

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 3, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:40 a.m. on the above date in Room 415 of the State Capitol Building.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES APPEARING TO TESTIFY:

Senator Dunkle - District 15  
Jim Hughes - Mountain Bell  
D. B. Tooley - Montana Highway Patrol  
Chad Smith - American Mutual Ins. Alliance  
W. Boyce Clark - Independent Insurance Agents  
Harold Parks - U. S. F. & G.  
Glen Drake - American Insurance Assn.

CONSIDERATION OF SENATE BILL 185:

Senator Dunkle, chief sponsor of this bill, told the committee that the reason he had introduced the bill was because he realized that motorists carrying insurance needed protection from those who don't since he had been hit by uninsured vehicles three times who totalled his car out. He had the Legislative Council draft the bill for him. He said that he does not believe people who cannot afford insurance should be allowed to drive cars and that he would not oppose the committee making the bill workable by amendments.

The first proponent of S.B. 185 to speak was Jim Hughes, representing Mountain Bell, saying that they are for this bill but would like to see it amended in section 4 by inserting "ownership and operators" for "drivers" and in section 9 on page 11 by striking the material regarding valid claims of 90 days.

The next proponent was Duane Tooley of the Montana Highway Patrol who said that they fully support the concept of this bill with a couple of amendments. One was to define "non-residents". (Ex. 1)

Chad Smith, representing the American Mutual Insurance Alliance, was the next proponent of S.B. 185. He said they were concerned with how this law will be applied. He presented a prepared statement to the committee on this. (See Exhibit 2) He told the committee that every effort should be made to try to enforce responsibility upon the uninsured motorist.

The next proponent was W. Boyce Clarke, representing the Independent Insurance Agents, who read a prepared statement. He pointed out that they supported this bill but were disturbed with some material in section 19. (See Exhibit 3)

## JUDICIARY COMMITTEE

Date 2-3-77

[illegible]

*Highway Bill*  
Montana S. B. 185

(Introduced Bill)

Motor Vehicles -  
Financial Responsibility

SYNOPSIS: Revises financial responsibility laws, Title 53, Chapter 4, to provide for motor vehicle liability protection as a condition of operation of vehicles upon highways or property open to use by the public. The key provision of the bill, which is contained in Section 3, requires that a motor vehicle may not be registered unless it is covered by a suitable motor vehicle liability policy.

COMMENT: The major provisions of this bill will not have any adverse impact on the Company, since the bill provides that vehicles owned by self-insurers such as Mountain Bell are exempt from the requirements of liability insurance coverage. Section 4 (3), page 4. However, there are two amendments that should be made in the self-insurer provisions. First, Section 4 - the exemption section - provides: "The following vehicles and their drivers are exempt from the provisions of this act:". I think that "owners and operators" should be substituted for "drivers" in this phrase, since the former term is defined in the definitions section, page 2, whereas the latter term, "drivers," is not. Second, and more important, Section 9 of the bill, which sets forth the requirements for self-insurers, provides that failure to pay a valid claim within 90 days of its submission is a reasonable ground for the cancellation of a certificate of self-insurance. Section 9 (3), page 11. This is an addition to the present law on self-insurers, which is contained in 50-451, and which provides that failure to pay a final judgment within 30 days is a reasonable ground for cancellation of a certificate of self-insurance. The problem with the "valid claim" addition is: "Who determines whether or not a claim is valid?" Under the bill as written, the validity of a claim would have to be determined by the Department of Justice, yet this is not the business of the Department. On the contrary, the determination of the validity or non-validity of a claim can be made only by a court. In short, self-insurers should not be singled out for subjection of their claims policies to ~~the Department of Justice~~ the Department of Justice. The public is adequately protected under the present law, which is preserved by this bill, and which provides that a self-insurer may have its certificate of self-insurance revoked for failure to pay final judgments

Montana S. B. 185

(Page 2)

within 30 days. I would strongly recommend that the phrase "valid claim within 90 days of its submission or" be deleted from Section 9 of this bill, page 11, line 21.

- FROM AMER MUTUAL INS ALLIANCE

CHAD SMITH

BOX 604

HELENA

442-2980

A BILL TO BE ENTITLED

AN ACT

BE IT ENACTED BY THE LEGISLATURE OF \_\_\_\_\_ :

(EX 2)

Financial security prerequisite to registration.

a) No self-propelled motor vehicle shall be registered in this state unless the owner, at the time of registration, has financial security for the operation of such motor vehicle as provided in this article. The owner of each motor vehicle registered in this state shall maintain financial security continuously throughout the period of registration.

b) Financial security shall be provided by a liability insurance policy or a security bond or a security deposit or by qualification as a self-insurer. Such financial security shall be the ability to respond in damages, on account of accidents occurring subsequent to the effective date of such financial security, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of \$ ,000 because of injury to or death of one person in any one accident and subject to said limit for one person, in the amount of \$ ,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$ ,000 because of injury to or destruction of property of others in any one accident.

c) The director shall require that the owner certify as to the existence of such insurance as will satisfy the requirements set forth in subsection b above at the time of registration. The owner shall certify as to the existence of an alternative type of security authorized in b above if qualified by the director. Failure to so certify shall be prima facie evidence that no financial security exists with regard to the vehicle concerned and the commissioner shall revoke the owner's registration plate for 60 days.

In no case shall any vehicle, the registration of which has been revoked for failure to have financial security, be re-registered in the name of the registered owner, his spouse, or any child of the spouse, or any child of such owner, within less than 60 days after the date of receipt of the registration plate by the director. As a condition precedent to the re-registration of the vehicle, the owner shall pay the appropriate fee for a new registration plate.

It shall be the duty of insurance companies, upon the request of the director to verify the accuracy of any owner's certification. Failure by an insurance company to deny coverage within twenty (20) days may be considered by the director as an acknowledgment that the information as submitted is correct.

d) When liability insurance with regard to any motor vehicle is terminated by cancellation or failure to renew, or the owner's financial security for the operation of any motor vehicle is otherwise terminated, the owner shall forthwith surrender the registration certificate and plates of the vehicle to the director unless financial security is maintained in some other manner in compliance with this article.

