



OFFICE OF FAIR HOUSING  
AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-2000

JUL 14 2017

Dr. Alisa Warren  
Executive Director  
Missouri Commission on Human Rights  
3315 West Truman Boulevard, Suite 212  
Jefferson City, MO 65109-2205

**RE: Amendments to the Missouri Human Rights Act**

Dear Dr. Warren:

It is my understanding that Governor Eric Greitens signed Missouri Senate Bill 43 into law on June 30, 2017, with an effective date of August 28, 2017. The Department has reviewed the legislation and concludes that the resulting amendments to the Missouri Human Rights Act (MHRA) render it no longer substantially equivalent to the federal Fair Housing Act.

HUD values its partnership with the Commission; however, the existence of a substantially equivalent fair housing law is a fundamental requirement of participation in the Fair Housing Assistance Program. If MCHR wishes to continue its participation in the program, the MHRA must be restored to a state of substantial equivalence on or before March 1, 2018. If not, HUD will be compelled to suspend Missouri's participation in the FHAP program. In the interim, because the recent amendments will result in significant departures from the protections, remedies, and procedures contained in the federal Fair Housing Act, beginning August 1, 2017, HUD will not refer complaints to the Missouri Commission. Further, HUD will require MCHR to inform potential complainants of the changes to Missouri's law and advise them of their right to file directly with HUD.

**Background**

In or around November 1992, the Department certified Missouri's fair housing law as substantially equivalent to the federal Fair Housing Act, meaning that Missouri's law provided rights, remedies, procedures, and judicial review substantially equivalent to those provided under the Act. The following amendments to the Missouri Human Rights Act made by the enactment of Senate Bill 43 render it fundamentally inconsistent with the Act.

Limitations on Methods for Proving Discrimination: Senate Bill 43 adds a new definition to MHRA § 213.010 as follows:

(2) "Because" or "because of", as it relates to the adverse decision or action, the protected criterion was the motivating factor;

Defining the term in this manner excludes as discrimination instances wherein discriminatory intent was not the sole motive of the alleged policy or practice, as well instances where discrimination was caused by the disparate impact of an otherwise neutral policy. Thus, long- and firmly established theories of discrimination (*e.g.*, mixed-motive, discriminatory effects) available under the Fair Housing Act and substantially equivalent laws are no longer available under the MHRA.

The viability of the disparate impact standard (*a.k.a.* “discriminatory effects”) effectuates Congress’s broad, remedial intent in passing the Fair Housing Act. The Supreme Court and virtually every federal Court of Appeals have held that liability may be established by proof of discriminatory effects. In 2013, HUD published the discriminatory effects rule to codify this interpretation, the preamble to which specifically states:

*‘Discriminate’ is a term that may encompass actions that have a discriminatory effect but not a discriminatory intent. HUD’s extensive experience in administering the Fair Housing Act . . . informs its conclusion that not only can the term ‘discriminate’ be interpreted to encompass discriminatory effects liability, but it must be so interpreted in order to achieve the Act’s stated purpose to provide for fair housing to the extent the Constitution allows.*

78 Fed. Reg. 11466 (*emphasis added*).

Limitations on both Actual and Punitive Damages: Senate Bill 43 amends § 213.111(4) of the MHRA to place caps on the total award of both actual and punitive damages, and thus impermissibly limits the remedies available to victims of housing discrimination.

Substantial equivalence requires that a State or local law provide similar remedies to victims of housing discrimination. *See*, 42 U.S.C. §3610(f)(3)(A); 24 C.F.R. §115.202(a). Actual damages are damages necessary to make a victim of discrimination whole. The imposition of a cap is antithetical to that fundamental purpose, and no such cap is authorized by the Fair Housing Act. Similarly, punitive damages are expressly authorized in civil actions by the Act, *see*, 42 U.S.C. §3613(c)(1), and the availability of punitive damages is required by the regulations governing substantial equivalence. As with actual damages, the Act contains neither an express limitation nor authorization to impose such a limitation. Importantly, while the original Act of 1968 included a cap on punitive damages, *see*, former 42 U.S.C. §3612(c), that cap was removed by the Fair Housing Amendments Act of 1988, which, *inter alia*, introduced the administrative and judicial enforcement mechanism. This change represented an effort on the part of Congress to “remove barriers to court enforcement by private litigants.” *See*, U.S. House of Representatives, Committee on the Judiciary, Report 100-711: The Fair Housing Amendments Act of 1988, 13, 100<sup>th</sup> Cong., 2d. Sess. (June 17, 1988).

Protections related to Retaliation and Association: Senate Bill 43 amends § 213.070 of the MHRA in a manner that removes important protections related to retaliation and association in housing cases.

Whereas existing § 213.070 of the MHRA (“*Additional unlawful discriminatory practices*”) applies without limitation to any class of respondents/defendants, Senate Bill 43 narrows the scope of coverage to apply only to employers, employment agencies, labor organizations, or places of public accommodation. This revision omits owners, landlords, or any other class of persons related to housing transactions. Thus, important protections provided in § 213.070 that are available under the Act and were previously provided under § 213.070, including protection from retaliation and protection because of having associated with a person protected by the MHRA, are no longer available to aggrieved persons in cases of housing discrimination.

Prerequisite for Filing of a Civil Action: Senate Bill 43 amends § 213.075.1 of the MHRA such that the filing of a complaint with MHRC is now a jurisdictional prerequisite to the filing of a civil action by an aggrieved person.

