

HOUSE BILL NO. 24

INTRODUCED BY CODY

IN THE HOUSE

DECEMBER 27, 1990 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 7, 1991 FIRST READING.

JANUARY 18, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 19, 1991 PRINTING REPORT.

JANUARY 21, 1991 SECOND READING, DO PASS.

JANUARY 22, 1991 ENGROSSING REPORT.

JANUARY 23, 1991 THIRD READING, PASSED.
AYES, 93; NOES, 7.

TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 24, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

FEBRUARY 15, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

FEBRUARY 16, 1991 SECOND READING, CONCURRED IN.

FEBRUARY 18, 1991 THIRD READING, CONCURRED IN.
AYES, 38; NOES, 12.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 9, 1991 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 11, 1991 THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL NO. 24
INTRODUCED BY CODY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE BEST INTERESTS OF THE CHILD AS THE STANDARD IN ADOPTION PROCEEDINGS; ALLOWING THE DEPARTMENT OF FAMILY SERVICES AND LICENSED CHILD-PLACING AGENCIES TO CONSIDER AGE, MARITAL STATUS, AND RELIGION IN ADOPTION PROCEEDINGS; AMENDING THE LAWS RELATING TO DISCRIMINATION TO ALLOW THE NONARBITRARY CONSIDERATION IN ADOPTION PROCEEDINGS OF RELEVANT INFORMATION CONCERNING FACTORS THAT MIGHT OTHERWISE BE PROHIBITED; AMENDING SECTIONS 49-1-102, 49-2-308, 49-3-204, AND 49-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

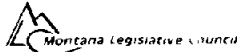
NEW SECTION. **Section 1.** Adoption policy -- best

interest of child standard -- factors to be considered. (1) It is the policy of the state of Montana to ensure that the best interests of the child are met by adoption proceedings.

(2) The primary purpose of adoption is to help a child become a permanent member of a nurturing family that can give him the care, protection, and opportunities essential for his healthy personal growth and development.

(3) The well-being of the adopted child is the main objective in the placement of children for adoption. The

needs of the child must be the primary focus of adoption proceedings, with full recognition of the interdependent needs and interests of birth parents and adoptive parents.
(4) All relevant factors must be considered in determining the best interests of the child in an adoption proceeding. Factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability must be considered. In determining the best interests of the child, the following factors with regard to a prospective adoptive parent may be considered:
(a) age, as it relates to health, earning capacity, provisions for the support of a child, or other relevant circumstance;
(b) marital status, as it relates to the ability to serve as a parent in particularized circumstances; and
(c) religion, as it relates to the ability to provide the child with an opportunity for religious or spiritual and ethical development.
(5) For purposes of ensuring that the best interests of the child are met, the department and licensed child-placing agencies are authorized to gather and use, in an appropriate, nonarbitrary manner, information concerning the age, marital status, and religious beliefs of prospective adoptive parents. The authority granted by this subsection



1 includes the authority to receive and to consider,
 2 consistent with the best interests of the child, the
 3 preferences of natural parents relating to the age, marital
 4 status, or religious beliefs of adoptive parents.

5 **Section 2.** Section 49-1-102, MCA, is amended to read:

6 "49-1-102. Freedom from discrimination. (1) The right
 7 to be free from discrimination because of race, creed,
 8 religion, color, sex, physical or mental handicap, age, or
 9 national origin is recognized as and declared to be a civil
 10 right. This right shall must include but not be limited to:

11 (1)(a) the right to obtain and hold employment without
 12 discrimination; and

13 (2)(b) the right to the full enjoyment of any of the
 14 accommodation facilities or privileges of any place of
 15 public resort, accommodation, assemblage, or amusement.

16 (2) This section does not prevent the nonarbitrary
 17 consideration in adoption proceedings of relevant
 18 information concerning the factors listed in subsection
 19 (1)."