Failure of an owner to deliver certificate of registration and plates after revocation.

Failure of an owner to deliver the certificate of registration and registration plates issued by the director after revocation thereof as provided in this article, shall constitute a misdemeanor.

Operation of a motor vehicle without financial security is a misdemeanor.

a) On or after July 1, 1977, any owner of a motor vehicle registered or required to be registered in this state who shall operate or permit such motor vehicle to be operated in this state without having in full force and effect the financial security required by this article shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

b) Evidence that the owner of a motor vehicle registered or required to be registered in this state has operated or permitted such motor vehicle to be operated in this state, coupled with proof of records of the director indicating that the owner did not have financial security applicable to the operation of the motor vehicle shall be prima facie evidence that such owner did at the time and place alleged, operate or permit such motor vehicle to be operated without having in full force and effect financial security required by the provisions of this article.

Making false certification or giving false information is a misdemeanor.

a) Any owner of a motor vehicle registered or required to be registered in this state who shall make a false certification concerning financial security for the operation of such motor vehicle shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

b) Any person, firm or corporation giving false information to the commissioner of the department of motor vehicles concerning another's financial security for the operation of a motor vehicle registered or required to be registered in this state, knowing or having reason to believe that such information is false, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

The director is to administer article; rules and regulations.

The director shall administer and enforce the provisions of this article relating to registration of motor vehicles and may make necessary rules and regulations for its administration.

Insurance required by any other law; certain operators not affected.

This article shall not be held to apply to or affect the policies of automobile insurance against liability which may now or hereafter be required by any other law of this state and such policies, if they contain an agreement or are endorsed to conform to the requirements of this article, may be certified as proof of financial security under this article; provided, however, that nothing contained in this article shall affect operators of motor vehicles that are now or hereafter required to furnish evidence of insurance or financial responsibility to the Interstate Commerce Commission, but to the extent that any insurance policy, bond, or other agreement filed with the Interstate Commerce Commission as evidence of financial responsibility affords less protection to the public than the financial security required to be certified to the director under this article as a condition precedent to registration of motor vehicles, the amounts, provisions and terms of such policies, bond or other agreement so certified shall be deemed to be modified to conform to the financial security required to be proved under this article as a condition precedent to registration of motor vehicles in this state. It is the intention of this section to require owners of self-propelled motor vehicles registered in this state and operated under permits from the Interstate Commerce Commission to show and maintain proof of financial responsibility

There were no more proponents of S.B. 185 present to testify.

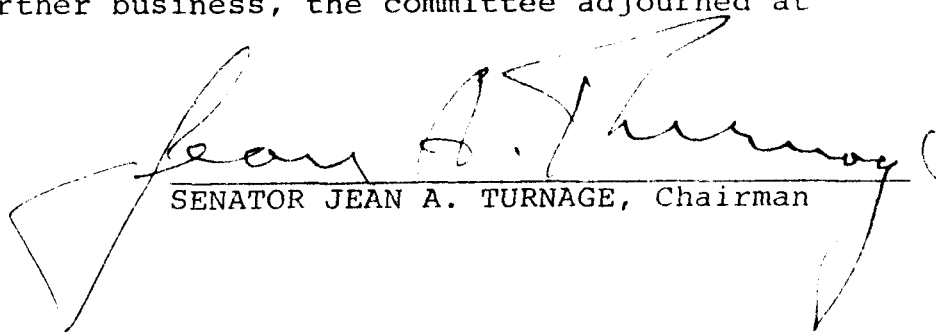
The first opponent of this bill to testify was Harold Parks, manager of the U.S.F. & G., who attended this meeting at the request of Glen Drake, a Helena attorney and former senator. He said the problem for the underwriters is those who will not buy insurance. He said, after they have an accident and then want to buy insurance, they will be faced with a high premium or they may not be able to buy it at all.

Former Senator Glen Drake, representing the American Insurance Association, was the next opponent of S.B. 185 to testify. He read a statement from a conference on "No-Fault Insurance" which had been held in San Francisco on mandatory insurance. (See Exhibit 4) He then told the committee that the mandatory system presents real problems in that the less well-endowed persons may rebel against buying mandatory insurance. He said that he felt that the cost was under-estimated for this bill as the fiscal note does not address the problem of the assigned risk plan and that the cost will be tremendous for the state - in fact, it will be prohibitive. He then suggested an amendment for page 3 and said that this could be corrected by going to page 8, subsection (c) and making that an "exclusive" right. He further stated that the premium cost to the average citizen, if the bill is passed, should be considered because it takes away all policy defenses and it also makes it mandatory that the person driving the motor vehicle is covered, thereby making it necessary to raise premiums and the ability to exclude any person from coverage on a policy would be eliminated.

There being no more witnesses to testify, the Chairman allowed Senator Dunkle to close. He said that he doesn't like to hear insurance companies say that the rates will go up for the insured to make up for those who don't carry insurance, and that those who are not good risks should be cancelled. He suggested that a motorist when stopped by a patrolman should have to show his insurance certificate along with his registration slip and driver's license. He then told the committee that approximately 25% of the driving public are uninsured.

The chairman then allowed committee members to ask questions of the witnesses.

There being no further business, the committee adjourned at 11:00 a.m.



