MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 20, 1987

The forty-seventh meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 20, 1987, by the Chairman, Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 393: Representative Earl Lory, House District 59, introduced HB 393, which is by request of the Department of Labor and Industry and revises the procedures for removal of Human Rights Commission cases to district court. (Exhibit 1)

PROPONENTS: Anne MacIntyre, Human Rights Commission testified for the passage of HB 393. (Exhibit 2)

Leroy H. Schramm, Chief Legal Counsel for the Montana University System, supported the bill and presented an amendment and rationale for the amendment. (Exhibit 3) He stated Rep. Lory agrees with the amendment.

Fredrick Sherwood, representing himself, testified in support of the bill with all the amendments. He stated he strongly supports the "sue letter" part of the bill.

Ann Brodsky, Women's Law Caucus, said the Caucus supported the bill but did not care for some of the amendments the House added to the bill. She said on page 2, lines 17-19, which were stricken, is a provision that is part of the Human Rights Commission. She said it makes the process a great deal easier and informal with the provision in. She said on page 2, lines 3-5, the original language was preferable because a party should not benefit from its own wrong doings.

OPPONENTS: There were no opponents.

DISCUSSION ON HOUSE BILL 393: Senator Mazurek inquired how 2(c) on page 2 has a notice of hearing. Ann MacIntyre replied that the hearing examiner schedules a hearing after a notice of hearing is issued. She said the investigation process has to be completed before a notice of hearing can be issued.

Representative Lory closed the hearing on House Bill 393.

CONSIDERATION OF HOUSE BILL 400: Representative Rex Manuel, House District 11, introduced HB 400, which amends the laws relating to rules of the Human Rights Commission as they relate to age discrimination in housing. (Exhibit 4) Rep. Manuel explained the actions by the House Judiciary and said he did not agree with the rule which the House put back in the bill (24.9.1107), so he offered amendments to the bill. (Exhibit 5 and 5A)

PROPONENTS: Representative Dorothy Cody, House District 20, testified in support of the bill. She felt the House amended discrimination into the bill. She would like the bill the way it was presented in the first reading, and if it is not changed back to the original form, she would want to be recorded as an opponent.

Larry Witt, Bozeman Landlord's Association, supported the bill. (Exhibit 6)

Brian McCullough, Helena Landlord's Association, supports the bill. (Exhibit 7)

Jane Wester, realtor, testified in support of the bill because she is a single mother with children. She said several rentals that don't want children, have good reason not to, because of high balconies or many stairs. She said liability plays a big part in certain rentals.

OPPONENTS: Lois M. Durand, a rental manager, opposed HB 400. (Exhibit 8)

Jerry Croteau, representing himself, opposed the bill. (Exhibit 9)

JoAnne Peterson Thun, Bozeman Housing Coalition, opposed the bill. (See witness sheet) She also presented written testimony to the committee for Joyce M. Ridgway of Gallatin Manor in Bozeman (Exhibit 10), and Richard Miller, Bozeman. (Exhibit 11)

Anne Moylan, representing the Montana Catholic Conference, opposed HB 400. (Exhibit 12)

Thelma Leibman, Fogarty Apartments, Butte, Montana, opposed the bill. (Exhibit 13)

Mary Jean Golden, Bozeman Housing Coalition, testified against HB 400. (See witness sheet)

Sandy Chaney, Women's Lobbyist Fund, opposed HB 400. (Exhibit 14) She also presented written testimony of Mary Gibson, AAUW, who also opposed the bill. (Exhibit 15)

Marcia Youngman, Bozeman Housing Coalition, opposed HB 400. (Exhibit 16) She also presented letters from landlords and renters who oppose the bill. (Exhibit 16A-12 letters)

Bonnie Stefanac, Butte 4-C's, testified against the bill.

Chester Kinsey, Montana Senior Citizens and Montana Low Income Coalition, opposed the bill.

Martha L. Onishuk, Missoula Legislative Chair, League of Women Voters, opposed HB 400. (Exhibit 17)

DISCUSSION ON HOUSE BILL 400: Senator Halligan asked the status of the rule. Anne MacIntyre said the rule, 24.9.1107, was adopted by the commission, however, the commission gave the rule an effective date of July 1, 1987 in order to give the legislature a chance to look at this issue. Senator Halligan asked what kind of public testimony did the Human Rights Commission receive. Ms. MacIntyre stated about the same kind of input seen here today. She said federal government has interpreted federal law like House Bill 400.

Senator Beck inquired how far the rule goes. Anne MacIntyre said there is a policy list with sex, religion, race, education, etc., which sets guidelines for renters.

Senator Mazurek questioned what section 2 does. Anne MacIntyre replied there is federal pre-emption in section 2 and section 3 addresses creating specialized facilites for senior citizens. Senator Mazurek asked why in section 3, a special facility can be created for the elderly, but not the young. Ms. MacIntyre replied senior citizens have specialized needs compared to young adults. Senator Mazurek questioned rentals that could be dangerous to

children is not one of the exceptions, why not. Anne MacIntyre felt it wasn't necessary for the Commission to make a laundry list of section 3.

Representative Manuel closed the hearing on HB 400.

CONSIDERATION OF HOUSE BILL 696: Representative Tom Hannah, House District 86, introduced the bill, which amends the law relating to judicial review of rulings of the Human Rights Commission. (Exhibit 18) He said the main part of the bill is on page 7, lines 10-21. He explained how one goes before the Human Rights Commission.

PROPONENTS: Brooks FitzGerald, Billings Neon Co., supported the bill. (Exhibit 19)

Oliver Goe, Billings Neon, testified in support of the bill because the current position of the hearing examiner gives him the power to decide, and after he decides on a case brought before the Commission, the person's case is stuck with that decision. He said the only grounds that can overturn the decision of the Human Rights Commission in a district court is there can't be anything in the record in support of the findings of the Commission.

OPPONENTS: Anne L. MacIntyre, Human Rights Commission, opposed HB 696. (Exhibit 20)

Margery Brown, Chair of the Montana Human Rights Commission, stated her opposition to the bill. (Exhibit 21)

John Sullivan, representing himself, said the Administrative Procedure Act is correct now. He explained the Act was created by the Legislature so administrative agencies would handle some of these cases. He said the Equal Employment Commission in Denver is who Montana lawyers will have to deal with if the legislature takes rights from the Human Rights Commission. He said he wanted to deal with people in Montana, not Denver. He said he didn't think it was a good idea to have exceptions in the Human Rights Commission process because it weakens their administrative ability to deal with cases that come before them. He felt the bill ruins the three step process to get to the Human Rights Commission and makes everyone start over again in district court. He felt the expense of this change will be drastic on the HRC. He said the length of the trial will be longer, thus making it more expensive. He felt there should be only one shot in court, not two. One in front of the district court and one in front of the Human Rights Commission is not fair.

Alan Joscelyn, lawyer in Helena, stated the HRC is not a party in case. He did not think a full district court trial was necessary.

Fredrick Sherwood, representing himself, opposed the bill.

Ann Brodsky, Women's Law Caucus, opposed HB 696.

Jack McLean, attorney in private practice in Helena, Montana, opposed the bill. (Exhibit 22)

Jeanne Close Wagner, Billings, Montana, stated her opposition to the bill. (Exhibit 23)

DISCUSSION ON HOUSE BILL 696: Senator Pinsoneault asked if a defendant has a chance to challenge anyone of the Commission. Ms. MacIntyre replied yes.

Senator Mazurek asked how many other Administrative Agencies have the power to handle disputes like the Human Rights Commission. Anne MacIntyre replied the Office of Public Instruction can, but she did not know about the rest. Senator Mazurek inquired what lengths the Commission goes to to make the hearing fair since the investigation and judgement come from the same people. Senator Mazurek said he has had complaints of investigators going into district court hearings and testify for either side as an expert witness. Anne MacIntyre responded the district court will subpoena an investigator to testify if an issue has come out of the Human Rights claim. She said an investigator has been used as an expert witness in the past. Senator Mazurek asked if it would be alright to broaden the ability to introduce evidence at the district court level. Ms. MacIntyre said the Administration Procedure Act provides that a party can introduce any evidence they can to show there was good cause for the failure to introduce it at the HRC level. Mr. Sullivan said it is very easy to lose the "good cause" rule when trying to enter new evidence or evidence not considered important at the agency level.