20 **Section 3.** Section 49-2-308, MCA, is amended to read:

21 "49-2-308. Discrimination by the state. (1) It is an
 22 unlawful discriminatory practice for the state or any of its
 23 political subdivisions:

24 (1)(a) to refuse, withhold from, or deny to a person
 25 any local, state, or federal funds, services, goods,

1 facilities, advantages, or privileges because of race,
 2 creed, religion, sex, marital status, color, age, physical
 3 or mental handicap, or national origin, unless based on
 4 reasonable grounds;

5 (2)(b) to publish, circulate, issue, display, post, or
 6 mail a written or printed communication, notice, or
 7 advertisement which states or implies that any local, state,
 8 or federal funds, services, goods, facilities, advantages,
 9 or privileges of the office or agency will be refused,
 10 withheld from, or denied to a person of a certain race,
 11 creed, religion, sex, marital status, color, age, physical
 12 or mental handicap, or national origin or that the patronage
 13 of a person of a particular race, creed, religion, sex,
 14 marital status, color, age, or national origin or possessing
 15 a physical or mental handicap is unwelcome or not desired or
 16 solicited, unless based on reasonable grounds;

17 (3)(c) to refuse employment to a person, to bar him
 18 from employment, or to discriminate against him in
 19 compensation or in a term, condition, or privilege of
 20 employment because of his political beliefs. However, this
 21 prohibition does not apply to policymaking positions on the
 22 immediate staff of an elected officer of the executive
 23 branch provided for in Article VI, section 1, of the Montana
 24 constitution, to the appointment by the governor of a
 25 director of a principal department provided for in Article

1 VI, section 7, of the Montana constitution, or to the
 2 immediate staff of the majority and minority leadership of
 3 the Montana legislature.

4 (2) This section does not prevent the nonarbitrary
 5 consideration in adoption proceedings of relevant
 6 information concerning the factors listed in subsection
 7 (1)."

8 **Section 4.** Section 49-3-204, MCA, is amended to read:

9 "49-3-204. Licensing. (1) A state or local governmental
 10 agency may not grant, deny, or revoke the license or charter
 11 of a person on the grounds of race, color, religion, creed,
 12 political ideas, sex, age, marital status, physical or
 13 mental handicap, or national origin. Each state or local
 14 governmental agency shall take such appropriate action in
 15 the exercise of its licensing or regulatory power as will
 16 assure equal treatment of all persons, eliminate
 17 discrimination, and enforce compliance with the policy of
 18 this chapter. This subsection does not prevent the
 19 department of family services from licensing a child-placing
 20 agency that gives nonarbitrary consideration in adoption
 21 proceedings to relevant information concerning the factors
 22 listed in this subsection.

23 (2) The state may not issue or renew a license under
 24 Title 16, chapter 4, to an applicant or licensee that
 25 excludes from its membership or from its goods, services,

1 facilities, privileges, or advantages any individual on the
 2 grounds of race, color, religion, creed, political ideas,
 3 sex, age, marital status, physical or mental handicap, or
 4 national origin. This subsection does not apply to any lodge
 5 of a recognized national fraternal organization."

6 **Section 5.** Section 49-3-205, MCA, is amended to read:

7 "49-3-205. Governmental services. (1) All services of
 8 every state or local governmental agency must be performed
 9 without discrimination based upon race, color, religion,
 10 creed, political ideas, sex, age, marital status, physical
 11 or mental handicap, or national origin.

12 (2) No state or local facility may be used in the
 13 furtherance of any discriminatory practice, nor may a state
 14 or local governmental agency become a party to an agreement,
 15 arrangement, or plan which has the effect of sanctioning
 16 discriminatory practices.

17 (3) Each state or local governmental agency shall
 18 analyze all of its operations to ascertain possible
 19 instances of noncompliance with the policy of this chapter
 20 and shall initiate comprehensive programs to remedy any
 21 defect found to exist.

22 (4) This section does not prevent the nonarbitrary
 23 consideration in adoption proceedings of relevant
 24 information concerning the factors listed in this section."

25 NEW SECTION. **Section 6.** Codification instruction.

HB 0024/01

1 [Section 1] is intended to be codified as an integral part
2 of Title 40, chapter 8, part 1, and the provisions of Title
3 40, chapter 8, part 1, apply to {section 1}.

4 NEW SECTION. Section 7. Severability. If a part of
5 {this act} is invalid, all valid parts that are severable
6 from the invalid part remain in effect. If a part of {this
7 act} is invalid in one or more of its applications, the part
8 remains in effect in all valid applications that are
9 severable from the invalid applications.