SENATOR JEAN A. TURNAGE, Chairman

SENATE

JUDICIARY COMMITTEE

BILL

VISITORS' REGISTER

DATE

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

SUPPORT

OPPOSE

Jim HUGHES

MOUNTAIN BELL

SB 185

✓

L. B. Tinsley

MHP

SB 185

✓

H. E. PARKS

U.S. 714

SB 185

✓

Allen Drake

American Ins. Assoc'n

SB 185

✓

William York

Independent Ins. Agents

SB 185

Qualified

Chas. Smith

Amer. Mutual Ins. Assoc'n

SB 185

✓ with amendment



MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 4, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman at 9:30 a.m. on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Pat Melby - Director of Social & Rehabilitative Services Dept.  
Robert W. Corcoran - counsel for Dept. of Revenue  
Richard Weber - attorney for SRS  
Jim Tillotson - staff attorney for Dept. of Revenue

CONSIDERATION OF SENATE BILL 182:

Since there were no opponents or proponents present on this bill of which Senator Roberts is the chief sponsor, the bill was deemed considered.

CONSIDERATION OF SENATE BILL 254:

Pat Melby, the director of SRS, explained that S.B. 254 amends §71-226 and that welfare fraud should be treated as any other theft, and requested that it be amended to define welfare fraud as theft.

Robert Corcoran, counsel for the Dept. of Revenue, testified as a proponent of S.B. 254, saying that they prosecute cases in the welfare fraud and child support areas under Title 71, and that he believes they should be treated as theft and not misdemeanors as they are usually required to do now. He said that they do not understand why the theft of \$2500 is theft under the criminal code and a misdemeanor under the welfare code. He further said that the people who are committing these felonies are stealing the state's money just as others steal money.

Richard Weber, attorney for SRS. said they seek not only punishment of people but also seek to recover the moneys involved.

Jim Tillotson, staff attorney for the Dept. of Revenue, said this is not a problem unique in Montana and asks that the legislation be passed so that they can use the theft statute

There were no other proponents or opponents present to testify. Therefore the chairman allowed committee members to question the witnesses and work out amendments to this bill with them. The committee members told them they should have a statement on the back of the welfare checks similar to that on unemployment checks so that they would be protected from a case being taken to the Supreme Court after the state had won it in district court.

Senator Towe moved the adoption of the following amendments:

Amend section 1, line 11, following "obtains" by striking the ",,";

Amend section 1, lines 12 and 13 by striking "or attempts to obtain, or aids, or abets any person to obtain";

Amend section 1, line 13, following "of" by inserting "a" and following "statement" by striking "or" and inserting a ",,";

Amend section 1, line 14, following "representation" by inserting a "," and following "or" by striking "by" and following "impersonation" by striking the ",,";

Amend section 1, line 15, following "device" by striking the ",," and following "entitled" by also striking the ",,";

Amend section 1, lines 15 through 20, following line 15, by striking lines 16 through 20 in their entirety, and to insert "is" following line 20.

The motion for adoption of the amendments carried unanimously.

Senator Towe then moved that S.B. 254 as amended DO PASS. The motion carried unanimously.

#### DISPOSITION OF SENATE BILL 23:

This bill was rereferred to this committee on February 1, 1977.

Senator Towe moved the adoption of the following amendments:

Amend title, lines 4 and 5, following "THE" by striking "SALE OF DISCONTINUED" and inserting "ASSESSMENT OF COSTS TO PETITIONING PROPERTY OWNERS FOR DISCONTINUATION OF" and to amend the title in lines 6 and 7, following "COUNTY;" by striking "; AND PROVIDING AN EFFECTIVE DATE";

Amend pages 1 and 2, sections 1, 2 and 3, lines 10 through line 2 on page 2, following the enacting clause by striking all of the material therein and inserting "Section 1. Costs of discontinuation. Whenever a governing body discontinues, abandons, or vacates a street, alley, or road under Title 11, chapter 28 or Title 32, chapter 28, the costs of such process may be assessed against the petitioning property owner. Such costs may include costs of publication, engineering, and site viewing."

The motion to adopt the amendments carried unanimously. Senator Towe then moved that S.B. 23 as amended DO PASS. This motion also carried unanimously.

#### DISPOSITION OF SENATE BILL 97:

Senator Towe moved to amend S.B. 97 as follows:

Amend the title, line 5, by striking "KENO AND OTHER";

Amend page 1, section 1, subsection (1)(a), following line 19, by inserting "Nothing contained herein prohibits the use of a blower to mix the numbers or symbols";

Amend page 1, section 1, subsection (1)(a), line 20, and 21, following "include" by striking "the game commonly referred to as keno or other";

Amend page 2, section 1, subsection (2)(a), line 19, following "signs" by striking ", however operated,";

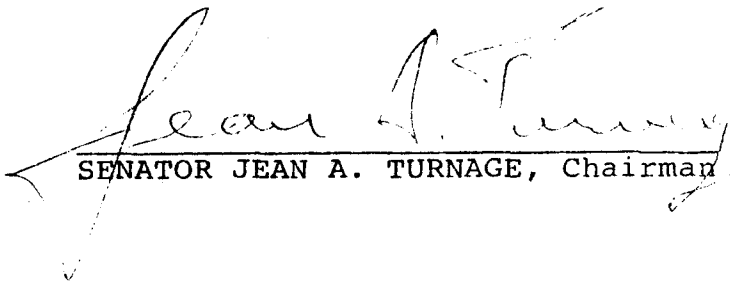
The motion carried unanimously. However, the committee discussed the bill further and decided that another amendment was needed following "system, and" on page 1, section 1, subsection (2)(a), in that lines 21, 22 and 23 should be struck and "the blower" inserted.

At this time, Senator Towe moved to reconsider the previous action. This motion carried unanimously. He then moved to adopt the amendment just discussed. Motion carried unanimously. Senator Towe then moved that S.B. 97 as amended DO PASS. The motion carried unanimously.

DISPOSITION OF SENATE BILL 75:

Senator Regan moved DO NOT PASS. She then addressed the committee saying that she believed it should not be up to just the doctor to decide this issue. The motion carried unanimously.

There being no further business, the committee adjourned at 11:00 a.m.

