

SECOND REGULAR SESSION

HOUSE BILL NO. 2460

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES EMERY (Sponsor) AND JONES (89) (Co-sponsor).

Read 1st time March 26, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5562L.01I

AN ACT

To repeal sections 213.010, 213.055, 213.070, 213.075, and 213.111, RSMo, and to enact in lieu thereof six new sections relating to the Missouri human rights act.

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

Section A. Sections 213.010, 213.055, 213.070, 213.075, and 213.111, RSMo, are
2 repealed and six new sections enacted in lieu thereof, to be known as sections 213.010, 213.055,
3 213.070, 213.075, 213.111, and 1, 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
14 having such an impairment, which with or without reasonable accommodation does not interfere

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 with performing the job, utilizing the place of public accommodation, or occupying the dwelling
16 in question. For purposes of this chapter, the term "disability" does not include current, illegal
17 use of or addiction to a controlled substance as such term is defined by section 195.010, RSMo;
18 however, a person may be considered to have a disability if that person:

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

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

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

27 (5) "Discrimination", [any unfair treatment based on] **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, in an**
2 **employment context, or for a person, in a housing or real estate context:**

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 of
10 race, color, religion, national origin, sex, ancestry, age, as it relates to employment, disability,
11 or familial status as it relates to housing; or

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

213.075. 1. Any person claiming to be aggrieved by an unlawful discriminatory practice
2 may make, sign and file with the commission a verified complaint in writing, within one hundred
3 eighty days of the alleged act of discrimination, which shall state the name and address of the
4 person alleged to have committed the unlawful discriminatory practice and which shall set forth
5 the particulars thereof and such other information as may be required by the commission. The
6 complainant's agent, attorney or the attorney general may, in like manner, make, sign and file
7 such complaint.

8 2. Any complaint which is filed with the federal Equal Employment Opportunity
9 Commission or other federal agencies with which the commission has a work-sharing or deferral
10 agreement, or with a local commission which has been certified as substantially equivalent by
11 the commission, shall be deemed filed with the commission on the date that such complaint is
12 received by such federal agency or local commission. A copy of all complaints filed with a local
13 commission with the authority to enforce the provisions of this chapter is to be forwarded to the
14 commission within seven days of the filing thereof with such local commission. If a local
15 commission has jurisdiction to hear a complaint filed with the commission, such complaint shall
16 be deemed to have been filed with the local commission on the date on which such complaint
17 was filed with the commission. The commission shall, within seven days of the receipt of a
18 complaint which a local commission has jurisdiction to hear, forward a copy thereof to such local
19 commission.

20 3. After the filing of any complaint, the executive director shall, with the assistance of
21 the commission's staff, promptly investigate the complaint, and if the director determines after
22 the investigation that probable cause exists for crediting the allegations of the complaint, the
23 executive director shall immediately endeavor to eliminate the unlawful discriminatory practice
24 complained of by conference, conciliation and persuasion, and shall report the results to the
25 commission. The investigation, determination of probable cause and conciliation shall be
26 conducted according to such rules, regulations and guidelines as the commission shall prescribe.

27 4. A person who is not named as a respondent in a complaint, but who is identified as
28 a respondent in the course of investigation, may be joined as an additional or substitute
29 respondent upon written notice, pursuant to such rules, regulations, and guidelines as the
30 commission shall prescribe. Such notice, in addition to complying with the requirements of such
31 rules, regulations, and guidelines, shall also state the reason why the person to whom the notice
32 is addressed has been joined as a party.

33 5. In case of failure to eliminate such discriminatory practice as found in the
34 investigation, if in the judgment of the chairperson of the commission circumstances so warrant,
35 there shall be issued and served in the name of the commission, a written notice, together with
36 a copy of the complaint, as it may have been amended, requiring the person named in the
37 complaint, hereinafter referred to as "respondent", to answer the charges of the complaint at a
38 hearing, at a time and place to be specified in the notice, before a panel of at least three members
39 of the commission sitting as the commission or before a hearing examiner licensed to practice
40 law in this state who shall be appointed by the executive director and approved by the
41 commission. The place of the hearing shall be in the office of the commission or such other
42 place designated by it, except that if the respondent so requests, in writing, the hearing shall be
43 held in the county of such person's residence or business location at the time of the alleged
44 unlawful discriminatory practice. A copy of the notice shall also be served on the complainants.

45 6. In all cases where a written notice of hearing has been issued and a party has not
46 elected the option to proceed in circuit court as set forth in section 213.076, the procedures set
47 forth for a hearing shall apply.

48 7. The commission shall be a party to the action and shall be represented before the panel
49 or the hearing examiner by the office of the attorney general or, when so delegated by the
50 attorney general, a staff attorney of the commission. Neither the hearing examiner nor any
51 member of the panel shall have participated in the investigation of the complaint. Evidence
52 concerning endeavors at conciliation shall be excluded.

53 8. The respondent may file a written verified answer to the complaint and appear at the
54 hearing in person or otherwise with or without counsel, and submit testimony. At the discretion
55 of the hearing examiner or the panel, the complainant may be allowed to intervene, thereby
56 becoming a party to the action with the right to present testimony in person or by counsel,
57 provided the complainant at all times shall be treated as a party for the purpose of discovery and
58 the taking of depositions. The commission or complainant intervenor shall have the power to
59 reasonably and fairly amend any complaint, and the respondent shall have like power to amend
60 any answer. The testimony taken at the hearing shall be under oath and be transcribed.

