

HOUSE BILL NO. 389

INTRODUCED BY GOULD, STRIZICH, J. RICE, YELLOWTAIL
BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

IN THE HOUSE

JANUARY 24, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON HUMAN SERVICES & AGING.

JANUARY 25, 1991 FIRST READING.

FEBRUARY 5, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 6, 1991 PRINTING REPORT.

FEBRUARY 8, 1991 SECOND READING, DO PASS.

FEBRUARY 9, 1991 ENGROSSING REPORT.

FEBRUARY 11, 1991 THIRD READING, PASSED.
AYES, 98; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

MARCH 5, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 6, 1991 SECOND READING, CONCURRED IN AS
AMENDED.

MARCH 7, 1991 THIRD READING, CONCURRED IN.
AYES, 48; NOES, 1.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 16, 1991 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 18, 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. 389
[Signature]

INTRODUCED BY
BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

Yellowtail

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDEFINE AND CLARIFY THE TERMS "MENTAL HANDICAP" AND "PHYSICAL HANDICAP", AS USED IN THE DISCRIMINATION LAWS, TO INCLUDE AN IMPAIRMENT THAT LIMITS A MAJOR LIFE ACTIVITY, A RECORD OF SUCH AN IMPAIRMENT, OR A CONDITION REGARDED AS SUCH AN IMPAIRMENT AND TO INCLUDE THE REQUIREMENT OF REASONABLE ACCOMMODATION; AND AMENDING SECTIONS 49-2-101 AND 49-3-101, MCA."

WHEREAS, the Legislature has previously included physical and mental handicaps as subjects of discrimination law in the Montana Human Rights Act and the Montana Governmental Code of Fair Practices; and

WHEREAS, the definitions previously adopted lack clarity and are inconsistent with definitions used in federal civil rights statutes and court interpretations on the subject; and

WHEREAS, federal handicap discrimination law requires reasonable accommodation for mental and physical handicaps.

THEREFORE, it is appropriate for the Legislature to redefine the terms "mental handicap" and "physical handicap" and to include the requirement of reasonable accommodation.

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

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

Section 1. Section 49-2-101, MCA, is amended to read:

"49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is



-2-
INTRODUCED BILL
HB 389

1 required, whether in connection with loans, sale of property
2 or services, or otherwise.

3 (6) "Educational institution" means a public or private
4 institution and includes an academy; college; elementary or
5 secondary school; extension course; kindergarten; nursery;
6 school system; university; business, nursing, professional,
7 secretarial, technical, or vocational school; or agent of an
8 educational institution.

9 (7) "Employee" means any individual employed by an
10 employer.

11 (8) "Employer" means an employer of one or more persons
12 but does not include a fraternal, charitable, or religious
13 association or corporation if the association or corporation
14 is not organized either for private profit or to provide
15 accommodations or services that are available on a
16 nonmembership basis.

17 (9) "Employment agency" means a person undertaking to
18 procure employees or opportunities to work.

19 (10) "Financial institution" means a commercial bank,
20 trust company, savings bank, finance company, savings and
21 loan association, investment company, or insurance company.

22 (11) "Housing accommodation" means a building or portion
23 of a building, whether constructed or to be constructed,
24 which is or will be used as the sleeping quarters of its
25 occupants.

1 (12) "Labor organization" means an organization or an
2 agent of an organization organized for the purpose, in whole
3 or in part, of collective bargaining, of dealing with
4 employers concerning grievances or terms or conditions of
5 employment, or of other mutual aid and protection of
6 employees.

7 ~~(13) "Mental handicap" means any mental disability~~
8 ~~resulting in subaverage intellectual functioning or impaired~~
9 ~~social competence.~~

10 ~~(14)~~ (13) "National origin" means ancestry.

11 ~~(15)~~ (14) "Person" means one or more individuals, labor
12 unions, partnerships, associations, corporations, legal
13 representatives, mutual companies, joint-stock companies,
14 trusts, unincorporated employees' associations, employers,
15 employment agencies, or labor organizations.

16 ~~(16)~~ (15) (a) "Physical or mental handicap" means:

17 ~~(i) a physical disability, infirmity, malformation, or~~
18 ~~disfigurement which is caused by bodily injury, birth~~
19 ~~defect, or illness, including epilepsy. It includes, without~~
20 ~~limitation, any degree of paralysis, amputation, lack of~~
21 ~~physical coordination, blindness or visual impediment,~~
22 ~~deafness or hearing impediment, muteness or speech~~
23 ~~impediment, or physical reliance on a guide dog for the~~
24 ~~blind, a wheelchair, or any other remedial appliance or~~
25 ~~device or mental impairment that substantially limits one or~~

1 more of a person's major life activities;

2 (ii) a record of such an impairment; or

3 (iii) a condition regarded as such an impairment.