  
SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

## JUDICIARY

## COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 2-4-77

[illegible]

# STANDING COMMITTEE REPORT

February 4,

1977

MR. **PRESIDENT:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **254**

Respectfully report as follows: That **SENATE** Bill No. **254**, the introduced bill, be amended as follows:

1. Amend section 1, line 11.

Following: "obtains"

Strike: ", "

2. Amend section 1, line 12, and 13.

Strike: "or attempts to obtain, or aids, or abets any person to obtain"

3. Amend section 1, line 13.

Following: "of"

Insert: "a"

Following: ~~statement~~ *statement*

Strike: "or"

Insert: ", "

4. Amend section 1, line 14.

Following: "representation"

Insert: ", "

Following: "or"

~~DO PASS~~ Strike: "by"

Following: "impersonation"

Strike: ", "

5. Amend section 1, line 15.

Following: "device"

Strike: ", "

Following: "entitled"

Strike: ", "

6. Amend section 1, lines 15 through 20.

Following: line 15

Strike: lines 16 through 20 in thier entirety

7. Amend section 1, following line 20.

Insert: "is"

AND AS SO AMENDED, DO PASS.

PA.

SEN. JEAN A. TURNAGE, Chairman

# STANDING COMMITTEE REPORT

Feb. 4,

1977

PRESIDENT:

MR. ....

JUDICIARY

We, your committee on .....

SENATE

having had under consideration ..... Bill No. 23

Respectfully report as follows: That ..... SENATE ..... Bill No. 23,  
the second reading bill, be amended as follows:

1. Amend the title, lines 4 and 5.

Following: "THE"

Strike: "SALE OF DISCONTINUED"

Insert: "ASSESSMENT OF COSTS TO PETITIONING PROPERTY OWNERS FOR DISCONTINUATION OF"

2. Amend the title, lines 6 and 7.

Following: "COUNTY;"

Strike: "; AND PROVIDING AN EFFECTIVE DATE"

3. Amend page 1, and 2, sections 1, 2 and 3, line 10 through line 2 on page 2.

Following: the enacting clause

Strike: the material therein in its entirety

Insert: "Section 1. Costs of discontinuation. Whenever a governing body discontinues, abandons, or vacates a street, alley, or road under Title 11, chapter 28 or Title 32, chapter 28, the costs of such process may be assessed against the petitioning property owner. Such costs may include costs of publication, engineering, and site viewing."

AND AS SO AMENDED DO PASS

SEN. JEAN A. TURNAGE,

Chairman.

# STANDING COMMITTEE REPORT

Feb. 4, 1977

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 97

Respectfully report as follows: That SENATE Bill No. 97, the introduced bill, be amended as follows:

1. Amend the title, line 5.  
Strike: "KENO AND OTHER"

2. Amend ~~xxxxxx~~ page 1, section 1, subsection (1)(a),  
Following: line 19  
Insert: "Nothing contained herein prohibits the use of a blower to mix the numbers or symbols."

3. Amend page 1, section 1, subsection (1)(a), line 20, and 21.  
Following: "include"  
Strike: "the game commonly referred to as keno or other"

4. Amend page 2, section 1, subsection (2)(a), line 19.  
Following: "signs"  
Strike: ", however operated,"

5. Amend page 2, section 1, subsection (2)(a), lines 21, 22 and 23.  
Following: "system, and"  
~~DO PASS~~ Strike: "all other articles essential to the operation, conduct, and playing of bingo"  
Insert: "the blower"  
AND AS SO AMENDED DO PASS.



4. Amend page 2, section 4, line 1.  
Strike: "buffalo"  
Insert: "bison"

AND AS SO AMENDED, DO PASS.

SENATOR JEAN A. TURNAGE, Chairman

# STANDING COMMITTEE REPORT

February 4, 1977

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 75

Respectfully report as follows: That SENATE Bill No. 75

DO NOT PASS

DO PASS

Judiciary

COMMITTEE

# BILL

# VISITORS' REGISTER

DATE 12-7-55

Please note bill no.

(check one)

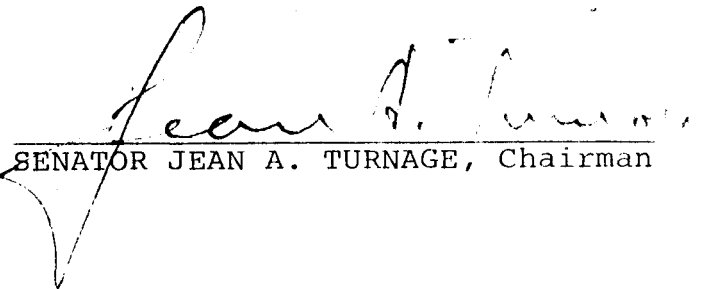
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DISCLOSURE OF INFORMATION TO THE SECRETARY

Amendment to Judiciary Committee  
Minutes 2/4/77 Re: SB 97

Statement of intent  
concerning deletion of "keno"

The committee is of the opinion that with the insertion of the word "manually" in Sec. 1, p. 1, line 19, coupled with the changes on p. 2, lines 15-23, the basic definitional language becomes sufficiently narrow to eliminate electronic keno and similar games. The committee recognizes the futility of trying to prohibit a gambling game by its name only, since names of games can be changed at will.



SENATOR JEAN A. TURNAGE, Chairman

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 5, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:30 a.m. on the above date in Room 415 of the State Capitol Building.

ROLL CALL:

All members of the committee were present with the exception of Senator Towe who was excused.

WITNESSES PRESENT TO TESTIFY:

Senator Larry Fasbender - District 17  
Mr. Raymond D. Brown - Human Rights Division, administrator  
Rosemary Zion - Human Rights Division, chief counsel  
Senator Brown - District 10

CONSIDERATION OF SENATE BILL 222:

Senator Larry Fasbender, District 17, sponsor of the bill, said that it was introduced for the Department of Labor. He introduced Rosemary Zion, chief counsel for the Human Rights Division of the Department of Labor, who in turn introduced the administrator of the division, Raymond D. Brown, who explained the bill to the committee. He told the committee that in 1974 the Human Rights Act was passed which prohibits discrimination in housing and that these cases are investigated on state level, which is very important. He said that the claims of discrimination are becoming less in the federal program of HUD but are growing on the state level and that essentially what his division is trying to do by this bill is to bring Montana law in compliance with the federal law.

