

SECOND REGULAR SESSION

HOUSE BILL NO. 1314

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WHITE.

4390H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 213.010, 213.070, 213.111, 285.575, and 510.265, RSMo, and to enact in lieu thereof five 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, 213.070, 213.111, 285.575, and 510.265, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 213.010, 213.070,
3 213.111, 285.575, and 510.265, to read as follows:

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

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

9 (2) “Because” or “because of”[-]; :

10 (a) As it relates to the adverse decision or action **taken in an area unrelated to**
11 **employment**, the protected criterion was ~~[the motivating factor]~~ **a contributing factor;**

12 (b) **As it relates to the adverse decision or action taken in an area related to**
13 **employment, the protected criterion was a motivating factor;**

14 (3) “Commission”, the Missouri commission on human rights;

15 (4) “Complainant”, a person who has filed a complaint with the commission alleging that
16 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.

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

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

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

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

32 (6) “Discrimination”, conduct proscribed herein, taken because of race, color, religion,
33 national origin, ancestry, sex, ~~[or]~~ age as it relates to employment, disability, or familial status
34 as it relates to housing;

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

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

45 (a) The United States;

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

47 (c) An individual employed by an employer **who was not directly or proximately**
48 **involved in the proscribed conduct**;

49 (d) An Indian tribe;

50 (e) Any department or agency of the District of Columbia subject by statute to
51 procedures of the competitive service, as defined in 5 U.S.C. Section ~~[2101]~~ **2102**; or

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

54 (9) "Employment agency" includes any person or agency, public or private, regularly
55 undertaking with or without compensation to procure employees for an employer or to procure
56 for employees opportunities to work for an employer;

57 (10) "Executive director", the executive director of the Missouri commission on human
58 rights;

59 (11) "Familial status", one or more individuals who have not attained the age of eighteen
60 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
64 because 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 (12) "Human rights fund", a fund established to receive civil penalties as required by
67 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 (13) "Labor organization" includes any organization which exists for the purpose, in
71 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 (14) "Local commissions", any commission or agency established prior to August 13,
75 1986, by an ordinance or order adopted by the governing body of any city, constitutional charter
76 city, town, village, or county;

77 (15) **"Motivating factor", the protected classification played a role in the adverse
78 action or decision but need not have been the only reason for the adverse action or
79 decision;**

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

84 ~~[(16)]~~ (17) "Places of public accommodation", all places or businesses offering or
85 holding out to the general public, goods, services, privileges, facilities, advantages or
86 accommodations for the peace, comfort, health, welfare and safety of the general public or such
87 public places providing food, shelter, recreation and amusement, including, but not limited to:

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

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

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

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

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

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

106 ~~[(17)]~~ **(18)** "Rent" includes to lease, to sublease, to let and otherwise to grant for
107 consideration the right to occupy premises not owned by the occupant;

108 ~~[(18)]~~ **(19)** "Respondent", a person who is alleged to have engaged in a prohibited
109 discriminatory practice in a complaint filed with the commission;

110 ~~[(19) "The motivating factor", the employee's protected classification actually played
111 a role in the adverse action or decision and had a determinative influence on the adverse decision
112 or action;]~~

113 (20) "Unlawful discriminatory practice", any act that is unlawful under this chapter.

213.070. ~~[(1)]~~ It shall be an unlawful discriminatory practice ~~[for an employer,
2 employment agency, labor organization, or place of public accommodation]:~~

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

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

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

14 ~~[2. This chapter, in addition to chapter 285 and chapter 287, shall provide the exclusive~~
15 ~~remedy for any and all claims for injury or damages arising out of an employment relationship.]~~

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

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

30 3. Any party to any action initiated under this section has a right to a trial by jury.

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

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

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

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

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

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

48 5. In any employment-related civil action brought under this chapter, the plaintiff shall
49 bear the burden of proving the alleged unlawful decision or action was made or taken because
50 of his or her protected classification and was the direct proximate cause of the claimed damages.

