

SECOND REGULAR SESSION

SENATE BILL NO. 703

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Read 1st time January 13, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

5321S.011

AN ACT

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

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Section A. Section 213.010, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 213.010 and 213.099, to read as
3 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
3 that it shall not be an unlawful employment practice for an employer to require
4 the compulsory retirement of any person who has attained the age of sixty-five
5 and who, for the two-year period immediately before retirement, is employed in
6 a bona fide executive or high policy-making position, if such person is entitled to
7 an immediate nonforfeitable annual retirement benefit from a pension, profit
8 sharing, savings or deferred compensation plan, or any combination of such plans,
9 of the employer, which equals, in the aggregate, at least forty-four thousand
10 dollars;

11 (2) **"Because" or "because of", as it relates to an unlawful**
12 **employment or discriminatory practice, shall mean a protected**
13 **criterion played a part, or played a role, or was a motivating factor in**
14 **the defendant's unlawful employment or discriminatory practice, but**
15 **need not have been the only factor in, or reason for, such**
16 **practice. This definition shall not apply to a claim that defendant's**
17 **otherwise neutral policy or practice has a disparate adverse impact on**
18 **a protected individual or group of individuals;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

20 **[(3) (4)]** "Complainant", a person who has filed a complaint with the
21 commission alleging that another person has engaged in a prohibited
22 discriminatory practice;

23 **[(4)] (5)** "Disability", a physical or mental impairment which
24 substantially limits one or more of a person's major life activities, being regarded
25 as having such an impairment, or a record of having such an impairment, which
26 with or without reasonable accommodation does not interfere with performing the
27 job, utilizing the place of public accommodation, or occupying the dwelling in
28 question. For purposes of this chapter, the term "disability" does not include
29 current, illegal use of or addiction to a controlled substance as such term is
30 defined by section 195.010; however, a person may be considered to have a
31 disability if that person:

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

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

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

40 **[(5)] (6)** "Discrimination", any unfair treatment based on race, color,
41 religion, national origin, ancestry, sex, age as it relates to employment, disability,
42 or familial status as it relates to housing;

43 **[(6)] (7)** "Dwelling", any building, structure or portion thereof which is
44 occupied as, or designed or intended for occupancy as, a residence by one or more
45 families, and any vacant land which is offered for sale or lease for the
46 construction or location thereon of any such building, structure or portion thereof;

47 **[(7)] (8)** "Employer" includes the state, or any political or civil
48 subdivision thereof, or any person employing six or more persons within the state,
49 and any person directly acting in the interest of an employer, but does not include
50 corporations and associations owned and operated by religious or sectarian
51 groups;

52 **[(8)] (9)** "Employment agency" includes any person or agency, public or
53 private, regularly undertaking with or without compensation to procure
54 employees for an employer or to procure for employees opportunities to work for

55 an employer and includes any person acting in the interest of such a person;

56 [(9)] (10) "Executive director", the executive director of the Missouri
57 commission on human rights;

58 [(10)] (11) "Familial status", one or more individuals who have not
59 attained the age of eighteen years being domiciled with:

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

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

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

71 [(12)] (13) "Labor organization" includes any organization which exists
72 for the purpose, in whole or in part, of collective bargaining or of dealing with
73 employers concerning grievances, terms or conditions of employment, or for other
74 mutual aid or protection in relation to employment;

75 [(13)] (14) "Local commissions", any commission or agency established
76 prior to August 13, 1986, by an ordinance or order adopted by the governing body
77 of any city, constitutional charter city, town, village, or county;

78 [(14)] (15) "Person" includes one or more individuals, corporations,
79 partnerships, associations, organizations, labor organizations, legal
80 representatives, mutual companies, joint stock companies, trusts, trustees,
81 trustees in bankruptcy, receivers, fiduciaries, or other organized groups of
82 persons;

83 [(15)] (16) "Places of public accommodation", all places or businesses
84 offering or holding out to the general public, goods, services, privileges, facilities,
85 advantages or accommodations for the peace, comfort, health, welfare and safety
86 of the general public or such public places providing food, shelter, recreation and
87 amusement, including, but not limited to:

88 (a) Any inn, hotel, motel, or other establishment which provides lodging
89 to transient guests, other than an establishment located within a building which
90 contains not more than five rooms for rent or hire and which is actually occupied

91 by the proprietor of such establishment as his residence;

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

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

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

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

103 (f) Any establishment which is physically located within the premises of
104 any establishment otherwise covered by this section or within the premises of
105 which is physically located any such covered establishment, and which holds itself
106 out as serving patrons of such covered establishment;

107 [(16)] (17) "Rent" includes to lease, to sublease, to let and otherwise to
108 grant for consideration the right to occupy premises not owned by the occupant;

109 [(17)] (18) "Respondent", a person who is alleged to have engaged in a
110 prohibited discriminatory practice in a complaint filed with the commission;

111 [(18)] (19) "Unlawful discriminatory practice", any act that is unlawful
112 under this chapter.

**213.099. If a party to litigation files a motion for summary
2 judgment pursuant to the Missouri rules of civil procedure in an
3 employment case pursuant to this chapter, then the court shall analyze
4 the merits of the motion for summary judgment.**

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

12 (2) When considering a motion for summary judgment where the
13 plaintiff does not submit direct evidence of discrimination, the burden
14 shall be on the plaintiff to establish an allegation of

15 **discrimination. The employer may then produce evidence of non-**
16 **discriminatory reasons for the employment decision. If the employer**
17 **produces evidence of non-discriminatory reasons for the employment**
18 **decision, then the plaintiff shall present facts to show the employer's**
19 **explanation is insufficient or illegitimate. If the court determines that**
20 **the employer relied upon non-discriminatory reasons for the**
21 **employment decision, the court shall rule in favor of the employer.**

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