4 (b) Discrimination based on, because of, on the basis
5 of, or on the grounds of physical or mental handicap
6 includes the failure to make reasonable accommodations that
7 are required by an otherwise qualified person who has a
8 physical or mental handicap.

9 ~~{17}(16)~~ (a) "Public accommodation" means a place which
10 caters or offers its services, goods, or facilities to the
11 general public subject only to the conditions and
12 limitations established by law and applicable to all persons
13 alike. It includes without limitation a public inn,
14 restaurant, eating house, hotel, roadhouse, place where food
15 or alcoholic beverages or malt liquors are sold for
16 consumption, motel, soda fountain, soft drink parlor,
17 tavern, nightclub, trailer park, resort, campground,
18 barbershop, beauty parlor, bathroom, resthouse, theater,
19 swimming pool, skating rink, golf course, cafe, ice cream
20 parlor, transportation company, or hospital and all other
21 public amusement and business establishments.

22 (b) Public accommodation does not include an
23 institution, club, or place of accommodation that proves
24 that it is by its nature distinctly private. An institution,
25 club, or place of accommodation may not be considered by its

1 nature distinctly private if it has more than 100 members,
2 provides regular meal service, and regularly receives
3 payment for dues, fees, use of space, facilities, services,
4 meals, or beverages, directly or indirectly, from or on
5 behalf of nonmembers, for the furtherance of trade or
6 business. For the purposes of this subsection ~~{17}(16)~~, any
7 lodge of a recognized national fraternal organization is
8 considered by its nature distinctly private.

9 ~~{18}(17)~~ "Staff" or "commission staff" means the staff
10 of the commission for human rights."

11 **Section 2.** Section 49-3-101, MCA, is amended to read:

12 **"49-3-101. Definitions.** As used in this chapter, the
13 following definitions apply:

14 (1) "Age" means number of years since birth. It does
15 not mean level of maturity or ability to handle
16 responsibility, which may represent legitimate
17 considerations as reasonable grounds for discrimination
18 without reference to age.

19 (2) "Commission" means the commission for human rights
20 provided for in 2-15-1706.

21 ~~{3}--"Mental--handicap"--means--any--mental---disability~~
22 ~~resulting-in-subaverage-intellectual-functioning-or-impaired~~
23 ~~social-competence-~~

24 ~~{4}(3)~~ (a) "Physical or mental handicap" means:

25 (i) a physical disability,--infirmity,--malformation,--or

1 ~~disfigurement--which--is--caused--by--bodily--injury,--birth~~
 2 ~~defect,--or--illness,--including--epilepsy;--it--includes--without~~
 3 ~~limitation--any--degree--of--paralysis;--amputation;--lack-of~~
 4 ~~physical--coordination;--blindness--or--visual--impediment;~~
 5 ~~deafness---or---hearing---impediment;---muteness--or--speech~~
 6 ~~impediment;--or--physical--reliance--on--a--guide--dog--for--the~~
 7 ~~blind,--a--wheelchair,--or--any--other--remedial--appliance--or~~
 8 device or mental impairment that substantially limits one or
 9 more of a person's major life activities;

- 10 (ii) a record of such an impairment; or
- 11 (iii) a condition regarded as such an impairment.

12 (b) Discrimination based upon, because of, on the basis
 13 of, on the grounds of, or with regard to physical or mental
 14 handicap includes the failure to make reasonable
 15 accommodations that are required by an otherwise qualified
 16 person who has a physical or mental handicap.

17 {5}(4) "State or local governmental agency" means:

18 (a) any branch, department, office, board, bureau,
 19 commission, agency, university unit, college, or other
 20 instrumentality of state government; or

21 (b) a county, city, town, school district, or other
 22 unit of local government and any instrumentality of local
 23 government.

24 {6}(5) "Qualifications" means such qualifications as
 25 are genuinely related to competent performance of the

1 particular occupational task."

