

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1019

98TH GENERAL ASSEMBLY

1743H.03P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.101, 213.111, and 287.780, RSMo, and to enact in lieu thereof ten 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Section A. Sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.101, 213.111, and 287.780, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.101, 213.111, 285.575, and 287.780, 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) **"Because" or "because of", as it relates to a decision or action, the protected criterion was a motivating factor;**
  - (3) "Commission", the Missouri commission on human rights;
  - [(3)] (4) "Complainant", a person who has filed a complaint with the commission 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  
15 or more of a person's major life activities, being regarded as having such an impairment, or a  
16 record of having such an impairment, which with or without reasonable accommodation does  
17 not interfere with performing the job, utilizing the place of public accommodation, or occupying  
18 the dwelling in question. For purposes of this chapter, the term "disability" does not include  
19 current, illegal use of or addiction to a controlled substance as such term is defined by section  
20 195.010; 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] **conduct proscribed herein, a motivating factor of such conduct being because of**  
32 **race, color, religion, national origin, ancestry, sex, or age;**

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

37            [(7)] (8) "Employer" [includes], **a person engaged in an industry affecting commerce**  
38 **who has six or more employees for each working day in each of twenty or more calendar**  
39 **weeks in the current or preceding calendar year, and shall include** the state, or any political  
40 or civil subdivision thereof[, or any person employing six or more persons within the state, and  
41 any person directly acting in the interest of an employer, but does not include corporations and  
42 associations owned and operated by religious or sectarian groups] . **“Employer” shall not**  
43 **include:**

44            (a) **The United States;**

45            (b) **A corporation wholly owned by the government of the United States;**

46            (c) **An individual employed by an employer;**

47            (d) **An Indian tribe;**

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

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

52           **(g) Corporations and associations owned and operated by religious or sectarian**  
53 **groups;**

54           [(8)] **(9)** "Employment agency" includes any person or agency, public or private,  
55 regularly undertaking with or without compensation to procure employees for an employer or  
56 to procure for employees opportunities to work for an employer and includes any person acting  
57 in the interest of such a person;

58           [(9)] **(10)** "Executive director", the executive director of the Missouri commission on  
59 human rights;

60           [(10)] **(11)** "Familial status", one or more individuals who have not attained the age of  
61 eighteen years being domiciled with:

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

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

67           [(11)] **(12)** "Human rights fund", a fund established to receive civil penalties as required  
68 by federal regulations and as set forth by subdivision (2) of subsection 11 of section 213.075, and  
69 which will be disbursed to offset additional expenses related to compliance with the Department  
70 of Housing and Urban Development regulations;

71           [(12)] **(13)** "Labor organization" includes any organization which exists for the purpose,  
72 in whole or in part, of collective bargaining or of dealing with employers concerning grievances,  
73 terms or conditions of employment, or for other mutual aid or protection in relation to  
74 employment;

75           [(13)] **(14)** "Local commissions", any commission or agency established prior to August  
76 13, 1986, by an ordinance or order adopted by the governing body of any city, constitutional  
77 charter city, town, village, or county;

78           [(14)] **(15)** "Person" includes one or more individuals, corporations, partnerships,  
79 associations, organizations, labor organizations, legal representatives, mutual companies, joint  
80 stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other organized  
81 groups of persons;

82           [(15)] **(16)** "Places of public accommodation", all places or businesses offering or  
83 holding out to the general public, goods, services, privileges, facilities, advantages or  
84 accommodations for the peace, comfort, health, welfare and safety of the general public or such  
85 public places providing food, shelter, recreation and amusement, including, but not limited to:

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

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

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

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

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

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

104 [(16)] (17) "Rent" includes to lease, to sublease, to let and otherwise to grant for  
105 consideration the right to occupy premises not owned by the occupant;

106 [(17)] (18) "Respondent", a person who is alleged to have engaged in a prohibited  
107 discriminatory practice in a complaint filed with the commission;

108 [(18)] (19) "Unlawful discriminatory practice", any act that is unlawful under this  
109 chapter.

