

FIRST REGULAR SESSION

HOUSE BILL NO. 205

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ELMER (Sponsor), DIEHL, JONES (117), RICHARDSON, REDMON, SCHOELLER, LONG, NANCE, ROWLAND, COX, PHILLIPS, BURLISON, DIECKHAUS, WETER, DUGGER, SMITH (150), HOSKINS, RIDDLE, JONES (89), GUERNSEY, FUNDERBURK, MOLENDORP, McGHEE, DENISON, FISHER, CRAWFORD AND KEENEY (Co-sponsors).

0701L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 213.010, 213.070, 213.101, and 213.111, RSMo, and to enact in lieu thereof four new sections relating to unlawful discriminatory practices in employment.

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

Section A. Sections 213.010, 213.070, 213.101, and 213.111, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 213.010, 213.070, 213.101,
3 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 that it shall
3 not be an unlawful employment practice for an employer to require the compulsory retirement
4 of any person who has attained the age of sixty-five and who, for the two-year period
5 immediately before retirement, is employed in a bona fide executive or high policy-making
6 position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from
7 a pension, profit sharing, savings or deferred compensation plan, or any combination of such
8 plans, of the employer, which equals, in the aggregate, at least forty-four thousand dollars;
- 9 (2) **"Because of" or "because", as it relates to a decision or action, the protected**
10 **criterion was a motivating factor;**
- 11 (3) "Commission", the Missouri commission on human rights;
- 12 [(3)] (4) "Complainant", a person who has filed a complaint with the commission
13 alleging that another person has engaged in a prohibited discriminatory practice;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 [(4)] (5) "Disability", a physical or mental impairment which substantially limits one or
15 more of a person's major life activities, being regarded as having such an impairment, or a record
16 of having such an impairment, which with or without reasonable accommodation does not
17 interfere with performing the job, utilizing the place of public accommodation, or occupying the
18 dwelling in question. For purposes of this chapter, the term "disability" does not include current,
19 illegal use of or addiction to a controlled substance as such term is defined by section 195.010,
20 RSMo; however, a person may be considered to have a disability if that person:

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

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

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

29 [(5)] (6) "Discrimination", any unfair treatment based on race, color, religion, national
30 origin, ancestry, sex, age as it relates to employment, disability, or familial status as it relates to
31 housing;

32 [(6)] (7) "Dwelling", any building, structure or portion thereof which is occupied as, or
33 designed or intended for occupancy as, a residence by one or more families, and any vacant land
34 which is offered for sale or lease for the construction or location thereon of any such building,
35 structure or portion thereof;

36 [(7)] (8) "Employer" [includes], **a person engaged in an industry affecting commerce**
37 **who has six or more employees for each working day in each of twenty or more calendar**
38 **weeks in the current or preceding calendar year, and shall include** the state, or any political
39 or civil subdivision thereof[, or any person employing six or more persons within the state, any
40 person directly acting in the interest of an employer, but does not include corporations and
41 associations owned and operated by religious or sectarian groups] . **Employer shall not include**
42 **the United States, a corporation wholly owned by the government of the United States, an**
43 **individual employed by an employer, an Indian tribe, or any department or agency of the**
44 **District of Columbia subject by statute to procedures of the competitive service, as defined**
45 **in 5 U.S.C. Section 2101, or a bona fide private membership club (other than a labor**
46 **organization) which is exempt from taxation under 26 U.S.C. Section 501(c), and shall not**
47 **include corporations and associations owned and operated by religious or sectarian groups;**

48 [(8)] (9) "Employment agency" includes any person or agency, public or private,
49 regularly undertaking with or without compensation to procure employees for an employer or

50 to procure for employees opportunities to work for an employer and includes any person acting
51 in the interest of such a person;

52 [(9)] (10) "Executive director", the executive director of the Missouri commission on
53 human rights;

54 [(10)] (11) "Familial status", one or more individuals who have not attained the age of
55 eighteen years being domiciled with:

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

57 (b) The designee of such parent or other person having such custody, with the written
58 permission of such parent or other person. The protections afforded against discrimination on
59 the basis of familial status shall apply to any person who is pregnant or is in the process of
60 securing legal custody of any individual who has not attained the age of eighteen years;

61 [(11)] (12) "Human rights fund", a fund established to receive civil penalties as required
62 by federal regulations and as set forth by subdivision (2) of subsection 11 of section 213.075, and
63 which will be disbursed to offset additional expenses related to compliance with the Department
64 of Housing and Urban Development regulations;

65 [(12)] (13) "Labor organization" includes any organization which exists for the purpose,
66 in whole or in part, of collective bargaining or of dealing with employers concerning grievances,
67 terms or conditions of employment, or for other mutual aid or protection in relation to
68 employment;

