

SECOND REGULAR SESSION

# HOUSE BILL NO. 2098

96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ELMER.

6308L.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 213.010 and 213.111, RSMo, and to enact in lieu thereof two new sections relating to unlawful discriminatory practices.

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

Section A. Sections 213.010 and 213.111, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 213.010 and 213.111, to read as follows:

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

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

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

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

(4) "Disability", a physical or mental impairment 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

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.

17 use of or addiction to a controlled substance as such term is defined by section 195.010;  
18 however, a person may be considered to have a disability if that person:

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

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

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

27 (5) "Discrimination", any unfair treatment based on race, color, religion, national origin,  
28 ancestry, sex, age as it relates to employment, disability, or familial status as it relates to housing;

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

33 (7) "Employer" [includes] , **a person engaged in an industry affecting commerce who**  
34 **has six or more employees for each working day in each of the twenty or more calendar**  
35 **weeks in a current or preceding calendar year, and shall include** the state, or any political  
36 or civil subdivision thereof[, or any person employing six or more persons within the state, and  
37 any person directly acting in the interest of an employer], but does not include corporations and  
38 associations owned and operated by religious or sectarian groups;

39 (8) "Employment agency" includes any person or agency, public or private, regularly  
40 undertaking with or without compensation to procure employees for an employer or to procure  
41 for employees opportunities to work for an employer and includes any person acting in the  
42 interest of such a person;

43 (9) "Executive director", the executive director of the Missouri commission on human  
44 rights;

45 (10) "Familial status", one or more individuals who have not attained the age of eighteen  
46 years being domiciled with:

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

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

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

56 (12) "Labor organization" includes any organization which exists for the purpose, in  
57 whole or in part, of collective bargaining or of dealing with employers concerning grievances,  
58 terms or conditions of employment, or for other mutual aid or protection in relation to  
59 employment;

60 (13) "Local commissions", any commission or agency established prior to August 13,  
61 1986, by an ordinance or order adopted by the governing body of any city, constitutional charter  
62 city, town, village, or county;

63 (14) "Person" includes one or more individuals, corporations, partnerships, associations,  
64 organizations, labor organizations, legal representatives, mutual companies, joint stock  
65 companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other organized  
66 groups of persons;

67 (15) "Places of public accommodation", all places or businesses offering or holding out  
68 to the general public, goods, services, privileges, facilities, advantages or accommodations for  
69 the peace, comfort, health, welfare and safety of the general public or such public places  
70 providing food, shelter, recreation and amusement, including, but not limited to:

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

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

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

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

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

85 (f) Any establishment which is physically located within the premises of any  
86 establishment otherwise covered by this section or within the premises of which is physically

87 located any such covered establishment, and which holds itself out as serving patrons of such  
88 covered establishment;

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

91 (17) "Respondent", a person who is alleged to have engaged in a prohibited  
92 discriminatory practice in a complaint filed with the commission;

93 (18) "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  
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, either before a circuit or  
16 associate circuit judge. Upon issuance of this notice, the commission shall terminate all  
17 proceedings relating to the complaint. No person may file or reinstate a complaint with the  
18 commission after the issuance of a notice under this section relating to the same practice or act.  
19 Any action brought in court under this section shall be filed within ninety days from the date of  
20 the commission's notification letter to the individual but no later than two years after the alleged  
21 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].

28 **3. The court may award to the plaintiff actual and punitive damages and may**  
29 **award court costs and reasonable attorney fees to the prevailing party, other than a state**

30 agency or commission or a local commission; except that, a prevailing respondent may be  
31 awarded court costs and reasonable attorney fees upon a showing that a case is without  
32 foundation. An award of damages may include all future pecuniary losses, emotional pain,  
33 suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary  
34 losses, and punitive damages awarded under this section.

35 **4. The total amount of punitive damages awarded by the court for each plaintiff**  
36 **shall not exceed:**

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

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

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

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

49 **5. Notwithstanding subsection 4 of this section, punitive damages shall not be**  
50 **awarded against the state of Missouri or any other of its political subdivisions; except in**  
51 **claims for discriminatory housing practices as authorized in section 213.040.**

52 **6. Subsections 3 and 4 of this section shall not apply when there is an alleged**  
53 **violation of sections 213.040, 213.045, or 213.050. Subsections 3 and 4 of this section shall**  
54 **apply when there is an alleged violation of section 213.070 against an employer, but not**  
55 **otherwise.**

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