10 NEW SECTION. Section 8. Effective date. {This act} is
11 effective July 1, 1991.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 24
INTRODUCED BY CODY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE BEST INTERESTS OF THE CHILD AS THE STANDARD IN ADOPTION PROCEEDINGS; ALLOWING THE DEPARTMENT OF FAMILY SERVICES AND LICENSED CHILD-PLACING AGENCIES TO CONSIDER AGE, MARITAL STATUS, AND RELIGION IN ADOPTION PROCEEDINGS; AMENDING THE LAWS RELATING TO DISCRIMINATION TO ALLOW THE NONARBITRARY CONSIDERATION IN ADOPTION PROCEEDINGS OF RELEVANT INFORMATION CONCERNING FACTORS THAT MIGHT OTHERWISE BE PROHIBITED; AMENDING SECTIONS 49-1-102, 49-2-308, 49-3-204, AND 49-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Adoption policy -- best

interest of child standard -- factors to be considered. (1)

It is the policy of the state of Montana to ensure that the best interests of the child are met by adoption proceedings.

(2) The primary purpose of adoption is to help a child become a permanent member of a nurturing family that can give him the care, protection, and opportunities essential for his healthy personal growth and development.

(3) The well-being of the adopted child is the main objective in the placement of children for adoption. The

needs of the child must be the primary focus of adoption proceedings, with full recognition of the interdependent needs and interests of birth parents and adoptive parents.

(4) All relevant factors must be considered in determining the best interests of the child in an adoption proceeding. Factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability must be considered. In determining the best interests of the child, the following factors with regard to a prospective adoptive parent may be considered:

(a) age, as it relates to health, earning capacity, provisions for the support of a child, or other relevant circumstance;

(b) marital status, as it relates to the ability to serve as a parent in particularized circumstances; and

(c) IF THE DEPARTMENT OR A LICENSED CHILD-PLACING AGENCY THAT IS NOT AFFILIATED WITH A PARTICULAR RELIGIOUS FAITH IS THE CHILD-PLACING AGENCY, religion, as it relates to the ability to provide the child with an opportunity for religious or spiritual and ethical development.

(5) For purposes of ensuring that the best interests of the child are met, the department and licensed child-placing agencies are authorized to gather and use, in an appropriate, nonarbitrary manner, information concerning the

SECOND READING



1 age, marital status, and religious beliefs of prospective
 2 adoptive parents. The authority granted by this subsection
 3 includes the authority to receive and to consider,
 4 consistent with the best interests of the child, the
 5 preferences of natural parents relating to the age, marital
 6 status, or religious beliefs of adoptive parents.
 7 CONSIDERATION OF RELIGIOUS FACTORS BY A LICENSED
 8 CHILD-PLACING AGENCY THAT IS AFFILIATED WITH A PARTICULAR
 9 RELIGIOUS FAITH IS NOT ARBITRARY CONSIDERATION OF RELIGION
 10 WITHIN THE MEANING OF THIS SECTION.

11 **Section 2.** Section 49-1-102, MCA, is amended to read:
 12 "49-1-102. Freedom from discrimination. (1) The right
 13 to be free from discrimination because of race, creed,
 14 religion, color, sex, physical or mental handicap, age, or
 15 national origin is recognized as and declared to be a civil
 16 right. This right ~~shall~~ must include but not be limited to:
 17 (a) the right to obtain and hold employment without
 18 discrimination; and
 19 (b) the right to the full enjoyment of any of the
 20 accommodation facilities or privileges of any place of
 21 public resort, accommodation, assemblage, or amusement.
 22 (2) This section does not prevent the nonarbitrary
 23 consideration in adoption proceedings of relevant
 24 information concerning the factors listed in subsection (1).
 25 CONSIDERATION OF RELIGIOUS FACTORS BY A LICENSED

1 CHILD-PLACING AGENCY THAT IS AFFILIATED WITH A PARTICULAR
 2 RELIGIOUS FAITH IS NOT ARBITRARY CONSIDERATION OF RELIGION
 3 WITHIN THE MEANING OF THIS SECTION."

4 **Section 3.** Section 49-2-308, MCA, is amended to read:
 5 "49-2-308. Discrimination by the state. (1) It is an
 6 unlawful discriminatory practice for the state or any of its
 7 political subdivisions:
 8 (a) to refuse, withhold from, or deny to a person
 9 any local, state, or federal funds, services, goods,
 10 facilities, advantages, or privileges because of race,
 11 creed, religion, sex, marital status, color, age, physical
 12 or mental handicap, or national origin, unless based on
 13 reasonable grounds;
 14 (b) to publish, circulate, issue, display, post, or
 15 mail a written or printed communication, notice, or
 16 advertisement which states or implies that any local, state,
 17 or federal funds, services, goods, facilities, advantages,
 18 or privileges of the office or agency will be refused,
 19 withheld from, or denied to a person of a certain race,
 20 creed, religion, sex, marital status, color, age, physical
 21 or mental handicap, or national origin or that the patronage
 22 of a person of a particular race, creed, religion, sex,
 23 marital status, color, age, or national origin or possessing
 24 a physical or mental handicap is unwelcome or not desired or
 25 solicited, unless based on reasonable grounds;

