

HOUSE BILL 493

Introduced by Cohen, et al.

1/31	Introduced
1/31	Referred to Judiciary
1/31	First Reading
2/13	Hearing
2/14	Committee Report--Bill Passed
2/16	2nd Reading Passed
2/19	3rd Reading Passed
	Transmitted to Senate
2/20	First Reading
2/20	Referred to Judiciary
3/05	Hearing
3/19	Committee Report--Bill Not Passed
3/19	Adverse Committee Report Adopted

1 *HOUSE* BILL NO. *493*  
 2 INTRODUCED BY *John Marko Dave Zorn*  
 3 *Christina Wipert* *Boyer* *Edwards* *Ream*

4 ~~A~~ BILL FOR AN ACT ENTITLED: "AN ACT DELETING THE PROVISIONS  
 5 OF THE MONTANA HUMAN RIGHTS LAWS THAT PROVIDE THAT THE HUMAN  
 6 RIGHTS LAWS ESTABLISH THE EXCLUSIVE REMEDY FOR VIOLATIONS OF  
 7 THOSE LAWS; AND AMENDING SECTIONS 49-2-509 AND 49-3-312,  
 8 MCA."  
 9

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

11 **Section 1.** Section 49-2-509, MCA, is amended to read:

12 **"49-2-509. Filing a complaint in district court.** (1)  
 13 Except as provided in subsection (2), the commission staff  
 14 shall, at the request of either party, issue a letter  
 15 entitling the complainant to file a discrimination action in  
 16 district court if:

- 17 (a) the commission has not yet held a contested case
- 18 hearing pursuant to 49-2-505; and
- 19 (b) 12 months have elapsed since the complaint was
- 20 filed.

21 (2) The commission staff may refuse to permit removal  
 22 of a case to district court if:

- 23 (a) the party requesting removal fails to comply with
- 24 the terms of a lawful subpoena issued in the investigative
- 25 process;

1 (b) the party requesting removal has waived the right  
 2 to request removal to the district court;

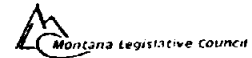
3 (c) more than 30 days have elapsed since service of  
 4 notice of hearing under 49-2-505, unless the commission  
 5 fails to schedule a hearing to be held within 90 days of  
 6 service of notice of hearing; or

7 (d) the party requesting removal has unsuccessfully  
 8 attempted through court litigation to prevent the commission  
 9 staff from investigating the complaint.

10 (3) The commission staff may dismiss a complaint filed  
 11 under 49-2-501 and allow the complainant to file a  
 12 discrimination action in district court if:

- 13 (a) the commission staff determines that the commission
- 14 lacks jurisdiction over the complaint;
- 15 (b) the complainant fails to cooperate in the staff's
- 16 investigation of the complaint or fails to keep the
- 17 commission advised of changes of address; or
- 18 (c) the commission staff determines that the
- 19 allegations of the complaint are not supported by
- 20 substantial evidence.

21 (4) A decision of the commission staff to dismiss a  
 22 complaint or to refuse to permit removal to the district  
 23 court is final unless a party seeks review by filing  
 24 objections within 14 days after the decision is served on  
 25 him. The commission shall review the decision in informal



1 proceedings under 2-4-604, except that 2-4-604(5) applies  
2 only to review of a refusal to permit removal.

3 (5) Within 90 days after receipt of a notice of  
4 dismissal under subsection (3) or an order under subsection  
5 (4) of affirmance of a dismissal, whichever occurs later, or  
6 of a letter issued under subsection (1), the complainant may  
7 petition the district court in the district in which the  
8 alleged violation occurred for appropriate relief. If the  
9 claimant fails to petition the district court within 90 days  
10 after receipt of the letter, notice, or order issued by the  
11 commission staff, the claim shall be barred.

12 (6) If the district court finds, in an action under  
13 this section, that a person, institution, entity, or agency  
14 against whom or which a complaint was filed has engaged in  
15 the unlawful discriminatory practice alleged in the  
16 complaint, the court may provide the same relief as  
17 described in 49-2-506 for a commission order. In addition,  
18 the court may in its discretion allow the prevailing party  
19 reasonable attorney fees.

20 ~~{7}--The---provisions--of--this--chapter--establish--the~~  
21 ~~exclusive-remedy-for-acts-constituting-an-alleged--violation~~  
22 ~~of--this--chapter,--including--acts--that--may--otherwise--also~~  
23 ~~constitute-a-violation-of-the-discrimination--provisions--of~~  
24 ~~Article--II,--section--4,--of--the--Montana--constitution--or~~  
25 ~~49-1-102. No other claim or request for relief based upon~~

1 ~~such--acts--may--be--entertained--by--a--district--court--other--than~~  
2 ~~by--the--procedures--specified--in--this--chapter."~~

3 **Section 2.** Section 49-3-312, MCA, is amended to read:

4 **"49-3-312. Filing a complaint in district court.** (1)  
5 Except as provided in subsection (2), the commission staff  
6 shall, at the request of either party, issue a letter  
7 entitling the complainant to file a discrimination action in  
8 district court if:

9 (a) the commission has not yet held a contested case  
10 hearing pursuant to 49-3-308; and

11 (b) 12 months have elapsed since the complaint was  
12 filed.