-End-

APPROVED BY COMM. ON
HUMAN SERVICES AND AGING

HOUSE BILL NO. 389

INTRODUCED BY GOULD, STRIZICH, J. RICE, YELLOWTAIL

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDEFINE AND CLARIFY THE TERMS "MENTAL HANDICAP" AND "PHYSICAL HANDICAP", AS USED IN THE DISCRIMINATION LAWS, TO INCLUDE AN IMPAIRMENT THAT LIMITS A MAJOR LIFE ACTIVITY, A RECORD OF SUCH AN IMPAIRMENT, OR A CONDITION REGARDED AS SUCH AN IMPAIRMENT AND TO INCLUDE THE REQUIREMENT OF REASONABLE ACCOMMODATION; AND AMENDING SECTIONS 49-2-101 AND 49-3-101, MCA."

WHEREAS, the Legislature has previously included physical and mental handicaps as subjects of discrimination law in the Montana Human Rights Act and the Montana Governmental Code of Fair Practices; and

WHEREAS, the definitions previously adopted lack clarity and are inconsistent with definitions used in federal civil rights statutes and court interpretations on the subject; and

WHEREAS, federal handicap discrimination law requires reasonable accommodation for mental and physical handicaps.

THEREFORE, it is appropriate for the Legislature to redefine the terms "mental handicap" and "physical handicap" and to include the requirement of reasonable accommodation.

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

Section 1. Section 49-2-101, MCA, is amended to read:

"49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is

SECOND READING

1 required, whether in connection with loans, sale of property
2 or services, or otherwise.

3 (6) "Educational institution" means a public or private
4 institution and includes an academy; college; elementary or
5 secondary school; extension course; kindergarten; nursery;
6 school system; university; business, nursing, professional,
7 secretarial, technical, or vocational school; or agent of an
8 educational institution.

9 (7) "Employee" means any individual employed by an
10 employer.

11 (8) "Employer" means an employer or one or more persons
12 but does not include a fraternal, charitable, or religious
13 association or corporation if the association or corporation
14 is not organized either for private profit or to provide
15 accommodations or services that are available on a
16 nonmembership basis.

17 (9) "Employment agency" means a person undertaking to
18 procure employees or opportunities to work.

19 (10) "Financial institution" means a commercial bank,
20 trust company, savings bank, finance company, savings and
21 loan association, investment company, or insurance company.

22 (11) "Housing accommodation" means a building or portion
23 of a building, whether constructed or to be constructed,
24 which is or will be used as the sleeping quarters of its
25 occupants.

1 (12) "Labor organization" means an organization or an
2 agent of an organization organized for the purpose, in whole
3 or in part, of collective bargaining, of dealing with
4 employers concerning grievances or terms or conditions of
5 employment, or of other mutual aid and protection of
6 employees.

7 ~~(13) "Mental handicap" means any mental disability~~
8 ~~resulting in subaverage intellectual functioning or impaired~~
9 ~~social competence.~~

10 ~~(14)~~ (13) "National origin" means ancestry.

11 ~~(15)~~ (14) "Person" means one or more individuals, labor
12 unions, partnerships, associations, corporations, legal
13 representatives, mutual companies, joint-stock companies,
14 trusts, unincorporated employees' associations, employers,
15 employment agencies, or labor organizations.

16 ~~(16)~~ (15) (a) "Physical or mental handicap" means:

17 ~~(i) a physical disability, infirmity, malformation, or~~
18 ~~disfigurement which is caused by bodily injury, birth~~
19 ~~defect, or illness, including epilepsy; it includes without~~
20 ~~limitation any degree of paralysis, amputation, lack of~~
21 ~~physical coordination, blindness or visual impediment,~~
22 ~~deafness or hearing impediment, muteness or speech~~
23 ~~impediment, or physical reliance on a guide dog for the~~
24 ~~blind, a wheelchair, or any other remedial appliance or~~
25 ~~device or mental impairment that substantially limits one or~~

1 more of a person's major life activities;
 2 (ii) a record of such an impairment; or
 3 (iii) a condition regarded as such an impairment.
 4 (b) Discrimination based on, because of, on the basis
 5 of, or on the grounds of physical or mental handicap
 6 includes the failure to make reasonable accommodations that
 7 are required by an otherwise qualified person who has a
 8 physical or mental handicap. ANY ACCOMMODATION THAT WOULD
 9 REQUIRE AN UNDUE HARDSHIP OR THAT WOULD ENDANGER THE HEALTH
 10 OR SAFETY OF ANY PERSON IS NOT A REASONABLE ACCOMMODATION.