Representative Hannah closed the hearing on HB 696.

ADJOURNMENT: The meeting was adjourned.

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SENATOR JOE MAZUREK, Chairman

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 20th

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

COMMITTEE ON Judiciary

DATE March 20th

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Check One Oppose
Earl McLoy	Ref Dist 59	392	x	
Brian McCully	Helena-Landlords	HB400	X	
Sandy Chaney	Women's Lobbyist Fund	HB 400	[illegible]	X
Kathleen Harrington	American Assoc. of Univ Women	HB 400		X
Frederick F Sherwood	self	393	X	
Frederick F Sherwood	self	696		X
Jim Reynolds	self	696		X
Jim Reynolds	self	393	X	
Chuck Kmen	MLIC	HB 400		X
Sue Romney	MT University System	HB693		X
"	"	HB 393	X with amendment	
Maria [illegible]	Boze Housing Coalition	HB 400		X
Margy H. Brown	6000 Wildcat Road	HB696		X
JoAnne Peterson Thun	BOZ. Housing Coal	HB400		X
Lois McDurand	211 No Idaho	H400		X
Thelma Liebman	1115 S. Wyoming	400		X
Mary Ellen Holden	Bozeman Housing Coalition	HB400		X
Jerry Costean	Montana's Children	HB400		X
Bonnie [illegible]	Butte 4-C's	HB 400		X
M. B. [illegible]	Billings Neon	HB696	X	
John Sullivan	self	HB 696		X
Eleanor [illegible]	Self [illegible]	HB 400		X
Anne Moylan	Mt Cath Conf			X
Jane Weston	Realtors - mothers	HB 400	X	
Ann Brodsky	Women's Lobbyist Fund / Women's Law Caucus	HB 393	X	
"	"	HB 696		X

(Please leave prepared statement with Secretary)

DATE March 20th

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ann Mac Intyre	Human Rights Comm	393 696	✓	✓

(Please leave prepared statement with Secretary.)

SENATE JUDICIARY
EXHIBIT NO. 1
DATE March 20, 1987
BILL NO. HB 393

SUMMARY OF HB 393 (LORY)
(Prepared by Senate Judiciary Committee staff)

HB393 is by request of the Department of Labor and Industry and revises the procedures for removal of Human Rights Commission cases to district court.

Section 1. Amends 49-2-509 dealing with "Filing a complaint in district court" [as the discrimination statutes apply to private persons]. **Under current law,** a case can be removed from the HRC if if the HRC can not hold a contested case hearing within 12 months or 180 days have elapsed since the complaint was filed and the efforts of the commission staff to settle the complaint after informal investigation have failed. **This bill** provides that a case can be removed to district court if the HRC hasn't had a contested case hearing and 12 months have elapsed since the complaint was filed. However, under the bill, the HRC staff could refuse to permit removal if: a) the party requesting removal has refused to obey a lawful subpoena issued in the investigative process; b) the party has waived the right to request removal; c) more than 30 days have elapsed since service of notice of hearing, unless the commission fails to schedule a hearing to be held within 90 days of service of notice; d) the party has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint. **The bill** also provides that the HRC staff can dismiss a complaint and allow filing in district court if: a) the commission lacks jurisdiction; b) the complainant fails to cooperate or fails to keep the staff advised of changes of address; or c) allegations in the complaint are not supported by substantial evidence as determined by the commission staff.

Section 2. Amends 49-3-312 dealing with "Filing a complaint in district court" [as the discrimination statutes apply to the government]. **The bill** makes similar changes as described above in the Governmental Code of Fair Practices.

Section 3. Extension of authority.

Section 4. Effective on passage and approval and applies to cases pending before HRC as well as to cases filed in the future.

COMMENTS: None.

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SENATE JUDICIARY
EXHIBIT NO. 2
DATE March 20 1987
BILL NO. HB 393

TESTIMONY OF ANNE L. MacINTYRE, ADMINISTRATOR

HUMAN RIGHTS DIVISION IN SUPPORT

OF HOUSE BILL 393

Representative Lory has introduced House Bill 393 at the request of the Human Rights Commission. The purpose of the bill is to revise procedures for removal of Human Rights Commission cases in light of a recent state supreme court decision interpreting the removal statute.

The Human Rights Act (Title 49, Chapter 2) and the Governmental Code of Fair Practices (Title 49, Chapter 3) require that for all complaints filed with the Commission, the Commission must conduct an investigation and hold a contested case hearing. Removal to district court is permitted if these steps are not completed within certain time frames. The court interpreted the statute to mean the time limit for completion of cases filed with the Commission is 12 months and regardless of the reasons for delay, it a party requests removal of a case to district court after 12 months have elapsed, the Commission loses jurisdiction. We feel that such an interpretation creates a significant inequity in some cases, particularly those cases in which the failure of the respondent to cooperate is the cause of the delay. In addition, the Commission has experienced problems when a party fails to request removal until the eve of the hearing. By this time, the Commission has usually invested significant resources in preparing the case for

hearing, in ruling on prehearing motions and preparing a prehearing order. It is out belief that a party wishing to elect removal to district court should have to exercise that election expeditiously when the case is certified for hearing to avoid unnecessary governmental expense.

House Bill 393 solves these problems by adding a new subsection (2) to both section 49-2-509 and 49-3-312, MCA. Those subsections are identical in each statute and establish fairly limited exceptions for denial of removal to district court even if 12 months have elapsed.

House Bill 393 also adds some provisions to both sections 49-2-509 and 49-3-312, MCA, which permit the Commission staff to dismiss cases on its own motion and permit them to be pursued in the district court. This is set forth as new subsection (3) to both sections 49-2-509 and 49-3-312, MCA. We believe such a provision will give us the ability to better manage our caseload by allowing us to dismiss cases over which we clearly lack jurisdiction, or in which the complainant fails to cooperate, or for which the staff has determined, after investigation, that the allegations of the complaint are not supported by substantial evidence.

The bill also sets up an appeal procedure if a party disagrees with a Commission staff determination to refuse to permit removal or to dismiss a case.

One concern that was raised in the House Judiciary Committee over House Bill 393 was that the bill increased

the amount of time for the Commission to complete the administrative process from 180 days to 12 months. I would emphasize that the bill does not do this. The time limit in the present law is 12 months. House Bill 393 merely eliminates the 180 day limit on investigation and conciliation, but returns the 12 month limit on overall case processing. The Commission merely felt that the 180 day period was somewhat artificial in light of the Supreme Court decision.

With those comments, I request that you recommend that House Bill 393 be concurred.

THE MONTANA UNIVERSITY SYSTEM
33 SOUTH LAST CHANCE GULCH
HELENA, MONTANA 59620-2602
(406) 444-6570

SENATE JUDICIARY
EXHIBIT NO. 3
DATE March 20, 1987
BILL NO HB 393

COMMISSIONER OF HIGHER EDUCATION

OFFICE OF LEGAL COUNSEL

TO: Senate Judicary Committee

FROM: LeRoy H. Schramm
Chief Legal Counsel

DATE: March 20, 1987

RE: HB 393

Because I must testify before another Senate committee at the same time HB 393 is heard, I would like to express my support of HB 393 in writing. The University System has numerous cases before the Human Rights Commission at any one time, and we therefore have a great interest in orderly procedures before the commission that end in a decision that is due some legal deference. We support the bill as amended by the House, but we do propose one additional amendment as shown and explained on the attached sheet.

Attachment

Amend HB 393 as follows:

Page 4, between lines 5 and 6, add a new subsection to read as follows:

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

Page 6, between lines 24 and 25, add a new subsection to read as follows:

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

Page 1, line 7, after "COURT;" add:

"CLARIFYING THE EXCLUSIVE NATURE OF REMEDIES AVAILABLE FOR DISCRIMINATION."

