

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/Senate Bill No. 631, Page 1, Section title, Line 4,

2 by striking all of said line and inserting in lieu thereof
3 the following: "civil actions."; and

4 Further amend said bill and page, section A, line 4, by
5 inserting after all of said line the following:

6 "213.010. As used in this chapter, the following terms
7 shall mean:

8 (1) "Age", an age of forty or more years but less than
9 seventy years, except that it shall not be an unlawful
10 employment practice for an employer to require the
11 compulsory retirement of any person who has attained the age
12 of sixty-five and who, for the two-year period immediately
13 before retirement, is employed in a bona fide executive or
14 high policy-making position, if such person is entitled to
15 an immediate nonforfeitable annual retirement benefit from a
16 pension, profit sharing, savings or deferred compensation
17 plan, or any combination of such plans, of the employer,
18 which equals, in the aggregate, at least forty-four thousand
19 dollars;

20 (2) "Because" or "because of", as it relates to the
21 adverse decision or action, **[the]** a protected criterion was
22 **[the]** a motivating factor;

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

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

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

40 (a) Has successfully completed a supervised drug
41 rehabilitation program and is no longer engaging in the
42 illegal use of, and is not currently addicted to, a
43 controlled substance or has otherwise been rehabilitated
44 successfully and is no longer engaging in such use and is
45 not currently addicted;

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

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

51 (6) "Discrimination", conduct proscribed herein, taken
52 because of race, color, religion, national origin, ancestry,
53 sex, or age as it relates to employment, disability, or
54 familial status as it relates to housing. Discrimination
55 includes any unfair treatment based on a person's presumed
56 or assumed race, color, religion, national origin, ancestry,
57 sex, sexual orientation, gender identity, age as it relates

58 to employment, disability, or familial status as it relates
59 to housing, regardless of whether the presumption or
60 assumption as to such characteristic is correct;

61 (7) "Dwelling", any building, structure or portion
62 thereof which is occupied as, or designed or intended for
63 occupancy as, a residence by one or more families, and any
64 vacant land which is offered for sale or lease for the
65 construction or location thereon of any such building,
66 structure or portion thereof;

67 (8) "Employer", a person engaged in an industry
68 affecting commerce who has six or more employees for each
69 working day in each of twenty or more calendar weeks in the
70 current or preceding calendar year, and shall include the
71 state, or any political or civil subdivision thereof, or any
72 person employing six or more persons within the state but
73 does not include corporations and associations owned or
74 operated by religious or sectarian organizations.

75 "Employer" shall not include:

76 (a) The United States;

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

79 (c) An individual employed by an employer;

80 (d) An Indian tribe;

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

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

87 (9) "Employment agency" includes any person or agency,
88 public or private, regularly undertaking with or without
89 compensation to procure employees for an employer or to
90 procure for employees opportunities to work for an employer;

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

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

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

98 (b) The designee of such parent or other person having
99 such custody, with the written permission of such parent or
100 other person. The protections afforded against
101 discrimination because of familial status shall apply to any
102 person who is pregnant or is in the process of securing
103 legal custody of any individual who has not attained the age
104 of eighteen years;

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

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

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

120 (15) "Motivating factor", the employee's protected
121 classification played a role in the adverse action or
122 decision and had an influence on the adverse decision or
123 action;

124 (16) "Person" includes one or more individuals,
125 corporations, partnerships, associations, organizations,
126 labor organizations, legal representatives, mutual
127 companies, joint stock companies, trusts, trustees, trustees
128 in bankruptcy, receivers, fiduciaries, or other organized
129 groups of persons;

130 [(16)] (17) "Places of public accommodation", all
131 places or businesses offering or holding out to the general
132 public, goods, services, privileges, facilities, advantages
133 or accommodations for the peace, comfort, health, welfare
134 and safety of the general public or such public places
135 providing food, shelter, recreation and amusement,
136 including, but not limited to:

137 (a) Any inn, hotel, motel, or other establishment
138 which provides lodging to transient guests, other than an
139 establishment located within a building which contains not
140 more than five rooms for rent or hire and which is actually
141 occupied by the proprietor of such establishment as [his]
142 the proprietor's residence;