11 ~~(17)~~(16) (a) "Public accommodation" means a place which
 12 caters or offers its services, goods, or facilities to the
 13 general public subject only to the conditions and
 14 limitations established by law and applicable to all persons
 15 alike. It includes without limitation a public inn,
 16 restaurant, eating house, hotel, roadhouse, place where food
 17 or alcoholic beverages or malt liquors are sold for
 18 consumption, motel, soda fountain, soft drink parlor,
 19 tavern, nightclub, trailer park, resort, campground,
 20 barbershop, beauty parlor, bathroom, resthouse, theater,
 21 swimming pool, skating rink, golf course, cafe, ice cream
 22 parlor, transportation company, or hospital and all other
 23 public amusement and business establishments.

24 (b) Public accommodation does not include an
 25 institution, club, or place of accommodation that proves

1 that it is by its nature distinctly private. An institution,
 2 club, or place of accommodation may not be considered by its
 3 nature distinctly private if it has more than 100 members,
 4 provides regular meal service, and regularly receives
 5 payment for dues, fees, use of space, facilities, services,
 6 meals, or beverages, directly or indirectly, from or on
 7 behalf of nonmembers, for the furtherance of trade or
 8 business. For the purposes of this subsection ~~(17)~~(16), any
 9 lodge of a recognized national fraternal organization is
 10 considered by its nature distinctly private.

11 ~~(18)~~(17) "Staff" or "commission staff" means the staff
 12 of the commission for human rights."

13 **Section 2.** Section 49-3-101, MCA, is amended to read:
 14 "49-3-101. Definitions. As used in this chapter, the
 15 following definitions apply:

16 (1) "Age" means number of years since birth. It does
 17 not mean level of maturity or ability to handle
 18 responsibility, which may represent legitimate
 19 considerations as reasonable grounds for discrimination
 20 without reference to age.

21 (2) "Commission" means the commission for human rights
 22 provided for in 2-15-1706.

23 ~~(3) "Mental handicap" means any mental disability~~
 24 ~~resulting in subaverage intellectual functioning or impaired~~
 25 ~~social competence.~~

1 †4†(3) (a) "Physical or mental handicap" means:
 2 (i) a physical disability, infirmity, malformation, or
 3 disfigurement which is caused by bodily injury, birth
 4 defect, or illness, including epilepsy; it includes without
 5 limitation any degree of paralysis, amputation, lack of
 6 physical coordination, blindness or visual impediment,
 7 deafness or hearing impediment, muteness or speech
 8 impediment, or physical reliance on a guide dog for the
 9 blind, a wheelchair, or any other remedial appliance or
 10 device or mental impairment that substantially limits one or
 11 more of a person's major life activities;

12 (ii) a record of such an impairment; or
 13 (iii) a condition regarded as such an impairment.

14 (b) Discrimination based upon, because of, on the basis
 15 of, on the grounds of, or with regard to physical or mental
 16 handicap includes the failure to make reasonable
 17 accommodations that are required by an otherwise qualified
 18 person who has a physical or mental handicap. ANY
 19 ACCOMMODATION THAT WOULD REQUIRE AN UNDUE HARDSHIP OR THAT
 20 WOULD ENDANGER THE HEALTH OR SAFETY OF ANY PERSON IS NOT A
 21 REASONABLE ACCOMMODATION.

22 †5†(4) "State or local governmental agency" means:
 23 (a) any branch, department, office, board, bureau,
 24 commission, agency, university unit, college, or other
 25 instrumentality of state government; or

1 (b) a county, city, town, school district, or other
 2 unit of local government and any instrumentality of local
 3 government.

4 †6†(5) "Qualifications" means such qualifications as
 5 are genuinely related to competent performance of the
 6 particular occupational task."

-End-

1 HOUSE BILL NO. 389

2 INTRODUCED BY GOULD, STRIZICH, J. RICE, YELLOWTAIL

3 BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REDEFINE AND CLARIFY
6 THE TERMS "MENTAL HANDICAP" AND "PHYSICAL HANDICAP", AS USED
7 IN THE DISCRIMINATION LAWS, TO INCLUDE AN IMPAIRMENT THAT
8 LIMITS A MAJOR LIFE ACTIVITY, A RECORD OF SUCH AN
9 IMPAIRMENT, OR A CONDITION REGARDED AS SUCH AN IMPAIRMENT
10 AND TO INCLUDE THE REQUIREMENT OF REASONABLE ACCOMMODATION;
11 AND AMENDING SECTIONS 49-2-101 AND 49-3-101, MCA."

12
13 WHEREAS, the Legislature has previously included
14 physical and mental handicaps as subjects of discrimination
15 law in the Montana Human Rights Act and the Montana
16 Governmental Code of Fair Practices; and

17 WHEREAS, the definitions previously adopted lack clarity
18 and are inconsistent with definitions used in federal civil
19 rights statutes and court interpretations on the subject;
20 and

21 WHEREAS, federal handicap discrimination law requires
22 reasonable accommodation for mental and physical handicaps.

23 THEREFORE, it is appropriate for the Legislature to
24 redefine the terms "mental handicap" and "physical handicap"
25 and to include the requirement of reasonable accommodation.

