

FIRST REGULAR SESSION

HOUSE BILL NO. 542

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SPARKS.

1409H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 213.077 and 213.111, RSMo, and to enact in lieu thereof three new sections relating to unlawful discrimination in places of public accommodation.

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

Section A. Sections 213.077 and 213.111, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 213.064, 213.077, and 213.111, to read as
3 follows:

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

2 **(1) "Changing room", a room that is designated for a person to change his or**
3 **her clothes or to shower;**

4 **(2) "Family restroom", a single-stall restroom that is enclosed by floor-to-ceiling**
5 **walls, that is accessed by a full door with a secure lock that prevents another person**
6 **from entering while the restroom is in use, and that complies with the standards of the**
7 **Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.;**

8 **(3) "Restroom", a room that contains one or more toilets or urinals;**

9 **(4) "Sex", the physical condition of being male or female based on genetics and**
10 **physiology, as identified on the person's original birth certificate.**

11 **2. It shall be an unlawful discriminatory practice for a place of public**
12 **accommodation to:**

13 **(1) Designate any changing room or any restroom, other than a family restroom,**
14 **for use by persons of both sexes; or**

15 **(2) Allow any person to use a changing room or restroom that has been**
16 **designated for use exclusively by persons of the opposite sex.**

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 **3. Notwithstanding any provision of this chapter to the contrary, a place or**
18 **business that collects membership fees or dues from persons for access to any of the**
19 **accommodations, advantages, facilities, services, or privileges made available in the**
20 **place or business shall not be exempt from the provisions of this section on the basis of**
21 **the collection of such fees or dues, and shall be deemed a "place of public**
22 **accommodation" under this section, as long as the place or business accepts for**
23 **membership any member of the public who pays the fees or dues and the place or**
24 **business otherwise meets the definition of a place of public accommodation in section**
25 **213.010.**

 213.077. 1. During the period beginning with the filing of a complaint under section
2 213.075, and ending with the filing of a charge, setting of a complaint for hearing or dismissal
3 of a complaint pursuant to the provisions of that section, the executive director and the
4 commission staff shall, to the extent feasible, engage in settlement and/or conciliation with
5 respect to the complaint. Any settlement and conciliation agreement negotiated during such
6 period shall be an agreement between the complainant and respondent and shall be subject to
7 approval by the executive director. Nothing said or done in the course of settlement or
8 conciliation under this section shall be made public or used as evidence in any subsequent
9 proceeding under this chapter, without the written consent of the complainant and respondent.

10 2. If a complaint has been filed pursuant to section 213.055, **213.064**, 213.065, or
11 213.070, alleging commission of an unlawful employment practice or discrimination in
12 public accommodations:

13 (1) During investigation, the public shall not have access to records relating to the
14 complaint, nor shall any information relating thereto be released to the public;

15 (2) During investigation, the complainant and respondent shall only have access to
16 records they provided until the point at which disclosure is allowed at hearing, or if a request
17 for civil action is made under section 213.111 for a right to or other legal proceedings
18 pursuant to federal, state or local discrimination laws that require disclosure;

19 (3) Settlement agreements, executed during investigation shall be disclosed to the
20 public only by agreement of the complainant and respondent;

21 (4) After closure of a complaint, the public may only have access to the complaint
22 and closure documents by agreement of the complainant and respondent;

23 (5) Excluding a finding of probable cause, after an investigation closure, the
24 complainant and respondent may have access to the investigative file except for sensitive or
25 confidential records and records relating to witnesses who have requested anonymity. With
26 respect to records that the commission has obtained from other government agencies, the
27 commission will observe any statutory confidentiality provisions imposed on the originating
28 agencies;

29 (6) A conciliation agreement shall be disclosed to the public only by agreement of the
30 complainant and respondent;

31 (7) After failure of conciliation attempts, the complainant and respondent may have
32 access to copies of the investigative file, except for sensitive or confidential records and
33 records relating to witnesses who have requested anonymity;

34 (8) To achieve the purposes of this chapter, this subsection shall not apply to
35 disclosure of information to representatives of interested federal, state or local civil or human
36 rights agencies.

37 3. If a complaint is filed alleging violation of section 213.040, 213.045, 213.050, or
38 213.070, to the extent that the alleged violation of section 213.070 relates to or involves
39 violations of one or more of the other above enumerated sections or relates to or involves the
40 encouraging, aiding or abetting of violation of such sections:

41 (1) The public, complainant and respondent shall have access to records relating to
42 the complaint in the same manner as set forth in subdivisions (1), (2), (4), (5), (7), and (8) of
43 subsection 2 of this section;

44 (2) Any settlement or conciliation agreement entered into by the complainant and
45 respondent shall be made public unless the parties thereto otherwise agree and the executive
46 director determines that disclosure is not required to further the purpose of this chapter.

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, **213.064**, 213.065, or
3 213.070 to the extent that the alleged violation of section 213.070 relates to or involves a
4 violation of section 213.055 ~~[or]~~, **213.064**, or 213.065, or subdivision (3) of subsection 1 of
5 section 213.070 as it relates to employment and public accommodations, the commission has
6 not completed its administrative processing and the person aggrieved so requests in writing,
7 the commission shall issue to the person claiming to be aggrieved a letter indicating his or her
8 right to bring a civil action within ninety days of such notice against the respondent named in
9 the complaint. If, after the filing of a complaint pursuant to sections 213.040, 213.045,
10 213.050 and 213.070, to the extent that the alleged violation of section 213.070 relates to or
11 involves a violation of sections 213.040, 213.045 and 213.050, or subdivision (3) of
12 subsection 1 of section 213.070 as it relates to housing, and the person aggrieved so requests
13 in writing, the commission shall issue to the person claiming to be aggrieved a letter
14 indicating his or her right to bring a civil action within ninety days of such notice against the
15 respondent named in the complaint. The commission may not at any other time or for any
16 other reason issue a letter indicating a complainant's right to bring a civil action. Such an
17 action may be brought in any circuit court in any county in which the unlawful discriminatory
18 practice is alleged to have been committed, either before a circuit or associate circuit judge.
19 Upon issuance of this notice, the commission shall terminate all proceedings relating to the

20 complaint. No person may file or reinstate a complaint with the commission after the
21 issuance of a notice under this section relating to the same practice or act. Any action brought
22 in court under this section shall be filed within ninety days from the date of the commission's
23 notification letter to the individual but no later than two years after the alleged cause occurred
24 or its reasonable discovery by the 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, a
29 prevailing respondent may be awarded reasonable attorney fees only upon a showing that the
30 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.

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