Rosemary Zion told the committee that the federal Fair Housing Act is part of the Civil Rights Act of 1968, and that one of the advantages of the federal law is that it is a great deal more specific in what is prohibited. A second advantage is that, under the Fair Housing Act, there must be a deferral to the state level using state means, and this would speed up the action. She said that HUD is slow on processing claims of discrimination, and that this bill would really let us "keep our own house" in Montana.

No other proponents of the bill were present. There being no opponents to the bill to testify, the Chairman opened the meeting to questioning of the witnesses by committee members. During this period, Senator Roberts asked Rosemary Zion where discrimination under the state law differs from the federal. She told him that the federal law does not deal with the mental, handicapped or aged, and that the state law does.

At this time, the Chairman thanked and excused the witnesses.

CONSIDERATION OF SENATE JOINT RESOLUTION 16:

Senator Brown of District 10, sponsor of this resolution, was present in committee to explain it. He said that the same bill had been sponsored by Rep. Huennekens in the House in the 1974 session in behalf of people studying to be lawyers by taking the course from LaSalle University by mail. However, the Supreme Court ignored it. This session Rep. Huennekens and another representative who had taken the LaSalle course asked that Senator Brown introduce this resolution in the Senate. However, in the meantime, a constitutional amendment had been introduced in the House. Therefore, Senator Brown requested that this be held pending the outcome of the constitutional amendment.

Senator Roberts moved that SJR 16 be held in committee. The motion carried unanimously.

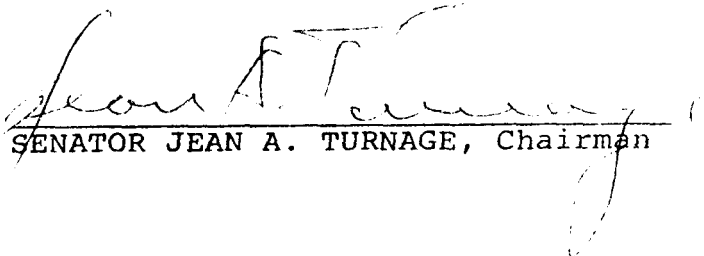
CONSIDERATION OF SENATE BILL 37:

Lon Maxwell, Judiciary committee attorney and researcher, explained amendments which had been proposed by Roger Tippy of the Legislative Council.

Senator Regan moved the adoption of the amendments. The motion carried unanimously.

Lon told the committee that he had a problem with page 2, lines 12 through 15. At this time, the committee decided not to act further on the bill because Senator Towe was unable to be here and they felt he should have the opportunity to go over the bill, too.

There being no further business for this meeting, the committee adjourned at 10:40 a.m..

  
SENATOR JEAN A. TURNAGE, Chairman



1 Senate Bill BILL NO. 37  
 2 INTRODUCED BY Turnage - Bookie  
 3 By request of Administrative Code Committee

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING  
 5 ADMINISTRATIVE RULES TO CONFORM TO LEGISLATIVE INTENT;  
 6 PROVIDING FOR THE DOCUMENTATION OF SOME LEGISLATIVE INTENT;  
 7 AMENDING SECTION 82-4219, R.C.M. 1947."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. Sections 2 through 4 may be  
 11 cited as the "Legislative History Act".

12 Section 2. Statement of policy. The legislature finds  
 13 that it must accept the ultimate responsibility for the  
 14 increase in the discretionary authority of state executive  
 15 branch agencies, as evidenced by proliferating rules, forms,  
 16 orders, and licensing proceedings before state agencies.  
 17 The purpose of this Legislative History Act is to assure  
 18 that statutes henceforth enacted to grant additional  
 19 discretionary authority to state agencies are accompanied by  
 20 a clear indication of the legislature's intent as to how  
 21 such discretion is to be exercised and the legislature's  
 22 purpose for delegating the authority.

23 Section 3. Delegation of authority defined. As used in  
 24 section 4, "delegation of authority" means a statutory  
 25 authorization to:

- 1 (1) adopt rules implementing a statute, or
- 2 (2) license (as defined in 82-4202) an activity or
- 3 establishment regulated by statute.

4 Section 4. Bills containing delegations of authority  
 5 to state agencies -- limitations. (1) A bill introduced in a  
 6 regular or special session of the legislature which contains  
 7 a delegation of authority to a state agency shall be  
 8 referred to an appropriate standing committee. The  
 9 committee or a minority of the committee may not file a  
 10 favorable report on the bill or on the bill as amended,  
 11 unless the report <sup>appends</sup> includes a statement ~~published in the~~  
 12 ~~journal with the report~~ which indicates the specific  
 13 purpose for which authority is to be delegated and the  
 14 committee members' intention as to how this authority will  
 15 be exercised. If the authority delegated includes the power  
 16 to adopt rules, the statement <sup>may</sup> ~~shall~~ include an outline or  
 17 summary of the rules to be adopted. A bill delegating  
 18 authority to a state agency which is not accompanied by <sup>this</sup> ~~the~~  
 19 statement may not be removed from the committee and <sup>this</sup> ~~this~~  
 20 ~~Section~~ <sup>prevails over Joint Rule 7-2 to the extent that</sup> (2) A bill subject to this section, reported from a <sup>cos</sup> ~~cos~~

21 committee in the other house than that of its introduction  
 22 or from a regular joint conference committee, may be  
 23 supported by a committee statement which incorporates by  
 24 reference in whole or part the statement of another  
 25 committee which considered the bill. A bill subject to this

INTRODUCED BILL

SB3;