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

2 **Section 1.** Section 49-2-101, MCA, is amended to read:

3
4 "49-2-101. Definitions. As used in this chapter, unless
5 the context requires otherwise, the following definitions
6 apply:

7 (1) "Age" means number of years since birth. It does
8 not mean level of maturity or ability to handle
9 responsibility. These latter criteria may represent
10 legitimate considerations as reasonable grounds for
11 discrimination without reference to age.

12 (2) "Commission" means the commission for human rights
13 provided for in 2-15-1706.

14 (3) "Credit" means the right granted by a creditor to a
15 person to defer payment of a debt, to incur debt and defer
16 its payment, or to purchase property or services and defer
17 payment therefor. It includes without limitation the right
18 to incur and defer debt which is secured by residential real
19 property.

20 (4) "Credit transaction" means any invitation to apply
21 for credit, application for credit, extension of credit, or
22 credit sale.

23 (5) "Creditor" means a person who, regularly or as a
24 part of his business, arranges for the extension of credit
25 for which the payment of a financial charge or interest is

1 required, whether in connection with loans, sale of property
2 or services, or otherwise.

3 (6) "Educational institution" means a public or private
4 institution and includes an academy; college; elementary or
5 secondary school; extension course; kindergarten; nursery;
6 school system; university; business, nursing, professional,
7 secretarial, technical, or vocational school; or agent of an
8 educational institution.

9 (7) "Employee" means any individual employed by an
10 employer.

11 (8) "Employer" means an employer of one or more persons
12 but does not include a fraternal, charitable, or religious
13 association or corporation if the association or corporation
14 is not organized either for private profit or to provide
15 accommodations or services that are available on a
16 nonmembership basis.

17 (9) "Employment agency" means a person undertaking to
18 procure employees or opportunities to work.

19 (10) "Financial institution" means a commercial bank,
20 trust company, savings bank, finance company, savings and
21 loan association, investment company, or insurance company.

22 (11) "Housing accommodation" means a building or portion
23 of a building, whether constructed or to be constructed,
24 which is or will be used as the sleeping quarters of its
25 occupants.

1 (12) "Labor organization" means an organization or an
2 agent of an organization organized for the purpose, in whole
3 or in part, of collective bargaining, of dealing with
4 employers concerning grievances or terms or conditions of
5 employment, or of other mutual aid and protection of
6 employees.

7 ~~{13} "Mental handicap" means any mental disability~~
8 ~~resulting in subaverage intellectual functioning or impaired~~
9 ~~social competence.~~

10 {14}(13) "National origin" means ancestry.

11 {15}(14) "Person" means one or more individuals, labor
12 unions, partnerships, associations, corporations, legal
13 representatives, mutual companies, joint-stock companies,
14 trusts, unincorporated employees' associations, employers,
15 employment agencies, or labor organizations.

16 {16}(15) (a) "Physical or mental handicap" means:

17 (i) a physical disability, infirmity, malformation, or
18 disfigurement which is caused by bodily injury, birth
19 defect, or illness, including epilepsy; it includes without
20 limitation any degree of paralysis, amputation, lack of
21 physical coordination, blindness or visual impediment,
22 deafness or hearing impediment, muteness or speech
23 impediment, or physical reliance on a guide dog for the
24 blind, a wheelchair, or any other remedial appliance or
25 device or mental impairment that substantially limits one or

1 more of a person's major life activities;
 2 (ii) a record of such an impairment; or
 3 (iii) a condition regarded as such an impairment.
 4 (b) Discrimination based on, because of, on the basis
 5 of, or on the grounds of physical or mental handicap
 6 includes the failure to make reasonable accommodations that
 7 are required by an otherwise qualified person who has a
 8 physical or mental handicap. ANY ACCOMMODATION THAT WOULD
 9 REQUIRE AN UNDUE HARDSHIP OR THAT WOULD ENDANGER THE HEALTH
 10 OR SAFETY OF ANY PERSON IS NOT A REASONABLE ACCOMMODATION.
 11 ~~(17)~~(16) (a) "Public accommodation" means a place which
 12 caters or offers its services, goods, or facilities to the
 13 general public subject only to the conditions and
 14 limitations established by law and applicable to all persons
 15 alike. It includes without limitation a public inn,
 16 restaurant, eating house, hotel, roadhouse, place where food
 17 or alcoholic beverages or malt liquors are sold for
 18 consumption, motel, soda fountain, soft drink parlor,
 19 tavern, nightclub, trailer park, resort, campground,
 20 barbershop, beauty parlor, bathroom, resthouse, theater,
 21 swimming pool, skating rink, golf course, cafe, ice cream
 22 parlor, transportation company, or hospital and all other
 23 public amusement and business establishments.
 24 (b) Public accommodation does not include an
 25 institution, club, or place of accommodation that proves