69 [(13)] (14) "Local commissions", any commission or agency established prior to August
70 13, 1986, by an ordinance or order adopted by the governing body of any city, constitutional
71 charter city, town, village, or county;

72 (15) **"Other protected person", includes a person who has reported to the proper**
73 **authorities an unlawful act of the employer or its agent or who reports to an employer**
74 **serious misconduct of the employer or its agent that violates a clear mandate of public**
75 **policy as articulated in a constitutional provision, statute, regulation promulgated under**
76 **statute, or rule created by a governmental body, or a person who has refused to carry out**
77 **a directive issued by an employer or its agent that if completed would be a violation of the**
78 **law. Additionally, a person who engages in conduct otherwise protected by statute or**
79 **regulation is an other protected person;**

80 [(14)] (16) "Person" includes one or more individuals, corporations, partnerships,
81 associations, organizations, labor organizations, legal representatives, mutual companies, joint
82 stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other organized
83 groups of persons;

84 [(15)] (17) "Places of public accommodation", all places or businesses offering or
85 holding out to the general public, goods, services, privileges, facilities, advantages or

86 accommodations for the peace, comfort, health, welfare and safety of the general public or such
87 public places providing food, shelter, recreation and amusement, including, but not limited to:

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

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

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

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

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

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

106 **(18) "Proper authorities", governmental or law enforcement agencies, or an officer**
107 **or the employee's human resources representative employed by the employer;**

108 [(16)] **(19)** "Rent" includes to lease, to sublease, to let and otherwise to grant for
109 consideration the right to occupy premises not owned by the occupant;

110 [(17)] **(20)** "Respondent", a person who is alleged to have engaged in a prohibited
111 discriminatory practice in a complaint filed with the commission;

112 [(18)] **(21)** "Unlawful discriminatory practice", any act that is unlawful under this
113 chapter.

114 213.070. **1.** It shall be an unlawful discriminatory practice:

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

117 (2) To retaliate or discriminate in any manner against any other person because such
118 person has opposed any practice prohibited by this chapter or because such person has filed a
119 complaint, testified, assisted, or participated in any manner in any investigation, proceeding or
120 hearing conducted pursuant to this chapter, **or to discharge a person because of such person's**
121 **status as an other protected person as defined in section 213.010;**

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

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

127 **2. This chapter shall provide the exclusive remedy for any and all unlawful**
128 **employment practices articulated herein and hereby abrogates any common law causes of**
129 **action to the contrary.**

213.101. **1.** The provisions of this chapter shall be construed to accomplish the purposes
2 thereof and any law inconsistent with any provision of this chapter shall not apply. Nothing
3 contained in this chapter shall be deemed to repeal any of the provisions of any law of this state
4 relating to the discrimination because of race, color, religion, national origin, sex, ancestry, age,
5 disability, or familial status. **This chapter is intended to be consistent with Title VII of the**
6 **Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), as amended, in accordance with the work**
7 **sharing agreement between the Missouri Commission on Human Rights and the United**
8 **States Equal Employment Opportunity Commission.**

9 **2. In interpreting and applying this chapter in employment cases, courts shall rely**
10 **heavily upon judicial interpretations of Title VII of the Civil Rights Act of 1964 (42 U.S.C.**
11 **2000e et seq.), as amended, the Age Discrimination Employment Act of 1967 (29 U.S.C. 621**
12 **et seq.), and the Americans With Disabilities Act (42 U.S.C. 12101 et seq.), as amended.**

13 **3. The legislature intends expressly to abrogate by this statute the case of McBryde**
14 **v. Ritenour School District, 207 S.W.3d 162 (Mo. App. E.D.) and its progeny as it relates**
15 **to the necessity and appropriateness of the issuance of a business judgment instruction.**

16 **4. Rule 74.04 of the Missouri rules of civil procedure is an integral part of the rules**
17 **as a whole and can be a tool of great utility in removing factually insubstantial cases under**
18 **this chapter from crowded dockets. If an employer in a case under this chapter files a Rule**
19 **74.04 motion, there are two frameworks for analysis that should be considered highly**
20 **persuasive:**

21 **(1) Plaintiff may submit direct evidence of discrimination, in which case the**
22 **analysis of Price Waterhouse v. Hopkins, 490 U.S. 228, 258 (1989) and its progeny are**
23 **highly persuasive;**

24 **(2) If plaintiff submits no direct evidence of discrimination, then the burden**
25 **shifting analysis of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800-01 (1973) and its**
26 **progeny present a highly persuasive framework for analysis.**