1 section reported from a free joint conference committee  
2 shall be accompanied by a statement from the joint committee  
3 which complies with subsection (1).  
4 (3) So much of a statute as is enacted in  
5 contravention of this section ~~as indicated by the journals~~  
6 is void.  
7 Section 5a. Section 82-4219 R.C.M. 1947, is amended to  
8 read as follows:  
9 "82-4219. Declaratory judgments on validity or  
10 application of rules. ~~The validity or application of a~~ A  
11 rule may be determined declared invalid at, inapplicable in  
12 an action for declaratory judgment if it is found that the  
13 rule or its threatened application interferes with or  
14 impairs or threatens to interfere with or impair the legal  
15 rights or privileges of the plaintiff. A rule may also be  
16 declared invalid in such an action on the grounds that the  
17 rule was adopted with an arbitrary or capricious disregard  
18 for the purpose of the authorizing statutes as evidenced by  
19 documented legislative intent. If the administrative code  
20 committee has objected to the adoption of a amendment of a  
21 rule on the grounds set forth in the preceding sentence, the  
22 agency bears the burden in any action brought under this  
23 section of proving that its rule was not adopted with an  
24 arbitrary or capricious disregard for the purpose of the  
25 authorizing statutes. The action may be brought in the

1 district court for the county in which the plaintiff resides  
2 or has his principal place of business or in which the  
3 agency maintains its principal office. The agency shall be  
4 have a party to the action. A declaratory judgment may be  
5 rendered whether or not the plaintiff has requested the  
6 agency to pass upon the validity or applicability of the  
7 rule in question."

-End-

(1) The legislative council shall indicate at  
the top of a bill prepared for introduction if  
a statement on delegation of authority may  
be necessary under this section. The word  
for this statement shall be determined by  
the presiding officer of a committee  
on the basis of the following  
criteria:  
1. The delegation of authority shall be  
necessary to the committee or subcommittee  
in order to carry out its duties.  
2. The delegation of authority shall be  
necessary to the committee or subcommittee  
in order to carry out its duties.



# MONTANA HUMAN RIGHTS COMMISSION



POWER BLOCK, LAST CHANCE GULCH, HELENA, MONTANA 59601 • TELEPHONE 406/449-2884

Testimony of Montana Human Rights Commission

To: Senate Judiciary Committee

Re: Senate Bill 222

Date: February 5, 1977

Members of the Committee,

The purpose of Senate Bill 222 is to conform the language of Montana's Human Rights Act to the language of the Federal Fair Housing Act. Both laws prohibit discrimination in the sale or rental of housing accommodations. However, the Fair Housing Act, 42 U.S. C. 3601, et seq, is a great deal more specific in its language and somewhat more comprehensive in its coverage. For example, the Fair Housing Act specifically prohibits discrimination in the advertising of dwellings for sale or rental, discrimination in the provision of brokerage services, and the use of racial "scare tactics" to frighten people into selling out of neighborhoods, so called blockbusting.

The advantages of conforming Montana's laws to the Fair Housing Act are many. The greater specificity of the Federal law makes enforcement easier and gives better notice to persons in the real estate business of what practices are prohibited and what practices are permitted.

Passing the Montana law will not place any restriction upon persons in the real estate business which they do not already face, since the Fair Housing Act already applies to the activities of real estate agents. What the passing of this law will do is to put enforcement of the law in a Montana agency operating in Montana.

The need for this law came to our attention when we received notification from the Department of Housing and Urban Development that our law was not considered "substantially equivalent" to the Federal law. Because the law was not "substantially equivalent" to the Fair Housing Act, the Human Rights Commission would not be considered eligible to have deferred to it housing discrimination cases filed with HUD. Nor, should funding become available to fund state fair housing efforts, would the Commission qualify for Federal funds. While such funds are not currently available, it is anticipated that such funds will become available for state enforcement within the biennium.

RAYMOND D. BROWN  
ADMINISTRATOR  
HUMAN RIGHTS DIVISION

Passage of this bill should not significantly increase the caseload of the Human Rights Commission, since most of the practices specifically prohibited by the new language also involve activities clearly prohibited by present Montana law. What the law will do is allow the State of Montana to have a first opportunity to police its own housing problems before the Federal government becomes actively involved in the matter, since cases filed with HUD would be deferred to the Commission for enforcement if HUD enters into a deferral agreement with the Commission.

The bill , if passed, will also, by making possible this deferral arrangement, provide the Commission with access to HUD expertise and resources when they are necessary or helpful to the state's fair housing efforts. And, it is to be hoped, as funding for state fair housing efforts becomes available, Montana will be able to share in such funds as may become available.

In summation, the language of this bill improves the quality and clarity of the Montana law and is a necessary precondition for the establishment of favorable relationships with the Department of Housing and Urban Development, which will help Montana to provide its own , in-state enforcement effort in this important area.



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D. C. 20410

*Received July 29, 1976 11:00 a.m.  
E.V. McGarvey*

20 JUL 1976

OFFICE OF THE ASSISTANT SECRETARY  
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

IN REPLY REFER TO:

**RECEIVED**

JUL 30 1976

Mrs. Elsie McGarvey  
Chairperson  
Montana Human Rights Commission  
445 Fourth Avenue  
Kalispell, Montana 59901

**HUMAN RIGHTS BUREAU**

Dear Mrs. McGarvey:

As you know, Mrs. Glendora Putnam, my Deputy, and I had considerable experience in administering civil rights laws when she served as Chairperson of the Massachusetts Commission Against Discrimination, and I, as Director of the New Jersey Division on Civil Rights and Executive Director of the Michigan Civil Rights Commission.

One of the major objectives we wish to accomplish in our present responsibilities is to complete the process of determining whether or not State and local agencies administering fair housing laws and ordinances are providing rights and remedies which are substantially equivalent to the rights and remedies provided in Title VIII of the Civil Rights Act of 1968, the Federal fair housing law.

Section 810 of Title VIII states that wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices, which are substantially equivalent to the rights and remedies provided in Title VIII, the Assistant Secretary will notify the appropriate State or local agency of any complaint filed under Title VIII which appears to constitute a violation of such State or local fair housing law, and shall take no further action upon such complaint pending an opportunity for the appropriate State or local agency to assume responsibility for the matter.

