  
304 national origin, sex, sexual orientation, gender identity,  
305 ancestry, age or disability in admission to, or employment  
306 in, any program established to provide apprenticeship or  
307 other training;

308 (3) For any employer or employment agency to print or  
309 circulate or cause to be printed or circulated any  
310 statement, advertisement or publication, or to use any form  
311 of application for employment or to make any inquiry in  
312 connection with prospective employment, which expresses,  
313 directly or indirectly, any limitation, specification, or  
314 discrimination, because of race, color, religion, national  
315 origin, sex, sexual orientation, gender identity, ancestry,  
316 age or disability unless based upon a bona fide occupational  
317 qualification or for an employment agency to fail or refuse  
318 to refer for employment, or otherwise to discriminate  
319 against, any individual because of his or her race, color,  
320 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

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

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

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

397 213.101. 1. The provisions of this chapter shall be  
398 construed to accomplish the purposes thereof and any law  
399 inconsistent with any provision of this chapter shall not  
400 apply. Nothing contained in this chapter shall be deemed to  
401 repeal any of the provisions of any law of this state  
402 relating to discrimination because of race, color, religion,  
403 national origin, sex, sexual orientation as it relates to  
404 employment, gender identity as it relates to employment,  
405 ancestry, age, disability, or familial status.

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

413 3. If an employer in a case brought under this chapter  
414 files a motion pursuant to rule 74.04 of the Missouri rules  
415 of civil procedure, the court shall consider the burden-  
416 shifting analysis of *McDonnell Douglas Corp. v. Green*, 411  
417 U.S. 792 (1973), and its progeny to be highly persuasive for  
418 analysis in cases not involving direct evidence of  
419 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.