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CHAPTER 9

Equal Enjoyment and Privileges to Public Accommodations

ARTICLE 1

Right To Equal Enjoyment of and Privileges to Public Accommodations

**SECTION 45‑9‑10.** All persons entitled to equal enjoyment of and privileges to public accommodations; places of public accommodation; “supported by state action” defined.

 (A) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in Article 1 of this chapter, without discrimination or segregation on the ground of race, color, religion, or national origin.

 (B) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this chapter if discrimination or segregation by it is supported by state action:

 (1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

 (2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station;

 (3) any hospital, clinic, or other medical facility which provides overnight accommodations;

 (4) any retail or wholesale establishment;

 (5) any motion picture house, theater, concert hall, billiard parlor, saloon, barroom, golf course, sports arena, stadium, or other place of amusement, exhibition, recreation, or entertainment; and

 (6) any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

 (C) “Supported by state action” means the licensing or permitting of any establishment or any agent of an establishment listed above, subject to the exclusion provided in Section 45‑9‑20, which has or must have a license or permit from the State, its agencies, or local governmental entities to lawfully operate.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

**SECTION 45‑9‑20.** Exception for private establishments.

 The provisions of this chapter do not apply to a private club or other establishment not in fact open to the general public. An institution, a club, an organization, or a place of accommodation, as defined in Section 45‑9‑10, which offers memberships for less than thirty days is not private within the meaning of this section.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

**SECTION 45‑9‑30.** Deprivation of right to equal enjoyment of and privileges to public accommodations prohibited.

 No person shall withhold, deny, or attempt to withhold or deny, or deprive, or attempt to deprive any person of any right or privilege secured by the provisions of Section 45‑9‑10; or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by the provisions of Section 45‑9‑10; or punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by the provisions of Section 45‑9‑10.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

ARTICLE 3

Complaints; Hearings, Permit or License Revocation

**SECTION 45‑9‑40.** Processing of complaints; review by State Human Affairs Commission; complaint by Attorney General.

 Whenever the Attorney General receives a complaint and has cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by the provisions of Article 1, and that the pattern or practice is of a nature so as to deny the full exercise of the rights described in the provisions of Article 1, the Attorney General shall notify the State Law Enforcement Division which shall conduct an investigation. The results of this investigation must be reported to the State Human Affairs Commission. A panel of not fewer than three commission members, designated by the chairman, shall determine if there is reasonable cause to believe that the facts alleged, based upon the results of this investigation, are sufficient to state a violation of Article 1 by a pattern or practice of discrimination or segregation.

 If this panel finds reasonable cause, the chairman shall inform the Attorney General, and the Attorney General or his designee shall begin an action by filing a complaint with the commission and serving, by certified mail, return receipt requested, the parties named in the complaint. The commission members which serve on this panel may not serve on the panel conducting a hearing on the allegations contained in the complaint if a license revocation proceeding is initiated. If a person alleged to have violated the provisions of Article 1 by a pattern or practice of discrimination or segregation is an employee or agent of an establishment as defined in Section 45‑9‑10, the Attorney General shall make a diligent effort to include in the complaint the name of the employer, principal, or a third party who may be the holder of a license or permit under which the establishment or an agent of the establishment operates. The complaint must set forth a description of the charges, including the facts pertaining to the pattern or practice of discrimination or segregation and a listing of those licenses or permits which are sought to be revoked under the provisions of this article and must state clearly the remedy or penalty available pursuant to Sections 45‑9‑60 and 45‑9‑80 if the allegations are found to be true.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

**SECTION 45‑9‑50.** Hearing on complaint by Attorney General; notice of hearing.

 A panel of not fewer than five commission members, designated by the chairman, must conduct a hearing on the allegations contained in the complaint by the Attorney General within sixty days of its filing, but not sooner than twenty days from the date of the filing of the complaint. The panel, for cause shown, may at any time in its discretion (1) with or without written motion or notice order the period of time prior to the hearing enlarged if request therefor is made before the expiration of the time period as originally prescribed or extended or (2) upon motion made after the expiration of the specified time period, for good cause shown, permit a continuance or further extension.

 Notification of the hearing must be sent by certified mail, return receipt requested. The notification of the hearing must include a description of the charges, the date, time, and location of the hearing, and a statement in bold type that a failure to appear may result in revocation of licenses or permits under which the establishment or an agent of the establishment operates. The notice must be sent to the person or group of persons accused of discriminatory conduct as well as to all persons listed in the Attorney General’s complaint as having been aggrieved by the alleged discriminatory conduct. The notice also must be sent to any employer, principal, or any third party who may be the holder of a license or permit under which the establishment or an agent of the establishment operates. A license or permit of any party, for whom there is no receipt of the notice showing delivery or attempted delivery of the certified mail, shall not be revoked.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

**SECTION 45‑9‑60.** State Human Affairs Commission may establish rules of procedure for hearings; subpoenas; rights of persons charged; rules of evidence; scope of hearing; deliberations of panel; remedies for violation.