213.040. 1. It shall be an unlawful housing practice:

2 (1) To refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate  
3 for the sale or rental of, to deny or otherwise make unavailable, a dwelling to any person because  
4 of race, color, religion, national origin, ancestry, sex, disability, or familial status;

5 (2) To discriminate against any person in the terms, conditions, or privileges of sale or  
6 rental of a dwelling, or in the provision of services or facilities in connection therewith, because  
7 of race, color, religion, national origin, ancestry, sex, disability, or familial status;

8 (3) To make, print, or publish, or cause to be made, printed, or published any notice,  
9 statement or advertisement, with respect to the sale or rental of a dwelling that indicates any  
10 preference, limitation, or discrimination based on race, color, religion, national origin, ancestry,  
11 sex, disability, or familial status, or an intention to make any such preference, limitation, or  
12 discrimination;

13 (4) To represent to any person because of race, color, religion, national origin, ancestry,  
14 sex, disability, or familial status that any dwelling is not available for inspection, sale, or rental  
15 when such dwelling is in fact so available;

16 (5) To induce or attempt to induce any person to sell or rent any dwelling by  
17 representations regarding the entry or prospective entry into the neighborhood of a person or  
18 persons **because** of a particular race, color, religion, national origin, ancestry, sex, disability, or  
19 familial status;

20 (6) To discriminate in the sale or rental of, or to otherwise make unavailable or deny, a  
21 dwelling to any buyer or renter because of a disability of:

22 (a) That buyer or renter;

23 (b) A person residing in or intending to reside in that dwelling after it is so sold, rented,  
24 or made available; or

25 (c) Any person associated with that buyer or renter;

26 (7) To discriminate against any person in the terms, conditions, or privileges of sale or  
27 rental of a dwelling, or in the provision of services or facilities in connection with such dwelling,  
28 because of a disability of:

29 (a) That person;

30 (b) A person residing in or intending to reside in that dwelling after it is so sold, rented,  
31 or made available; or

32 (c) Any person associated with that person.

33 2. For purposes of this section and sections 213.045 and 213.050, discrimination  
34 includes:

35 (1) A refusal to permit, at the expense of the person with the disability, reasonable  
36 modifications of existing premises occupied or to be occupied by such person if such  
37 modifications may be necessary to afford such person full enjoyment of the premises, except that,  
38 in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for  
39 a modification on the renter's agreeing to restore the interior of the premises to the condition that  
40 existed before the modification, reasonable wear and tear excepted;

41 (2) A refusal to make reasonable accommodations in rules, policies, practices, or  
42 services, when such accommodations may be necessary to afford such person equal opportunity  
43 to use and enjoy a dwelling; or

44 (3) In connection with the design and construction of covered multifamily dwellings for  
45 first occupancy after March 13, 1991, a failure to design and construct those dwellings in such  
46 a manner that:

47 (a) The public use and common use portions of such dwellings are readily accessible to  
48 and usable by persons with a disability;

49 (b) All the doors designed to allow passage into and within all premises within such  
50 dwellings are sufficiently wide to allow passage by persons with a disability in wheelchairs; and

51 (c) All premises within such dwellings contain the following features of adaptive design:

52 a. An accessible route into and through the dwelling;

53 b. Light switches, electrical outlets, thermostats, and other environmental controls in  
54 accessible locations;

55 c. Reinforcements in bathroom walls to allow later installation of grab bars; and

56 d. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver  
57 about the space.

58 3. As used in subdivision (3) of subsection 2 of this section, the term "covered  
59 multifamily dwelling" means:

60 (1) Buildings consisting of four or more units if such buildings have one or more  
61 elevators; and

62 (2) Ground floor units in other buildings consisting of four or more units.

63 4. Compliance with the appropriate requirements of the American National Standard for  
64 Buildings and Facilities providing accessibility and usability for people with physical disabilities,  
65 commonly cited as "ANSI A117.1", suffices to satisfy the requirements of paragraph (a) of  
66 subdivision (3) of subsection 2 of this section.

67 5. Where a unit of general local government has incorporated into its laws the  
68 requirements set forth in subdivision (3) of subsection 2 of this section, compliance with such  
69 laws shall be deemed to satisfy the requirements of that subdivision. Such compliance shall be  
70 subject to the following provisions:

71 (1) A unit of general local government may review and approve newly constructed  
72 covered multifamily dwellings for the purpose of making determinations as to whether the design  
73 and construction requirements of subdivision (3) of subsection 2 of this section are met;

74 (2) The commission shall encourage, but may not require, the units of local government  
75 to include in their existing procedures for the review and approval of newly constructed covered  
76 multifamily dwellings, determinations as to whether the design and construction of such  
77 dwellings are consistent with subdivision (3) of subsection 2 of this section, and shall provide  
78 technical assistance to units of local government and other persons to implement the  
79 requirements of subdivision (3) of subsection 2 of this section;

80 (3) Nothing in this chapter shall be construed to require the commission to review or  
81 approve the plans, designs or construction of all covered dwellings, to determine whether the  
82 design and construction of such dwellings are consistent with the requirements of subdivision  
83 (3) of subsection 2 of this section.