Rationale: On February 23, 1987, the Montana Supreme Court decided the case of Drinkwalter v. Shipton. Under the holding of that case, persons alleging acts that violate the discrimination provisions of the Human Rights Act and the Governmental Code of Fair Practices need no longer vindicate their rights under the provisions of these acts. Rather, they are allowed to completely bypass the administrative procedures set up by statute and go directly to court alleging tort theories of recovery grounded on the individual dignities clause of the constitution. This amendment would make clear that the statutory procedures for discrimination are exclusive remedies and cannot be bypassed.

SENATE JUDICIARY
EXHIBIT NO. 4
DATE March 20, 1987
BILL NO. HB 400

SUMMARY OF HB400 (MANUEL)
(Prepared by Senate Judiciary Committee staff)

HB400 amends the laws relating to rules of the Human Rights Commission as they relate to age discrimination in housing. **Current law** prohibits age discrimination in housing (Section 49-2-305, MCA). This statute has been interpreted by the HRC in rules as prohibiting property owners from refusing to sell, lease, or rent to people with children. **The bill as originally drafted** would have required legislative approval of any HRC rule implementing 49-2-305. **As amended by the House, the bill now** amends 49-2-305 to specifically provide that the statute does not prohibit an owner, lessee, manager, or other person from refusing to sell, lease, or rent property to a person or persons with a child or children. Effective on passage and approval.

COMMENTS: None.

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SENATE JUDICIARY
EXHIBIT NO. 5
DATE March 20, 1987
BILL NO. HB 400

Amend House Bill 400, Third Reading Copy (blue)
Rep. Manuel

1. Title, line 9.
Strike: "PROVIDING THAT"
Insert: "REPEALING THE ADMINISTRATIVE RULE THAT PROHIBITED"

2. Title, lines 11 and 12.
Strike: "MAY" on line 11 through "REFUSE" on line 12.
Insert: "FROM REFUSING"

3. Title, line 14.
Strike: "AMENDING SECTION 49-2-305, MCA"
Insert: "REPEALING RULE 24.9.1107 ADMINISTRATIVE RULES OF MONTANA"

4. Page 1, line 16.
Insert: "WHEREAS, the Legislature finds that Rule 24.9.1107 Administrative Rules of Montana directly conflicts with the public policy expressed by the Legislature."

5. Page 1, line 19 through page 4, line 8.
Strike: Section 1 in its entirety
Insert: "Section 1. Repealer. Rule 24.9.1107 Administrative Rules of Montana, is repealed."

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the following changes:

24.9.1107 REAL PROPERTY TRANSACTIONS; AGE DISCRIMINATION. (1) Section 49-2-305(1), MCA, which prohibits discrimination in housing on the basis of age shall cover refusal to sell, rent or lease a housing accommodation or improved or unimproved property because of the age of a person residing with the buyer, lessee, or renter.

(2) Restricting sale, rental or lease of a housing accommodation to persons of a certain age group or requiring that persons residing with the buyer, lessee, or renter in the housing accommodation belong to a certain age group when such accommodation is authorized, approved, financed, or subsidized in whole or in part for the benefit of that age group by a unit of the federal government shall not constitute a violation of subsection (1).

(3) Restricting sale, rental, or lease of a housing accommodation with specialized facilities, services, or environment to the specific age group requiring those specialized facilities, services, or environment shall not constitute a violation of subsection (1).

(4) The effective date of this rule is July 1, 1987.

SENATE JUDICIARY
EXHIBIT NO. 5A
DATE March 20, 1987
BILL NO. HB 400

SENATE JUDICIARY
EXHIBIT NO. 6
DATE March 20, 198
BILL NO. HB 400

TESTIMONY IN SUPPORT OF HOUSE BILL 400

From: Bozeman Landlord's Association

To: The Judiciary Committee

Mr. Chairman, members of the committee, my name is Larry Witt, and I reside at 1601 West Olive in Bozeman. I am president of the Bozeman Landlords' Association. Our Association is supporting HB 400.

We feel that Human Rights Commission Rule 24-9-1107 is both vaguely written and lacking in some important exemptions. In an age of increasing litigation such vague language will only breed more lawsuits. Just what constitutes age discrimination needs to be spelled out in detail. Many questions exist with the rule as it is written: such as, "Is allowing a maximum number of people to live in an apartment permitted?" I have allowed only two people in some of my apartments and advertise that only two people are permitted. I have rented to a single parent with a child but not to a couple with a child. Is this discrimination? I like to keep the wear and tear to a minimum, and keep the noise level down. In a college town I have found this to be a necessary practice. Would it now be illegal?

If two sets of tenants want to rent an apartment and their qualifications are equal, I would prefer a couple over a couple with a child. One less person means less noise and less wear and tear. Is this discrimination?

An exemption is clearly needed when a condition exists where something on or a part of the property is considered safe for adults, but not for children. We have laws setting minimum ages for driving, for drinking, and for voting because of the maturity needed to do these things. Age and more specifically maturity are important factors to a landlord in selecting his tenants.

As an example, an outside staircase and deck may be safe for an adult but would be dangerous for a child to play on. The landlord can tell them not to play on the staircase or deck. The parents can tell them not to play, but... some will still play on them. And... when the child falls and gets hurt, the parents will sue the landlord, and the attorney for the child will argue that the child lacked the maturity to know better... and thus the landlord will be at fault.

Outside decks, and open lofts, swimming pools, and duck ponds, and meandering streams might be considered wonderful amenities in an apartment complex, but they also pose potential danger to small children. <u>The landlord needs the right to determine how much risk he is willing to take and set his own guidelines and age limits for children.</u>

SENATE JUDICIARY
EXHIBIT NO. 7
DATE March 20, 1987
BILL NO. HB400

Testimony in Support OF HB 400

From: Helena Landlord Association

Mr. Chairman, Members of the Committee, my name is Brian McCullough. I reside at 2537 South Ridge, Helena Montana. I am president of the Helena Chapter of the Montana Landlords' Association. Our Association Supports HB 400.

First I would like to say that during this discussion you will undoubtably here of good and bad tenants as well as good and bad landlords. Neither of which is the real issue.

Issues are: Property Rights

Property Risk

Liabilty

Economic growth

Law enforcement

Property Rights Those who own property have a right to quietly enjoy their property however they see fit as long as it is law abiding. This includes recreation as well as free enterprise. This also includes having a choice on who may utilize it with them. Whether it is permission to hunt or permission to rent an apartment.

Property Risk Those who choose to own property have chosen to accept the risk of gain or loss associated with the right to own property. I ask you, when an apartment is vacant what group of tenants are going to collect donations to help cover the mortgage payments in such a case. Right now there are over 100 vacant apartments in Helena and that is with the Legislature in Session. He who takes the risks must be allowed to chose who can use his property.

Liability When disaster, or just normal maintenance strikes and the result is huge bills who has to pay? The landlord is responsible after the tenant leaves. Even if damage is the tenants fault, if that tenant has no funds the ultimate loss is owned by the landlord.

Economic Growth It has been said that tourism or agriculture is the largest industry in the state. When you look around various communities in Montana and see all the 4 plexes just imagine the total investment when you figure $75,000 to $180,000 per building. I'm sure you would find landlords as a group are right up there in the amount they have invested in Montana. They believe in Montana! When new business comes into the state and it will again, who provides the capital and the guts to take a chance and risking 100s of thousands of $ in housing for those new people. Its landlords in concert with Montana Bankers.

HB 400 - Brian McCullough

SENATE JUDICIARY
EXHIBIT NO. 7
DATE March 20, 1985
BILL NO. HB 400

Enforcement If you feel that landlords should not have the choices afforded by HB 400, and see fit to vote against HB 400, I ask you how will these administrative rules that will soon be in effect be enforced?

The only guidance for both the landlord and the tenant to know if discrimination is ocurring was given by the commission in their notice of adoption of rules. It states that"A landlord who is concerned about excessive noise or damage to rentals may protect his property by using good management practices, such as requiring tenants to provide references. However if references are required they should be require of all tenants, not merely those with children.