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

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

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

154 (e) Any public facility owned, operated, or managed by
155 or on behalf of this state or any agency or subdivision

156 thereof, or any public corporation; and any such facility
157 supported in whole or in part by public funds;

158 (f) Any establishment which is physically located
159 within the premises of any establishment otherwise covered
160 by this section or within the premises of which is
161 physically located any such covered establishment, and which
162 holds itself out as serving patrons of such covered
163 establishment;

164 [(17)] (18) "Rent" includes to lease, to sublease, to
165 let and otherwise to grant for consideration the right to
166 occupy premises not owned by the occupant;

167 [(18)] (19) "Respondent", a person who is alleged to
168 have engaged in a prohibited discriminatory practice in a
169 complaint filed with the commission;

170 [(19) "The motivating factor", the employee's
171 protected classification actually played a role in the
172 adverse action or decision and had a determinative influence
173 on the adverse decision or action;]

174 (20) "Unlawful discriminatory practice", any act that
175 is unlawful under this chapter.

176 213.111. 1. If, after one hundred eighty days from
177 the filing of a complaint alleging an unlawful
178 discriminatory practice pursuant to section 213.055, 213.065
179 or 213.070 to the extent that the alleged violation of
180 section 213.070 relates to or involves a violation of
181 section 213.055 or 213.065, or subdivision (3) of subsection
182 1 of section 213.070 as it relates to employment and public
183 accommodations, the commission has not completed its
184 administrative processing and the person aggrieved so
185 requests in writing, the commission shall issue to the
186 person claiming to be aggrieved a letter indicating his or
187 her right to bring a civil action within ninety days of such
188 notice against the respondent named in the complaint. [If,

189 after the filing of a complaint] Any person alleging an
190 unlawful discriminatory practice pursuant to sections
191 213.040, 213.045, 213.050 and 213.070, to the extent that
192 the alleged violation of section 213.070 relates to or
193 involves a violation of sections 213.040, 213.045 and
194 213.050, or subdivision (3) of subsection 1 of section
195 213.070 as it relates to housing, [and the person aggrieved
196 so requests in writing, the commission shall issue to the
197 person claiming to be aggrieved a letter indicating his or
198 her right to bring a civil action within ninety days of such
199 notice against the respondent named in the complaint] may
200 file a petition in the circuit court of the county in which
201 the alleged unlawful discriminatory practice occurred
202 without first filing a complaint with the commission. The
203 commission may not at any other time or for any other reason
204 issue a letter indicating a complainant's right to bring a
205 civil action. Such an action may be brought in any circuit
206 court in any county in which the unlawful discriminatory
207 practice is alleged to have been committed, either before a
208 circuit or associate circuit judge. Upon issuance of this
209 notice, the commission shall terminate all proceedings
210 relating to the complaint. No person may file or reinstate
211 a complaint with the commission after the issuance of a
212 notice under this section relating to the same practice or
213 act. Any action brought in court under this section shall
214 be filed within ninety days from the date of the
215 commission's notification letter to the individual but no
216 later than two years after the alleged cause occurred or its
217 reasonable discovery by the alleged injured party.

218 2. The court may grant as relief, as it deems
219 appropriate, any permanent or temporary injunction,
220 temporary restraining order, or other order, and may award
221 to the plaintiff actual and punitive damages, and may award

222 court costs and reasonable attorney fees to the prevailing
223 party, other than a state agency or commission or a local
224 commission; except that, a prevailing respondent may be
225 awarded reasonable attorney fees only upon a showing that
226 the case was without foundation.

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

229 4. The sum of the amount of actual damages, including
230 damages for future pecuniary losses, emotional pain,
231 suffering, inconvenience, mental anguish, loss of enjoyment
232 of life, and other nonpecuniary losses, and punitive damages
233 awarded under this section for an unlawful discriminatory
234 practice related to employment shall not exceed for each
235 complaining party:

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

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

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

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

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

253 [5. In any employment-related civil action brought
254 under this chapter, the plaintiff shall bear the burden of

255 proving the alleged unlawful decision or action was made or
256 taken because of his or her protected classification and was
257 the direct proximate cause of the claimed damages.]