84           6. Nothing in this chapter shall be construed to invalidate or limit any law of the state  
85 or political subdivision of the state, or other jurisdiction in which this chapter shall be effective,  
86 that requires dwellings to be designed and constructed in a manner that affords persons with  
87 disabilities greater access than is required by this chapter.

88           7. Nothing in this section and sections 213.045 and 213.050 requires that a dwelling be  
89 made available to an individual whose tenancy would constitute a direct threat to the health or  
90 safety of other individuals or whose tenancy would result in substantial physical damage to the  
91 property of others.

92           8. Nothing in this section and sections 213.045 and 213.050 limits the applicability of  
93 any reasonable local or state restriction regarding the maximum number of occupants permitted  
94 to occupy a dwelling, nor does any provision in this section and sections 213.045 and 213.050  
95 regarding familial status apply with respect to housing for older persons.

96           9. As used in this section and sections 213.045 and 213.050, "housing for older persons"  
97 means housing:

98           (1) Provided under any state or federal program that the commission determines is  
99 specifically designed and operated to assist elderly persons, as defined in the state or federal  
100 program;

101           (2) Intended for, and solely occupied by, persons sixty-two years of age or older; or

102           (3) Intended and operated for occupancy by at least one person fifty-five years of age or  
103 older per unit. In determining whether housing qualifies as housing for older persons under this  
104 subsection, the commission shall develop regulations which require at least the following factors:

105           (a) The existence of significant facilities and services specifically designed to meet the  
106 physical or social needs of older persons, or if the provision of such facilities and services is not  
107 practicable, that such housing is necessary to provide important housing opportunities for older  
108 persons; and

109           (b) That at least eighty percent of the units are occupied by at least one person fifty-five  
110 years of age or older per unit; and

111           (c) The publication of, and adherence to, policies and procedures which demonstrate an  
112 intent by the owner or manager to provide housing for persons fifty-five years of age or older.

113           10. Housing shall not fail to meet the requirements for housing for older persons by  
114 reason of:

115           (1) Persons residing in such housing as of August 28, 1992, who do not meet the age  
116 requirements of subdivision (2) or (3) of subsection 9 of this section, provided that new  
117 occupants of such housing meet the age requirements of subdivision (2) or (3) of subsection 9  
118 of this section; or

119 (2) Unoccupied units, provided that such units are reserved for occupancy by persons  
120 who meet the age requirements of subdivision (2) or (3) of subsection 9 of this section.

121 11. Nothing in this section or section 213.045 or 213.050 shall prohibit conduct against  
122 a person because such person has been convicted by any court of competent jurisdiction of the  
123 illegal manufacture or distribution of a controlled substance, as defined by section 195.010.

124 12. Nothing in this chapter shall prohibit a religious organization, association, or society,  
125 or any nonprofit institution or organization operated, supervised or controlled by or in  
126 conjunction with a religious organization, association, or society, from limiting the sale, rental  
127 or occupancy of dwellings which it owns or operates for other than a commercial purpose to  
128 persons of the same religion, or from giving preference to such persons, unless membership in  
129 such religion is restricted on account of race, color, or national origin. Nor shall anything in this  
130 chapter prohibit a private club not in fact open to the public, which as an incident to its primary  
131 purpose or purposes provides lodging which it owns or operates for other than a commercial  
132 purpose, from limiting the rental or occupancy of such lodging to its members or from giving  
133 preference to its members.

134 13. Nothing in this chapter, other than the prohibitions against discriminatory advertising  
135 in subdivision (3) of subsection 1 of this section, shall apply to:

136 (1) The sale or rental of any single family house by a private individual owner, provided  
137 the following conditions are met:

138 (a) The private individual owner does not own or have any interest in more than three  
139 single family houses at any one time; and

140 (b) The house is sold or rented without the use of a real estate broker, agent or  
141 salesperson or the facilities of any person in the business of selling or renting dwellings and  
142 without publication, posting or mailing of any advertisement. If the owner selling the house does  
143 not reside in it at the time of the sale or was not the most recent resident of the house prior to  
144 such sale, the exemption in this section applies to only one such sale in any twenty-four-month  
145 period; or

146 (2) Rooms or units in dwellings containing living quarters occupied or intended to be  
147 occupied by no more than four families living independently of each other, if the owner actually  
148 maintains and occupies one of such living quarters as his or her residence.

