

FIRST REGULAR SESSION

# HOUSE BILL NO. 1144

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES EMERY (Sponsor), JONES (89), FAITH,  
RUESTMAN AND CUNNINGHAM (86) (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

2635L.01I

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### AN ACT

To repeal sections 213.010, 213.055, 213.070, and 537.610, RSMo, and to enact in lieu thereof  
four new sections relating to liability for human rights violations.

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

Section A. Sections 213.010, 213.055, 213.070, and 537.610, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 213.010, 213.055, 213.070,  
3 and 537.610, 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) "Commission", the Missouri commission on human rights;  
10 (3) "Complainant", a person who has filed a complaint with the commission alleging that  
11 another person has engaged in a prohibited discriminatory practice;  
12 (4) "Disability", a physical or mental impairment which substantially limits one or more  
13 of a person's major life activities, being regarded as having such an impairment, or a record of

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 having such an impairment, which with or without reasonable accommodation does not interfere  
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] **an adverse action motivated by**  
28 race, color, religion, national origin, ancestry, sex, age as it relates to employment, disability, or  
29 familial status as it relates to housing;

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

34 (7) "Employer" includes the state, or any political or civil subdivision thereof, or any  
35 person employing six or more persons within the state, [and any person directly acting in the  
36 interest of an employer,] but does not include corporations and associations owned and operated  
37 by religious or sectarian groups;

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

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

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

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

47 (b) The designee of such parent or other person having such custody, with the written  
48 permission of such parent or other person. The protections afforded against discrimination on

49 the basis of familial status shall apply to any person who is pregnant or is in the process of  
50 securing legal custody of any individual who has not attained the age of eighteen years;

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

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

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

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

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

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

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

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

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

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

84 (f) Any establishment which is physically located within the premises of any  
85 establishment otherwise covered by this section or within the premises of which is physically  
86 located any such covered establishment, and which holds itself out as serving patrons of such  
87 covered establishment;

88 (16) **"Protected class", includes race, color, religion, national origin, ancestry, sex,**  
89 **age as it relates to employment, disability, or familial status as it relates to housing;**

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

92 [(17)] (18) "Respondent", a person who is alleged to have engaged in a prohibited  
93 discriminatory practice in a complaint filed with the commission;

94 (19) **"Retaliate" and "retaliation", refers to materially adverse action affecting the**  
95 **terms and conditions of a person's employment or housing;**

96 [(18)] (20) "Unlawful discriminatory practice", any act that is unlawful under this  
97 chapter.

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 **to be the employer's motivating factor**:

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

8 (b) [To limit, segregate, or classify] **In limiting, segregating, or classifying** his  
9 employees or his employment applicants in any way which would deprive or tend to deprive any  
10 individual of employment opportunities or otherwise adversely affect his status as an employee[,  
11 because of such 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] **which is motivated by the** race, color,  
15 religion, national origin, sex, ancestry, age or disability of any individual; or to limit, segregate,  
16 or classify its membership, or to classify or fail or refuse to refer for employment any individual,  
17 in any way which would deprive or tend to deprive any individual of employment opportunities,  
18 or would limit such employment opportunities or otherwise adversely affect his status as an  
19 employee or as an applicant for employment, [because of such] **which is motivated by the**  
20 individual's race, color, religion, national origin, sex, ancestry, age or disability; or for any  
21 employer, labor organization, or joint labor-management committee controlling apprenticeship  
22 or other training or retraining, including on-the-job training programs to discriminate against any

23 individual because of his race, color, religion, national origin, sex, ancestry, age or disability in  
24 admission to, or employment in, any program established to provide apprenticeship or other  
25 training;

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

37 2. Notwithstanding any other provision of this chapter, it shall not be an unlawful  
38 employment practice for an employer to apply different standards of compensation, or different  
39 terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system,  
40 or a system which measures earnings by quantity or quality of production or to employees who  
41 work in different locations, provided that such differences or such systems are not the result of  
42 an intention or a design to discriminate, and are not used to discriminate, because of race, color,  
43 religion, sex, national origin, ancestry, age or disability, nor shall it be an unlawful employment  
44 practice for an employer to give and to act upon the results of any professionally developed  
45 ability test, provided that such test, its administration, or action upon the results thereof, is not  
46 designed, intended or used to discriminate because of race, color, religion, national origin, sex,  
47 ancestry, age or disability.