What kind of guidance is that?

If you were me and called a previous landlord inquiring about potential renters and he said, "the kids were noisy that's why they are looking for another place" and you were to repeat that to a would be tenant what should you do? Is that just cause in their eyes to sue you for discrimination so they could demand the right to live in your apartment?

I suspect not.

Is asking a higher rent based on the number of persons discrimination based upon this rule?

If I build a complex of 50 units with 5 set aside for people with children is that discrimination or not. Again, I say where is the guidance to prevent needless lawsuits and tension?

Potential Future: Landlords, if pushed may chose to turn their nice units into condos leaving only poor quality housing for those who are left and can not afford to buy. This has happened in other states.

That would not be good for the tenant with children nor would it be good for the furture economic well being of this state.

Currently I have children in some of my units. If I have a choice I chose to not to rent to people without children based on common sense. It is generally cheaper.

Why?
Lower water bills
Lower utility bills
Less noise to irritate other tenants
Less mess from children's things lying around the units- on sidewalks
Less wear and tear on carpets, screens, doors, walls
Less follow up needed to touch up unit for next tenant

The commission says this is sterotyping. Well I ask you,how many times have you heard parents say. We won't get the new carpet or new furniture until either the kids are older or until the kids are gone.

In closing, I urge you vote for HB 400. Don't take away any rights of the people who take the risks, property owners. Thank you.

Butte Community Union
P.O. Box 724
Butte MT 59703
Telephone: 782-0670

Estela Villasenor, Board Chair
Tim Kearney, Director

March 20, 1987

TESTIMONEY

Lois M. Durand
home phone 782-5537
BCU phone 782-0670

SENATE JUDICIARY
EXHIBIT NO. 8
DATE March 20, 1987
BILL NO. HB 400

I was a manager from 1978-1984 in the 200 block on North Idaho St.in Butte. I managed 7 units. We have no discrimination against renting to parents with children. Children are our goal. We have more problems renting to adults because adults are more destructive than children sometimes. So you as a committee, please think about this and don't let our children live out on the streets. This is not fair to our children in Society. They were not asked to be brought into the world. Maybe some of you on the committee, that have children, understand the situation better than people that don't have children. I think this is awful to discriminate against Human Beings, meaning our children. So please be aware that you was a child growing up at one time. Also keep in mind how some of the parents with children feel when they are turned down no place to go. Are we just going to ignore this and let it go at that. Please have a conscience and reconsider this situation in a peace of mind and dignity.

Thank you

Lois M Durand (B.C.U. advocate)

Lois M. Durand

Jerry Croteau 3-19-87
Speaking out against H.B 400

Ladies + Gentelmen
My name is Jerry Croteau
I am apposed to house bill 400.
I feel that this bills runs counter to the Ideals of the Montana Human rights act of 1973.
The law as it stands prohibits discrimination based on age.
Fair Housing + ~~equal~~ equal opportunity Laws mean just that.
It is important that we preserve the children of Montana's right to grow up free of prejudices from law backed Biggotry.
Seneters it is your job as law Makers and stewards of our land to make laws worthy of the Ideals this country was founded on.
Children growing up in a unwanted environment is counter productive to a law abiding society.
Hatred + Bigotry festers in a child

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 3-20-87
BILL NO. H.B 400

until it becomes a part of that child

House Bill 400 deals a heavy blow to all our civil rights. A free land is only as free as the laws that govern it.

Landowners have many ways to screen and protect themselves from potentialy bad risk for their properties. This is their job and their own responcibilities.

House Bill 400 denies fair public access to rented properties

This is protectionism at the cost of our children's Birth right of a free society.

Let us help our young Americans bring their children up respecting our laws and respecting their own rights

Please Senators send a message to people everywhere,

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 3-20-87
BILL NO. H.B. 400

that Biggotry + Hatred will not be ~~once~~ embedded in Montana, by law

Vote no on House Bill #400

Thank you

Jerry Cotton

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 3-20-87
BILL NO. H.B. 400

NAME: JoAnn Peterson Thun DATE: 3-2087

ADDRESS: 519 ½ E. Lamme Bozeman

PHONE: 587-3791

REPRESENTING WHOM? Bozeman Housing Coalition member group of Montana Low Income Coalition

APPEARING ON WHICH PROPOSAL: HB 400

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: Please don't pass this bill because it violates Article 3 section 11 of the Procedural rules. The reason why it does this is that the amendment changes the purpose of the bill.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY
EXH'BIT NO. 10
DATE 3-20-87
BILL NO. H.B. 400

I am very angry about the discrimination to children in housing. I personally have been discriminated against. Most people will let you have animals but not children. The Kids have rights to. Children can be taught to have respect for other people's homes. I am very upset about this; as I feel it is not right for the Government to say who can and who cannot rent to people with Kids. Many let you live there until the child is 6 months then you are out; where is the justice in this. Were these people born full grown or are the type that only care about the almighty dollar. These same people will rent to college students who, (I know by experience) cause more damage to a house, mobile home or apartment then

any 20 children I know. I feel this bill was passed unjustly and unfairly.

Jaya M Ridgway

March 19, 1987

SENATE JUDICIARY
EXHIBIT NO. 11
DATE March 20, 1987
BILL NO. HB 400

Dear Senators of the Judiciary Comm.

I am writing this letter concerning people who will not accept children as a condition when they rent to people.

My wife and I have run into this on a few occasions. One person in Great Falls had a nice 3 bdrm. house with a nice yard. This person was all ready to rent to us until she found out we had children. She was willing to allow us to have a cat and dog, but no children. To me, this is discrimination. If people are willing to rent, it should be to anyone regardless of race, creed, color, or size of family; depending on the size of the dwelling.

My family and I are asking you to vote no on H.B. 400. As times are getting tougher, we really

do not need any more obstacles to make things harder, as times are hard enough as it is

Thank You,
Richard L. Miller
802 N. Grand #219
Bozeman, Mt.

Montana Catholic Conference

March 20, 1987

CHAIRMAN MAZUREK AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

I am Anne Moylan representing the Montana Catholic Conference.

The U.S. Congress declared in the Housing Act of 1949, Section 2, that "The housing polic of this country...is a decent home in a suitable environment for every American family." The Catholic Bishops in 1975 issued a statement on housing entitled: The Right to a Decent Home. In it they pointed out the disproportionate suffering from lack of housing by certain groups in our society. Although it has been more than a decade since the Bishops' statement was issued their observations about the disproportionate suffering of the poor, the elderly, and women are still relevant today.

H.B. 400 would seem to encourage housing discrimination toward children. We would ask you to vote "no" on H.B. 400.

SENATE JUDICIARY
EXHIBIT NO. 12
DATE March 20, 1987
BILL NO. HB 400

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

3/20-87 Testimony
Thelma Leibman

SENATE JUDICIARY
EXHIBIT NO. 13
DATE March 20, 1987
BILL NO. HB 400

I Thelma Leibman, owned ~~op~~ the 70 party pts in Butte, Mt; at 2208 6th Ave & for 6 yrs I rented to families and I did not have any problems with any children - but I had trouble with grown ups, they were destructive, they would steal stuff & Break up Stuff in the apts I would rather rent to people with children than one adult, Sometimes children have more sense than adults I still clean apts when people move out, the way some of the apts look is a disgrace, So please before you take on drastic steps always keep in mind that you were a child at one time. ~~also~~ also our children are our future Generations Thank you

Thelma Leibman

NAME: Mary Ellen Golden DATE: 3-30-87

ADDRESS: P.O. Box 92, Manhattan MT.

PHONE: 284-6406

REPRESENTING WHOM? Bozeman Housing Coalition

APPEARING ON WHICH PROPOSAL: HB 400

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: Indians of Mont. put retirement home near school, "Without the Children We die" promotion of selfishness. If Children do not grow up near some groups such as senior citizens why would they want to help care for them when these Children grow up & become tax payers.

Who makes sure landlords do not claim damage to their housing due to Children even when they only rent to people considered more careful.