13 (2) The commission staff may refuse to permit removal  
14 of a case to district court if:

15 (a) the party requesting removal fails to comply with  
16 the terms of a lawful subpoena issued in the investigative  
17 process;

18 (b) the party requesting removal has waived the right  
19 to request removal to the district court;

20 (c) more than 30 days have elapsed since service of  
21 notice of hearing under 49-3-308, unless the commission  
22 fails to schedule a hearing to be held within 90 days of  
23 service of notice of hearing; or

24 (d) the party requesting removal has unsuccessfully  
25 attempted through court litigation to prevent the commission

1 staff from investigating the complaint.

2 (3) The commission staff may dismiss a complaint filed  
3 under 49-3-304 and allow the complainant to file a  
4 discrimination action in district court if:

5 (a) the commission staff determines that the commission  
6 lacks jurisdiction over the complaint;

7 (b) the complainant fails to cooperate in the staff's  
8 investigation of the complaint or fails to keep the  
9 commission advised of changes of address; or

10 (c) the commission staff determines that the  
11 allegations of the complaint are not supported by  
12 substantial evidence.

13 (4) A decision of the commission staff to dismiss a  
14 complaint or to refuse to permit removal to the district  
15 court is final unless a party seeks review by filing  
16 objections within 14 days after the decision is served on  
17 him. The commission shall review the decision in informal  
18 proceedings under 2-4-604, except that 2-4-604(5) applies  
19 only to review of a refusal to permit removal.

20 (5) Within 90 days after receipt of a notice of  
21 dismissal under subsection (3) or an order under subsection  
22 (4) of affirmance of a dismissal, whichever occurs later, or  
23 of a letter issued under subsection (1), the complainant may  
24 petition the district court in the district in which the  
25 alleged violation occurred for appropriate relief. If the

1 claimant fails to petition the district court within 90 days  
2 after receipt of the letter, notice, or order issued by the  
3 commission staff, the complaint shall be barred.

4 (6) If the district court finds, in an action under  
5 this section, that a state or local governmental agency  
6 against whom or which a complaint was filed has engaged in  
7 the unlawful discriminatory practice alleged in the  
8 complaint, the court may provide the same relief as  
9 described in 49-3-309 for a commission order. In addition,  
10 the court may in its discretion allow the prevailing party  
11 reasonable attorney fees.

12 ~~(7) The provisions of this chapter establish the~~  
13 ~~exclusive remedy for acts constituting an alleged violation~~  
14 ~~of this chapter, including acts that may otherwise also~~  
15 ~~constitute a violation of the discrimination provisions of~~  
16 ~~Article II, section 4, of the Montana constitution or~~  
17 ~~49-1-102. No other claim or request for relief based upon~~  
18 ~~such acts may be entertained by a district court other than~~  
19 ~~by the procedures specified in this chapter."~~

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

1 HOUSE BILL NO. 493  
2 INTRODUCED BY John Mark Dave Bran  
3 Christina W. Bockert, J. Edward Ream

4 A BILL FOR AN ACT ENTITLED: "AN ACT DELETING THE PROVISIONS  
5 OF THE MONTANA HUMAN RIGHTS LAWS THAT PROVIDE THAT THE HUMAN  
6 RIGHTS LAWS ESTABLISH THE EXCLUSIVE REMEDY FOR VIOLATIONS OF  
7 THOSE LAWS; AND AMENDING SECTIONS 49-2-509 AND 49-3-312,  
8 MCA."  
9

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

11 Section 1. Section 49-2-509, MCA, is amended to read:

12 "49-2-509. Filing a complaint in district court. (1)  
13 Except as provided in subsection (2), the commission staff  
14 shall, at the request of either party, issue a letter  
15 entitling the complainant to file a discrimination action in  
16 district court if:

17 (a) the commission has not yet held a contested case  
18 hearing pursuant to 49-2-505; and

19 (b) 12 months have elapsed since the complaint was  
20 filed.

