

FIRST REGULAR SESSION

HOUSE BILL NO. 552

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE AUSTIN.

1138H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.101, 213.111, and 510.265, RSMo, and to enact in lieu thereof ten new sections relating to unlawful discriminatory practices.

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Section A. Sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.101, 213.111, and 510.265, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 213.010, 213.040, 213.050, 213.055, 213.065, 213.070, 213.101, 213.111, 285.575, and 510.265, 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]~~ **conduct proscribed herein,**
30 **a motivating factor of such conduct being because of** race, color, religion, national origin,
31 ancestry, sex, age as it relates to employment, disability, or familial status as it relates to 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, and~~
40 ~~any 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**
42 **include:**

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

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

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

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

47 **(e) Any department or agency of the District of Columbia subject by statute to**
48 **procedures of the competitive service, as defined in 5 U.S.C. Section 2102;**

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

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

53 ~~[(8)]~~ **(9)** "Employment agency" includes any person or agency, public or private,
54 regularly undertaking with or without compensation to procure employees for an employer or
55 to procure for employees opportunities to work for an employer and includes any person acting
56 in the interest of such a person;

57 ~~[(9)]~~ **(10)** "Executive director", the executive director of the Missouri commission on
58 human rights;

59 ~~[(10)]~~ **(11)** "Familial status", one or more individuals who have not attained the age of
60 eighteen years being domiciled with:

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

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

66 ~~[(11)]~~ **(12)** "Human rights fund", a fund established to receive civil penalties as required
67 by federal regulations and as set forth by subdivision (2) of subsection 11 of section 213.075, and
68 which will be disbursed to offset additional expenses related to compliance with the Department
69 of Housing and Urban Development regulations;

70 ~~[(12)]~~ **(13)** "Labor organization" includes any organization which exists for the purpose,
71 in whole or in part, of collective bargaining or of dealing with employers concerning grievances,
72 terms or conditions of employment, or for other mutual aid or protection in relation to
73 employment;

74 ~~[(13)]~~ **(14)** "Local commissions", any commission or agency established prior to August
75 13, 1986, by an ordinance or order adopted by the governing body of any city, constitutional
76 charter city, town, village, or county;

77 ~~[(14)]~~ **(15)** "Person" includes one or more individuals, corporations, partnerships,
78 associations, organizations, labor organizations, legal representatives, mutual companies, joint
79 stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other organized
80 groups of persons;

81 ~~[(15)]~~ **(16)** "Places of public accommodation", all places or businesses offering or
82 holding out to the general public, goods, services, privileges, facilities, advantages or
83 accommodations for the peace, comfort, health, welfare and safety of the general public or such
84 public places providing food, shelter, recreation and amusement, including, but not limited to:

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

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

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

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

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

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

103 [~~16~~] (17) "Rent" includes to lease, to sublease, to let and otherwise to grant for
104 consideration the right to occupy premises not owned by the occupant;

105 [~~17~~] (18) "Respondent", a person who is alleged to have engaged in a prohibited
106 discriminatory practice in a complaint filed with the commission;

107 [~~18~~] (19) "Unlawful discriminatory practice", any act that is unlawful under this
108 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 **or her** compensation, terms, conditions, or privileges
6 of employment, because of such individual's race, color, religion, national origin, sex, ancestry,
7 age or disability;

8 (b) To limit, segregate, or classify his **or her** employees or his **or her** employment
9 applicants in any way which would deprive or tend to deprive any individual of employment
10 opportunities or otherwise adversely affect his **or her** status as an employee, because of such
11 individual's race, color, 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 **or her** status as an employee or as
19 an applicant for employment, because of such individual's race, color, religion, national origin,
20 sex, ancestry, age or disability; or for any employer, labor organization, or joint
21 labor-management committee controlling apprenticeship or other training or retraining, including
22 on-the-job training programs to discriminate against any individual because of his **or her** race,
23 color, religion, national origin, sex, ancestry, age or disability in admission to, or employment
24 in, any program 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 chapters 285 and 287, shall provide the exclusive**
14 **remedy for any and all unlawful employment practices articulated herein and hereby**
15 **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**
11 **amended.**

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

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 presents a highly persuasive framework for analysis.**