Personal experience - lived next to retirement home in Butte. People really missed their pets - brought them to mine - came out to teach my child how to fly a kite. asked about my child when she was gone for a week. There is a lot of difference between saying "I don't want Children to bother me and spending years isolated from Children.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

01

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

20 March 1987

SENATE JUDICIARY
EXHIBIT NO. 14
DATE March 20, 1987
BILL NO. HB 400

Testimony in opposition to HB 400

Mr. Chairman and members of the committee:

My name is Sandy Chaney. I am here today on behalf of the Women's Lobbyist Fund to express our opposition to House Bill 400. In the fall of 1985, the WLF adopted a Women and Families Economic Agenda for the 1987 Legislature. This bill falls within the principles of that agenda because its intent is to limit the availability of housing options to families with children.

The Montana Human Rights Act prohibits discrimination on the basis of age. Unlike the federal laws that prohibit age discrimination, the Montana Act does not limit to older persons the categories of those protected by the Act. The prohibitions against age discrimination cover persons of any age, young as well as old.

In keeping with the spirit of the Human Rights Act, housing accomodations should not be limited on the basis of age. Restricting the housing that is available to single mothers or families with small children, merely because of the age of the children, blatantly violates the very purpose of the Human Rights Act. Individuals should be treated as individuals. They should not be judged on the basis of a particular classification such as age. Landlords may screen potential tenants for their compatibility with the leasing requirements imposed by the landlord. However, some classifications on which to base tenancy restrictions are not permissible in the Human Rights Act. Age is one of these categories.

Individuals under 18 years of age have the same basic rights as adults do, as provided by the Montana Constitution, Article II, Section 15. Youth have a right, for example, to the pursuit of life's basic necessities; they have a right to a clean, healthy, environment. This bill which proposes to deny the very basic necessity of housing to families with children, this bill which might force low-income families into substandard housing, must compell us to question its constitutionality.

Women's Lobbyist Fund opposes HB 400 for yet another question regarding its constitutionality. As it passed through the House, this bill was severely amended. Compare the introduced version of the bill with the amended version. Has the intent of the bill been altered? The Montana Constitution (Art. V, Sec. 11 (1)) states that "a bill. . . shall not be amended on its passage through the legislature as to change its original purpose. . . ." Can we legally consider this bill?

here are obvious problems with House Bill 400. We urge the committee to give this bill a "do not pass" recommendation. Thank-you.

AMERICAN ASSOCIATION of UNIVERSITY WOMEN

MONTANA DIVISION

SENATE JUDICIARY
EXHIBIT NO. 15
DATE March 20, 1987
BILL NO. HB 400

March 20, 1987

Dear Chairman Mazurek and Members of the Judiciary Committee:

The Montana Division of the American Association of University Women recognizes the importance of the Human Rights Commission and the Division opposes any attempt to weaken the authority of the Commission.

Sincerely,

Mary Gibson by KBH

Mary Gibson
AAUW Montana Division President

Please Vote No on HB 400

SENATE JUDICIARY
EXHIBIT NO. 16
DATE March 20, 1987
BILL NO. HB 400

March 20, 1987

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE ON H.B. 400

fr: Marcia Youngman, Bozeman Housing Coalition

My name is Marcia Youngman. I am a member of the Bozeman Housing Coalition, former housing consultant to the City of Bozeman, and I have worked on housing issues for seven years at the local and state level.

The Montana Human Rights statute on housing prohibits age discrimination. Refusal to rent to families because of their children is age discrimination as certainly as refusal to rent to senior citizens. The Montana statutory definition of age includes children. Furthermore, Article II of the Montana Constitution says that all persons have an inalienable right to a "clean and healthful environment." By amending the Human Rights statute on housing to allow discrimination against children, you are limiting their right to one of the most basic necessities, safe housing.

As we understand it, H.B. 400 as it now reads violates Article V, Sec. 11 of the Constitution as well, which prohibits amending a bill in its passage through the legislature in a way that changes its original purpose. The original purpose of this bill was not to encourage discrimination against children, just to make it more difficult for the Human Rights Commission to act on the subject in a policy way. The Commission could still have investigated cases individually, and with legislative approval, could have set policy on child discrimination.

We originally requested the Human Rights Commission administrative rule on this subject to make a clear statement to Montana landlords that to refuse to rent to families is discriminatory and illegal. The rule as drafted did not expand on the law as it read at that time; it just provided a needed clarification to correct a statewide pattern of discrimination against Montana's families.

Changing the law to make discrimination against families with children legal in housing would make an unfortunate anti-family statement at a time when Montana families are struggling to make ends meet and need no further stumbling blocks put in their way. Safe, affordable housing for families is very limited, especially for low and moderate-income families. When landlords are allowed to ban children from housing, so many of them do so that family housing becomes almost impossible to find in a number of Montana communities. Families sometimes look for months and may end up in substandard, over-priced housing as the only available option. The greatest hardship is caused to single parent families supported by one low-wage job.

Landlords claim that children are noisy and hard on property, but this has never been documented that this is more true of children than any other class of people. To assume that any family will be a difficult tenant is discriminatory. Landlords have the recourse of eviction and use of security deposits to clear up problems tenants actually cause. And there are other options open as well, such as rules about quiet and dividing floors or wings into adult and family sections in apartment buildings. Also, elderly and disabled units are exempted in certain circumstances.

It is important that the Human Rights Commission's authority to protect families from discrimination when renting or purchasing housing is not eliminated by the passage of H.B. 400. I urge you to oppose it.

SENATE JUDICIARY
EXHIBIT NO. 16A
DATE March 20, 1987
BILL NO. HB 400

406 N. Montana Ave.
Bozeman, MT 59715

September 23, 1985

To The Human Rights Commission:

Please find it necessary to act on the age discrimination issue at this time. As a young family (2 adults, 1 child) we ran into problems last year while trying to locate housing to rent.

One of our major discouragements came from reading the rental ads in the newspaper and on bulletin boards that stated "no children or no pre-school children." We were even turned down from a rental because the landlord was "concerned" about our one year old son.

Being a responsible family, paying our bills and supporting our community we would like to be freed of this aspect of child discrimination. We wish you would act <u>now</u> to eliminate this unnecessary problem for us and other families looking for rentals.

Thank you for listening.

Sincerely,

Kris Zimmermann

SENATE JUDICIARY
EXHIBIT NO. 16A
DATE March 20, 199
BILL NO. HB 400

The Montana Human Rights Commission:

As a single parent and head of a household, I ask that The Montana Human Rights Commission consider the rights of the children of Montana. I have personally known the frustration of searching for a rental home for myself and my daughter, a frustration that is amplified considerably when most of the advertisements specify "No children. No pets." Simply because my child is seven rather than 27, she is considered an undisciplined and basically destructive animal. . .or so it seems after a day on the phone searching for a place to rent.

While some landlords have explained their decision to me, by far the most common responce is simply, "I don't rent to children." Case closed. I doubt that any landlord will be brazen enough to say that they didn't rent to the elderly, or to blacks, or to people between the ages of 19 and 30, but children seem to be easy to exclude. Unfortunately, there seems to be a growing bias throughout our culture against children. Frankly, the law seems to condone such behavior. It may be that many adults are aware that they need never fear that they will be in the same position; in the meantime, children --and families as a whole--suffer.

How real is that suffering? I and my daughter have lived in substandard housing most of her young life. This was the direct result of economic preasure (I am the sole wage earner) and the fear that if we left the place where we were living I would not be able to find anything else. So we have lived with broken windows in the winter, with electrical wiring that wasn't safe, with plaster falling from the walls and ceiling. We are lucky right now, I and she were invited to housesit for the coming year, but next July the whole story begins again. I hope that the commission will act before then.

Thank you.

Blythe Nelson-Daniels
819 W. Beverly

To: Human Rights
Helena, MT

From: Iris Serrano
P.O. Box 1411
Belgrade, MT 59714

Sir or Madam:

I am writing to lend my support to the committee trying to change (re-interpret) the law regarding housing that doesn't allow children.