1 ~~(3)(c)~~ to refuse employment to a person, to bar him
 2 from employment, or to discriminate against him in
 3 compensation or in a term, condition, or privilege of
 4 employment because of his political beliefs. However, this
 5 prohibition does not apply to policymaking positions on the
 6 immediate staff of an elected officer of the executive
 7 branch provided for in Article VI, section 1, of the Montana
 8 constitution, to the appointment by the governor of a
 9 director of a principal department provided for in Article
 10 VI, section 7, of the Montana constitution, or to the
 11 immediate staff of the majority and minority leadership of
 12 the Montana legislature.

13 (2) This section does not prevent the nonarbitrary
 14 consideration in adoption proceedings of relevant
 15 information concerning the factors listed in subsection
 16 (1)."

17 **Section 4.** Section 49-3-204, MCA, is amended to read:

18 **"49-3-204. Licensing.** (1) A state or local governmental
 19 agency may not grant, deny, or revoke the license or charter
 20 of a person on the grounds of race, color, religion, creed,
 21 political ideas, sex, age, marital status, physical or
 22 mental handicap, or national origin. Each state or local
 23 governmental agency shall take such appropriate action in
 24 the exercise of its licensing or regulatory power as will
 25 assure equal treatment of all persons, eliminate

1 discrimination, and enforce compliance with the policy of
 2 this chapter. This subsection does not prevent the
 3 department of family services from licensing a child-placing
 4 agency that gives nonarbitrary consideration in adoption
 5 proceedings to relevant information concerning the factors
 6 listed in this subsection. CONSIDERATION OF RELIGIOUS
 7 FACTORS BY A LICENSED CHILD-PLACING AGENCY THAT IS
 8 AFFILIATED WITH A PARTICULAR RELIGIOUS FAITH IS NOT
 9 ARBITRARY CONSIDERATION OF RELIGION WITHIN THE MEANING OF
 10 THIS SECTION.

11 (2) The state may not issue or renew a license under
 12 Title 16, chapter 4, to an applicant or licensee that
 13 excludes from its membership or from its goods, services,
 14 facilities, privileges, or advantages any individual on the
 15 grounds of race, color, religion, creed, political ideas,
 16 sex, age, marital status, physical or mental handicap, or
 17 national origin. This subsection does not apply to any lodge
 18 of a recognized national fraternal organization."

19 **Section 5.** Section 49-3-205, MCA, is amended to read:

20 **"49-3-205. Governmental services.** (1) All services of
 21 every state or local governmental agency must be performed
 22 without discrimination based upon race, color, religion,
 23 creed, political ideas, sex, age, marital status, physical
 24 or mental handicap, or national origin.

25 (2) No state or local facility may be used in the

1 furtherance of any discriminatory practice, nor may a state
2 or local governmental agency become a party to an agreement,
3 arrangement, or plan which has the effect of sanctioning
4 discriminatory practices.

5 (3) Each state or local governmental agency shall
6 analyze all of its operations to ascertain possible
7 instances of noncompliance with the policy of this chapter
8 and shall initiate comprehensive programs to remedy any
9 defect found to exist.

10 (4) This section does not prevent the nonarbitrary
11 consideration in adoption proceedings of relevant
12 information concerning the factors listed in this section."

13 NEW SECTION. Section 6. Codification instruction.
14 [Section 1] is intended to be codified as an integral part
15 of Title 40, chapter 8, part 1, and the provisions of Title
16 40, chapter 8, part 1, apply to [section 1].

17 NEW SECTION. Section 7. Severability. If a part of
18 [this act] is invalid, all valid parts that are severable
19 from the invalid part remain in effect. If a part of [this
20 act] is invalid in one or more of its applications, the part
21 remains in effect in all valid applications that are
22 severable from the invalid applications.