Requiring the filing of an administrative complaint as a prerequisite to filing a private civil action is fundamentally inconsistent with the rights of an aggrieved person under the Act. Under the Act, aggrieved persons have the unqualified right to file an administrative complaint, to proceed directly in State or federal court, or to do both simultaneously. The ability to directly file a civil action was present in the original 1968 Fair Housing Act, and upheld by the Supreme Court in Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, at 103-104 (1979).


The legislative history of the 1968 Fair Housing Act further supports complainants’ direct access to courts without filing an administrative complaint. In describing the enforcement of the Act, Representative Celler stated: “In addition to administrative remedies, the bill authorizes immediate civil suits by private persons within 180 days after the alleged discriminatory housing practice occurred ...” 114 Cong.Rec. 9560 (1968).

### Conclusion

Owing to the changes identified above made by the recent amendments to the Missouri Human Rights Act, HUD will be compelled to suspend Missouri’s participation in the FHAP program unless Missouri’s fair housing law is restored to a state of substantial equivalence on or before March 1, 2018. Effective August 1, 2017, and until such time as the MHRA meets the criteria for substantial equivalence, HUD will not refer any complaints to the Missouri Commission and MCHR must inform potential complainants of the changes to Missouri’s law and advise them of their right to file a fair housing complaint directly with HUD.

If you believe that any part of this analysis is incorrect, or that the Missouri Human Rights Act, as amended by Senate Bill 43, continues to be substantially equivalent to the Fair Housing Act, you are welcome to offer a response to this letter within 30 days. If you have any questions please contact Joseph Pelletier, Director, Fair Housing Assistance Program. Mr. Pelletier can be reached at (202) 402-2126 or at [Joseph.A.Pelletier@hud.gov](mailto:Joseph.A.Pelletier@hud.gov).

Sincerely,

  
Bryan Greene  
General Deputy Assistant Secretary  
for Fair Housing and Equal Opportunity

cc:

Betty Bottiger, FHEO Region VII Director



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AUG 2 2017

Alisa Warren, Executive Director  
Missouri Commission on Human Rights  
3315 West Truman Boulevard, Suite 212  
Jefferson City, MO 65109-6805

Dear Dr. Warren:

This letter follows my letter of July 14, 2017. As previously stated, the Department of Housing and Urban Development (HUD) values all of our Fair Housing Assistance Program participants in Missouri and we remain hopeful that Missouri law will be returned to a state of substantial equivalence with the federal Fair Housing Act. With this shared goal in mind, this letter sets forth additional guidance as to (i) next steps for complaints currently pending with the Missouri Commission on Human Rights (MCHR); and (ii) FHAP funds due or accruing to MCHR.

I. Complaints Currently Pending with MCHR

As you were informed by telephone on July 28, HUD will continue to refer complaints to MCHR until August 25, 2017, but not beyond that date. MCHR does not need to refer back to HUD any cases filed prior to August 28. Instead, MCHR will process complaints filed before August 28, 2017, the effective date of the revised MHRA, under the law as of the date of filing.

II. FHAP Funds Due or Accruing to MCHR

With respect to FHAP funds that may be due or accruing to MCHR under agreements currently in effect, HUD will proceed as follows:

A. Complaint Processing Funds and Supplemental Payments

Dual-filed complaints that are completed and accepted for payment between July 1, 2016 – June 30, 2017, will be reimbursed in accordance with the payment schedule set forth in the 2017 FHAP Guidance. This reimbursement will include any post cause supplemental payments that accrue before June 30, 2017. Dual-filed complaints currently open in MCHR's inventory and those filed before August 26, 2017, which are completed and accepted for payment between July 1, 2017 – June 30, 2018, will be paid in accordance with the terms of the 2018 FHAP Guidance. Any post-cause supplemental payment that accrues after September 30, 2017, will be paid in accordance with the terms of the annual FHAP Guidance in effect at the time the payment accrues, provided that MCHR is a participant in the FHAP program at that time.

#### B. Training Funds

HUD will provide Training funds to MCHR for training between October 1, 2016 and September 30, 2017, in accordance with the terms of the 2017 FHAP Guidance. With respect to requests from MCHR for the use of Training funds after September 30, 2017, the FHAP GTR and the Region Director for Region VII shall consult with the FHAP Division in HUD headquarters.

#### C. Administrative Cost Funds

HUD will provide Administrative Cost funds to MCHR for costs incurred between October 1, 2016 -- September 30, 2017, in accordance with the terms of the 2017 FHAP Guidance.

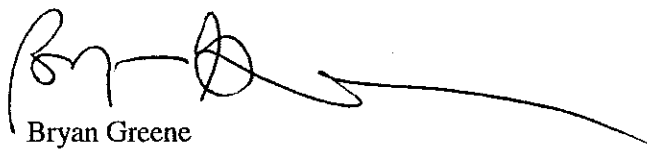
In order to assist MCHR with the investigation and enforcement of open complaints currently in its inventory and those dual-filed before August 26, as well as to provide funds to support activities directed at restoring the MHRA to a state of substantial equivalence, HUD will provide a *pro-rata* share of Administrative Cost funds until at least the end of Missouri's 2018 legislative session. The continued availability of Administrative Cost funds after the end of Missouri's 2018 legislative session will be assessed at that time.

#### D. Partnership Funds

HUD staff in Region VII will work with MCHR staff to determine whether any funds remain under the 2016 Partnership funds award to MCHR and if so, whether any portion of those funds is subject to recapture by HUD.

I hope that this information is helpful to you, and that we will ultimately be able to continue our long-standing fair housing partnership. If you have any questions please contact Joseph Pelletier, Director, Fair Housing Assistance Program. Mr. Pelletier can be reached at (202) 402-2126 or at [Joseph.A.Pelletier@hud.gov](mailto:Joseph.A.Pelletier@hud.gov).

Sincerely,



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