As a single parent, I found my choices were very limited, and housing that allowed children very scarce indeed. Given my particular circumstances, (2 children, low income) I found very few places to choose from.

Please examine this issue & give people who have children some choice. There are laws on age discrimination for the elderly, why not youngsters?

Sincerely Yours,

Iris Serrano

September 23, 1985

Housing Colition:

In the past, I know from experience, how difficult housing can be to obtain here in Bozeman. In fact, eight years ago when my husaband, myself and our daughter were looking for a place to rent, with the help of my parents we ended up buying a home instead of renting - there was just nothing available at that time.

Presently, I have just finished a two month long search for a house to rent. I am now single, have four children that age between two and ten and have a cat and dog. I started reading the newspaper adds, enrolled with the Gallatin Valley Rental Housing Agency and advertised for an apartment or house on the "Call - In" program on the radio, and did alot of searching by riding the streets looking for"For Rent" signs.

What I've run into seems to be the fact that a landlord prefers to rent out a house with three to five bedrooms for $100.00 per room to college students instead of renting that house out to a family unit at an affordable price. I'm talking between 250.00 and 400.00 per month.

I also have a handicapped child in a wheelchair and on at least two seperate occasions I can think of after preparing to rent a house or fourplex I was declined after finding they would need to provide a ramp for access to that dwelling. Not for that reason of course.

I also have pets. This was as big a strike against gaining a rental as four children can be.

I tried to obtain a two bedroom rental after realizing the three bedroom idea was too expensive. I was told each time after being asked how many children I had that the landlord would not permit that many children in the rental even though the bedrooms may have been very large.

I finally, thru seeking out realtors, rented a mobile home on a month to month basis. The owner is from out of town and did not want the home left empty during the colder winter months. I realize this is only a temporary situation and I will probably be back out looking for another rental in the next six months. I am paying $350.00 per month for an unfurnished three bedroom mobile home and feel very lucky I found it.

Sincerely,

Elizabeth Lyles

Elizabeth Hodder Lyles

Human Right Commission:

Wanda McBEATH
105 Peach #D Boz. Mt
59715

THis letter here is to tell you now that thier is a problem for housing in Boz. Rent is too high & or children not allowed. I was involved where I was and felt that I was being discriminated for not knowing the landlord for low housing. thier are People in thier that I THink Should not be thier. When I am working for a Place I cant afford with two Small children. It is not adequate housing for Sinle mother or Father

Wanda McBeath

from [illegible]
1018 Toole av Missoula MT
[illegible]-4447

To Whom it may Conserm

I would like to tell you watt happen to me and my family on March 13-1985. We where gevin a no cause 30 Day eviction notese for the record. But off the record a verbual 30 Day eviction notes was for my three Boys ages 9-12-14. This put a great finacitle and mentle streem on me and my wife. We move out on aprle 4 1985 and we stile haven't recovred from the move.

There where outher family in the apartments we lived in with children over 7 were given the same kind of notese.

This makes me very angery at the system now. the landlord and mangers can get around the law by giving you a 30 Day no cause

viction notise. They don't half to tell you why in wrighting. they just give it to you. I think they should half to give you a reason for telling to move, no matter watt the reason is. Especily when you are allways on time with the rent money and have not done damage to the rental.

We was told off the record our Boys and outher children over the age of 7 or 8

mail to much noise when the plane
out side. This was the mail room
for our 30 Day so cause noise.
Then was nothing ever put in
weighting about our children Sent
to music.

Sincerely
Daniel Evard

P S

I'M VEARY

ANGERY!!!

YOUNG WOMEN'S CHRISTIAN ASSOCIATION
1130 WEST BROADWAY MISSOULA, MONTANA 59801 (406) 543-6691

May 9, 1985

To the Human Rights Commission:

This letter is in concern for single parents seeking appropriate and desirable housing for their families.

As the director of the YWCA Battered Women's Shelter in Missoula, I have had ample opportunity to witness the struggles women encounter as they seek to have a life free from violence. Very few men who abuse their partners will leave the home they share. The abused women stay with us for up to five days and during that time must find an alternative place to stay because they do not wish to return to the violent family home. Their concerns are that their children's lives should not remain disrupted, that the children's schooling continue, and that the housing should be safe and relatively pleasant. Time and again a woman hangs up the phone from calling landlords, discouraged because landlords will not rent to women with children.

Thirty percent of the women who leave our shelter return to the abusive situation. Probably over half of these women return because they encounter so many obstacles in finding a new home. The homes I have visited, when a woman does find an alternative living situation, are, without exception, too small for her family, depressing in environment and restrictive for children's play. I do not wonder, when I later find out she returned to the abusive relationship, why---for she finds it less depressing to be beaten once a month and demeaned daily than to live in substandard housing.

I strongly encourage you to review carefully the landlord-tenant laws that allow landlords to discriminate against single parent families.

Sincerely,

Lois M. Doubleday

Lois M. Doubleday, Director
YWCA Battered Women's Shelter

President, Montana Coalition Against Domestic Violence

P.O. BOX 752
BOZEMAN, MT.
59771 – 0752
Ph: (406) 586 – 0263

bozeman area battered womens' network

September 23, 1985

Human Rights Commission;

The Bozeman Area Battered Women's Network offers emergency shelter, trained advocates, and other support systems needed by victims of domestic violence.

As part of our services to clients within Gallatin and Park County, we try to assist clients in finding safe, adequate, and affordable housing. This has always been one of the largest obstacles facing women who have fled from abusive home lifes - and not finding housing can be one of the major contributors to the high recidivism rate.

Historically most women from abusive home lifes are non-working mothers with 2 to 3 children to raise. In addition to seeking employment, counseling, and legal protection, housing is a primary concern. And in the Bozeman area this has always been an obstacle due to high rents, no children rules, and inaccessability for unemployed women.

Therefore this growing situation should be addressed as soon as possible to alleviate this added burden facing our clients (227 in 1984).

Thank you for your attention and interest in our concerns.

Sincerely,

Kathy A. Sewell

Kathy A. Sewell
Executive Director

KAS/sln

TO- Human Rights Comission
from. Mae Schaff
502 N Hand 3A7
Bozeman, Montana 59715

I'm a mother of two children, one a boy who is ten years old and a girl who is five years old. I'm on a fixed income, and I do baby sitting for a living. I'm also looking for a house. Ive been having great problems finding one. There are alot of houses that won't even take kids, and then there are a few who will take my ten year old and not my five year old. They're afraid that she will mark on the walls, color on the floors and so on. This is a big problem for me, most places get a deposit and it should cover the damages that a five year old can do.

Thank you
Mae Schaff
May. 9-85

ASSOCIATED STUDENTS LEGAL SERVICES
SUB — Room 281
Bozeman, Montana 59717
Phone: (406) 994-2933

May 10, 1985

Memo To: Human Rights Commissioners

From: Phyllis A. Bock, Managing Attorney

Re: May 10, 1985 Hearing

The Associated Students Legal Services program at Montana State University includes a free rental listing of off-campus housing program for students. I oversee that program as Managing Attorney of Legal Services. We have stopped taking listings where there is the restriction of "no children." I told my staff that it had been held to be discriminatory in California and it is my legal interpretation that the Montana Human Rights Act is broad enough to cover the same situation in Montana. When the staff people took phone calls and would not list "no children" as a restriction, the landlords would tell the staff that they would screen them when the tenants called.

HRDC
HUMAN RESOURCE DEVELOPMENT COUNCIL, INC.
BOZEMAN HOTEL, SUITE 300 • 321 EAST MAIN • BOZEMAN, MT 59715
BOZEMAN (406) 587-4486 • LIVINGSTON (406) 222-0806
GALLATIN, PARK, MADISON AND MEAGHER COUNTIES

May 9, 1985

Human Rights Division
Room C-317
Cogswell Building
Helena, MT 59620

To Whom It May Concern:

As Housing Program Manager for the District IX Human Resource Development Council, I manage HUD Section 8 Housing Assistance Programs for the Montana Department of Commerce. Affordable housing is extremely difficult to find for the low-income families that this program serves.