27 **5. The legislature intends expressly to abrogate by this statute the cases of**
28 **Daugherty v. City of Maryland Heights, 231 S.W.3d 814 (Mo. banc), Korando v.**

29 **Mallinckrodt, Inc. 239 S.W.3d 647 (Mo. App. E.D.), Lomax v. DaimlerChrysler Corp., 243**
30 **S.W.3d 474 (Mo. App. E.D.), and Francin v. Mosby, Inc., 248 S.W.3d 619 (Mo. App. E.D.)**
31 **and their progeny as they relate to the contributing factor standard and abandonment of**
32 **the burden shifting framework established in McDonnell Douglas Corp. v. Green, 411 U.S.**
33 **792, 800-01 (1973) and the mixed motive framework established in Price Waterhouse v.**
34 **Hopkins, 490 U.S. 228, 258 (1989).**

35 **6. The legislature intends to abrogate MAI 31.24, MAI 31.25, and MAI 31.27.**

213.111. 1. If, after one hundred eighty days from the filing of a complaint alleging an
2 unlawful discriminatory practice pursuant to section 213.055, 213.065 or 213.070 to the extent
3 that the alleged violation of section 213.070 relates to or involves a violation of section 213.055
4 or 213.065, or subdivision (3) of section 213.070 as it relates to employment and public
5 accommodations, the commission has not completed its administrative processing and the person
6 aggrieved so requests in writing, the commission shall issue to the person claiming to be
7 aggrieved a letter indicating his or her right to bring a civil action within ninety days of such
8 notice against the respondent named in the complaint. If, after the filing of a complaint pursuant
9 to sections 213.040, 213.045, 213.050 and 213.070, to the extent that the alleged violation of
10 section 213.070 relates to or involves a violation of sections 213.040, 213.045 and 213.050, or
11 subdivision (3) of section 213.070 as it relates to housing, [and the person aggrieved so requests
12 in writing,] the commission shall issue to the person claiming to be aggrieved a letter indicating
13 his or her right to bring a civil action within ninety days of such notice against the respondent
14 named in the complaint. Such an action may be brought in any circuit court in any county in
15 which the unlawful discriminatory practice is alleged to have [occurred] **been committed**, either
16 before a circuit or associate circuit judge. Upon issuance of this notice, the commission shall
17 terminate all proceedings relating to the complaint. No person may file or reinstate a complaint
18 with the commission after the issuance of a notice under this section relating to the same practice
19 or act. Any action brought in court under this section shall be filed within ninety days from the
20 date of the commission's notification letter to the individual but no later than two years after the
21 alleged cause occurred or its reasonable discovery by the alleged injured party.

22 2. The court may grant as relief, as it deems appropriate, any permanent or temporary
23 injunction, temporary restraining order, or other order, and may award to the plaintiff actual and
24 punitive damages, and may award court costs and reasonable attorney fees to the prevailing
25 party, other than a state agency or commission or a local commission; except that, a prevailing
26 respondent may be awarded court costs and reasonable attorney fees only upon a showing that
27 the case is without foundation. **The prevailing party in a case brought alleging discharge of**
28 **an other protected person as defined in section 213.010 shall not be entitled to attorney**
29 **fees.**

30 **3. Any party to any action initiated under this section may demand a trial by jury.**

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

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

36 **(2) (a) In the case of a respondent who has more than five and fewer than one**
37 **hundred one employees in each of twenty or more calendar weeks in the current or**
38 **preceding calendar year, fifty thousand dollars.**

39 **(b) In the case of a respondent who has more than one hundred and fewer than two**
40 **hundred one employees in each of twenty or more calendar weeks in the current or**
41 **preceding calendar year, one hundred thousand dollars.**

42 **(c) In the case of a respondent who has more than two hundred and fewer than five**
43 **hundred one employees in each of twenty or more calendar weeks in the current or**
44 **preceding calendar year, two hundred thousand dollars.**

45 **(d) In the case of a respondent who has more than five hundred employees in each**
46 **of twenty or more calendar weeks in the current or preceding calendar year, three hundred**
47 **thousand dollars.**

48 **5. Subsection 4 of this section shall not apply to actions filed for violations of**
49 **sections 213.040, 213.045, 213.050, and 213.070 to the extent that the alleged violation of**
50 **section 213.070 relates to or involves a violation of sections 213.040, 213.045, and 213.050,**
51 **or subsection 3 of section 213.070 as it relates to housing.**

52 **6. In any employment-related civil action brought under this chapter, the plaintiff**
53 **shall bear the burden of proving that the protected criterion was the motivating factor in**
54 **the alleged unlawful decision or action.**

55 **7. Notwithstanding subsection 4 of this section, punitive damages shall not be**
56 **awarded against the state of Missouri or any of its political subdivisions.**