

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 878

91ST GENERAL ASSEMBLY

Reported from the Committee on Aging, Families and Mental Health, April 4, 2002, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 878, adopted April 24, 2002.

Taken up for Perfection April 24, 2002. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

3194S.04P

AN ACT

To amend chapter 209, RSMo, by adding thereto ten new sections relating to rights of persons with service animals, with penalty provisions and a severability clause.

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

Section A. Chapter 209, RSMo, is amended by adding thereto ten new sections, to be known as sections 209.200, 209.202, 209.204, 209.206, 209.208, 209.210, 209.212, 209.214, 209.216, and 209.218, to read as follows:

209.200. As used in sections 209.200 to 209.218, the following terms shall mean:

- (1) "Commission", the Missouri commission on human rights;**
- (2) "Disability", as defined in section 213.010, RSMo;**
- (3) "Discrimination", any unfair treatment based on use of a service animal in housing, employment, or public accommodations;**
- (4) "Dwelling", as defined in section 213.010, RSMo;**
- (5) "Employer", as defined in section 213.010, RSMo;**
- (6) "Employment agency", as defined in section 213.010, RSMo;**
- (7) "Labor organization", as defined in section 213.010, RSMo;**
- (8) "Major life activity", those basic activities that the average person in the general population can perform with little or no difficulty. Major life activities**

include but are not limited to caring for oneself, performing manual tasks, walking, sight, hearing, speech, breathing, learning, and employment. Major life activities may include sitting, standing, lifting, and reaching;

(9) "Person", as defined in section 213.010, RSMo;

(10) "Physical or mental impairment":

(a) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and learning disabilities.

Minor temporary illnesses, such as broken bones, sprains, or colds, are not physical or mental impairments;

(11) "Places of public accommodation", as defined in section 213.010, RSMo. Places of public accommodation shall include those facilities set forth in sections 209.150 and 209.160;

(12) "Record of having an impairment", a history of or having been improperly classified as having a physical or mental impairment that does not substantially limit major life activities but is treated as constituting such a limitation;

(13) "Regarded as having an impairment", when a respondent determines a person:

(a) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a respondent or others as constituting such a limitation; or

(b) Has no disability as defined in this section but is treated by the respondent or by others as having an impairment which substantially limits a major life activity;

(14) "Rent", as defined in section 213.010, RSMo;

(15) "Service animal", an animal that is being or has been specially trained to assist a particular person with a disability. Service animal includes, but is not limited to:

(a) "Emotional support animal", an animal that is being or has been specially trained to assist a person with a disability caused by mental or emotional impairments;

(b) "Guide animal", an animal that is being or has been specially trained to assist a particular blind or visually impaired person;

(c) "Hearing animal", an animal that is being or has been specially trained to

assist a particular deaf or hearing-impaired person;

(d) "Medical alert/respond animal", an animal that is being or has been trained to alert a person with a disability that a particular medical event is about to occur and/or to respond to a medical event that has occurred;

(e) "Mobility animal", an animal that is being or has been specially trained to assist a person with a disability caused by physical impairments.

209.202. 1. No person shall discriminate in the sale or rental or otherwise make unavailable or deny, a dwelling to any buyer or renter because: that buyer or renter has a service animal; a person residing or intending to reside in that dwelling has a service animal; or any person associated with that buyer or renter has a service animal.

2. No person shall refuse to make reasonable accommodations in rules, practices, or services, when such accommodation may be necessary to afford a person with the service animal equal opportunity to use and enjoy a dwelling.

3. A person may require proof that a tenant has a physical or mental disability and that an animal is, or is being trained as, a service animal. However, the landlord may not ask the nature of the disability, but only whether or not the tenant is impaired.

4. Any restriction, reservation, condition, exception, or covenant in any subdivision, plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property that would permit residential use of such property but prohibit the use of such property as housing for a service animal shall, to the extent of such prohibition, not be given legal or equitable force and effect.

5. Any rules relating to pets that limit or restrict an animal's size or access to housing areas available to tenants shall not apply to service animals.

6. No residential property owner, person engaging in a residential real estate transaction, residential real estate broker, or residential real estate salesperson shall refuse to engage in a residential real estate transaction, including the inspection of the property by the prospective renter or buyer, or deny equal opportunity to use and enjoy a dwelling or housing accommodation because of a person's use of a service animal.