23 NEW SECTION. Section 8. Effective date. [This act] is
24 effective July 1, 1991.

-End-

HOUSE BILL NO. 24
INTRODUCED BY CODY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE BEST INTERESTS OF THE CHILD AS THE STANDARD IN ADOPTION PROCEEDINGS; ALLOWING THE DEPARTMENT OF FAMILY SERVICES AND LICENSED CHILD-PLACING AGENCIES TO CONSIDER AGE, MARITAL STATUS, AND RELIGION IN ADOPTION PROCEEDINGS; AMENDING THE LAWS RELATING TO DISCRIMINATION TO ALLOW THE NONARBITRARY CONSIDERATION IN ADOPTION PROCEEDINGS OF RELEVANT INFORMATION CONCERNING FACTORS THAT MIGHT OTHERWISE BE PROHIBITED; AMENDING SECTIONS 49-1-102, 49-2-308, 49-3-204, AND 49-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
NEW SECTION. **Section 1.** Adoption policy -- best interest of child standard -- factors to be considered. (1) It is the policy of the state of Montana to ensure that the best interests of the child are met by adoption proceedings. (2) The primary purpose of adoption is to help a child become a permanent member of a nurturing family that can give him the care, protection, and opportunities essential for his healthy personal growth and development. (3) The well-being of the adopted child is the main objective in the placement of children for adoption. The

needs of the child must be the primary focus of adoption proceedings, with full recognition of the interdependent needs and interests of birth parents and adoptive parents.

(4) All relevant factors must be considered in determining the best interests of the child in an adoption proceeding. Factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability must be considered. In determining the best interests of the child, the following factors with regard to a prospective adoptive parent may be considered:

(a) age, as it relates to health, earning capacity, provisions for the support of a child, or other relevant circumstance;

(b) marital status, as it relates to the ability to serve as a parent in particularized circumstances; and

(c) IF THE DEPARTMENT OR A LICENSED CHILD-PLACING AGENCY THAT IS NOT AFFILIATED WITH A PARTICULAR RELIGIOUS FAITH IS THE CHILD-PLACING AGENCY, religion, as it relates to the ability to provide the child with an opportunity for religious or spiritual and ethical development.

(5) For purposes of ensuring that the best interests of the child are met, the department and licensed child-placing agencies are authorized to gather and use, in an appropriate, nonarbitrary manner, information concerning the

THIRD READING
HB 24 HB 24



1 age, marital status, and religious beliefs of prospective
 2 adoptive parents. The authority granted by this subsection
 3 includes the authority to receive and to consider,
 4 consistent with the best interests of the child, the
 5 preferences of natural parents relating to the age, marital
 6 status, or religious beliefs of adoptive parents.
 7 CONSIDERATION OF RELIGIOUS FACTORS BY A LICENSED
 8 CHILD-PLACING AGENCY THAT IS AFFILIATED WITH A PARTICULAR
 9 RELIGIOUS FAITH IS NOT ARBITRARY CONSIDERATION OF RELIGION
 10 WITHIN THE MEANING OF THIS SECTION.

11 **Section 2.** Section 49-1-102, MCA, is amended to read:
 12 "49-1-102. Freedom from discrimination. (1) The right
 13 to be free from discrimination because of race, creed,
 14 religion, color, sex, physical or mental handicap, age, or
 15 national origin is recognized as and declared to be a civil
 16 right. This right shall must include but not be limited to:
 17 †1†(a) the right to obtain and hold employment without
 18 discrimination; and
 19 †2†(b) the right to the full enjoyment of any of the
 20 accommodation facilities or privileges of any place of
 21 public resort, accommodation, assemblage, or amusement.
 22 (2) This section does not prevent the nonarbitrary
 23 consideration in adoption proceedings of relevant
 24 information concerning the factors listed in subsection (1).
 25 CONSIDERATION OF RELIGIOUS FACTORS BY A LICENSED

1 CHILD-PLACING AGENCY THAT IS AFFILIATED WITH A PARTICULAR
 2 RELIGIOUS FAITH IS NOT ARBITRARY CONSIDERATION OF RELIGION
 3 WITHIN THE MEANING OF THIS SECTION."