213.050. It shall be unlawful to deny any person access to or membership or participation  
2 in any multiple listing service, real estate brokers' organization or other service organization, or  
3 facility relating to the business of selling or renting dwellings, [on account] **because** of race,  
4 color, religion, national origin, ancestry, sex, disability, or familial status.

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

2 (1) For an employer, because of the race, color, religion, national origin, sex, ancestry,  
3 age or disability of any individual:

4 (a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate  
5 against any individual with respect to his compensation, terms, conditions, or privileges of  
6 employment, because of such individual's race, color, religion, national origin, sex, ancestry, age  
7 or disability;

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

12 (2) For a labor organization to exclude or to expel from its membership any individual  
13 or to discriminate in any way against any of its members or against any employer or any  
14 individual employed by an employer because of race, color, religion, national origin, sex,  
15 ancestry, age or disability of any individual; or to limit, segregate, or classify its membership,  
16 or to classify or fail or refuse to refer for employment any individual, in any way which would  
17 deprive or tend to deprive any individual of employment opportunities, or would limit such  
18 employment opportunities or otherwise adversely affect his status as an employee or as an  
19 applicant for employment, because of such individual's race, color, religion, national origin, sex,  
20 ancestry, age or disability; or for any employer, labor organization, or joint labor-management  
21 committee controlling apprenticeship or other training or retraining, including on-the-job training  
22 programs to discriminate against any individual because of his race, color, religion, national  
23 origin, sex, ancestry, age or disability in admission to, or employment in, any program  
24 established to provide apprenticeship or other training;

25 (3) For any employer or employment agency to print or circulate or cause to be printed  
26 or circulated any statement, advertisement or publication, or to use any form of application for  
27 employment or to make any inquiry in connection with prospective employment, which  
28 expresses, directly or indirectly, any limitation, specification, or discrimination, because of race,  
29 color, religion, national origin, sex, ancestry, age or disability unless based upon a bona fide  
30 occupational qualification or for an employment agency to fail or refuse to refer for employment,  
31 or otherwise to discriminate against, any individual because of his **or her** race, color, religion,  
32 national origin, sex, ancestry, age as it relates to employment, or disability, or to classify or refer  
33 for employment any individual [on the basis] **because** of his **or her** race, color, religion, national  
34 origin, sex, ancestry, age or disability.

35 2. Notwithstanding any other provision of this chapter, it shall not be an unlawful  
36 employment practice for an employer to apply different standards of compensation, or different  
37 terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system,

38 or a system which measures earnings by quantity or quality of production or to employees who  
39 work in different locations, provided that such differences or such systems are not the result of  
40 an intention or a design to discriminate, and are not used to discriminate, because of race, color,  
41 religion, sex, national origin, ancestry, age or disability, nor shall it be an unlawful employment  
42 practice for an employer to give and to act upon the results of any professionally developed  
43 ability test, provided that such test, its administration, or action upon the results thereof, is not  
44 designed, intended or used to discriminate because of race, color, religion, national origin, sex,  
45 ancestry, age or disability.

46 3. Nothing contained in this chapter shall be interpreted to require any employer,  
47 employment agency, labor organization, or joint labor-management committee subject to this  
48 chapter to grant preferential treatment to any individual or to any group because of the race,  
49 color, religion, national origin, sex, ancestry, age or disability of such individual or group on  
50 account of an imbalance which may exist with respect to the total number or percentage of  
51 persons of any race, color, religion, national origin, sex, ancestry, age or disability employed by  
52 any employer, referred or classified for employment by any employment agency or labor  
53 organization, admitted to membership or classified by any labor organization, or admitted to or  
54 employed in any apprenticeship or other training program, in comparison with the total number  
55 or percentage of persons of such race, color, religion, national origin, sex, ancestry, age or  
56 disability in any community, state, section, or other area, or in the available workforce in any  
57 community, state, section, or other area.

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

213.065. 1. All persons within the jurisdiction of the state of Missouri are free and equal  
2 and shall be entitled to the full and equal use and enjoyment within this state of any place of  
3 public accommodation, as hereinafter defined, without discrimination or segregation on the  
4 grounds of race, color, religion, national origin, sex, ancestry, or disability.