258 285.575. 1. This section shall be known and may be
259 cited as the "Whistleblower's Protection Act".

260 2. As used in this section, the following terms shall
261 mean:

262 (1) "Because" or "because of", as it relates to the
263 adverse decision or action, the person's status as a
264 protected person was [the] a motivating factor;

265 (2) "Employer", an entity that has six or more
266 employees for each working day in each of twenty or more
267 calendar weeks in the current or preceding calendar year.
268 "Employer" shall not include the state of Missouri or its
269 agencies, instrumentalities, or political subdivisions,
270 including but not limited to any public institution of
271 higher education, a corporation wholly owned by the state of
272 Missouri, an individual employed by an employer, or
273 corporations and associations owned or operated by religious
274 or sectarian organizations;

275 (3) "Motivating factor", the employee's protected
276 classification played a role in the adverse decision or
277 action and had an influence on the adverse decision or
278 action;

279 (4) "Proper authorities", a governmental or law
280 enforcement agency, an officer of an employee's employer,
281 the employee's supervisor employed by the employer, or the
282 employee's human resources representative employed by the
283 employer;

284 [(4)] (5) "Protected person", an employee of an
285 employer who has reported to the proper authorities an
286 unlawful act of his or her employer; an employee of an
287 employer who reports to his or her employer serious

288 misconduct of the employer that violates a clear mandate of
289 public policy as articulated in a constitutional provision,
290 statute, or regulation promulgated under statute; or an
291 employee of an employer who has refused to carry out a
292 directive issued by his or her employer that if completed
293 would be a violation of the law. An employee of an employer
294 is not a protected person if:

295 (a) The employee is a supervisory, managerial, or
296 executive employee or an officer of his or her employer and
297 the unlawful act or serious misconduct reported concerns
298 matters upon which the employee is employed to report or
299 provide professional opinion; or

300 (b) The proper authority or person to whom the
301 employee makes his or her report is the person whom the
302 employee claims to have committed the unlawful act or
303 violation of a clear mandate of public policy[;]

304 (5) "The motivating factor", the employee's protected
305 classification actually played a role in the adverse
306 decision or action and had a determinative influence on the
307 adverse decision or action].

308 3. This section is intended to codify the existing
309 common law exceptions to the at-will employment doctrine and
310 to limit their future expansion by the courts. This
311 section, in addition to chapter 213 and chapter 287, shall
312 provide the exclusive remedy for any and all claims of
313 unlawful employment practices.

314 4. It shall be an unlawful employment practice for an
315 employer to discharge an individual defined as a protected
316 person in this section because of that person's status as a
317 protected person.

318 5. A protected person aggrieved by a violation of this
319 section shall have a private right of action for actual
320 damages for violations of this section but not for punitive

321 damages. However, if a private right of action for damages
322 exists under another statutory or regulatory scheme, whether
323 under state or federal law, no private right of action shall
324 exist under this statute.

325 6. Any party to any action initiated under this
326 section may demand a trial by jury.

327 7. A protected person aggrieved by a violation of this
328 section shall have a private right of action that may be
329 filed in a court of competent jurisdiction. The only
330 remedies available in such an action shall be:

331 (1) Back pay;

332 (2) Reimbursement of medical bills directly related to
333 a violation of this section; and

334 (3) Additionally, if a protected person proves, by
335 clear and convincing evidence, that the conduct of the
336 employer was outrageous because of the employer's evil
337 motive or reckless indifference to the rights of others,
338 then, such person may receive double the amount awarded
339 under subdivisions (1) and (2) of this subsection, as
340 liquidated damages. In applying this subdivision, the
341 provisions of section 510.263 shall be applied as though
342 liquidated damages were punitive damages and as though the
343 amounts referenced in subdivisions (1) and (2) of this
344 subsection were compensatory damages.

345 8. The court, in addition to the damages set forth in
346 subsection 7 of this section, may award the prevailing party
347 court costs and reasonable attorney fees; except that a
348 prevailing respondent may be awarded reasonable attorney
349 fees only upon a showing that the case was without
350 foundation."; and

351 Further amend the title and enacting clause accordingly.