1 that it is by its nature distinctly private. An institution,
 2 club, or place of accommodation may not be considered by its
 3 nature distinctly private if it has more than 100 members,
 4 provides regular meal service, and regularly receives
 5 payment for dues, fees, use of space, facilities, services,
 6 meals, or beverages, directly or indirectly, from or on
 7 behalf of nonmembers, for the furtherance of trade or
 8 business. For the purposes of this subsection ~~(17)~~(16), any
 9 lodge of a recognized national fraternal organization is
 10 considered by its nature distinctly private.

11 ~~(18)~~(17) "Staff" or "commission staff" means the staff
 12 of the commission for human rights."

13 **Section 2.** Section 49-3-101, MCA, is amended to read:

14 **"49-3-101. Definitions.** As used in this chapter, the
 15 following definitions apply:

16 (1) "Age" means number of years since birth. It does
 17 not mean level of maturity or ability to handle
 18 responsibility, which may represent legitimate
 19 considerations as reasonable grounds for discrimination
 20 without reference to age.

21 (2) "Commission" means the commission for human rights
 22 provided for in 2-15-1706.

23 ~~(3) "Mental handicap" means any mental disability~~
 24 ~~resulting in subaverage intellectual functioning or impaired~~
 25 ~~social competence.~~

1 †4†(3) (a) "Physical or mental handicap" means:

2 (i) ~~a physical disability, infirmity, malformation, or~~

3 ~~disfigurement--which--is--caused--by--bodily--injury--birth~~

4 ~~defect, or illness, including epilepsy, it includes--without~~

5 ~~limitation--any--degree--of--paralysis,--amputation,--lack-of~~

6 ~~physical--coordination,--blindness--or--visual---impediment,~~

7 ~~deafness---or---hearing---impediment,---muteness--or--speech~~

8 ~~impediment, or physical reliance on--a--guide--dog--for--the~~

9 ~~blind,--a--wheelchair,--or--any--other--remedial--appliance--or~~

10 device or mental impairment that substantially limits one or

11 more of a person's major life activities;

12 (ii) a record of such an impairment; or

13 (iii) a condition regarded as such an impairment.

14 (b) Discrimination based upon, because of, on the basis

15 of, on the grounds of, or with regard to physical or mental

16 handicap includes the failure to make reasonable

17 accommodations that are required by an otherwise qualified

18 person who has a physical or mental handicap. ANY

19 ACCOMMODATION THAT WOULD REQUIRE AN UNDUE HARDSHIP OR THAT

20 WOULD ENDANGER THE HEALTH OR SAFETY OF ANY PERSON IS NOT A

21 REASONABLE ACCOMMODATION.

22 †5†(4) "State or local governmental agency" means:

23 (a) any branch, department, office, board, bureau,

24 commission, agency, university unit, college, or other

25 instrumentality of state government; or

1 (b) a county, city, town, school district, or other

2 unit of local government and any instrumentality of local

3 government.

4 †6†(5) "Qualifications" means such qualifications as

5 are genuinely related to competent performance of the

6 particular occupational task."

-End-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 6, 1991 1:15 pm

Mr. Chairman: I move to amend House Bill No. 389 (third reading copy -- blue) as follows:

1. Page 3, line 21.
Following: "association,"
Insert: "credit union,"

ADOPT

REJECT

Signed: _____



Senator Doherty

MM 3-6-91
And. Coord.

SB 3/6 1:55
Sec. of Senate

SENATE
HB 389

1 HOUSE BILL NO. 389

2 INTRODUCED BY GOULD, STRIZICH, J. RICE, YELLOWTAIL

3 BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REDEFINE AND CLARIFY
6 THE TERMS "MENTAL HANDICAP" AND "PHYSICAL HANDICAP", AS USED
7 IN THE DISCRIMINATION LAWS, TO INCLUDE AN IMPAIRMENT THAT
8 LIMITS A MAJOR LIFE ACTIVITY, A RECORD OF SUCH AN
9 IMPAIRMENT, OR A CONDITION REGARDED AS SUCH AN IMPAIRMENT
10 AND TO INCLUDE THE REQUIREMENT OF REASONABLE ACCOMMODATION;
11 AND AMENDING SECTIONS 49-2-101 AND 49-3-101, MCA."