It has been my experience that because of the market for housing in this area, landlords can be very selective in who they choose to rent their dwelling units to as they have no problems with vacancy due to a number of reasons, primarily because of the presence of Montana State University in Bozeman. I can testify to the fact that this puts a heavy burden on low-income families with children to find housing that fits their needs in this area due to lack of income and the attitudes amoung landlords that children are undesirable tenants.

Thank you for your attention.

Respectfully,

Christopher C. Pazder
Housing Program Manager

NAME: Bonnie Stefanac DATE: 3-20-87

ADDRESS: 907 Nevada Butte MT 59701

PHONE: 782-5523

REPRESENTING WHOM? Butte 4-C's

APPEARING ON WHICH PROPOSAL: HB 400

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

March 20, 1987

Testimony Opposing HB 400, Allowing Discrimination in Housing
Before Senate Judiciary Committtee

SENATE JUDICIARY
EXHIBIT NO. 17
DATE March 20, 1987
BILL NO. HB 400

Chairman Muzarek and Members of the Committee:

The League of Women Voters, a citizens' group, has worked for social justice for over sixty years. We oppose discrimination in housing. HB 440 would allow such discrimination against children and families with children. Especially affected are single-parent families, most often headed by women. Because women make 60% of what men make, they are more often renters than homeowners. Therefore, HB 400 is sex discriminatory as well as age discriminatory.

Arguments will be made that landlords who have premises which might be dangerous to children need this legislation to protect the children. The existing legislation, 49-2-305, already has "reasonable grounds" exceptions to cover such instances.

Landlords have other means to screen renters--reference and referrals. And damage deposits are usually required. It is not just to include an entire group of people--in this case children--to be treated as identical. This reasoning has not been allowed with races or one sex or the handicapped or one religion. It should be no more acceptable with one age group, children.

Rather than pass HB 400 in its present form, we suggest it be amended to include "age discrimination" as an unacceptable practice in 49-2-305 (1) a. This language is included in most other sections of the Human Rights Act.

I'm included some classified advertisements from the Missoulian showing discrimination against children. The advertizing department says it is not prohibited by law so they accept such ads. In many cases pets or dogs are lumped with children as being unwelcome.

Please vote against HB 400. Take a stand against discrimination.

Sincerely,

Martha Onishuk

Martha L. Onishuk,
Missoula Legislative Chair
5855 Pinewood Lane
Missoula, Mt. 59803

SENATE JUDICIARY
EXHIBIT NO. 18
DATE March 20, 198
BILL NO. HB 696

SUMMARY OF HB 696 (HANNAH)
(Prepared by Senate Judiciary Commitee staff)

HB696 amends the law relating to judicial review of rulings of the Human Rights Commission. **Under current law,** HRC rulings are reviewable under the Administrative Procedures Act which provides that a judge's review of an administrative ruling, such as an HRC ruling, is confined to the record and that the judge can not substitute its judgment for that of the agency's on questions of fact. The court can only reverse the agency's decision if substantial rights of the appellant have been prejudiced because the decision is: a) in violation of constitutional or statutory provisions; b) in excess of statutory authority; c) made upon unlawful procedure; d) affected by other error of law; e) clearly erroneous; f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or g) because findigs of fact, upon issues essential to the decision, were not made although requested (Section 2-4-704, MCA).

This bill provides that HRC rulings will no longer be revied as described above. Instead, cases decided by the HRC could be appealed to district court and tried anew and the record before and findings, conclusions, and decision of the commission would be entitled to no special weight or presumption.

COMMENTS: None.

C:\LANE\WP\SUMHB696.

Testimony Before The Senate Judiciary Committee - March 18, 1987

My name is Brooks FitzGerald. I represent the Billings Neon Co. I am here to speak in favor of HB 696.

Some time ago a young doctors wife in our employ quit because she thought she should have had a design job we had given to a young man. She then sued us for sex discrimination before the Human Rights Commission. Her supervisor had not placed her in this job because he felt she did not have the capability It all seemed simple enough. We would just tell the court that. However, we hadn't reckoned with the HRC.

After over three years delay occasioned by her attorney and the HRC, the HRC awarded the young woman $53,959.31 which represented three years wages plus 10% interest. In addition, the hearing officer stipulated that we had to hire her back and until we did her salary plus 10% interest would accrue.

Naturally, the first thing we thought of was to appeal these findings to the District Court. However, upon advice of our attorneys, we did not pursue this course. The District Court cannot retry the case and will review only matters of the law. And with the meter running on the plaintiff's wages plus 10%, another long delay would be disastrous.

So we borrowed $50,000.00 and paid the young woman. We will have to pay interest on this amount for years to come. Added to that are thousands of dollars in attorneys fees. And we are not through yet. The plaintiff's attorney is suing us in District Court for an additional $10,000.00 in attorneys fees. She has the right to go to District Court but we do not. It is a one way street.

We wondered if the hearing officer got us confused with the Burlington Northern because we have the same initials. It is estimated that our ultimate cost will be in the neighborhood of $100,000.00. Suppose this debt is too much for us to handle in addition to our other obligations? What then? Is justice for women served if we have to lay off seven women and 27 men, most of whom have wives.

The HRC acts as both prosecutor and judge and then makes their outrageous awards without regard to the consequences or who they hurt. Although it is too late for us to do anything about our case, two of our good customers are about to be crucified in the same manner we were.

If this agency is allowed to continue as they have been without some changes in the legal structure, it will be more than the employers who will suffer.

SENATE JUDICIARY
EXHIBIT NO. 9
DATE March 20, 1986
BILL NO. HB 696

NAME: _____ DATE: _____

ADDRESS: Olivia Gee

PHONE: 444-6220

REPRESENTING WHOM? Billings Ngan

APPEARING ON WHICH PROPOSAL: HB 696

DO YOU: SUPPORT? V AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY
EXHIBIT NO. 20
DATE March 20, 1987
BILL NO. HB 696

Testimony of Anne L. MacIntyre, Administrator,
Human Rights Division, in opposition to HB 696

Chairman Mazurek, members of the Senate Judiciary Committee:

I am Anne MacIntyre, Administrator of the Human Rights Division, the staff of the Human Rights Commission. I am here to testify in opposition to House Bill 696. With me today are Margery Brown, Chair of the Commission, and Jack McLean, a member of the Commission. Both Marge and Jack will also comment on the Commission's position on House Bill 696.

In 1971, the legislature enacted the Montana Administrative Procedure Act. The Act was a comprehensive overhaul of administrative procedure in Montana. It provided a set of requirements governing agency rulemaking, contested case hearings, and judicial review of agency decisions. It replaced a patchwork of separate statutes governing administrative procedure for particular agencies. It was an intentional policy decision by the legislature to establish a comprehensive set of procedures to govern all agencies. Attachment A lists all of the 55 other administrative agencies and quasi-judicial boards that I have been able to identify which hear contested cases and make orders subject to the limited judicial review provided for in the Montana Administrative Procedure Act. There may well be more. Many of them make decisions of equal or greater import or and impact than the Commission.

It is clear from the legislative history that the legislature intended to simplify state procedural structure by having one mode and scope of review. Attachment B is a copy of a portion of comments of Administrative Procedures Subcommittee of the Legislative Council, which drafted the proposed Montana Administrative Procedures Act for introduction in the 1971 legislative session. I call your particular attention to the portions of the comments I have highlighted. House Bill 696 singles out the Human Rights Commission to depart from the state's overall policy concerning appeals of administrative agency decisions and it is for this reason we oppose the bill.

