

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 628
93RD GENERAL ASSEMBLY

Reported from the Committee on Judiciary March 10, 2005 with recommendation that House Committee Substitute for House Bill No. 628 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

1774L.03C

AN ACT

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

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

Section A. Sections 213.010, 213.070, and 213.111, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 213.010, 213.070, and 213.111, to read as follows: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

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.

15 with performing the job, utilizing the place of public accommodation, or occupying the dwelling
16 in question. For purposes of this chapter, the term "disability" does not include current, illegal
17 use of or addiction to a controlled substance as such term is defined by section 195.010, RSMo;
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 twenty or more calendar weeks**
35 **in the current or preceding calendar year, and any agent of such person, and shall include**
36 the state, or any political or civil subdivision thereof[, or any person employing six or more
37 persons within the state, and any person directly acting in the interest of an employer, but does
38 not include corporations and associations owned and operated by religious or sectarian groups].
39 **"Employer" does not include the United States, a corporation wholly owned by the**
40 **government of the United States, an Indian tribe, or any department or agency of the**
41 **District of Columbia subject by statute to procedures of the competitive service, as defined**
42 **in 5 U.S.C. Section 2101, or a bona fide private membership club, other than a labor**
43 **organization which is exempt from taxation under 26 U.S.C. Section 501(c), and does not**
44 **include corporations and associations owned and operated by religious or sectarian groups;**

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

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

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

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

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

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

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

66 (13) "Local commissions", any commission or agency established prior to August 13,
67 1986, by an ordinance or order adopted by the governing body of any city, constitutional charter
68 city, town, village, or county;

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

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

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

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

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

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

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

91 (f) Any establishment which is physically located within the premises of any
92 establishment otherwise covered by this section or within the premises of which is physically
93 located any such covered establishment, and which holds itself out as serving patrons of such
94 covered establishment;

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

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

99 (18) "Unlawful discriminatory practice", any act that is unlawful under this chapter.
213.070. 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] **under section 213.040, 213.045, 213.050, or 213.065** 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] **section 213.040, 213.045, 213.050,**
6 **or 213.065** or because such person has filed a complaint, testified, assisted, or participated in any
7 manner in any investigation, proceeding or hearing conducted [pursuant to this chapter] **section**
8 **213.040, 213.045, 213.050, or 213.065;**

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

12 (4) To discriminate in any manner against any other person because of such person's
13 association with any person protected by this chapter; **or**

14 (5) **For an employer to discriminate against any of his or her employees or**
15 **applicants for employment, for an employment agency, or joint labor-management**
16 **committee controlling apprenticeships or other training or retraining, including on-the-job**
17 **training programs, to discriminate against any individual, or for a labor organization to**
18 **discriminate against any member thereof or applicant for membership, because he or she**
19 **has opposed any practice made an unlawful employment practice by this chapter, or**
20 **because he or she has made a charge, testified, assisted, or participated in any manner in**
21 **an investigation, proceeding, or hearing 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 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 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. Such an action may be brought in any circuit court in any county in which the unlawful discriminatory practice is alleged to have [occurred] **caused the plaintiff injury**, 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 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 respondent may be awarded court costs and reasonable attorney fees only upon a showing that the case is without foundation.

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

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

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

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

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

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

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

47 **5. Subsection 4 of this section shall not apply to:**

48 **(1) Actions filed for violations of sections 213.040, 213.045, 213.050, and 213.070,**
49 **to the extent that the alleged violation of section 213.070 relates to or involves a violation**
50 **of sections 213.040, 213.045, and 213.050, or subdivision (3) of section 213.070, as it relates**
51 **to housing;**

52 **(2) Any action filed under this chapter in which the defendant or the defendant's**
53 **agents are found to have committed battery in conjunction with the act of discrimination;**
54 **or**

55 **(3) Any action filed under section 213.126.**

56 **6. The provisions of subsection 4 of this section notwithstanding, punitive damages**
57 **shall not be awarded against the state of Missouri or any of its political subdivisions.**