 The commission may establish rules of procedure for the conduct of the panel hearings as provided in this article and is not governed by the Administrative Procedures Act in establishing these rules or in the conduct of panel hearings. The commissioner, upon request of the panel conducting a hearing, may issue subpoenas and subpoenas duces tecum to allow the panel to interview any person it deems necessary and review any document it deems relevant.

 A person or group of persons charged in the complaint with engaging in a pattern or practice of discrimination or segregation in violation of Article 1 shall have the right in the hearing to present physical and documentary evidence, the testimony of witnesses, and other relevant information. In procuring the testimony of witnesses, such persons shall have the benefit of the commissioner’s subpoena power. Such persons shall have the right to appear before the panel and be represented by an attorney, to call witnesses, to confront and cross examine adverse witnesses, and to make oral and written legal arguments.

 All testimony given must be under oath in the presence of a court reporter who shall record the proceedings. The rules of evidence applicable in circuit court shall be used in all hearings. Except to the extent necessary to establish a pattern or practice of discrimination or segregation or to allow for the participation of those intervenors as may be allowed by Section 45‑9‑70, the panel conducting the hearing must limit the scope of the hearing to the items delineated in the description of the charges or in the allegations in the complaint.

 Notwithstanding any other provision of law to the contrary, all deliberations and votes of the panel may be conducted in executive session. The deliberations, findings, and conclusions of the panel are confidential and may not be disclosed by any person until the final order or determination is made public as provided in this article.

 Except as otherwise provided by this article, if it is determined that the rights and privileges secured by Article 1 have been violated by a pattern or practice of discrimination or segregation by an owner of an establishment, an employee of an establishment, or an agent of an establishment, the panel shall grant the relief authorized in Section 45‑9‑80. The panel may further order any persons found to have violated the provisions of Article 1 by a pattern or practice of discrimination or segregation to reimburse the State for the actual costs incurred in conducting the hearing, including reasonable attorney’s fees.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

**SECTION 45‑9‑65.** Liability of employer for acts of employee; conditions under which revocation of license not required for pattern or practice of discriminatory conduct.

 No establishment or agent of an establishment shall be compelled to forfeit a license or permit because of the actions of an employee who has no authority to determine who shall enjoy the goods, services, facilities, privileges, and advantages of an establishment of public accommodations as defined in Section 45‑9‑10. If the panel finds that a pattern or practice of discriminatory conduct by such an employee was known, or was so open and notorious that it reasonably should have become known to the licensee, permittee, or its managing agent, and such licensee, permittee, or agent did not stop the discriminatory conduct, the license or permit may be revoked. If the action prohibited in Article 3 is committed by an employee or agent, and is not done in the presence of the employer, manager, or other person in charge, and is done without knowledge, consent, or approval of the person in charge, the license or permit revocation provisions do not apply.

 A panel may find a pattern or practice of discriminatory conduct violating Article 1 and not revoke a particular license or permit under which an establishment or agent of an establishment operates if:

 (1) the panel concludes the establishment is one of public necessity and the revocation of a license or permit to operate would be severely detrimental to the community and that the establishment is acting to eliminate any discriminatory conduct; or

 (2) the panel concludes that the pattern or practice of discriminatory conduct is limited to a segment of the establishment’s operations and concludes that only the licenses or permits issued to operate that segment may be revoked; or

 (3) the panel concludes that the pattern or practice of discriminatory conduct is limited to one person or a group of persons whose licenses or permits may be revoked.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

**SECTION 45‑9‑70.** Right to intervene in action.

 (A) Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the allegations of the complaint and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

 (B) Upon timely application anyone may be permitted to intervene in an action when an applicant’s claim or defense and the main action have a question of law or fact in common. In exercising its discretion, the panel shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

 (C) A person desiring to intervene shall timely serve a motion to intervene upon the panel. The motion shall state the ground therefor and shall be accompanied by a statement setting forth the claim or defense for which intervention is sought.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

**SECTION 45‑9‑75.** Final decision of panel; appeals.

 The final decision or order of the panel must be in writing and must include the findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The panel must list licenses or permits to be revoked in its order. No finding or conclusion may be included in the order of the panel unless it is supported by substantial evidence in the record before the panel.

 The commission shall send copies of the final order of determination to each party named in the complaint, all attorneys of record, and other interested parties within fifteen days of the conclusion of the hearing.