61 9. In any contested case before the commission, any party may take and use written
62 interrogatories, requests for production of documents and other materials, and requests for

63 admissions, and all other forms of discovery authorized by rules of civil procedure in the same
64 manner, upon, and under the same conditions, and upon the same notice, as is or may hereafter
65 be provided for with respect to the taking and using of written interrogatories, requests for
66 production of documents and other materials, and requests for admissions, and all other forms
67 of discovery authorized by rules of civil procedure in civil actions in the circuit court. The panel
68 or hearing examiner shall have the authority to impose sanctions in the same manner as set forth
69 in the rules of civil procedure.

70 10. The hearing shall be conducted in the manner provided by chapter 536, RSMo.

71 11. When the case is heard by a panel of the commission, the chairperson of the
72 commission shall select the hearing panel and the presiding officer. The presiding officer shall
73 have full authority to call and examine witnesses, admit or exclude evidence and rule upon all
74 motions and objections. The panel shall state its findings of fact and conclusions of law, and if,
75 upon all the evidence at the hearing, the panel finds:

76 (1) That a respondent has engaged in an unlawful discriminatory practice as defined in
77 this chapter, the commission shall issue and cause to be served on the respondent an order
78 requiring the respondent to cease and desist from the unlawful discriminatory practice. The order
79 shall require the respondent to take such affirmative action, as in the panel's judgment will
80 implement the purposes of this chapter, including, but not limited to, payment of back pay;
81 hiring; reinstatement or upgrading; restoration to membership in any respondent labor
82 organization; the extension of full, equal and unsegregated housing; the extension of full, equal
83 and unsegregated public accommodations; extension of a commercial real estate loan or other
84 financial assistance; extension or restoration of membership or participation in any multiple
85 listing service or other real estate service organization or facility; payment of actual damages;
86 and the submission of a report of the manner of compliance;

87 (2) That a respondent has engaged or is about to engage in a violation of section 213.040,
88 213.045, 213.050, **213.055**, or 213.070, to the extent that the alleged violation of section 213.070
89 relates to or involves a violation of one or more of such other sections or relates to or involves
90 the encouraging, aiding, or abetting of a violation of such other sections, the commission may,
91 in addition to the relief provided in subdivision (1) of this subsection, assess a civil penalty
92 against the respondent, for purposes of vindicating the public interest:

93 (a) In an amount not exceeding **[two] three** thousand dollars if the respondent has not
94 been adjudged to have violated one or more of the sections enumerated in subdivision (2) of this
95 subsection within five years of the date of the filing of the complaint;

96 (b) In an amount not exceeding **[five] seven** thousand dollars if the respondent has been
97 adjudged to have committed one violation of the sections enumerated in subdivision (2) of this
98 subsection within five years of the date on which the complaint is filed;

(c) In an amount not exceeding [ten] **fifteen** thousand dollars if the respondent has been adjudged to have committed two or more prior violations of the sections enumerated in subdivision (2) of this subsection within seven years of the date on which the complaint is filed.

All civil penalties set forth in this subsection shall be paid to the human rights fund.

12. If, upon all the evidence, the panel finds that a respondent has not engaged in any unlawful discriminatory practice, the panel shall state its findings of fact and conclusions of law and shall issue and cause to be served on the complainant and respondent an order dismissing the complaint.

13. When the case is heard by a hearing examiner, the examiner shall have all powers described in subdivision (8) of section 213.030 and subsection 11 of this section, for the purpose of the hearing. The hearing examiner shall make findings of fact and conclusions of law and shall recommend to the commission an order granting such relief as provided in subsection 11 of this section or dismissing the complaint as to the respondent as provided in subsection 12 of this section, in accordance with such findings.

14. A panel of at least three members of the commission, sitting as the commission, shall review the record, findings and recommended order of the hearing examiner. The panel shall thereafter accept or amend the recommended order which shall become the order of the commission. All orders shall be served on the complainant and respondent, and copies shall be delivered to the attorney general and such other public officers as the commission deems proper.

15. No order of the commission issued pursuant to this section shall affect any contract, sale, encumbrance or lease consummated before the issuance of such order and involving a bona fide purchaser without actual notice of the charge filed pursuant to this section.

16. Any person aggrieved by an order of the commission may appeal as provided in chapter 536, RSMo.

213.111. 1. If, after one hundred eighty days from the filing of a complaint alleging an unlawful discriminatory practice pursuant to section 213.055, 213.065 or 213.070 to the extent that the alleged violation of section 213.070 relates to or involves a violation of section 213.055 or 213.065, or subdivision (3) of section 213.070 as it relates to employment and public accommodations, the commission has not completed its administrative processing and the person aggrieved so requests in writing, the commission shall issue to the person claiming to be aggrieved a letter indicating his or her right to bring a civil action within ninety days of such notice against the respondent named in the complaint. If, after the filing of a complaint pursuant to sections 213.040, 213.045, 213.050 and 213.070, to the extent that the alleged violation of section 213.070 relates to or involves a violation of sections 213.040, 213.045 and 213.050, or subdivision (3) of section 213.070 as it relates to housing, and the person aggrieved so requests

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.

Section 1. In applying the provisions of chapter 213, RSMo, it is the intent of the
2 **legislature to reject and abrogate the holdings in *Daugherty v. City of Maryland Heights*,**
3 **231 S.W.3d 814 (Mo. 2007), *Cooper v. Albacore Holdings, Inc.*, 204 S.W.3d 238 (Mo.App.**
4 **E.D. 2006), and *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo.App. E.D. 2006),**
5 **and all cases citing, interpreting, applying, or following these cases as they pertain to the**
6 **discrimination standard defined by section 213.010, RSMo, unlawful employment practices**
7 **set forth in section 213.055, RSMo, and unlawful discriminatory practices set forth in**
8 **section 213.070, RSMo.**

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