Pursuant to a delegation of authority from the Secretary of the Department of Housing and Urban Development to the Assistant Secretary for Fair Housing and Equal Opportunity, this Office has recently completed a substantial equivalency evaluation of your agency.

The substantial equivalency evaluation was conducted in accordance with the criteria and the performance standards as set forth in Part 115 of Title 24 of the U.S. Code of Federal Regulations (37FR16540, 8/16/72). The review and analysis of the report and documented materials relating to your agency has been completed. The decision, at this time, is not to grant recognition of the fair housing law administered by the State of Montana.

On the basis of its review of the Montana Fair Housing Law, the Department's Office of General Counsel found it lacking in legal sufficiency. This determination was based upon finding that while the Commission may have the informal power to investigate the complaint and seek to eliminate or correct the discriminatory housing practice by informal means, the law does not provide that a copy of the complaint be served upon the respondent at this stage. Further, it was found that although the Commission may hold hearings and in connection therewith issue subpoenas to compel the production of documents and records, the law does not authorize the issuance of subpoenas at the investigative stage. Nor is there provision affording an aggrieved person judicial protection, although the Department may petition a court to enforce the Commission's order.

Further, the Fair Housing Law of the State of Montana does not specifically prohibit the following nondiscriminatory practices: 1) refusal to negotiate for sale or rental; 2) making a dwelling unavailable; 3) advertising in a discriminatory manner; 4) falsely representing that a dwelling is not available for inspection, sale or rental; and 5) denying a person access to or membership participation in multiple listing services, real estate broker's organizations or other services.

Our information indicates that the Fair Housing Law of the State of Montana is still lacking in legal sufficiency.

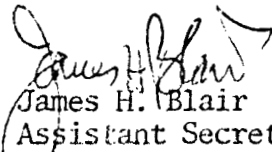
Our procedures relating to recognition of substantially equivalent laws, a copy of which is provided for your ready reference, provide you with an opportunity for a formal conference regarding this decision or in the alternative you may wish to informally discuss with us the resolution of the deficiencies necessitating our decision in the matter.

3

If you desire such a formal or informal procedure, please submit a request to this Office, attention Mr. Kenneth F. Holbert, Director of Fair Housing Enforcement and Contract Compliance, within 15 days after receipt of this letter.

We appreciate your interest in this matter.

Sincerely,



James H. Blair  
Assistant Secretary

Attachment

August 4, 1976

Mr. James H. Blair  
Assistant Secretary  
Department of Housing and  
Urban Development  
Washington, D.C. 20410

Attention: Mr. Kenneth F. Holbert

Dear Mr. Blair:

Your letter to Elsie McGarvey, Chairperson of the Montana Human Rights Commission, has been forwarded to the Human Rights Division for response. It is our opinion that the non-discriminatory laws of the State of Montana as found in the Montana Human Rights Act is not lacking in legal sufficiency.

In response to your determination and basis:

1. Although the law does not provide that a copy of the Complaint be served upon the Respondent: The Montana Administrative Code under which the Human Rights Division operates states in 24-3.9(2)-P9040 "Within ten (10) days after the filing of a complaint, the Bureau shall furnish the Respondent with a notice thereof by mail or in person (including the date, place, and circumstances of the alleged unlawful discriminatory practice)."

A copy of the rules are enclosed for your information.

3. Title 64-313 states specifically that the law does authorize the issuance of subpoenas at the investigative stage. A copy of our law is also enclosed for your information.

PAGE TWO

3. Although the Human Rights Act of the State of Montana does not specifically prohibit the non-discriminatory practices listed in your letter it is the position of this Division that said non-discriminatory practices are indeed covered by Title 64-30C(3).

At this time I therefore request an informal conference with you or Mr. Holbert to discuss the "deficiencies necessitating our decision in the matter." Further, I would like to expedite these proceedings in order to propose any legislation before the next Montana Legislative Session. Said session does begin in January and lasts approximately sixty days. The Montana Legislature only meets every two years.

Rosemary Zion, Chief Counsel for the Montana Human Rights Division, will review Part 115 of Title 24 and will take part in our informal conference to resolve any differences.

I do hope to hear from you shortly.

Sincerely,

Raymond D. Brown  
Administrator  
Human Rights Division

RDB/tg

Enclosures



Comparison of Fair Housing Act of 1968 and  
Montana Human Rights Laws -- Selected Provisions

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Fair Housing Act

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Montana Human Rights Act

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

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Fair Housing Act

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

Montana Human Rights Act

(12) "Person" means one (1) or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees, employers, employment agencies, or labor organizations.

### Fair Housing Act

[§ 801] § 801. Discrimination in the sale or rental of housing.—As made applicable by section 803 and except as exempted by sections 803(b) and 807, it shall be unlawful—

### Montana Human Rights Act

§ 806. Discriminatory practices described and prohibited.

(3) It is an unlawful discriminatory practice for the owner, lessee, manager or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

### Fair Housing Act

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

### Montana Human Rights Act

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, religion, color, age, physical or mental handicap, or national origin, except when the distinction is based on reasonable grounds;

### Fair Housing Act

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

### Montana Human Rights Act

(b) to discriminate against a person because of sex, race, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of a housing accommodation or improved or unimproved property, except when the distinction is based on reasonable grounds; or

(9) Any grounds urged as a "reasonable" basis for an exemption under any section of this act shall be strictly construed.

### Fair Housing Act

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

No comparable Montana provision

### Fair Housing Act

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

No comparable Montana provision

### Fair Housing Act

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin. [42 U.S.C. 2004]. (Last amended by Housing and Community Development Act of 1974.)

No comparable Montana provision

### Montana Human Rights Act

(c) to make a written or oral inquiry or record of the sex, race, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or improved or unimproved property, except when the distinction is based on reasonable grounds. A private residence designated for single family occupancy, in which sleeping space is rented to guests in the family home in which the landlord also resides, shall be excluded from the provisions of this act.

