

SECOND REGULAR SESSION

# HOUSE BILL NO. 2715

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DIEHL.

6139H.01I

JOSEPH ENGLER, Chief Clerk

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### AN ACT

To repeal sections 213.010 and 213.111, RSMo, and to enact in lieu thereof two new sections relating to certain civil remedies for unlawful discriminatory practices.

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

Section A. Sections 213.010 and 213.111, RSMo, are repealed and two new sections 2 enacted in lieu thereof, to be known as sections 213.010 and 213.111, to read as follows: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 3 shall not be an unlawful employment practice for an employer to require the compulsory 4 retirement of any person who has attained the age of sixty-five and who, for the two-year 5 period immediately before retirement, is employed in a bona fide executive or high policy- 6 making position, if such person is entitled to an immediate nonforfeitable annual retirement 7 benefit from a pension, profit sharing, savings or deferred compensation plan, or any 8 combination of such plans, of the employer, which equals, in the aggregate, at least forty-four 9 thousand dollars;

10 (2) "Because" or "because of", as it relates to the adverse decision or action, the 11 protected criterion was the motivating factor;

12 (3) "Commission", the Missouri commission on human rights;

13 (4) "Complainant", a person who has filed a complaint with the commission alleging 14 that another person has engaged in a prohibited discriminatory practice;

15 (5) "Disability", a physical or mental impairment which substantially limits one or 16 more of a person's major life activities, being regarded as having such an impairment, or a 17 record of having such an impairment, which with or without reasonable accommodation does

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.

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

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

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

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

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

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

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

44 (a) The United States;

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

46 (c) An individual employed by an employer;

47 (d) An Indian tribe;

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

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

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

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

57 (11) "Familial status", one or more individuals who have not attained the age of  
58 eighteen years being domiciled with:

59 (a) A parent or another person having legal custody of such individual; or  
60 (b) The designee of such parent or other person having such custody, with the written  
61 permission of such parent or other person. The protections afforded against discrimination  
62 because of familial status shall apply to any person who is pregnant or is in the process of  
63 securing legal custody of any individual who has not attained the age of eighteen years;

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

68 (13) "Labor organization" includes any organization which exists for the purpose, in  
69 whole or in part, of collective bargaining or of dealing with employers concerning grievances,  
70 terms or conditions of employment, or for other mutual aid or protection in relation to  
71 employment;

72 (14) "Local commissions", any commission or agency established prior to August 13,  
73 1986, by an ordinance or order adopted by the governing body of any city, constitutional  
74 charter city, town, village, or county;

75 (15) "Person" includes one or more individuals, corporations, partnerships,  
76 associations, organizations, labor organizations, legal representatives, mutual companies,  
77 joint stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other  
78 organized groups of persons;

79 (16) "Places of public accommodation", all places or businesses offering or holding  
80 out to the general public, goods, services, privileges, facilities, advantages or  
81 accommodations for the peace, comfort, health, welfare and safety of the general public or  
82 such public places providing food, shelter, recreation and amusement, including, but not  
83 limited to:

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

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

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

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

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

98 (f) Any establishment which is physically located within the premises of any  
99 establishment otherwise covered by this section or within the premises of which is physically  
100 located any such covered establishment, and which holds itself out as serving patrons of such  
101 covered establishment;

102 (17) **"Public employer"**, any entity for which coverage is provided by section  
103 **105.711**;

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

106 [(18)] (19) "Respondent", a person who is alleged to have engaged in a prohibited  
107 discriminatory practice in a complaint filed with the commission;

108 [(19)] (20) "The motivating factor", the employee's protected classification actually  
109 played a role in the adverse action or decision and had a determinative influence on the  
110 adverse decision or action;

111 [(20)] (21) "Unlawful discriminatory practice", any act that is unlawful under this  
112 chapter.

213.111. 1. If, after one hundred eighty days from the filing of a complaint alleging  
2 an unlawful discriminatory practice pursuant to section 213.055, 213.065 or 213.070 to the  
3 extent that the alleged violation of section 213.070 relates to or involves a violation of section  
4 213.055 or 213.065, or subdivision (3) of subsection 1 of section 213.070 as it relates to  
5 employment and public accommodations, the commission has not completed its  
6 administrative processing and the person aggrieved so requests in writing, the commission  
7 shall issue to the person claiming to be aggrieved a letter indicating his or her right to bring a  
8 civil action within ninety days of such notice against the respondent named in the complaint.  
9 If, after the filing of a complaint pursuant to sections 213.040, 213.045, 213.050 and 213.070,  
10 to the extent that the alleged violation of section 213.070 relates to or involves a violation of  
11 sections 213.040, 213.045 and 213.050, or subdivision (3) of subsection 1 of section 213.070  
12 as it relates to housing, and the person aggrieved so requests in writing, the commission shall  
13 issue to the person claiming to be aggrieved a letter indicating his or her right to bring a civil  
14 action within ninety days of such notice against the respondent named in the complaint. The  
15 commission may not at any other time or for any other reason issue a letter indicating a

16 complainant's right to bring a civil action. Such an action may be brought in any circuit court  
17 in any county in which the unlawful discriminatory practice is alleged to have been  
18 committed, either before a circuit or associate circuit judge. Upon issuance of this notice, the  
19 commission shall terminate all proceedings relating to the complaint. No person may file or  
20 reinstate a complaint with the commission after the issuance of a notice under this section  
21 relating to the same practice or act. Any action brought in court under this section shall be  
22 filed within ninety days from the date of the commission's notification letter to the individual  
23 but no later than two years after the alleged cause occurred or its reasonable discovery by the  
24 alleged injured party.

25       2. The court may grant as relief, as it deems appropriate, any permanent or temporary  
26 injunction, temporary restraining order, or other order, and may award to the plaintiff actual  
27 and punitive damages, and, **in cases not involving a public employer as one of the**  
**defendants, the court** may award court costs and reasonable [attorney] attorney's fees to the  
28 prevailing party, other than a state agency or commission or a local commission; except that, a  
29 prevailing respondent may be awarded reasonable [attorney] attorney's fees only upon a  
30 showing that the case was without foundation.

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

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

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

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

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

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

47           (d) In the case of a respondent who has more than five hundred employees in each of  
48 twenty or more calendar weeks in the current or preceding calendar year, five hundred  
49 thousand dollars.

50       5. In any employment-related civil action brought under this chapter, the plaintiff  
51 shall bear the burden of proving the alleged unlawful decision or action was made or taken

52 because of his or her protected classification and was the direct proximate cause of the  
53 claimed damages.

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