

SENATE BILL NO. 1053

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

4699S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 213.010 and 213.111, RSMo, and to enact in lieu thereof two new sections relating to civil actions in cases of unlawful discrimination.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 213.010 and 213.111, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 213.010 and 213.111, to read as follows:

213.010. As used in this chapter, the following terms
2 shall mean:

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

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

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

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

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

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

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

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

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

46 (6) "Discrimination", conduct proscribed herein, taken
47 because of race, color, religion, national origin, ancestry,
48 sex, or age as it relates to employment, disability, or
49 familial status as it relates to housing;

50 (7) "Dwelling", any building, structure or portion
51 thereof which is occupied as, or designed or intended for

52 occupancy as, a residence by one or more families, and any
53 vacant land which is offered for sale or lease for the
54 construction or location thereon of any such building,
55 structure or portion thereof;

56 (8) "Employer", a person engaged in an industry
57 affecting commerce who has six or more employees for each
58 working day in each of twenty or more calendar weeks in the
59 current or preceding calendar year, and shall include the
60 state, or any political or civil subdivision thereof, or any
61 person employing six or more persons within the state but
62 does not include corporations and associations owned or
63 operated by religious or sectarian organizations.

64 "Employer" shall not include:

65 (a) The United States;

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

68 (c) An individual employed by an employer;

69 (d) An Indian tribe;

70 (e) Any department or agency of the District of
71 Columbia subject by statute to procedures of the competitive
72 service, as defined in 5 U.S.C. Section 2101; or

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

76 (9) "Employment agency" includes any person or agency,
77 public or private, regularly undertaking with or without
78 compensation to procure employees for an employer or to
79 procure for employees opportunities to work for an employer;

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

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

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

87 (b) The designee of such parent or other person having
88 such custody, with the written permission of such parent or
89 other person. The protections afforded against
90 discrimination because of familial status shall apply to any
91 person who is pregnant or is in the process of securing
92 legal custody of any individual who has not attained the age
93 of eighteen years;

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

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

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

109 (15) "Person" includes one or more individuals,
110 corporations, partnerships, associations, organizations,
111 labor organizations, legal representatives, mutual
112 companies, joint stock companies, trusts, trustees, trustees

113 in bankruptcy, receivers, fiduciaries, or other organized
114 groups of persons;

115 (16) "Places of public accommodation", all places or
116 businesses offering or holding out to the general public,
117 goods, services, privileges, facilities, advantages or
118 accommodations for the peace, comfort, health, welfare and
119 safety of the general public or such public places providing
120 food, shelter, recreation and amusement, including, but not
121 limited to:

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

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

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

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

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

143 (f) Any establishment which is physically located
144 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) **"Public employer", any entity for which coverage is provided by section 105.711;**

(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;

[(19)] (20) "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)] (21) "Unlawful discriminatory practice", any act that is unlawful under this chapter.

213.111. 1. If, after one hundred eighty days from the filing of a complaint alleging an unlawful discriminatory practice pursuant to section 213.055, 213.065 or 213.070 to the extent that the alleged violation of section 213.070 relates to or involves a violation of section 213.055 or 213.065, or subdivision (3) of subsection 1 of section 213.070 as it relates to employment and public accommodations, the commission has not completed its administrative processing and the person aggrieved so requests in writing, the commission shall issue to the person claiming to be aggrieved a letter indicating his or her right to bring a civil action within ninety days of such notice against the respondent named in the complaint. If, after the filing of a complaint pursuant to sections

213.040, 213.045, 213.050 and 213.070, to the extent that the alleged violation of section 213.070 relates to or involves a violation of sections 213.040, 213.045 and 213.050, or subdivision (3) of subsection 1 of section 213.070 as it relates to housing, and the person aggrieved so requests in writing, the commission shall issue to the person claiming to be aggrieved a letter indicating his or her right to bring a civil action within ninety days of such notice against the respondent named in the complaint. The commission may not at any other time or for any other reason issue a letter indicating a complainant's right to bring a civil action. Such an action may be brought in any circuit court in any county in which the unlawful discriminatory practice is alleged to have been committed, either before a circuit or associate circuit judge. Upon issuance of this notice, the commission shall terminate all proceedings relating to the complaint. No person may file or reinstate a complaint with the commission after the issuance of a notice under this section relating to the same practice or act. Any action brought in court under this section shall be filed within ninety days from the date of the commission's notification letter to the individual but no later than two years after the alleged cause occurred or its reasonable discovery by the alleged injured party.

2. The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual and punitive damages, and **in cases not involving a public employer as one of the defendants, the court** may award court costs and reasonable attorney fees to the prevailing party, other than a state agency or commission or a local commission; except that, a prevailing

47 respondent may be awarded reasonable attorney fees only upon
48 a showing that the case was without foundation.

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

51 4. The sum of the amount of actual damages, including
52 damages for future pecuniary losses, emotional pain,
53 suffering, inconvenience, mental anguish, loss of enjoyment
54 of life, and other nonpecuniary losses, and punitive damages
55 awarded under this section shall not exceed for each
56 complaining party:

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

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

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

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

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

74 5. In any employment-related civil action brought
75 under this chapter, the plaintiff shall bear the burden of
76 proving the alleged unlawful decision or action was made or

77 taken because of his or her protected classification and was
78 the direct proximate cause of the claimed damages.

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