21 (2) The commission staff may refuse to permit removal  
22 of a case to district court if:

23 (a) the party requesting removal fails to comply with  
24 the terms of a lawful subpoena issued in the investigative  
25 process;

1 (b) the party requesting removal has waived the right  
2 to request removal to the district court;

3 (c) more than 30 days have elapsed since service of  
4 notice of hearing under 49-2-505, unless the commission  
5 fails to schedule a hearing to be held within 90 days of  
6 service of notice of hearing; or

7 (d) the party requesting removal has unsuccessfully  
8 attempted through court litigation to prevent the commission  
9 staff from investigating the complaint.

10 (3) The commission staff may dismiss a complaint filed  
11 under 49-2-501 and allow the complainant to file a  
12 discrimination action in district court if:

13 (a) the commission staff determines that the commission  
14 lacks jurisdiction over the complaint;

15 (b) the complainant fails to cooperate in the staff's  
16 investigation of the complaint or fails to keep the  
17 commission advised of changes of address; or

18 (c) the commission staff determines that the  
19 allegations of the complaint are not supported by  
20 substantial evidence.

21 (4) A decision of the commission staff to dismiss a  
22 complaint or to refuse to permit removal to the district  
23 court is final unless a party seeks review by filing  
24 objections within 14 days after the decision is served on  
25 him. The commission shall review the decision in informal



-2-  
SECOND READING  
HB 493

1 proceedings under 2-4-604, except that 2-4-604(5) applies  
2 only to review of a refusal to permit removal.

3 (5) Within 90 days after receipt of a notice of  
4 dismissal under subsection (3) or an order under subsection  
5 (4) of affirmance of a dismissal, whichever occurs later, or  
6 of a letter issued under subsection (1), the complainant may  
7 petition the district court in the district in which the  
8 alleged violation occurred for appropriate relief. If the  
9 claimant fails to petition the district court within 90 days  
10 after receipt of the letter, notice, or order issued by the  
11 commission staff, the claim shall be barred.

12 (6) If the district court finds, in an action under  
13 this section, that a person, institution, entity, or agency  
14 against whom or which a complaint was filed has engaged in  
15 the unlawful discriminatory practice alleged in the  
16 complaint, the court may provide the same relief as  
17 described in 49-2-506 for a commission order. In addition,  
18 the court may in its discretion allow the prevailing party  
19 reasonable attorney fees.

20 ~~(7) The provisions of this chapter establish the~~  
21 ~~exclusive remedy for acts constituting an alleged violation~~  
22 ~~of this chapter, including acts that may otherwise also~~  
23 ~~constitute a violation of the discrimination provisions of~~  
24 ~~Article II, section 47 of the Montana constitution or~~  
25 ~~49-1-102. No other claim or request for relief based upon~~

1 ~~such acts may be entertained by a district court other than~~  
2 ~~by the procedures specified in this chapter."~~

3 **Section 2.** Section 49-3-312, MCA, is amended to read:

4 **"49-3-312. Filing a complaint in district court.** (1)  
5 Except as provided in subsection (2), the commission staff  
6 shall, at the request of either party, issue a letter  
7 entitling the complainant to file a discrimination action in  
8 district court if:

9 (a) the commission has not yet held a contested case  
10 hearing pursuant to 49-3-308; and

11 (b) 12 months have elapsed since the complaint was  
12 filed.

13 (2) The commission staff may refuse to permit removal  
14 of a case to district court if:

15 (a) the party requesting removal fails to comply with  
16 the terms of a lawful subpoena issued in the investigative  
17 process;

18 (b) the party requesting removal has waived the right  
19 to request removal to the district court;

20 (c) more than 30 days have elapsed since service of  
21 notice of hearing under 49-3-308, unless the commission  
22 fails to schedule a hearing to be held within 90 days of  
23 service of notice of hearing; or

24 (d) the party requesting removal has unsuccessfully  
25 attempted through court litigation to prevent the commission

1 staff from investigating the complaint.

2 (3) The commission staff may dismiss a complaint filed  
3 under 49-3-304 and allow the complainant to file a  
4 discrimination action in district court if:

5 (a) the commission staff determines that the commission  
6 lacks jurisdiction over the complaint;

7 (b) the complainant fails to cooperate in the staff's  
8 investigation of the complaint or fails to keep the  
9 commission advised of changes of address; or

10 (c) the commission staff determines that the  
11 allegations of the complaint are not supported by  
12 substantial evidence.

13 (4) A decision of the commission staff to dismiss a  
14 complaint or to refuse to permit removal to the district  
15 court is final unless a party seeks review by filing  
16 objections within 14 days after the decision is served on  
17 him. The commission shall review the decision in informal  
18 proceedings under 2-4-604, except that 2-4-604(5) applies  
19 only to review of a refusal to permit removal.

20 (5) Within 90 days after receipt of a notice of  
21 dismissal under subsection (3) or an order under subsection  
22 (4) of affirmance of a dismissal, whichever occurs later, or  
23 of a letter issued under subsection (1), the complainant may  
24 petition the district court in the district in which the  
25 alleged violation occurred for appropriate relief. If the

1 claimant fails to petition the district court within 90 days  
2 after receipt of the letter, notice, or order issued by the  
3 commission staff, the complaint shall be barred.