4 **Section 3.** Section 49-2-308, MCA, is amended to read:
 5 "49-2-308. Discrimination by the state. (1) It is an
 6 unlawful discriminatory practice for the state or any of its
 7 political subdivisions:
 8 †1†(a) to refuse, withhold from, or deny to a person
 9 any local, state, or federal funds, services, goods,
 10 facilities, advantages, or privileges because of race,
 11 creed, religion, sex, marital status, color, age, physical
 12 or mental handicap, or national origin, unless based on
 13 reasonable grounds;
 14 †2†(b) to publish, circulate, issue, display, post, or
 15 mail a written or printed communication, notice, or
 16 advertisement which states or implies that any local, state,
 17 or federal funds, services, goods, facilities, advantages,
 18 or privileges of the office or agency will be refused,
 19 withheld from, or denied to a person of a certain race,
 20 creed, religion, sex, marital status, color, age, physical
 21 or mental handicap, or national origin or that the patronage
 22 of a person of a particular race, creed, religion, sex,
 23 marital status, color, age, or national origin or possessing
 24 a physical or mental handicap is unwelcome or not desired or
 25 solicited, unless based on reasonable grounds;

1 (3)(c) to refuse employment to a person, to bar him
 2 from employment, or to discriminate against him in
 3 compensation or in a term, condition, or privilege of
 4 employment because of his political beliefs. However, this
 5 prohibition does not apply to policymaking positions on the
 6 immediate staff of an elected officer of the executive
 7 branch provided for in Article VI, section 1, of the Montana
 8 constitution, to the appointment by the governor of a
 9 director of a principal department provided for in Article
 10 VI, section 7, of the Montana constitution, or to the
 11 immediate staff of the majority and minority leadership of
 12 the Montana legislature.

13 (2) This section does not prevent the nonarbitrary
 14 consideration in adoption proceedings of relevant
 15 information concerning the factors listed in subsection
 16 (1)."

17 **Section 4.** Section 49-3-204, MCA, is amended to read:
 18 "49-3-204. Licensing. (1) A state or local governmental
 19 agency may not grant, deny, or revoke the license or charter
 20 of a person on the grounds of race, color, religion, creed,
 21 political ideas, sex, age, marital status, physical or
 22 mental handicap, or national origin. Each state or local
 23 governmental agency shall take such appropriate action in
 24 the exercise of its licensing or regulatory power as will
 25 assure equal treatment of all persons, eliminate

1 discrimination, and enforce compliance with the policy of
 2 this chapter. This subsection does not prevent the
 3 department of family services from licensing a child-placing
 4 agency that gives nonarbitrary consideration in adoption
 5 proceedings to relevant information concerning the factors
 6 listed in this subsection. CONSIDERATION OF RELIGIOUS
 7 FACTORS BY A LICENSED CHILD-PLACING AGENCY THAT IS
 8 AFFILIATED WITH A PARTICULAR RELIGIOUS FAITH IS NOT
 9 ARBITRARY CONSIDERATION OF RELIGION WITHIN THE MEANING OF
 10 THIS SECTION.

11 (2) The state may not issue or renew a license under
 12 Title 16, chapter 4, to an applicant or licensee that
 13 excludes from its membership or from its goods, services,
 14 facilities, privileges, or advantages any individual on the
 15 grounds of race, color, religion, creed, political ideas,
 16 sex, age, marital status, physical or mental handicap, or
 17 national origin. This subsection does not apply to any lodge
 18 of a recognized national fraternal organization."

19 **Section 5.** Section 49-3-205, MCA, is amended to read:
 20 "49-3-205. Governmental services. (1) All services of
 21 every state or local governmental agency must be performed
 22 without discrimination based upon race, color, religion,
 23 creed, political ideas, sex, age, marital status, physical
 24 or mental handicap, or national origin.

25 (2) No state or local facility may be used in the

1 furtherance of any discriminatory practice, nor may a state
2 or local governmental agency become a party to an agreement,
3 arrangement, or plan which has the effect of sanctioning
4 discriminatory practices.

5 (3) Each state or local governmental agency shall
6 analyze all of its operations to ascertain possible
7 instances of noncompliance with the policy of this chapter
8 and shall initiate comprehensive programs to remedy any
9 defect found to exist.

10 (4) This section does not prevent the nonarbitrary
11 consideration in adoption proceedings of relevant
12 information concerning the factors listed in this section."

13 NEW SECTION. Section 6. Codification instruction.
14 [Section 1] is intended to be codified as an integral part
15 of Title 40, chapter 8, part 1, and the provisions of Title
16 40, chapter 8, part 1, apply to [section 1].

17 NEW SECTION. Section 7. Severability. If a part of
18 [this act] is invalid, all valid parts that are severable
19 from the invalid part remain in effect. If a part of [this
20 act] is invalid in one or more of its applications, the part
21 remains in effect in all valid applications that are
22 severable from the invalid applications.