 Notwithstanding another provision of law, the determination by the panel is not subject to appeal to the full commission and is the final administrative action. Appeal must be to the Administrative Law Court as provided in Sections 1‑23‑380(B) and 1‑23‑600(D) and then judicial review as provided in Sections 1‑23‑380 and 1‑23‑390.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990; 2006 Act No. 387, Section 22, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 2006 amendment in the third undesignated paragraph added “the Administrative Law Court as provided in Sections 1‑23‑380(B) and 1‑23‑600(D) and then judicial review as provided in”; and made nonsubstantive changes throughout.

**SECTION 45‑9‑80.** Attorney General to notify permitting, regulatory or licensing authority of violations; immediate revocation of license or permit; enforcement of panel’s decision; violators not to obtain license or permit for three years.

 Notwithstanding any other provision of law or ordinance to the contrary, if the panel determines that the provisions of Article 1 have been violated by a pattern or practice of discrimination or segregation by the owner of an establishment, an employee of an establishment, or an agent of an establishment of public accommodations as defined in Section 45‑9‑10, the Attorney General must immediately notify the appropriate state or local permitting, regulatory, or licensing authority that those licenses or permits so designated in the panel’s order must be revoked immediately, notwithstanding the provisions of Section 1‑23‑380(C), upon expiration of the time allowed for an appeal if no appeal has been filed. After appeals, if the panel’s order is not reversed, the license or permit must be revoked as provided in this article.

 If necessary, a writ of mandamus may be sought by the Attorney General or any individual to effectuate the provisions of this section. Nothing in this section shall be construed as requiring the issuance of a writ of mandamus, and no civil action shall lie against any regulatory or licensing official acting pursuant to an order of the panel.

 No owner of an establishment, employee of an establishment, or agent of an establishment who is found to have violated the provisions of Article 1 by a pattern or practice of discrimination or segregation may obtain a license or permit from the same regulatory or licensing entity or seek the reissuance of a revoked license or permit within three years from the date of the panel’s order or a final determination of a court of competent jurisdiction, whichever is later.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

**SECTION 45‑9‑85.** Penalty for violating confidentiality provisions.

 Any person violating the confidentiality provision of Section 45‑9‑60 is guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, in the discretion of the court. If the person convicted is an officer or employee of the State, he shall be dismissed from office or employment and shall be ineligible to hold any public office or public employment in this State for a period of three years after such conviction.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

ARTICLE 5

Penalties; Remedies

**SECTION 45‑9‑90.** Penalty for violating provisions of Article 1.

 A person violating the provisions of Article 1 is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned for not less than six months nor more than three years, or both, in the discretion of the court. Each violation is considered a separate offense.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

**SECTION 45‑9‑100.** Action for damages by aggrieved party; minimum damages for violation.

 Subject to the limitations in Section 45‑9‑110, a party aggrieved as a result of a person or group of persons violating the provisions of Article 1 may institute an action in his own name in the circuit court to recover damages for violations of Article 1. A single act of discrimination or segregation may constitute proof of a violation of Article 1 without the necessity of proving a pattern or practice of discrimination or segregation. Upon a finding that a person has violated the provisions of Article 1, the amount of damages that an aggrieved party has sustained is declared to be a minimum of five thousand dollars. In addition, the court, upon a finding that a person violated the provisions of Article 1, shall award the aggrieved party reasonable attorney’s fees, as determined by the court, and costs.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

**SECTION 45‑9‑110.** Prerequisites to action for damages; conciliation.

 An aggrieved party must file a charge alleging unlawful discrimination or segregation under Article 1 with the State Human Affairs Commission and seek conciliation of any civil action under Section 45‑9‑100 prior to bringing such action in the circuit court. The commission has sixty days to investigate the charge, attempt conciliation, and negotiate a settlement. The commission may establish regulations governing the conciliation of a charge filed pursuant to this section, but the failure to promulgate regulations shall not relieve a party from the requirements of this section. No civil action may be commenced by an aggrieved party until sixty days after the filing of the charge with the commission or until the commission issues a letter stating that the conciliation process has concluded, whichever occurs first. After the sixty‑day period has expired, the person filing the charge is deemed to have exhausted his administrative remedy notwithstanding whether the commission has concluded its attempts at conciliation.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.

**SECTION 45‑9‑120.** Prerequisites to action for damages not to limit right to pursue license revocation or criminal penalties.

 The limitations on the right to pursue a civil action in Section 45‑9‑110 shall not be construed to limit the right to pursue the license or permit revocation procedure provided in Article 3 or the criminal penalties provided in Section 45‑9‑90. The penalties and remedies provided in Article 5 may be pursued as independent actions and may not be construed as prohibiting or limiting the right to pursue the administrative remedy provided in Article 3.

HISTORY: 1990 Act No. 423, Section 1, eff April 25, 1990.