5 2. It is an unlawful discriminatory practice for any person, directly or indirectly, to  
6 refuse, withhold from or deny any other person, or to attempt to refuse, withhold from or deny  
7 any other person, any of the accommodations, advantages, facilities, services, or privileges made  
8 available in any place of public accommodation, as defined in section 213.010 and this section,  
9 or to segregate or discriminate against any such person in the use thereof [on the grounds]  
10 **because** of race, color, religion, national origin, sex, ancestry, or disability.

11 3. The provisions of this section shall not apply to a private club, a place of  
12 accommodation owned by or operated on behalf of a religious corporation, association or society,  
13 or other establishment which is not in fact open to the public, unless the facilities of such

14 establishments are made available to the customers or patrons of a place of public  
15 accommodation as defined in section 213.010 and this section.

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

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

4 (2) To retaliate or discriminate in any manner against any other person because such  
5 person has opposed any practice prohibited by this chapter or because such person has filed a  
6 complaint, testified, assisted, or participated in any manner in any investigation, proceeding or  
7 hearing conducted pursuant to this chapter;

8 (3) For the state or any political subdivision of this state to discriminate [on the basis]  
9 **because** of race, color, religion, national origin, sex, ancestry, age, as it relates to employment,  
10 disability, or familial status as it relates to housing; or

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

13 **2. This chapter, in addition to chapter 285 and chapter 287, shall provide the**  
14 **exclusive remedy for any and all unlawful employment practices articulated herein and**  
15 **hereby abrogates any common law causes of action not specifically articulated herein.**

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. **It shall be the presumption that for a fair presentation of the**  
6 **case, a jury shall be given an instruction expressing the business judgment rule.**

7 **2. In interpreting and applying chapter 213 in employment cases, courts shall rely**  
8 **heavily upon judicial interpretations of Title VII of the Civil Rights Act of 1964 (42 U.S.C.**  
9 **2000e et seq.) as amended, the Age Discrimination in Employment Act of 1967 (29 U.S.C.**  
10 **621 et seq.), and the Americans with Disabilities Act (42 U.S.C. 12101 et seq.), as amended.**

11 **3. The general assembly intends expressly to abrogate by this statute the case of**  
12 ***McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. E.D. 2006), and its progeny**  
13 **as it relates to the necessity and appropriateness of the issuance of a business judgment**  
14 **instruction.**

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

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

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

26 5. The general assembly hereby expressly abrogates by this statute the cases of  
27 *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814 (Mo. 2007), *Korando v.*  
28 *Mallinckrodt, Inc.*, 239 S.W.3d 647 (Mo. App. E.D. 2007), *Lomax v. Daimler Chrysler Corp.*,  
29 243 S.W.3d 474 (Mo. App. E.D. 2007), and *Francin v. Mosby, Inc.*, 248 S.W.3d 619 (Mo.  
30 App. E.D. 2008) and their progeny as they relate to the contributing factor standard and  
31 abandonment of the burden-shifting framework established in *McDonnell Douglas Corp.*  
32 *v. Green*, 411 U.S. 792, 800-01 (1973), and the mixed-motive framework established in *Price*  
33 *Waterhouse v. Hopkins*, 490 U.S. 228, 258 (1989). The general assembly also intends to  
34 abrogate Missouri approved jury instruction 31.24, Missouri approved jury instruction  
35 31.25, and Missouri approved jury instruction 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.

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

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

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

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

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

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

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

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

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

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

285.575. 1. This section shall be known and may be cited as the "Whistleblower's  
2 Protection Act".

3 2. As used in this section, the following terms shall mean:

4 (1) "Because" or "because of", as it relates to a decision or action, the person's  
5 status as a protected person was a motivating factor;

6 (2) "Employer", an entity that has six or more employees for each working day in  
7 each of twenty or more calendar weeks in the current or preceding calendar year.  
8 "Employer" shall not include the state of Missouri or its political subdivisions, a  
9 corporation wholly owned by the state of Missouri, an individual employed by an  
10 employer, or corporations and associations owned and operated by religious or sectarian  
11 groups;

12 (3) "Proper authorities", a governmental or law enforcement agency, an officer,  
13 the employee's supervisor, or the employee's human resources representative employed by  
14 the employer;

15 (4) "Protected person", a person who has reported to the proper authorities an  
16 unlawful act of the employer or its agent; a person who reports to an employer serious  
17 misconduct of the employer or its agent that violates a clear mandate of public policy as  
18 articulated in a constitutional provision, statute, or regulation promulgated under statute;  
19 a person who has refused to carry out a directive issued by an employer or its agent that  
20 if completed would be a violation of the law; or a person who has engaged in conduct  
21 otherwise protected by statute or regulation. A person is not a "protected person" if:

22 (a) The person is exempt from overtime compensation under the Fair Labor  
23 Standards Act or is a supervisory, managerial, or executive employee or an officer of the  
24 employer; and

25 (b) The unlawful act or serious misconduct reported concerns matters upon which  
26 the person is employed to report or provide professional opinion.