23 NEW SECTION. Section 8. Effective date. [This act] is
24 effective July 1, 1991.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 15, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 24 (third reading copy -- blue), respectfully report that House Bill No. 24 be amended and as so amended be concurred in.

1. Page 2, lines 17 through 19.

Following: "(c)" on line 17

Strike: remainder of line 17 through "AGENCY," on line 19

2. Page 2, line 21.

Following: "development"

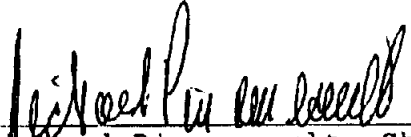
Insert: "and as it relates to the express preference of a birth parent to have a child placed with or the express preference of a child to be placed with adoptive parents of a particular religious faith or denomination"

3. Page 3, line 5.

Following: "of"

Strike: "natural"

Insert: "birth"

Signed: 
Richard Pinsoneault, Chairman

191 2-15-91
And. Coord.

SB 2-15 12:25
Sec. of Senate

HB 24

SENATE

HOUSE BILL NO. 24
INTRODUCED BY CODY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE BEST INTERESTS OF THE CHILD AS THE STANDARD IN ADOPTION PROCEEDINGS; ALLOWING THE DEPARTMENT OF FAMILY SERVICES AND LICENSED CHILD-PLACING AGENCIES TO CONSIDER AGE, MARITAL STATUS, AND RELIGION IN ADOPTION PROCEEDINGS; AMENDING THE LAWS RELATING TO DISCRIMINATION TO ALLOW THE NONARBITRARY CONSIDERATION IN ADOPTION PROCEEDINGS OF RELEVANT INFORMATION CONCERNING FACTORS THAT MIGHT OTHERWISE BE PROHIBITED; AMENDING SECTIONS 49-1-102, 49-2-308, 49-3-204, AND 49-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Adoption policy -- best interest of child standard -- factors to be considered. (1)

It is the policy of the state of Montana to ensure that the best interests of the child are met by adoption proceedings.

(2) The primary purpose of adoption is to help a child become a permanent member of a nurturing family that can give him the care, protection, and opportunities essential for his healthy personal growth and development.

(3) The well-being of the adopted child is the main objective in the placement of children for adoption. The

needs of the child must be the primary focus of adoption proceedings, with full recognition of the interdependent needs and interests of birth parents and adoptive parents.

(4) All relevant factors must be considered in determining the best interests of the child in an adoption proceeding. Factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability must be considered. In determining the best interests of the child, the following factors with regard to a prospective adoptive parent may be considered:

(a) age, as it relates to health, earning capacity, provisions for the support of a child, or other relevant circumstance;

(b) marital status, as it relates to the ability to serve as a parent in particularized circumstances; and

(c) ~~IF--THE--DEPARTMENT--OR--A--LICENSED--CHILD--PLACING AGENCY--THAT--IS--NOT--AFFILIATED--WITH--A--PARTICULAR--RELIGIOUS FAITH--IS--THE--CHILD--PLACING--AGENCY,~~ religion, as it relates to the ability to provide the child with an opportunity for religious or spiritual and ethical development AND AS IT RELATES TO THE EXPRESS PREFERENCE OF A BIRTH PARENT TO HAVE A CHILD PLACED WITH OR THE EXPRESS PREFERENCE OF A CHILD TO BE PLACED WITH ADOPTIVE PARENTS OF A PARTICULAR RELIGIOUS FAITH OR DENOMINATION.

REFERENCE BILL



(5) For purposes of ensuring that the best interests of the child are met, the department and licensed child-placing agencies are authorized to gather and use, in an appropriate, nonarbitrary manner, information concerning the age, marital status, and religious beliefs of prospective adoptive parents. The authority granted by this subsection includes the authority to receive and to consider, consistent with the best interests of the child, the preferences of natural BIRTH parents relating to the age, marital status, or religious beliefs of adoptive parents.

CONSIDERATION OF RELIGIOUS FACTORS BY A LICENSED CHILD-PLACING AGENCY THAT IS AFFILIATED WITH A PARTICULAR RELIGIOUS FAITH IS NOT ARBITRARY CONSIDERATION OF RELIGION WITHIN THE MEANING OF THIS SECTION.

