



## Get the Facts About Senate Bill 43

### What is SB 43?

[SB 43](#) is a bill that was signed into law on June 30, 2017 and went into effect on August 28, 2017. This bill, introduced in the 2017 Legislative session by [Senator Gary Romine](#), was signed into law by Governor Eric Greitens after a contentious battle in both the Senate and the House. SB 43 changes current Missouri law, specifically the [Missouri Human Rights Act](#).

### How does SB 43 change the Missouri Human Rights Act?

The Missouri Human Rights Act protects against discrimination in employment, housing, and places of public accommodations because of your race, color, religion, national origin, ancestry, sex, disability, age (in employment only), and familial status (in housing only). This means if you are fired from a job, evicted/denied housing, and/or denied access to a public space because of one of these protected categories you have legal recourse to file a complaint.

SB 43 changes the Missouri Human Rights Act in the following ways:

- **Limits the ability** to file class actions under State law.
- **Limits the method of proving discrimination** to require an individual's protected characteristic be "the motivating factor" in an adverse action, meaning that complaints must show a discriminatory intent. This negates firmly established theories of discrimination such as the disparate impact standard previously affirmed by the U.S. Supreme Court and every other federal Court of Appeals.
- **Removes important protections related to retaliation and whistleblowing.**
- **Limits the scope of liability for individuals**, meaning that complaints can name only employers, employment agencies, labor organizations or places of public accommodation, not individuals.

- **Caps the awards of both actual and punitive damages.** Actual damages are necessary to make a victim of discrimination whole, and punitive damages are required by the regulation governing substantial equivalence with federal fair housing law.
- **Creates special rules for businesses.** SB 43 reinstates the so called “business judgment rule” that allows employers to ask for a jury instruction that tells jurors: “You may not return a verdict for plaintiff just because you might disagree with the defendant’s action or believe it to be harsh or unreasonable.”

Prior to the signing of SB 43, if a person were fired from a job, and they believed that one of the previous protected classes was a contributing factor to their termination, they could file a complaint. Now, a person would have to prove that it was the motivating factor. For example, if someone is fired because they are a racial/ethnic minority, they will now have to prove that their race was the motivating factor for their termination. That is, an African American, for example, would have to prove the motivation to fire them was solely because they are African American.

### **How does this law reduce protections in public accommodations?**

An example of public accommodation discrimination is a restaurant manager who refuses to seat your family because of your age, ancestry, color, disability, sex, religion, race or nation of origin.

The new law substantially dilutes the public accommodation protections previously contained in the Act. This means that the State of Missouri, as well as the cities of St. Louis and Kansas City, will be hampered in their ability bring certain wrongdoers to justice and make victims of discrimination whole. The federal public accommodation protections still apply and are unchanged (e.g. Americans with Disabilities Act).

### **How does this law reduce protections in housing?**

The new law changes Missouri’s compliance with the Federal Fair Housing Act by substantially diluting the fair housing protections previously contained in the Act. This means that the State of Missouri, as well as the cities of St. Louis and Kansas City, will be hampered in their ability bring certain wrongdoers to justice and make victims of discrimination whole. The Federal Fair Housing Act protections still apply, and offers more protections than State law under SB 43.

### **How does this impact Missouri residents facing housing discrimination?**

Missouri agencies enforcing fair housing protections on a local level will be limited. This applies to the Missouri Commission on Human Rights, the Civil Rights Enforcement Agency of the City of St. Louis and the Kansas City Human Rights Commission. The Federal Fair Housing Act still holds fair housing protections in Missouri. Individuals can file federal fair housing complaints with the U.S. Department of Housing and Urban Development (HUD).

### **What does this new law say about whistleblower protections?**

SB 43 guts state-level whistleblower protections. A whistleblower is a person who sees something that is illegal or against the wellbeing of the public and reports it to their employer or

publicly in order to prevent the illegal or dangerous thing from happening. SB 43 specifically excludes managers, supervisors, and anyone who is paid to report on the business' activities from whistleblowing protection, the very people who may be in the best position to know when there is something going on that could harm the community. Federal whistleblower protections still apply and are unaffected by the change to the Act (e.g. OSHA, Sarbanes-Oxley, Dodd Frank, the False Claims Act). Additionally, many state and federal statutes provide anti-retaliation protections that may provide whistleblowers some protection from their employers (e.g. Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act, Age Discrimination in Employment Act, Family and Medical Leave Act).

**If a person is victimized, harassed, or discriminated against on the job, what does this new law say about bringing a lawsuit against the victimizer?**

This new law explicitly prohibits liability against individuals. Meaning the person being accused is no longer allowed to be named in the lawsuit. They could move from job to job and there would never be a real record of their bad behavior because SB 43 says they are not responsible for their bad behavior under State law. Under federal fair housing law protections individuals can still be named in a lawsuit.

**I've heard people say that this new law brings the Missouri Human Rights Act up to Federal standards and is in-keeping with other state law. Is this true?**

With the caveat that discrimination law is complicated and a comprehensive cross comparison is difficult at the state level, the argument that the bill brings our state laws into the line with the federal law and other states is false. No other state explicitly prohibits liability against individuals and most states allow the accused to be named in a lawsuit. It also makes us the only state in the nation to reduce protections in cases of housing or public accommodations.

**Will the State of Missouri experience any loss of revenue because of this law change?**

The Missouri Commission on Human Rights, the Civil Rights Enforcement Agency of the City of St. Louis and the Kansas City Human Rights Commission will lose both federal enforcement jurisdiction and federal contracts valued at hundreds of thousands of dollars over the course of the next six months as a direct result of SB 43. Whether businesses, conventions, entertainment entities, etc. choose to boycott Missouri remains to be seen, and our actions going forward may well determine how severe the economic impact becomes.

***Organizations that are working to reverse the harms done by Senate Bill 43 invite you to add your contact information to this form being managed by Empower Missouri so that we may keep you updated: <https://secure.everyaction.com/NttPIC7dE0W5OokfkyamoA2>.***