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

58 disability in any community, state, section, or other area, or in the available workforce in any  
59 community, state, section, or other area.

60       4. **Notwithstanding any other provision of this chapter, an employee may not**  
61 **prevail in an action under this chapter where the employer demonstrates that it would**  
62 **have taken the same action in the absence of the impermissible motivating factor.**

63       5. **Notwithstanding any other provision of this chapter to the contrary, where an**  
64 **employer discovers evidence that would have constituted cause for dismissal after taking**  
65 **an action against an employee that is the cause of an action under this chapter, and the**  
66 **employer demonstrates that based on the subsequently discovered evidence it would have**  
67 **terminated the employment of the employee, the employee's compensatory damages for**  
68 **such action shall terminate as of the date the employer demonstrates it would have**  
69 **terminated the employee's employment.**

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

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 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] **where such person's opposition to a discriminatory practice**  
7 **prohibited by this chapter was the motivating factor with respect to the retaliation;**

8       (3) **To retaliate or discriminate against any other person who has participated in any**  
9 **manner in any investigation, proceeding or hearing conducted pursuant to this chapter where**  
10 **such participation was the motivating factor with respect to the retaliation;**

11       [(3)] (4) For the state or any political subdivision of this state to discriminate on the  
12 basis of race, color, religion, national origin, sex, ancestry, age, as it relates to employment,  
13 disability, or familial status as it relates to housing **where such participation was the**  
14 **motivating factor with respect to the retaliation;** or

15       [(4)] (5) To discriminate in any manner against any other person because of such  
16 person's association with any person protected by this chapter.

537.610. 1. The commissioner of administration, through the purchasing division, and  
2 the governing body of each political subdivision of this state, notwithstanding any other  
3 provision of law, may purchase liability insurance for tort claims, made against the state or the  
4 political subdivision, but the maximum amount of such coverage shall not exceed two million  
5 dollars for all claims arising out of a single occurrence and shall not exceed three hundred

6 thousand dollars for any one person in a single accident or occurrence, except for those claims  
7 governed by the provisions of the Missouri workers' compensation law, chapter 287, RSMo, and  
8 no amount in excess of the above limits shall be awarded or settled upon. Sovereign immunity  
9 for the state of Missouri and its political subdivisions is waived only to the maximum amount  
10 of and only for the purposes covered by such policy of insurance purchased pursuant to the  
11 provisions of this section and in such amount and for such purposes provided in any  
12 self-insurance plan duly adopted by the governing body of any political subdivision of the state.

13 2. The liability of the state and its public entities on claims within the scope of sections  
14 537.600 to 537.650, shall not exceed two million dollars for all claims arising out of a single  
15 accident or occurrence and shall not exceed three hundred thousand dollars for any one person  
16 in a single accident or occurrence, except for those claims governed by the provisions of the  
17 Missouri workers' compensation law, chapter 287, RSMo.

18 3. No award for damages on any claim against a public entity within the scope of  
19 sections 537.600 to 537.650, **and chapter 213, RSMo**, shall include punitive or exemplary  
20 damages.

21 4. If the amount awarded to or settled upon multiple claimants exceeds two million  
22 dollars, any party may apply to any circuit court to apportion to each claimant his proper share  
23 of the total amount limited by subsection 1 of this section. The share apportioned each claimant  
24 shall be in the proportion that the ratio of the award or settlement made to him bears to the  
25 aggregate awards and settlements for all claims arising out of the accident or occurrence, but the  
26 share shall not exceed three hundred thousand dollars.

27 5. The limitation on awards for liability provided for in this section shall be increased  
28 or decreased on an annual basis effective January first of each year in accordance with the  
29 Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of  
30 Economic Analysis of the United States Department of Commerce. The current value of the  
31 limitation shall be calculated by the director of the department of insurance, who shall furnish  
32 that value to the secretary of state, who shall publish such value in the Missouri Register as soon  
33 after each January first as practicable, but it shall otherwise be exempt from the provisions of  
34 section 536.021, RSMo.

35 6. Any claim filed against any public entity under this section shall be subject to the  
36 penalties provided by supreme court rule 55.03.

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