

SECOND REGULAR SESSION

# HOUSE BILL NO. 1995

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES MILLER (Sponsor) AND ELMER (Co-sponsor).

5898H.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 213.010, RSMo, and to enact in lieu thereof two new sections relating to unlawful discriminatory practices.

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

Section A. Section 213.010, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 213.010 and 213.080, to read as follows: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", a protected criterion was a motivating factor in the defendant's unlawful employment or discriminatory practice, but need not have been the only factor in, or reason for, such practice. Because or because of shall not apply to a claim that defendant's otherwise neutral policy or practice has a disparate adverse impact on a protected individual or group of individuals;**

(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.

17        [(4)] (5) "Disability", a physical or mental impairment which substantially limits one or  
18 more of a person's major life activities, being regarded as having such an impairment, or a record  
19 of having such an impairment, which with or without reasonable accommodation does not  
20 interfere with performing the job, utilizing the place of public accommodation, or occupying the  
21 dwelling in question. For purposes of this chapter, the term "disability" does not include current,  
22 illegal 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        [(5)] (6) "Discrimination", any unfair treatment based on race, color, religion, national  
33 origin, ancestry, sex, age as it relates to employment, disability, or familial status as it relates to  
34 housing;

35        [(6)] (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        [(7)] (8) "Employer" includes the state, or any political or civil subdivision thereof, or  
40 any person employing six or more persons within the state[, and any person directly acting in the  
41 interest of an employer,] but does not include corporations and associations owned and operated  
42 by religious or sectarian groups;

43        [(8)] (9) "Employment agency" includes any person or agency, public or private,  
44 regularly undertaking with or without compensation to procure employees for an employer or  
45 to procure for employees opportunities to work for an employer and includes any person acting  
46 in the interest of such a person;

47        [(9)] (10) "Executive director", the executive director of the Missouri commission on  
48 human rights;

49        [(10)] (11) "Familial status", one or more individuals who have not attained the age of  
50 eighteen years being domiciled with:

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

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

56 [(11)] **(12)** "Human rights fund", a fund established to receive civil penalties as required  
57 by federal regulations and as set forth by subdivision (2) of subsection 11 of section 213.075, and  
58 which will be disbursed to offset additional expenses related to compliance with the Department  
59 of Housing and Urban Development regulations;

60 [(12)] **(13)** "Labor organization" includes any organization which exists for the purpose,  
61 in whole or in part, of collective bargaining or of dealing with employers concerning grievances,  
62 terms or conditions of employment, or for other mutual aid or protection in relation to  
63 employment;

64 [(13)] **(14)** "Local commissions", any commission or agency established prior to August  
65 13, 1986, by an ordinance or order adopted by the governing body of any city, constitutional  
66 charter city, town, village, or county;

67 [(14)] **(15)** "Person" includes one or more individuals, corporations, partnerships,  
68 associations, organizations, labor organizations, legal representatives, mutual companies, joint  
69 stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other organized  
70 groups of persons;

71 [(15)] **(16)** "Places of public accommodation", all places or businesses offering or  
72 holding out to the general public, goods, services, privileges, facilities, advantages or  
73 accommodations for the peace, comfort, health, welfare and safety of the general public or such  
74 public places providing food, shelter, recreation and amusement, including, but not limited to:

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

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

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

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

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

89 (f) Any establishment which is physically located within the premises of any  
90 establishment otherwise covered by this section or within the premises of which is physically  
91 located any such covered establishment, and which holds itself out as serving patrons of such  
92 covered establishment;

93 [(16)] (17) "Rent" includes to lease, to sublease, to let and otherwise to grant for  
94 consideration the right to occupy premises not owned by the occupant;

95 [(17)] (18) "Respondent", a person who is alleged to have engaged in a prohibited  
96 discriminatory practice in a complaint filed with the commission;

97 [(18)] (19) "Unlawful discriminatory practice", any act that is unlawful under this  
98 chapter.

**213.080. Notwithstanding any provision of law to the contrary, if a party files a  
2 motion for summary judgment pursuant to the Missouri rules of civil procedure in an  
3 employment case pursuant to this chapter, then the court shall analyze the merits of the  
4 motion for summary judgment.**

5 (1) When considering a motion for summary judgment where the plaintiff submits  
6 direct evidence of discrimination, the burden shall shift to the employer to provide  
7 evidence that the same employment decision would have occurred regardless of the direct  
8 evidence presented by the plaintiff. If the court determines that the employer would have  
9 taken the same action regardless of the evidence submitted by the plaintiff, then the court  
10 shall rule in favor of the employer.

11 (2) When considering a motion for summary judgment where the plaintiff does not  
12 submit direct evidence of discrimination, the burden shall be on the plaintiff to establish  
13 an allegation of discrimination. The employer may then produce evidence of non-  
14 discriminatory reasons for the employment decision. If the employer produces evidence  
15 of non-discriminatory reasons for the employment decision, then the plaintiff shall present  
16 facts to show the employer's explanation is insufficient or illegitimate. If the court  
17 determines that the employer relied upon non-discriminatory reasons for the employment  
18 decision, the court shall rule in favor of the employer.

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