Section 2. Section 49-1-102, MCA, is amended to read:

"49-1-102. Freedom from discrimination. (1) The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right ~~shall~~ must include but not be limited to:

~~††~~(a) the right to obtain and hold employment without discrimination; and

~~††~~(b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1). CONSIDERATION OF RELIGIOUS FACTORS BY A LICENSED CHILD-PLACING AGENCY THAT IS AFFILIATED WITH A PARTICULAR RELIGIOUS FAITH IS NOT ARBITRARY CONSIDERATION OF RELIGION WITHIN THE MEANING OF THIS SECTION."

Section 3. Section 49-2-308, MCA, is amended to read:

"49-2-308. Discrimination by the state. (1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

~~††~~(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

~~††~~(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage

1 of a person of a particular race, creed, religion, sex,
2 marital status, color, age, or national origin or possessing
3 a physical or mental handicap is unwelcome or not desired or
4 solicited, unless based on reasonable grounds;

5 (3)(C) to refuse employment to a person, to bar him
6 from employment, or to discriminate against him in
7 compensation or in a term, condition, or privilege of
8 employment because of his political beliefs. However, this
9 prohibition does not apply to policymaking positions on the
10 immediate staff of an elected officer of the executive
11 branch provided for in Article VI, section 1, of the Montana
12 constitution, to the appointment by the governor of a
13 director of a principal department provided for in Article
14 VI, section 7, of the Montana constitution, or to the
15 immediate staff of the majority and minority leadership of
16 the Montana legislature.

17 (2) This section does not prevent the nonarbitrary
18 consideration in adoption proceedings of relevant
19 information concerning the factors listed in subsection
20 (1)."

21 **Section 4.** Section 49-3-204, MCA, is amended to read:

22 "49-3-204. Licensing. (1) A state or local governmental
23 agency may not grant, deny, or revoke the license or charter
24 of a person on the grounds of race, color, religion, creed,
25 political ideas, sex, age, marital status, physical or

1 mental handicap, or national origin. Each state or local
2 governmental agency shall take such appropriate action in
3 the exercise of its licensing or regulatory power as will
4 assure equal treatment of all persons, eliminate
5 discrimination, and enforce compliance with the policy of
6 this chapter. This subsection does not prevent the
7 department of family services from licensing a child-placing
8 agency that gives nonarbitrary consideration in adoption
9 proceedings to relevant information concerning the factors
10 listed in this subsection. CONSIDERATION OF RELIGIOUS
11 FACTORS BY A LICENSED CHILD-PLACING AGENCY THAT IS
12 AFFILIATED WITH A PARTICULAR RELIGIOUS FAITH IS NOT
13 ARBITRARY CONSIDERATION OF RELIGION WITHIN THE MEANING OF
14 THIS SECTION.

15 (2) The state may not issue or renew a license under
16 Title 16, chapter 4, to an applicant or licensee that
17 excludes from its membership or from its goods, services,
18 facilities, privileges, or advantages any individual on the
19 grounds of race, color, religion, creed, political ideas,
20 sex, age, marital status, physical or mental handicap, or
21 national origin. This subsection does not apply to any lodge
22 of a recognized national fraternal organization."

23 **Section 5.** Section 49-3-205, MCA, is amended to read:

24 "49-3-205. Governmental services. (1) All services of
25 every state or local governmental agency must be performed

1 without discrimination based upon race, color, religion,
2 creed, political ideas, sex, age, marital status, physical
3 or mental handicap, or national origin.

4 (2) No state or local facility may be used in the
5 furtherance of any discriminatory practice, nor may a state
6 or local governmental agency become a party to an agreement,
7 arrangement, or plan which has the effect of sanctioning
8 discriminatory practices.

9 (3) Each state or local governmental agency shall
10 analyze all of its operations to ascertain possible
11 instances of noncompliance with the policy of this chapter
12 and shall initiate comprehensive programs to remedy any
13 defect found to exist.

14 (4) This section does not prevent the nonarbitrary
15 consideration in adoption proceedings of relevant
16 information concerning the factors listed in this section."

17 NEW SECTION. Section 6. Codification instruction.
18 [Section 1] is intended to be codified as an integral part
19 of Title 40, chapter 8, part 1, and the provisions of Title
20 40, chapter 8, part 1, apply to [section 1].

21 NEW SECTION. Section 7. Severability. If a part of
22 [this act] is invalid, all valid parts that are severable
23 from the invalid part remain in effect. If a part of [this
24 act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are

1 severable from the invalid applications.

2 NEW SECTION. Section 8. Effective date. [This act] is
3 effective July 1, 1991.

-End-