

FIRST REGULAR SESSION

HOUSE BILL NO. 1352

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHRISTOFANELLI.

2723H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 213.111 and 536.085, RSMo, and to enact in lieu thereof two new sections relating to the awarding of fees in certain proceedings.

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

Section A. Sections 213.111 and 536.085, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 213.111 and 536.085, to read as follows:

213.111. 1. If, after one hundred eighty days from the filing of a complaint alleging
2 an unlawful discriminatory practice pursuant to section 213.055, 213.065 or 213.070 to the
3 extent that the alleged violation of section 213.070 relates to or involves a violation of section
4 213.055 or 213.065, or subdivision (3) of subsection 1 of section 213.070 as it relates to
5 employment and public accommodations, the commission has not completed its
6 administrative processing and the person aggrieved so requests in writing, the commission
7 shall issue to the person claiming to be aggrieved a letter indicating his or her right to bring a
8 civil action within ninety days of such notice against the respondent named in the complaint.
9 If, after the filing of a complaint pursuant to sections 213.040, 213.045, 213.050 and 213.070,
10 to the extent that the alleged violation of section 213.070 relates to or involves a violation of
11 sections 213.040, 213.045 and 213.050, or subdivision (3) of subsection 1 of section 213.070
12 as it relates to housing, and the person aggrieved so requests in writing, the commission shall
13 issue to the person claiming to be aggrieved a letter indicating his or her right to bring a civil
14 action within ninety days of such notice against the respondent named in the complaint. The
15 commission may not at any other time or for any other reason issue a letter indicating a
16 complainant's right to bring a civil action. Such an action may be brought in any circuit court
17 in any county in which the unlawful discriminatory practice is alleged to have been

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 committed, either before a circuit or associate circuit judge. Upon issuance of this notice, the
19 commission shall terminate all proceedings relating to the complaint. No person may file or
20 reinstate a complaint with the commission after the issuance of a notice under this section
21 relating to the same practice or act. Any action brought in court under this section shall be
22 filed within ninety days from the date of the commission's notification letter to the individual
23 but no later than two years after the alleged cause occurred or its reasonable discovery by the
24 alleged injured party.

25 2. The court may grant as relief, as it deems appropriate, any permanent or temporary
26 injunction, temporary restraining order, or other order, and may award to the plaintiff actual
27 and punitive damages, and may award court costs [~~and reasonable attorney fees~~] to the
28 prevailing party [~~other than a state agency or commission or a local commission; except that,
29 a prevailing respondent may be awarded reasonable attorney fees only upon a showing that
30 the case was without foundation~~].

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

32 4. The sum of the amount of actual damages, including damages for future pecuniary
33 losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life,
34 and other nonpecuniary losses, and punitive damages awarded under this section shall not
35 exceed for each complaining party:

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

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

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

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

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

49 5. In any employment-related civil action brought under this chapter, the plaintiff
50 shall bear the burden of proving the alleged unlawful decision or action was made or taken
51 because of his or her protected classification and was the direct proximate cause of the
52 claimed damages.

536.085. As used in section 536.087, the following terms mean:

2 (1) "Agency proceeding", an adversary proceeding in a contested case pursuant to this
3 chapter in which the state is represented by counsel, but does not include proceedings for
4 determining the eligibility or entitlement of an individual to a monetary benefit or its
5 equivalent, child custody proceedings, eminent domain proceedings, driver's license
6 proceedings, vehicle registration proceedings, proceedings to establish or fix a rate, or
7 proceedings before the state tax commission;

8 (2) "Party":

9 (a) An individual whose net worth did not exceed two million dollars at the time the
10 civil action or agency proceeding was initiated; or

11 (b) Any owner of an unincorporated business or any partnership, corporation,
12 association, unit of local government or organization, the net worth of which did not exceed
13 seven million dollars at the time the civil action or agency proceeding was initiated, and
14 which had not more than five hundred employees at the time the civil action or agency
15 proceeding was initiated;

16 (3) "Prevails", obtains a favorable order, decision, judgment, or dismissal in a civil
17 action or agency proceeding;

18 (4) "Reasonable fees and expenses" includes the reasonable expenses of expert
19 witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which
20 is found by the court or agency to be necessary for the preparation of the party's case, and
21 reasonable attorney or agent fees. The amount of fees awarded as reasonable fees and
22 expenses shall be based upon prevailing market rates for the kind and quality of the services
23 furnished, except that no expert witness shall be compensated at a rate in excess of the highest
24 rate of compensation for expert witnesses paid by the state in the type of civil action or
25 agency proceeding~~], and attorney fees shall not be awarded in excess of seventy-five dollars~~
26 ~~per hour unless the court determines that a special factor, such as the limited availability of~~
27 ~~qualified attorneys for the proceedings involved, justifies a higher fee];~~

28 (5) "State", the state of Missouri, its officers and its agencies, but shall not include
29 political subdivisions of the state.

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