

FIRST REGULAR SESSION

HOUSE BILL NO. 1120

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ANDERS.

1964H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 213.075 and 213.111, RSMo, and to enact in lieu thereof two new sections relating to awards of attorney fees against the state.

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

Section A. Sections 213.075 and 213.111, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 213.075 and 213.111, to read as follows:

213.075. 1. Any person claiming to be aggrieved by an unlawful discriminatory practice may make, sign and file with the commission a verified complaint in writing, within one hundred eighty days of the alleged act of discrimination, which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice and which shall set forth the particulars thereof and such other information as may be required by the commission. The complainant's agent, attorney or the attorney general may, in like manner, make, sign and file such complaint.

2. Any complaint which is filed with the federal Equal Employment Opportunity Commission or other federal agencies with which the commission has a work-sharing or deferral agreement, or with a local commission which has been certified as substantially equivalent by the commission, shall be deemed filed with the commission on the date that such complaint is received by such federal agency or local commission. A copy of all complaints filed with a local commission with the authority to enforce the provisions of this chapter is to be forwarded to the commission within seven days of the filing thereof with such local commission. If a local commission has jurisdiction to hear a complaint filed with the commission, such complaint shall be deemed to have been filed with the local commission on the date on which such complaint was filed with the commission. The commission shall, within seven days of the receipt of a

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 complaint which a local commission has jurisdiction to hear, forward a copy thereof to such local
19 commission.

20 3. After the filing of any complaint, the executive director shall, with the assistance of
21 the commission's staff, promptly investigate the complaint, and if the director determines after
22 the investigation that probable cause exists for crediting the allegations of the complaint, the
23 executive director shall immediately endeavor to eliminate the unlawful discriminatory practice
24 complained of by conference, conciliation and persuasion, and shall report the results to the
25 commission. The investigation, determination of probable cause and conciliation shall be
26 conducted according to such rules, regulations and guidelines as the commission shall prescribe.

27 4. A person who is not named as a respondent in a complaint, but who is identified as
28 a respondent in the course of investigation, may be joined as an additional or substitute
29 respondent upon written notice, pursuant to such rules, regulations, and guidelines as the
30 commission shall prescribe. Such notice, in addition to complying with the requirements of such
31 rules, regulations, and guidelines, shall also state the reason why the person to whom the notice
32 is addressed has been joined as a party.

33 5. In case of failure to eliminate such discriminatory practice as found in the
34 investigation, if in the judgment of the chairperson of the commission circumstances so warrant,
35 there shall be issued and served in the name of the commission, a written notice, together with
36 a copy of the complaint, as it may have been amended, requiring the person named in the
37 complaint, hereinafter referred to as "respondent", to answer the charges of the complaint at a
38 hearing, at a time and place to be specified in the notice, before a panel of at least three members
39 of the commission sitting as the commission or before a hearing examiner licensed to practice
40 law in this state who shall be appointed by the executive director and approved by the
41 commission. The place of the hearing shall be in the office of the commission or such other
42 place designated by it, except that if the respondent so requests, in writing, the hearing shall be
43 held in the county of such person's residence or business location at the time of the alleged
44 unlawful discriminatory practice. A copy of the notice shall also be served on the complainants.

45 6. In all cases where a written notice of hearing has been issued and a party has not
46 elected the option to proceed in circuit court as set forth in section 213.076, the procedures set
47 forth for a hearing shall apply.

48 7. The commission shall be a party to the action and shall be represented before the panel
49 or the hearing examiner by the office of the attorney general or, when so delegated by the
50 attorney general, a staff attorney of the commission. Neither the hearing examiner nor any
51 member of the panel shall have participated in the investigation of the complaint. Evidence
52 concerning endeavors at conciliation shall be excluded.

53 8. The respondent may file a written verified answer to the complaint and appear at the
54 hearing in person or otherwise with or without counsel, and submit testimony. At the discretion
55 of the hearing examiner or the panel, the complainant may be allowed to intervene, thereby
56 becoming a party to the action with the right to present testimony in person or by counsel,
57 provided the complainant at all times shall be treated as a party for the purpose of discovery and
58 the taking of depositions. The commission or complainant intervenor shall have the power to
59 reasonably and fairly amend any complaint, and the respondent shall have like power to amend
60 any answer. The testimony taken at the hearing shall be under oath and be transcribed.

61 9. In any contested case before the commission, any party may take and use written
62 interrogatories, requests for production of documents and other materials, and requests for
63 admissions, and all other forms of discovery authorized by rules of civil procedure in the same
64 manner, upon, and under the same conditions, and upon the same notice, as is or may hereafter
65 be provided for with respect to the taking and using of written interrogatories, requests for
66 production of documents and other materials, and requests for admissions, and all other forms
67 of discovery authorized by rules of civil procedure in civil actions in the circuit court. The panel
68 or hearing examiner shall have the authority to impose sanctions in the same manner as set forth
69 in the rules of civil procedure; **except that, sanctions shall not include the award of costs and**
70 **attorney fees when the sanctioned party is the state or a political subdivision thereof.**

71 10. The hearing shall be conducted in the manner provided by chapter 536; **except that,**
72 **costs and attorney fees shall not be awarded to a prevailing party when the respondent is**
73 **the state or a political subdivision thereof, and sanctions shall not include the award of**
74 **costs and attorney fees when the sanctioned party is the state or a political subdivision**
75 **thereof.**

76 11. When the case is heard by a panel of the commission, the chairperson of the
77 commission shall select the hearing panel and the presiding officer. The presiding officer shall
78 have full authority to call and examine witnesses, admit or exclude evidence and rule upon all
79 motions and objections. The panel shall state its findings of fact and conclusions of law, and if,
80 upon all the evidence at the hearing, the panel finds:

81 (1) That a respondent has engaged in an unlawful discriminatory practice as defined in
82 this chapter, the commission shall issue and cause to be served on the respondent an order
83 requiring the respondent to cease and desist from the unlawful discriminatory practice. The order
84 shall require the respondent to take such affirmative action, as in the panel's judgment will
85 implement the purposes of this chapter, including, but not limited to, payment of back pay;
86 hiring; reinstatement or upgrading; restoration to membership in any respondent labor
87 organization; the extension of full, equal and unsegregated housing; the extension of full, equal
88 and unsegregated public accommodations; extension of a commercial real estate loan or other

89 financial assistance; extension or restoration of membership or participation in any multiple
90 listing service or other real estate service organization or facility; payment of actual damages;
91 and the submission of a report of the manner of compliance;

92 (2) That a respondent has engaged or is about to engage in a violation of section 213.040,
93 213.045, 213.050, or 213.070, to the extent that the alleged violation of section 213.070 relates
94 to or involves a violation of one or more of such other sections or relates to or involves the
95 encouraging, aiding, or abetting of a violation of such other sections, the commission may, in
96 addition to the relief provided in subdivision (1) of this subsection, assess a civil penalty against
97 the respondent, for purposes of vindicating the public interest:

98 (a) In an amount not exceeding two thousand dollars if the respondent has not been
99 adjudged to have violated one or more of the sections enumerated in subdivision (2) of this
100 subsection within five years of the date of the filing of the complaint;

101 (b) In an amount not exceeding five thousand dollars if the respondent has been adjudged
102 to have committed one violation of the sections enumerated in subdivision (2) of this subsection
103 within five years of the date on which the complaint is filed;

104 (c) In an amount not exceeding ten thousand dollars if the respondent has been adjudged
105 to have committed two or more prior violations of the sections enumerated in subdivision (2) of
106 this subsection within seven years of the date on which the complaint is filed. All civil penalties
107 set forth in this subsection shall be paid to the human rights fund.

108 12. If, upon all the evidence, the panel finds that a respondent has not engaged in any
109 unlawful discriminatory practice, the panel shall state its findings of fact and conclusions of law
110 and shall issue and cause to be served on the complainant and respondent an order dismissing
111 the complaint.

112 13. When the case is heard by a hearing examiner, the examiner shall have all powers
113 described in subdivision (8) of section 213.030 and subsection 11 of this section, for the purpose
114 of the hearing. The hearing examiner shall make findings of fact and conclusions of law and
115 shall recommend to the commission an order granting such relief as provided in subsection 11
116 of this section or dismissing the complaint as to the respondent as provided in subsection 12 of
117 this section, in accordance with such findings.

118 14. A panel of at least three members of the commission, sitting as the commission, shall
119 review the record, findings and recommended order of the hearing examiner. The panel shall
120 thereafter accept or amend the recommended order which shall become the order of the
121 commission. All orders shall be served on the complainant and respondent, and copies shall be
122 delivered to the attorney general and such other public officers as the commission deems proper.

123 15. No order of the commission issued pursuant to this section shall affect any contract,
124 sale, encumbrance or lease consummated before the issuance of such order and involving a bona
125 fide purchaser without actual notice of the charge filed pursuant to this section.

126 16. Any person aggrieved by an order of the commission may appeal as provided in
127 chapter 536.

213.111. 1. If, after one hundred eighty days from the filing of a complaint alleging an
2 unlawful discriminatory practice pursuant to section 213.055, 213.065 or 213.070 to the extent
3 that the alleged violation of section 213.070 relates to or involves a violation of section 213.055
4 or 213.065, or subdivision (3) of section 213.070 as it relates to employment and public
5 accommodations, the commission has not completed its administrative processing and the person
6 aggrieved so requests in writing, the commission shall issue to the person claiming to be
7 aggrieved a letter indicating his or her right to bring a civil action within ninety days of such
8 notice against the respondent named in the complaint. If, after the filing of a complaint pursuant
9 to sections 213.040, 213.045, 213.050 and 213.070, to the extent that the alleged violation of
10 section 213.070 relates to or involves a violation of sections 213.040, 213.045 and 213.050, or
11 subdivision (3) of section 213.070 as it relates to housing, and the person aggrieved so requests
12 in writing, the commission shall issue to the person claiming to be aggrieved a letter indicating
13 his or her right to bring a civil action within ninety days of such notice against the respondent
14 named in the complaint. Such an action may be brought in any circuit court in any county in
15 which the unlawful discriminatory practice is alleged to have occurred, either before a circuit or
16 associate circuit judge. Upon issuance of this notice, the commission shall terminate all
17 proceedings relating to the complaint. No person may file or reinstate a complaint with the
18 commission after the issuance of a notice under this section relating to the same practice or act.
19 Any action brought in court under this section shall be filed within ninety days from the date of
20 the commission's notification letter to the individual but no later than two years after the alleged
21 cause occurred or its reasonable discovery by the alleged injured party.

22 2. The court may grant as relief, as it deems appropriate, any permanent or temporary
23 injunction, temporary restraining order, or other order, and may award to the plaintiff actual and
24 punitive damages[, and] . **A court may also award court costs and reasonable attorney fees to**
25 **the prevailing party, other than a state agency or commission or a local commission; except that,**
26 **court costs and attorney fees shall not be awarded to a prevailing party when the**
27 **respondent is the state, a political subdivision thereof, or an official or employee of the state**
28 **or political subdivision.** A prevailing respondent may be awarded court costs and reasonable
29 attorney fees only upon a showing that the case is without foundation.

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