12
13 WHEREAS, the Legislature has previously included
14 physical and mental handicaps as subjects of discrimination
15 law in the Montana Human Rights Act and the Montana
16 Governmental Code of Fair Practices; and

17 WHEREAS, the definitions previously adopted lack clarity
18 and are inconsistent with definitions used in federal civil
19 rights statutes and court interpretations on the subject;
20 and

21 WHEREAS, federal handicap discrimination law requires
22 reasonable accommodation for mental and physical handicaps.

23 THEREFORE, it is appropriate for the Legislature to
24 redefine the terms "mental handicap" and "physical handicap"
25 and to include the requirement of reasonable accommodation.

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

2 Section 1. Section 49-2-101, MCA, is amended to read:

3
4 "49-2-101. Definitions. As used in this chapter, unless
5 the context requires otherwise, the following definitions
6 apply:

7 (1) "Age" means number of years since birth. It does
8 not mean level of maturity or ability to handle
9 responsibility. These latter criteria may represent
10 legitimate considerations as reasonable grounds for
11 discrimination without reference to age.

12 (2) "Commission" means the commission for human rights
13 provided for in 2-15-1706.

14 (3) "Credit" means the right granted by a creditor to a
15 person to defer payment of a debt, to incur debt and defer
16 its payment, or to purchase property or services and defer
17 payment therefor. It includes without limitation the right
18 to incur and defer debt which is secured by residential real
19 property.

20 (4) "Credit transaction" means any invitation to apply
21 for credit, application for credit, extension of credit, or
22 credit sale.

23 (5) "Creditor" means a person who, regularly or as a
24 part of his business, arranges for the extension of credit
25 for which the payment of a financial charge or interest is

1 required, whether in connection with loans, sale of property
2 or services, or otherwise.

3 (6) "Educational institution" means a public or private
4 institution and includes an academy; college; elementary or
5 secondary school; extension course; kindergarten; nursery;
6 school system; university; business, nursing, professional,
7 secretarial, technical, or vocational school; or agent of an
8 educational institution.

9 (7) "Employee" means any individual employed by an
10 employer.

11 (8) "Employer" means an employer of one or more persons
12 but does not include a fraternal, charitable, or religious
13 association or corporation if the association or corporation
14 is not organized either for private profit or to provide
15 accommodations or services that are available on a
16 nonmembership basis.

17 (9) "Employment agency" means a person undertaking to
18 procure employees or opportunities to work.

19 (10) "Financial institution" means a commercial bank,
20 trust company, savings bank, finance company, savings and
21 loan association, CREDIT UNION, investment company, or
22 insurance company.

23 (11) "Housing accommodation" means a building or portion
24 of a building, whether constructed or to be constructed,
25 which is or will be used as the sleeping quarters of its

1 occupants.

2 (12) "Labor organization" means an organization or an
3 agent of an organization organized for the purpose, in whole
4 or in part, of collective bargaining, of dealing with
5 employers concerning grievances or terms or conditions of
6 employment, or of other mutual aid and protection of
7 employees.

8 ~~(13) "Mental handicap" means any mental disability~~
9 ~~resulting in subaverage intellectual functioning or impaired~~
10 ~~social competence.~~

11 ~~(14)~~ (13) "National origin" means ancestry.

12 ~~(15)~~ (14) "Person" means one or more individuals, labor
13 unions, partnerships, associations, corporations, legal
14 representatives, mutual companies, joint-stock companies,
15 trusts, unincorporated employees' associations, employers,
16 employment agencies, or labor organizations.

17 ~~(16)~~ (15) (a) "Physical or mental handicap" means:

18 (i) a physical disability, infirmity, malformation, or
19 disfigurement which is caused by bodily injury, birth
20 defect, or illness, including epilepsy; it includes without
21 limitation any degree of paralysis, amputation, lack of
22 physical coordination, blindness or visual impediment,
23 deafness or hearing impediment, muteness or speech
24 impediment, or physical reliance on a guide dog for the
25 blind, a wheelchair, or any other remedial appliance or

1 device or mental impairment that substantially limits one or
2 more of a person's major life activities;

3 (ii) a record of such an impairment; or

4 (iii) a condition regarded as such an impairment.