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 the adverse decision or action, the person’s
5 status as a protected person was ~~[the]~~ **a** motivating factor;

6 (2) “Employer”, an entity that has six or more employees for each working day in each
7 of twenty or more calendar weeks in the current or preceding calendar year, **and any person**
8 **directly acting in the interest of an employer.** “Employer” shall not include the state of
9 Missouri or its agencies, instrumentalities, or political subdivisions, including but not limited to
10 any public institution of higher education, a corporation wholly owned by the state of Missouri,
11 an individual employed by an employer **who was not directly or proximately involved in the**
12 **proscribed conduct**, or corporations and associations owned or operated by religious or
13 sectarian organizations;

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

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

24 (a) The employee is a supervisory, managerial, or executive employee or an officer of
25 his or her employer and the unlawful act or serious misconduct reported concerns matters upon
26 which the employee is employed to report or provide professional opinion; **except that, such**
27 **employee shall be a "protected person" if he or she reported an unlawful act or serious**
28 **misconduct to a governmental or law enforcement agency after the employer, subsequent**
29 **to receiving a report from the employee concerning the unlawful act or serious misconduct,**
30 **failed to correct or stop the unlawful act or serious misconduct; or**

31 (b) The proper authority or person to whom the employee makes his or her report is the
32 person whom the employee claims to have committed the unlawful act or violation of a clear
33 mandate of public policy[;

34 ~~——(5) "The motivating factor", the employee's protected classification actually played a~~
35 ~~role in the adverse decision or action and had a determinative influence on the adverse decision~~
36 ~~or action].~~

37 3. ~~[This section is intended to codify the existing common law exceptions to the at-will~~
38 ~~employment doctrine and to limit their future expansion by the courts. This section, in addition~~
39 ~~to chapter 213 and chapter 287, shall provide the exclusive remedy for any and all claims of~~
40 ~~unlawful employment practices.~~

41 ~~——4.] It shall be an unlawful employment practice for an employer to discharge an~~
42 ~~individual defined as a protected person in this section because of that person's status as a~~
43 ~~protected person.~~

44 ~~[5-] 4. A protected person aggrieved by a violation of this section shall have a private~~
45 ~~right of action for actual damages for violations of this section but not for punitive damages.~~
46 ~~However, if a private right of action for damages exists under another statutory or regulatory~~
47 ~~scheme, whether under state or federal law, no private right of action shall exist under this~~
48 ~~[statute] section.~~

49 ~~[6-] 5. Any party to any action initiated under this section may demand a trial by jury.~~

50 [7-] 6. A protected person aggrieved by a violation of this section shall have a private
51 right of action that may be filed in a court of competent jurisdiction. The only remedies available
52 in such an action shall be:

53 (1) Back pay;

54 (2) Reimbursement of medical bills directly related to a violation of this section; and

55 (3) Additionally, if a protected person proves, by clear and convincing evidence, that the
56 conduct of the employer was outrageous because of the employer's evil motive or reckless
57 indifference to the rights of others, then, such person may receive double the amount awarded
58 under subdivisions (1) and (2) of this subsection, as liquidated damages. In applying this
59 subdivision, the provisions of section 510.263 shall be applied as though liquidated damages
60 were punitive damages and as though the amounts referenced in subdivisions (1) and (2) of this
61 subsection were compensatory damages.

62 [8-] 7. The court, in addition to the damages set forth in subsection [7] 6 of this section,
63 may award the prevailing party court costs and reasonable attorney fees; except that a prevailing
64 respondent may be awarded reasonable attorney fees only upon a showing that the case was
65 without foundation.

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.

6

7 Such limitations shall not apply if the state of Missouri is the plaintiff requesting the award of
8 punitive damages, or the defendant pleads guilty to or is convicted of a felony arising out of the
9 acts or omissions pled by the plaintiff.

10 2. The provisions of this section shall not apply to civil actions brought under section
11 213.111 that allege a violation of section 213.040, 213.045, 213.050, or 213.070, to the extent
12 that the alleged violation of section 213.070 relates to or involves a violation of section 213.040,
13 213.045, or 213.050, or subdivision (3) of ~~subsection 1 of~~ section 213.070 as it relates to
14 housing.

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