209.204. 1. No employer, employment agency, or labor organization shall discriminate against any person with a physical or mental impairment by directly or indirectly interfering with such person's use of a service animal.

2. No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any person with a physical or mental disability by directly or indirectly interfering with such person's use of a

disability-related aid or appliance, including a service animal. Permitting an employee who has a disability to be accompanied by such employee's service animal in the workplace is a type of reasonable accommodation. Employers may require proof that the employee has a disability and that the animal is a service animal for such employee. The employee may submit any of the following as evidence that an animal is a service animal:

- (1) Identification cards;**
- (2) Other written documentation;**
- (3) Presence of harness or markings on harnesses;**
- (4) Tags;**
- (5) Credible verbal assurances from the employee, including a description of the tasks the service animal is trained to perform; or**
- (6) A letter from a health care provider familiar with the employee's care that the employee has a disability and the service animal is necessary for such employee's health.**

3. No employer shall directly or indirectly refuse to allow an employee with a physical or mental impairment to keep such employee's service animal with him or her at all times in the employee's place of employment, unless the presence or behavior of the service animal creates a demonstrable direct threat or fundamental alteration to the nature of the business, including but not limited to:

- (1) A display of aggressive behavior by the service animal;**
- (2) A display of behavior by the service animal that is disruptive beyond the level tolerated by humans, such as uncontrollable barking or unwanted contact with coworkers;**
- (3) The work area, such as a hospital operating room, requires persons in such area to wear protective garments or equipment, such as gowns, gloves, or masks, which cannot be worn by the service animal; or**
- (4) The service animal presents a greater infection risk than posed by other persons in the work environment.**

209.206. 1. No person shall require an additional charge for, or no place of public accommodation shall deny equal service to any person with a physical or mental disability because of the use of a service animal.

2. The owner or trainer of such service animal may submit any one of the following as evidence that the owner has a disability and that an animal is a service animal:

- (1) Identification cards;**
- (2) Other written documentation;**

- (3) Presence of harness or markings on harnesses;**
- (4) Tags; or**
- (5) Credible verbal assurances that the person has a disability and the animal is the owner's service animal.**

3. A service animal's access may be restricted or denied only when such animal demonstrably creates a direct threat or fundamental alteration to the nature of the business, including but not limited to:

- (1) The service animal displays aggressive behavior;**
- (2) The service animal urinates or defecates in unapproved locations;**
- (3) The service animal damages property; or**
- (4) The service animal creates a disturbance beyond that which is tolerated by human customers or employees, such as howling during a theater performance, making unwelcomed contact with other persons, or sitting on the table in a restaurant.**

4. In addition to any other remedies provided by sections 209.200 to 209.218, any person who believes a violation of this section has occurred may seek criminal prosecution pursuant to section 209.160 or file a verified complaint with the commission pursuant to section 213.075, RSMo, but not both. A prosecutor may withdraw such criminal prosecution upon proof that a complaint has been filed with the commission.

209.208. 1. No common carrier of passengers or other means of public conveyance or transportation operating in this state, including but not limited to motor vehicles, taxis, airplanes, railroad trains, motor buses, streetcars, boats, buses, or other modes of transportation shall refuse service or charge an additional fee to any person with a disability, any person with a physical or mental impairment, or any trainer of service animals who is accompanied by a service animal.

2. In addition to any other remedies provided by sections 209.200 to 209.218, any person who believes a violation of this section has occurred may seek criminal prosecution pursuant to section 209.160 or file a verified complaint with the commission pursuant to section 213.075, RSMo, but not both. A prosecutor may withdraw such criminal prosecution upon proof that a complaint has been filed with the commission.

209.210. 1. The driver of a motor vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominately white in color, or a blind, visually impaired, deaf, hard-of-hearing, or otherwise physically disabled person or person with a physical or mental impairment using a service animal shall take all necessary precautions to avoid injury to such pedestrian. Any driver who fails to take

such precautions shall be liable for the actual damages for injury caused to such pedestrian or the pedestrian's service animal. No operator of a motor vehicle shall drive into or upon any crosswalk while such a pedestrian is on a crosswalk, crossing or attempting to cross a roadway if such pedestrian indicates his or her intention to cross or continue. Failure of any such pedestrian to so signal shall not deprive him or her the right-of-way accorded to the pedestrian by other laws.