5 (b) Discrimination based on, because of, on the basis
6 of, or on the grounds of physical or mental handicap
7 includes the failure to make reasonable accommodations that
8 are required by an otherwise qualified person who has a
9 physical or mental handicap. ANY ACCOMMODATION THAT WOULD
10 REQUIRE AN UNDUE HARDSHIP OR THAT WOULD ENDANGER THE HEALTH
11 OR SAFETY OF ANY PERSON IS NOT A REASONABLE ACCOMMODATION.

12 ~~(17)~~(16) (a) "Public accommodation" means a place which
13 caters or offers its services, goods, or facilities to the
14 general public subject only to the conditions and
15 limitations established by law and applicable to all persons
16 alike. It includes without limitation a public inn,
17 restaurant, eating house, hotel, roadhouse, place where food
18 or alcoholic beverages or malt liquors are sold for
19 consumption, motel, soda fountain, soft drink parlor,
20 tavern, nightclub, trailer park, resort, campground,
21 barbershop, beauty parlor, bathroom, resthouse, theater,
22 swimming pool, skating rink, golf course, cafe, ice cream
23 parlor, transportation company, or hospital and all other
24 public amusement and business establishments.

25 (b) Public accommodation does not include an

1 institution, club, or place of accommodation that proves
2 that it is by its nature distinctly private. An institution,
3 club, or place of accommodation may not be considered by its
4 nature distinctly private if it has more than 100 members,
5 provides regular meal service, and regularly receives
6 payment for dues, fees, use of space, facilities, services,
7 meals, or beverages, directly or indirectly, from or on
8 behalf of nonmembers, for the furtherance of trade or
9 business. For the purposes of this subsection ~~(17)~~(16), any
10 lodge of a recognized national fraternal organization is
11 considered by its nature distinctly private.

12 ~~(18)~~(17) "Staff" or "commission staff" means the staff
13 of the commission for human rights."

14 **Section 2.** Section 49-3-101, MCA, is amended to read:

15 **"49-3-101. Definitions.** As used in this chapter, the
16 following definitions apply:

17 (1) "Age" means number of years since birth. It does
18 not mean level of maturity or ability to handle
19 responsibility, which may represent legitimate
20 considerations as reasonable grounds for discrimination
21 without reference to age.

22 (2) "Commission" means the commission for human rights
23 provided for in 2-15-1706.

24 ~~(3) "Mental handicap" means any mental disability~~
25 ~~resulting in subaverage intellectual functioning or impaired~~

1 ~~social competence:~~

2 ~~†4†(3) (a) "Physical or mental handicap" means:~~

3 ~~(i) a physical disability, infirmity, malformation, or~~
 4 ~~disfigurement--which--is--caused--by--bodily--injury,--birth~~
 5 ~~defect, or illness, including epilepsy,--it includes--without~~
 6 ~~limitation--any--degree--of--paralysis,--amputation,--lack of~~
 7 ~~physical--coordination,--blindness--or--visual---impediment,~~
 8 ~~deafness---or---hearing---impediment,---muteness--or--speech~~
 9 ~~impediment,--or--physical--reliance--on--a--guide--dog--for--the~~
 10 ~~blind,--a--wheelchair,--or--any--other--remedial--appliance--or~~
 11 ~~device or mental impairment that substantially limits one or~~
 12 ~~more of a person's major life activities;~~

13 ~~(ii) a record of such an impairment; or~~

14 ~~(iii) a condition regarded as such an impairment.~~

15 ~~(b) Discrimination based upon, because of, on the basis~~
 16 ~~of, on the grounds of, or with regard to physical or mental~~
 17 ~~handicap includes the failure to make reasonable~~
 18 ~~accommodations that are required by an otherwise qualified~~
 19 ~~person who has a physical or mental handicap. ANY~~
 20 ~~ACCOMMODATION THAT WOULD REQUIRE AN UNDUE HARDSHIP OR THAT~~
 21 ~~WOULD ENDANGER THE HEALTH OR SAFETY OF ANY PERSON IS NOT A~~
 22 ~~REASONABLE ACCOMMODATION.~~

23 ~~†5†(4) "State or local governmental agency" means:~~

24 ~~(a) any branch, department, office, board, bureau,~~
 25 ~~commission, agency, university unit, college, or other~~

1 instrumentality of state government; or

2 (b) a county, city, town, school district, or other
 3 unit of local government and any instrumentality of local
 4 government.

5 ~~†6†(5) "Qualifications" means such qualifications as~~
 6 ~~are genuinely related to competent performance of the~~
 7 ~~particular occupational task."~~

-End-