27 **5. The general assembly hereby expressly abrogates by this statute the cases of**
28 ***Daugherty v. City of Maryland Heights*, 231 S.W.3d 814 (Mo. 2007); *Korando v.***
29 ***Mallinckrodt, Inc.*, 239 S.W.3d 647 (Mo. App. E.D. 2007); *Lomax v. Daimler Chrysler Corp.*,**
30 **243 S.W.3d 474 (Mo. App. E.D. 2007); and *Francin v. Mosby, Inc.*, 248 S.W.3d 619 (Mo.**
31 **App. E.D. 2008), and their progeny as they relate to the contributing factor standard and**
32 **abandonment of the burden-shifting framework established in *McDonnell Douglas Corp.***
33 ***v. Green*, 411 U.S. 792, 800-01 (1973), and the mixed-motive framework established in *Price***
34 ***Waterhouse v. Hopkins*, 490 U.S. 228, 258 (1989). The general assembly also intends to**
35 **abrogate Missouri approved jury instruction 38.01(A), Missouri approved jury instruction**
36 **38.01(B), Missouri approved jury instruction 38.02, and Missouri approved jury**
37 **instruction 38.03.**

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 subsection 1** of section 213.070 as it relates to employment and
5 public accommodations, the commission has not completed its administrative processing and the
6 person 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 subsection 1** of section 213.070 as it relates to housing, and the person
12 aggrieved so requests in writing, the commission shall issue to the person claiming to be
13 aggrieved a letter indicating his or her right to bring a civil action within ninety days of such
14 notice against the respondent named in the complaint. Such an action may be brought in any
15 circuit court in any county in which the unlawful discriminatory practice is alleged to have
16 ~~occurred~~ **been committed**, either before a circuit or associate circuit judge. Upon issuance of
17 this notice, the commission shall terminate all proceedings relating to the complaint. No person

18 may file or reinstate a complaint with the commission after the issuance of a notice under this
19 section relating to the same practice or act. Any action brought in court under this section shall
20 be filed within ninety days from the date of the commission's notification letter to the individual
21 but no later than two years after the alleged cause occurred or its reasonable discovery by the
22 alleged injured party.

23 2. The court may grant as relief, as it deems appropriate, any permanent or temporary
24 injunction, temporary restraining order, or other order, and may award to the plaintiff actual and
25 punitive damages, and may award court costs and reasonable attorney fees to the prevailing
26 party, other than a state agency or commission or a local commission; except that, a prevailing
27 respondent may be awarded court costs and reasonable attorney fees only upon a showing that
28 the case is without foundation.

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

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

34 **(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; or**

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

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

54 7. Notwithstanding subsection 4 of this section, punitive damages shall not be
55 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 a supervisory, managerial, or executive employee or an officer of
23 the employer; and**

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

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

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

34 **5. A protected person aggrieved by a violation of this section shall have a private**
35 **right of action for actual damages for violations of this section but not for punitive**
36 **damages. However, if a private right of action for damages exists under another statutory**
37 **or regulatory scheme, whether under state or federal law, no private right of action shall**
38 **exist under this section.**

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

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

43 **(1) Back pay; and**

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

51 **8. The court, in addition to the damages set forth in this section, may award the**
52 **prevailing party court costs and reasonable attorney fees.**

 510.265. 1. No award of punitive damages against any defendant shall exceed the
2 greater of:

3 (1) Five hundred thousand dollars; or

4 (2) Five times the net amount of the judgment awarded to the plaintiff against the
5 defendant. Such limitations shall not apply if the state of Missouri is the plaintiff requesting the
6 award of punitive damages, or the defendant pleads guilty to or is convicted of a felony arising
7 out of the acts or omissions pled by the plaintiff.

8 2. The provisions of this section shall not apply to civil actions brought under section
9 213.111 that allege a violation of section 213.040, 213.045, 213.050, or 213.070, to the extent
10 that the alleged violation of section 213.070 relates to or involves a violation of section 213.040,
11 213.045, or 213.050, or subdivision (3) **of subsection 1** of section 213.070 as it relates to
12 housing.

 Section B. If any provision of this act or the application thereof to anyone or to any
2 circumstance is held invalid, the remainder of those sections and the application of such
3 provisions to others or other circumstances shall not be affected thereby.

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