27 3. This section is intended to codify the existing common law exceptions to the at-  
28 will employment doctrine and to limit their future expansion by the courts. This section,  
29 in addition to chapter 213 and chapter 287, shall provide the exclusive remedy for any and  
30 all unlawful employment practices articulated herein and hereby abrogates any common  
31 law causes of action to the contrary.

32 4. It shall be an unlawful employment practice for an employer to discharge or  
33 retaliate against an individual defined as a protected person in this section because of that  
34 person's status as a protected person.

35 5. A protected person aggrieved by a violation of this section shall have a private  
36 right of action for actual damages for violations of this section but not for punitive

37 **damages. However, if a private right of action for damages exists under another statutory**  
38 **or regulatory scheme, whether under state or federal law, no private right of action shall**  
39 **exist under this statute.**

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

41 **7. A protected person aggrieved by a violation of this section shall have a private**  
42 **right of action that may be filed in a court of competent jurisdiction. The only remedies**  
43 **available in such an action shall be:**

44 **(1) Back pay;**

45 **(2) Reimbursement of medical bills directly related to a violation of this section;**

46 **and**

47 **(3) If a protected person proves, by clear and convincing evidence, that the conduct**  
48 **of the employer was outrageous because of the employer's evil motive or reckless**  
49 **indifference to the rights of others, then, in addition to the amounts referenced in**  
50 **subdivisions (1) and (2) of this subsection, an additional double amount as liquidated**  
51 **damages may be awarded. In applying this subdivision, the provisions of section 510.263**  
52 **shall be applied as though liquidated damages were punitive damages and as though the**  
53 **amounts referenced in subdivisions (1) and (2) of this subsection were compensatory**  
54 **damages.**

55 **8. The court, in addition to the damages set forth herein, may award the prevailing**  
56 **party court costs and reasonable attorney fees.**

287.780. **1. No employer [or agent] shall discharge or in any way discriminate against**  
2 **any employee for exercising any of his or her rights under this chapter. Any employee who has**  
3 **been discharged or discriminated against shall have a civil action for damages against his or her**  
4 **employer.**

5 **2. It shall be unlawful:**

6 **(1) For an employer to retaliate or discriminate against an employee if a motivating**  
7 **factor for such action was the fact that the employee refused to violate a statute, regulation,**  
8 **constitutional provision, ordinance, or common law at the request of someone employed**  
9 **by the employer who has direct or indirect supervisory authority over the employee; or**

10 **(2) For an employer to retaliate or discriminate against an employee if a motivating**  
11 **factor for such action was the fact that the employee reported to an authority of the**  
12 **federal, state, or local government a violation by the employer of any statute, regulation,**  
13 **constitutional provision, ordinance, or common law.**

14 **3. This chapter, in addition to chapter 213 and chapter 285, shall provide the**  
15 **exclusive remedy for any and all unlawful employment practices articulated herein and**  
16 **hereby abrogates any common law causes of action not specifically articulated herein.**

17           **4. In any action for damages brought under subsection 1, 2, or 3 of this section, the**  
18 **plaintiff shall have the burden of proof including, but not limited to, that the employee's**  
19 **exercise of his or her rights under this chapter was a motivating factor in the employer's**  
20 **retaliation or discrimination against the employee.**

21           **5. In an action brought under subsection 1 of this section by an employee against**  
22 **an employer or former employer, the sum of the amount of compensatory damages**  
23 **awarded and the amount of punitive damages awarded shall not exceed, for each plaintiff,**  
24 **the following:**

25           **(1) In the case of a defendant who has fewer than one hundred one employees in**  
26 **each of twenty or more calendar weeks in the current or preceding calendar year, fifty**  
27 **thousand dollars;**

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

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

34           **(4) In the case of a defendant who has more than five hundred employees in each**  
35 **of twenty or more calendar weeks in the current or preceding calendar year, three hundred**  
36 **thousand dollars.**

37           **6. Compensatory damages within the meaning of this section shall not include back**  
38 **pay and interest on back pay.**

39           **7. The court, in addition to the damages set forth herein, may award the prevailing**  
40 **party court costs and reasonable attorney fees.**

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