

SECOND REGULAR SESSION

# HOUSE BILL NO. 1858

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES EMERY (Sponsor), JONES (89), COX, ST. ONGE, AULL,  
DEEKEN, RUESTMAN, BIVINS, DIXON AND SANDER (Co-sponsors).

Read 1st time January 24, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

3880L.011

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### AN ACT

To repeal sections 213.010, 213.055, 213.070, and 213.111, RSMo, and to enact in lieu thereof  
four new sections relating to the Missouri human rights act.

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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Section A. Sections 213.010, 213.055, 213.070, and 213.111, RSMo, are repealed and  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 213.111, 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) "Rent" includes to lease, to sublease, to let and otherwise to grant for consideration  
89 the right to occupy premises not owned by the occupant;

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

92 (18) "Unlawful discriminatory practice", any act that is unlawful under this chapter.  
213.055. 1. It shall be an unlawful employment practice:

2 (1) [For an employer, because of the] **When** race, color, religion, national origin, sex,  
3 ancestry, age or disability of any individual **is the factor motivating the employer's decision:**

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

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

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

25 (3) For any employer or employment agency to print or circulate or cause to be printed  
26 or circulated any statement, advertisement or publication, or to use any form of application for  
27 employment or to make any inquiry in connection with prospective employment, which

28 expresses, directly or indirectly, any limitation, specification, or discrimination, because of race,  
29 color, religion, national origin, sex, ancestry, age or disability unless based upon a bona fide  
30 occupational qualification or for an employment agency to fail or refuse to refer for employment,  
31 or otherwise to discriminate against, any individual because of his race, color, religion, national  
32 origin, sex, ancestry, age as it relates to employment, or disability, or to classify or refer for  
33 employment any individual on the basis of his race, color, religion, national origin, sex, ancestry,  
34 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.

213.070. It shall be an unlawful discriminatory practice **for an employer:**

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 of  
9 race, color, religion, national origin, sex, ancestry, age, as it relates to employment, disability,  
10 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.

213.111. 1. If, after one hundred eighty days from the filing of a complaint alleging an  
2 unlawful discriminatory practice pursuant to section 213.055, 213.065 or 213.070 to the extent  
3 that the alleged violation of section 213.070 relates to or involves a violation of section 213.055  
4 or 213.065, or subdivision (3) of section 213.070 as it relates to employment and public  
5 accommodations, the commission has not completed its administrative processing and the person  
6 aggrieved so requests in writing, the commission shall issue to the person claiming to be  
7 aggrieved a letter indicating his or her right to bring a civil action within ninety days of such  
8 notice against the respondent named in the complaint. If, after the filing of a complaint pursuant  
9 to sections 213.040, 213.045, 213.050 and 213.070, to the extent that the alleged violation of  
10 section 213.070 relates to or involves a violation of sections 213.040, 213.045 and 213.050, or  
11 subdivision (3) of section 213.070 as it relates to housing, and the person aggrieved so requests  
12 in writing, the commission shall issue to the person claiming to be aggrieved a letter indicating  
13 his or her right to bring a civil action within ninety days of such notice against the respondent  
14 named in the complaint. Such an action may be brought in any circuit court in any county in  
15 which the unlawful discriminatory practice is alleged to have occurred, either before a circuit or  
16 associate circuit judge. Upon issuance of this notice, the commission shall terminate all  
17 proceedings relating to the complaint. No person may file or reinstate a complaint with the  
18 commission after the issuance of a notice under this section relating to the same practice or act.  
19 Any action brought in court under this section shall be filed within ninety days from the date of  
20 the commission's notification letter to the individual but no later than two years after the alleged  
21 cause occurred or its reasonable discovery by the alleged injured party.

22 2. The court may grant as relief, as it deems appropriate, any permanent or temporary  
23 injunction, temporary restraining order, or other order, and may award to the plaintiff actual [and  
24 punitive] damages. **The court may also award punitive damages to the plaintiff only if the**  
25 **defendant or respondent is not a state governmental agency or corporation, including**  
26 **public school districts and political subdivisions**, and may award court costs and reasonable  
27 attorney fees to the prevailing party, other than a state agency or commission or a local

28 commission; except that, a prevailing respondent may be awarded court costs and reasonable  
29 attorney fees only upon a showing that the case is without foundation.

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