4 (6) If the district court finds, in an action under  
5 this section, that a state or local governmental agency  
6 against whom or which a complaint was filed has engaged in  
7 the unlawful discriminatory practice alleged in the  
8 complaint, the court may provide the same relief as  
9 described in 49-3-309 for a commission order. In addition,  
10 the court may in its discretion allow the prevailing party  
11 reasonable attorney fees.

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16 ~~Article III, section 4, of the Montana constitution or~~  
17 ~~49-1-102. No other claim or request for relief based upon~~  
18 ~~such acts may be entertained by a district court other than~~  
19 ~~by the procedures specified in this chapter."~~

-End-

1 *HOUSE* BILL NO. *493*  
 2 INTRODUCED BY *Clay, Mark, Dave Zorn*  
 3 *Yosticalla, Wipert, Bickel, J. B. Lewis, Ream*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT DELETING THE PROVISIONS  
 5 OF THE MONTANA HUMAN RIGHTS LAWS THAT PROVIDE THAT THE HUMAN  
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1 (b) the party requesting removal has waived the right  
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8 alleged violation occurred for appropriate relief. If the  
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24 ~~Article--II,--section--4,--of--the--Montana--constitution--or~~  
25 ~~49-1-102. No other claim or request for relief based upon~~

1 ~~such--acts--may--be--entertained--by--a--district--court--other--than~~  
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3 **Section 2.** Section 49-3-312, MCA, is amended to read:

4 **"49-3-312. Filing a complaint in district court.** (1)  
5 Except as provided in subsection (2), the commission staff  
6 shall, at the request of either party, issue a letter  
7 entitling the complainant to file a discrimination action in  
8 district court if:

9 (a) the commission has not yet held a contested case  
10 hearing pursuant to 49-3-308; and

11 (b) 12 months have elapsed since the complaint was  
12 filed.

13 (2) The commission staff may refuse to permit removal  
14 of a case to district court if:

15 (a) the party requesting removal fails to comply with  
16 the terms of a lawful subpoena issued in the investigative  
17 process;

18 (b) the party requesting removal has waived the right  
19 to request removal to the district court;

20 (c) more than 30 days have elapsed since service of  
21 notice of hearing under 49-3-308, unless the commission  
22 fails to schedule a hearing to be held within 90 days of  
23 service of notice of hearing; or

24 (d) the party requesting removal has unsuccessfully  
25 attempted through court litigation to prevent the commission

1 staff from investigating the complaint.

2 (3) The commission staff may dismiss a complaint filed  
3 under 49-3-304 and allow the complainant to file a  
4 discrimination action in district court if:

5 (a) the commission staff determines that the commission  
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7 (b) the complainant fails to cooperate in the staff's  
8 investigation of the complaint or fails to keep the  
9 commission advised of changes of address; or

10 (c) the commission staff determines that the  
11 allegations of the complaint are not supported by  
12 substantial evidence.

13 (4) A decision of the commission staff to dismiss a  
14 complaint or to refuse to permit removal to the district  
15 court is final unless a party seeks review by filing  
16 objections within 14 days after the decision is served on  
17 him. The commission shall review the decision in informal  
18 proceedings under 2-4-604, except that 2-4-604(5) applies  
19 only to review of a refusal to permit removal.

20 (5) Within 90 days after receipt of a notice of  
21 dismissal under subsection (3) or an order under subsection  
22 (4) of affirmance of a dismissal, whichever occurs later, or  
23 of a letter issued under subsection (1), the complainant may  
24 petition the district court in the district in which the  
25 alleged violation occurred for appropriate relief. If the

1 claimant fails to petition the district court within 90 days  
2 after receipt of the letter, notice, or order issued by the  
3 commission staff, the complaint shall be barred.

4 (6) If the district court finds, in an action under  
5 this section, that a state or local governmental agency  
6 against whom or which a complaint was filed has engaged in  
7 the unlawful discriminatory practice alleged in the  
8 complaint, the court may provide the same relief as  
9 described in 49-3-309 for a commission order. In addition,  
10 the court may in its discretion allow the prevailing party  
11 reasonable attorney fees.

12 (7) ~~The provisions of this chapter establish the  
13 exclusive remedy for acts constituting an alleged violation  
14 of this chapter, including acts that may otherwise also  
15 constitute a violation of the discrimination provisions of  
16 Article II, section 4, of the Montana constitution or  
17 49-3-102. No other claim or request for relief based upon  
18 such acts may be entertained by a district court other than  
19 by the procedures specified in this chapter.~~

-End-