

SECOND REGULAR SESSION

HOUSE BILL NO. 2308

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHNELTING.

3284H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 213.010, RSMo, and to enact in lieu thereof two new sections relating to emerging issues in gender identity and sexual orientation, with a penalty provision.

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Section A. Section 213.010, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 171.421 and 213.010, to read as follows:

171.421. 1. As used in this section, the following terms mean:

- (1) "Bathroom", a multiple-occupancy room that contains a toilet or a urinal and that is intended for more than one occupant at a time;
- (2) "Changing facility", a multiple-occupancy room or area, such as a locker room or shower room, in which an individual may be in a state of undress in the presence of another individual, regardless of whether the room or area contains curtains, partial walls, or another method of dividing the room or area to provide stalls for individual use, that is designated for an individual to change clothes or to shower and is intended for more than one occupant at a time;
- (3) "Female", an individual who, in the context of a reproductive system that at some point produces, transports, and uses eggs for fertilization:
- (a) Had such reproductive system;
 - (b) Has such reproductive system;
 - (c) Will have such reproductive system; or
 - (d) Would have such reproductive system but for a developmental or genetic anomaly or historical accident;

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) "Male", an individual who, in the context of a reproductive system that at**
18 **some point produces, transports, and uses sperm for fertilization:**

19 **(a) Had such reproductive system;**

20 **(b) Has such reproductive system;**

21 **(c) Will have such reproductive system; or**

22 **(d) Would have such reproductive system but for a developmental or genetic**
23 **anomaly or historical accident;**

24 **(5) "Sex", the male or female biological sex of an individual.**

25 **2. For purposes of this section, an individual's sex is determined by a statement**
26 **of the individual's biological sex on the individual's official birth certificate or another**
27 **government record. Such statement shall be deemed to have correctly stated the**
28 **individual's biological sex only if the statement was:**

29 **(1) Entered at or near the time of the individual's birth; or**

30 **(2) Modified to correct any scrivener's error in the individual's biological sex.**

31 **3. No individual of the female sex shall use a bathroom or changing facility that**
32 **has been designated by a school district or a charter school for the exclusive use of the**
33 **male sex, and no individual of the male sex shall use a bathroom or changing facility**
34 **that has been designated by a school district or a charter school for the exclusive use of**
35 **the female sex.**

36 **4. Each school district and charter school shall designate each bathroom and**
37 **changing facility located in a public school building in the district or a building**
38 **controlled by a charter school as for the exclusive use of individuals of only one sex.**

39 **5. Notwithstanding the provisions of subsections 2 and 3 of this section to the**
40 **contrary, a school district or a charter school shall allow an individual to use a**
41 **bathroom or changing facility that has been designated by the school district or charter**
42 **school for the exclusive use of a sex that does not correspond to the individual's sex**
43 **under the following circumstances:**

44 **(1) The bathroom or changing facility is temporarily designated as a changing**
45 **facility for an individual or a group of individuals of the sex that does not correspond to**
46 **the sex for which the school district or charter school designates the bathroom or**
47 **changing facility, such as temporary designations of bathrooms or changing facilities for**
48 **athletics competition participants; or**

49 **(2) (a) An administrator or staff member of the school district or charter school**
50 **accompanies the individual into the bathroom or changing facility; and**

51 **(b) No other individual is present in the bathroom or changing facility at the**
52 **time of use by the individual.**

53 **6. A school district or charter school that receives a request to provide a gender-**
54 **neutral or a unisex bathroom or changing facility for an individual shall make**
55 **reasonable attempts to provide the best available accommodation. No such**
56 **accommodation shall allow access to a bathroom or changing facility designated for**
57 **use by individuals of the opposite sex while an individual of the opposite sex is present or**
58 **could be present.**

59 **7. (1) The following may bring a civil action against a school district or charter**
60 **school that violates this section:**

61 **(a) The attorney general of this state;**

62 **(b) A pupil's parent who is aggrieved by such violation; or**

63 **(c) A parent on behalf of a pupil who is aggrieved by a violation of this section.**

64 **(2) A civil action brought under this subsection shall be brought in the circuit**
65 **court of the county in which the violation occurred.**

66 **(3) In a civil action brought under this section, the court:**

67 **(a) Shall award court costs, expenses, and reasonable attorney's fees to a**
68 **prevailing party who establishes a violation of this section; and**

69 **(b) May award compensatory damages, injunctive relief, or any other**
70 **appropriate relief.**

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
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) **"Female", an individual who, in the context of a reproductive system that at
65 some point produces, transports, and uses eggs for fertilization:**

66 (a) **Had such reproductive system;**

67 (b) **Has such reproductive system;**

68 (c) **Will have such reproductive system; or**

69 (d) **Would have such reproductive system but for a developmental or genetic
70 anomaly or historical accident;**

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

75 ~~[(13)]~~ (14) "Labor organization" includes any organization which exists for the
76 purpose, in whole or in part, of collective bargaining or of dealing with employers concerning
77 grievances, terms or conditions of employment, or for other mutual aid or protection in
78 relation to employment;

79 ~~[(14)]~~ (15) "Local commissions", any commission or agency established prior to
80 August 13, 1986, by an ordinance or order adopted by the governing body of any city,
81 constitutional charter city, town, village, or county;

82 (16) **"Male", an individual who, in the context of a reproductive system that at
83 some point produces, transports, and uses sperm for fertilization:**

84 (a) **Had such reproductive system;**

85 (b) **Has such reproductive system;**

86 (c) **Will have such reproductive system; or**

87 (d) **Would have such reproductive system but for a developmental or genetic
88 anomaly or historical accident;**

89 ~~[(15)]~~ (17) "Person" includes one or more individuals, corporations, partnerships,
90 associations, organizations, labor organizations, legal representatives, mutual companies,
91 joint stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other
92 organized groups of persons;

93 ~~[(16)]~~ **(18)** "Places of public accommodation", all places or businesses offering or
94 holding out to the general public, goods, services, privileges, facilities, advantages or
95 accommodations for the peace, comfort, health, welfare and safety of the general public or
96 such public places providing food, shelter, recreation and amusement, including, but not
97 limited to:

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

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

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

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

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

112 (f) Any establishment which is physically located within the premises of any
113 establishment otherwise covered by this section or within the premises of which is physically
114 located any such covered establishment, and which holds itself out as serving patrons of such
115 covered establishment;

116 ~~[(17)]~~ **(19)** "Rent" includes to lease, to sublease, to let and otherwise to grant for
117 consideration the right to occupy premises not owned by the occupant;

118 ~~[(18)]~~ **(20)** "Respondent", a person who is alleged to have engaged in a prohibited
119 discriminatory practice in a complaint filed with the commission;

120 ~~[(19)]~~ **(21)** "Sex", **the male or female biological sex of an individual;**

121 **(22)** "The motivating factor", the employee's protected classification actually played a
122 role in the adverse action or decision and had a determinative influence on the adverse
123 decision or action;

124 ~~[(20)]~~ **(23)** "Unlawful discriminatory practice", any act that is unlawful under this
125 chapter.

✓