No comparable Federal provision

## Fair Housing Act

[§ 3605] § 3605. Discrimination in the financing of housing.—After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 803(b). [42 U.S.C. 3605]. (Last amended by Housing and Community Development Act of 1974.)

## Montana Human Rights Act

(4) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance to permit an official or employee during the execution of his duties to discriminate against the applicant because of sex, marital status, race, religion, age, physical or mental handicap, color, or national origin in a term, condition or privilege relating to the obtainment or use of the institution's financial assistance unless based on reasonable grounds.

## Fair Housing Act

[§ 3606] § 3606. Discrimination in the provision of brokerage services.—After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, or national origin. [42 U.S.C. 3606] (Last amended by Housing and Community Development Act of 1974.)

No comparable Montana provision

## Fair Housing Act

[§ 8061] § 811. Investigations; subpoenas; giving of evidence.—(a) In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: Provided, however, That the Secretary first complies with the provisions of the fourth amendment relating to unreasonable searches and seizures. The Secretary may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

(b) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

(c) Witnesses summoned by subpoena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

(d) Within five days after service of a subpoena upon any person, such person may petition the Secretary to revoke or modify the subpoena. The Secretary shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(e) In case of contumacy or refusal to obey a subpoena, the Secretary or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Secretary, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct

entries in such reports, accounts, records, or other documents, or shall willfully mislead, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(g) The Attorney General shall conduct all litigation in which the Secretary participates as a party or as an interested party to this Act. (42 U.S.C. 811)

## Montana Human Rights Act

64-308. Complaint--how filed---by whom. (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this act. The complaint shall be in the form of a written, verified complaint stating the name and address of the person alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention. A complaint under this act must be filed with the commission within one hundred eighty (180) days after the alleged unlawful discriminatory practice occurred or was discovered. Any complaint not filed within the time set forth herein may not be considered by the commission.

(2) The staff shall notify the commission in writing of all complaints filed with the commission. The commission shall meet a minimum of four (4) times a year to hear and act upon all complaints filed. In addition the commission may appoint hearing examiners to hear contested cases and petitions for declaratory rulings.

(3) At any time after a complaint is filed under this act, alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs, or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint. The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond fourteen (14) days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

(4) The commission staff shall informally investigate the matters set out in a filed complaint promptly and impartially. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

(5) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission shall cause written notice to be served together with a copy of the complaint, requiring the person, employer, business, corporation or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission. The hearing shall be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, employer, business, corporation, organization, agency or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant or by an attorney representing the complainant. The hearing and any subsequent proceedings under the act except as permitted under section 64-310 shall be held in accordance with the Montana Administrative Procedure Act.

(6) The commission may make provision for defraying the expenses of any indigent party in a contested hearing held pursuant to this act.

64-313. Powers of commission--subpoena. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths and in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter either under investigation by the commission or in question before the commission. The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.

(2) Subpoenas issued pursuant to this section may be enforced as provided in section 82-4220 of the Montana Administrative Procedure Act.

## Montana Human Rights Commission Procedural Rules

24-3.3(2)-P9040 Pre-hearing; Complaint, service of notice of filing. Within ten (10) days after the filing of a complaint, the bureau shall furnish the respondent with a notice thereof by mail or in person (including the date, place and circumstances of the alleged unlawful discriminatory practice).

## Fair Housing Act

[REDACTED] § 810. Enforcement.—(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c), the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

(b) A complaint under subsection (a) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title, the Secretary shall notify the appropriate State or local agency of any complaint filed under this title which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c), the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this title, insofar as such rights relate to the subject of the complaint. Provided, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title. Such actions

shall be

may be brought without regard to the amount in controversy in any United States district court for the district in which the alleged discriminatory housing practice is alleged to have occurred or in which the person or persons to be respondent resides or to whom it is business. If the court finds that a discriminatory housing practice has occurred or is about to occur, it may, in addition to the provisions of section 812, (1) enjoin the respondent from engaging in such practice or order such affirmative actions as may be appropriate.

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(f) Whenever an action filed by an individual in either Federal or State court, pursuant to this section or section 812, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance. [42 U.S.C.

## Montana Human Rights Act

64-308

(3) At any time after a complaint is filed under this act, alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs, or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint. The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond fourteen (14) days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

64-309. Power of commission of finding of discrimination. (1) If the commission finds that a person against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, it shall order him to refrain from engaging in the discriminatory conduct. The order may:

- (a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;
  - (b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;
  - (c) require a report on the manner of compliance.
- (2) The order may not require the payment of any punitive damages as defined by the Revised Codes of Montana.

(3) If the commission finds that a person against whom a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

(4) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time shall be no more than three (3) years.

64-310. Injunction to enforce commission order. If the commission's order is not obeyed, the commission staff shall petition the district court in the county where the discriminatory practice occurred or in the county where the respondent resides or transacts business to enforce the commission's order by injunction.



## Fair Housing Act

**§ 803. Enforcement by private persons.—**(a) The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: Provided, however, That the court shall continue such civil case brought pursuant to this section or section 810(d) from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: And provided, however, That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunctions, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: Provided, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees. [42 U.S.C. 3612]

## Montana Human Rights Act -- Code of Fair Practices

64-329. Remedies. (1) Any person claiming to be aggrieved by a violation of any provision of this act may file a complaint for redress of the violation with the commission for human rights and upon filing that complaint may, in addition, petition the district court in the district where the complainant resides or where the alleged violation occurred for appropriate relief, and the court may grant such relief, by injunction or otherwise, as it considers appropriate. Commencement of the administrative remedy does not preclude the judicial remedy.

(2) Actions under this section are original actions.

~~Judiciary~~ COMMITTEE

BILL

# VISITORS' REGISTER

DATE \_\_\_\_\_

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

**SUPPORT | OPPOSE**

Moe

AP

Montgomery River Comm.

222

CONFIDENTIAL

University of Montana