2. No person, either pedestrian or operator of a motor vehicle, who approaches an individual that appears to be a disabled person or a person with a physical or mental impairment using an assistive device or service animal shall intentionally fail to stop, change course, speak, or take any other necessary action as is necessary to avoid an accident or injury to such individuals, or intentionally startle or frighten such individual's service animal. Any person who violates the provisions of this section is guilty of a class B misdemeanor.

209.212. 1. Any person who knowingly and intentionally destroys or causes serious physical injury to a service animal is guilty of a class C felony. The provisions of this subsection shall not apply to the destruction of a service animal for humane purposes.

2. Any person who, with intent to deprive or defraud the owner takes, leads away, confines, secretes, or converts, or in any manner separates from the owner any service animal, or conceals the identity of a service animal or its owner by obscuring, altering, or removing any collar, tag, license or other identifying device or mark from the service animal is guilty of a class A misdemeanor. Nothing in this subsection shall prohibit a person from being charged with offenses for theft or possession of stolen property.

3. Any person who negligently or maliciously kills or injures a service animal shall be civilly liable to the user of the service animal in the amount of one thousand dollars plus reasonable attorney's fees and court costs. Such civil liability shall be in addition to and not in lieu of any other remedies provided by law.

4. Any person who willfully and maliciously assaults, beats, harasses, injures, or attempts to assault, beat, harass, or injure an animal that such person knows or has reason to believe is a service animal or service animal in training is guilty of a class C felony.

5. Any person who sells or otherwise transfers an animal such person knows or has reason to know is a service animal that has been stolen or fraudulently obtained is guilty of a class C felony. For purposes of this subsection, such sale, receipt, or transfer of each service animal constitutes a separate violation of this subsection.

6. Any person who willfully or negligently injures or destroys a service animal or deprives the owner of a service animal from the use of such animal is subject to civil liability for damages, including the value of the service animal, the cost of training, and reasonable compensation for the period of time for which the owner is denied use of the animal. If such actions are proven to be willful, the owner shall be entitled to attorney's fees.

7. The provisions of this section shall not apply to the lawful acts of any employee, agent, or director of any humane society, animal control agency, or animal shelter operated by or on behalf of any state or political subdivision, department or agency.

209.214. Any person who disguises an animal as a service animal or falsely uses an animal with a harness, leash, or other device identifying it as a service animal to represent that such person's animal is necessary due to disability or is being trained as a service animal is guilty of a class B misdemeanor.

209.216. 1. The owner of a service animal or service animal in training shall be liable for the actual damages caused by such service animal to persons, premises, or facilities, including places of public accommodation, public conveyances or transportation services, common carriers of passengers, places of housing accommodations, and places of employment.

2. A person with a physical or mental impairment who uses a service animal shall keep such animal harnessed or leashed or otherwise controlled when such animal is being used as a service animal. Any person who violates the provisions of this subsection shall be subject to civil liability for any damages caused as a result of the failure to properly restrain such animal.

3. Service animals shall be identifiable as service animals if such animals are wearing a harness, leash, collar, backpack, vest, or cape that is recognized as appropriate for a service animal or service animal in training.

209.218. 1. Any violation of section 209.202, 209.204, or 209.206, or subsection 1 of section 209.208 is an unlawful discriminatory practice. The commission, upon the filing of a complaint pursuant to section 213.075, RSMo, shall have jurisdiction over all unlawful discriminatory practice proceedings initiated pursuant to sections 209.200 to 209.218. Such proceedings shall be subject to the provisions of chapter 213, RSMo.

2. Upon a showing that a complaint has been filed with the commission alleging a violation of sections 209.202, 209.204, 209.206, or subsection 1 of section 209.208, a prosecuting attorney may withdraw any pending criminal action regarding the same violations. Nothing in this section shall preclude a prosecuting attorney from prosecuting any violation of sections 209.200 to 209.218.

3. Nothing in sections 209.200 to 209.218 shall exclude or impair any existing civil or criminal remedy, whether statutory or common law, for any violations of sections 209.200 to 209.218.

Section B. If any provision of this act or the application thereof to anyone or to any circumstances is held invalid, the remainder of those sections and the application of such provisions to others or other circumstances shall not be affected thereby.

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