When the legislature enacted the Administrative Procedure Act, it had several underlying principles in mind when it chose to provide for limited review of administrative agency decisions made after contested cases. Those principles are:

1. Limited review of administrative decisions strengthens the administrative process by encouraging the full presentation of evidence at the administrative hearing.
2. Judicial economy requires court recognition of the expertise of administrative agencies in the field of their responsibility.
3. Limited judicial review is necessary to determine that a fair procedure was used, that questions of law were properly decided, and that the decision of the administrative body was supported by substantial evidence. These principles were embraced by the Montana Supreme Court in Vita-Rich Dairy, Inc. v. Dept. of Business Regulation, 170 Mont. 341, 553 P.2d 980 (1976), and have been subsequently

reaffirmed by the Court. House Bill 696 flies in the face of these principles. I don't mean to suggest that it is not within the prerogative of the legislature to depart from these underlying principles with respect to particular agencies or with respect to one particular agency, but I sincerely question whether it is a good idea. I submit to you, members of the Committee, that it is not and that this Legislature has already determined that it is not a good idea.

These principles of limited judicial review are interrelated. All of them are founded upon the underlying theme of judicial economy. Judicial economy means more than the potential fiscal impact of trial de novo on the district courts. It also encompasses the impact on the parties. Having two full-blown contested hearings places a great burden on the parties. It forces them to go through the motions of what may ultimately become a meaningless procedure, at substantial expense to themselves and to government. It encourages parties to withhold their best evidence at the first hearing in order to improve their case at the de novo hearing. It rewards sloppy legal practice by giving a party who has not taken a case seriously at the administrative level the proverbial "second bite at the apple." For all of these reasons, the Commission believes House Bill 696 is a bad bill.

Representative Hannah's testimony suggests some misunderstanding of procedures used under the Human Rights Act. He implies that the record which goes forward on judicial review is a record compiled by the Commission. This is a distortion of how the record is developed, and this distortion has significant bearing upon the issue of judicial economy. Attachment C is an outline of the Commission's procedures. It is important to note that while the Commission staff does develop an investigative file during the first stage of the process, the investigative file does not automatically become a part of the record during the contested case hearing. Rather, it is developed to make an initial determination whether the complaint has merit and to work with the parties to resolve through conciliation those cases which appear to have merit. At the hearing step of the process, the record for purposes of judicial review is developed by the parties through the testimony and documentary evidence they themselves introduce at the contested case hearing. The investigative file cannot be considered by the hearing examiner unless the parties stipulate to its introduction into evidence. Particular items in the investigative file are sometimes introduced into evidence by the parties in the contested case if they are admissible pursuant to the rules of evidence. Because the record of the hearing is developed by the parties rather than the Commission, it makes little sense to give the same parties another opportunity to develop the record a second time.

Representative Hannah has also suggested that because trial de novo is utilized upon appeal of a justice court decision, its use is appropriate in the administrative setting. I submit there are significant differences between justice courts and the Commission. First, justice courts are not courts of record. No record is developed upon which an appeal can be taken to district court. Second, justices of the peace are not subject matter experts with regard to a limited area of the law as quasi-judicial boards are. Third, the availability

of prehearing discovery is limited in the justice courts. Finally, a substantial administrative process precedes the Commission's case hearing. In essence, the parties already have one de novo proceeding when the case goes to the contested case hearing after an investigative determination has been made.

Finally, I would like to call to the attention of the Committee a fairly significant technical problem in House Bill 696. Under the present statutory scheme, if the Commission makes a final order in a case, it can enforce the order. The power to enforce a Commission order is particularly significant in those instances where the respondent has an ongoing discriminatory policy or practice which is enjoined by the Commission's order. If House Bill 696 is enacted, the Commission order becomes a nullity. A respondent engaging in a discriminatory practice might avoid any responsibility to change its practice by appealing to the district court. While a district court might also enjoin a discriminatory practice, an individual plaintiff is generally more interested in seeking individual relief than in pressing for the elimination of a discriminatory practice. Because of this, the interest of the state in eliminating illegal discrimination is significantly impaired by House Bill 696. With those comments, I will close by requesting this committee to recommend that House Bill 696 not be concurred in.

Attachment A

ADMINISTRATIVE AGENCIES AND QUASI-JUDICIAL BOARDS WHICH MAKE DECISIONS ON CONTESTED CASES SUBJECT TO LIMITED JUDICIAL REVIEW

State Banking Board
County Printing Board
Board of Aeronautics
Hardrock Mining Impact Board
Board of Health and Environmental Sciences
Board of Labor Appeals
Board of Natural Resources and Conservation
Board of Personnel Appeals
Board of Public Education
Public Employees Retirement Board
Public Service Commission
Board of Regents
Board of Social and Rehabilitation Services Appeals
State Auditor (Commissioner of Insurance and Securities Commissioner)
State Tax Appeals Board
Superintendent of the Office of Public Instruction
Teachers Retirement Board
Workers Compensation Court
Commissioner of Labor and Industry
Department of Revenue
Department of Livestock
Occupational Licensing Agencies,* including:
- Board of Barbers
- Board of Chiropractors
- Board of Medical Examiners
- Board of Dentistry
- Board of Pharmacy
- Board of Nursing
- Board of Nursing Home Administrators
- Board of Optometrists
- Board of Radiologic Technologists
- Board of Speech Pathologists and Audiologists
- Board of Hearing Aid Dispensers
- Board of Psychologists
- Board of Veterinary Medicine
- Board of Morticians
- Board of Social Work Examiners and Professional Counselors
- Board of Denturity
- Board of Cosmetologists
- Board of Physical Therapy Examiners
- Board of Occupational Therapy Practice
- Board of Sanitarians
- Board of Public Accountants
- Board of Realty Regulation
- Board of Architects
- Board of Landscape Architects

Board of Professional Engineers and Land Surveyors
State Electrical Board
Board of Plumbers
Board of Horseracing
Board of Athletics
Board of Private Security Patrolmen and Investigators
Board of Water Well Contractors
Department of Commerce
Workers Compensation Division

In addition, the Board of Pardons makes contested case decisions which are essentially unreviewable.

*Some previously listed agencies perform occupational licensing also, but I have not listed them a second time.

The Revised Model Act does not give any guidance as to the allegations hich should be contained in a petition for review. It is believed that mini-ıum requirements should be stated by statute. This has been done in 2-4-702].

Judicial review of agency decisions [is] one of the most confused and roublesome areas in the state administrative procedures. There is a lack of niformity among agencies as to mode and scope of review. A number of stat-tes make no mention whatsoever of judicial review. Some mention only the ght to appeal or review, but say little or nothing about how it should be ccomplished or the extent to which a court may review the agency's find-ıgs. The statutes which are more specific with regard to method or scope of view lack uniformity and, in many cases are ambiguous and incomplete. he methods of review specifically provided for include trial de novo, certio-ıri and injunction.

It is the author's conclusion that there is no justification for the lack of niformity in judicial review proceedings. This matter is discussed in some etail in the report of the study of state administrative procedures. It would ot be practical to restate the discussion here. However, a few words about e novo review are deemed warranted. A number of statutes provide for de ovo review specifically, some seem to provide for it by implication, and oth-s specifically prohibit it. De novo review, even where specifically provided r, has no common meaning. Each statute seems to reflect a different con-ept of the term.

De novo review is abolished under [2-4-702 (not enacted in proposed form, e uniform commissioner's comment at 2-4-702)] along with other pre-isting forms of review because it causes wasteful and costly duplication of fort by courts and agencies. If a party can present a new or substantially ifferent case to a court than was presented to the agency, there is no real urpose in having an agency hearing at all. Such procedures will only encour-ge parties to withhold evidence at the agency hearing so as not to fully dvise the opposition of their case. Orderly administrative procedures should reclose such practices. The procedural safeguards set forth in the contested se sections of the [proposed] MAPA should eliminate any need which may reviously have existed for de novo review.

ompiler's Comments

Source: Revised Model Act, sec. 15(e).

ollateral References

73 C.J.S. Public Administration §§ 203, 204.

2-4-704. Standards of review.

ubcommittee Comments

[See chapter compiler's comments.]

Section 308 [2-4-702 through 2-4-704] provides for the mode and scope of dicial review in contested cases. Under the provisions of subsection 308(a) -4-702 (not enacted in proposed form, see uniform commissioner's com-ent at 2-4-702)] it is the sole mode of review available and pre-existing stat-ory or common law methods of review are eliminated.

Review is based upon the record made before the agency. The reviewing urt may permit a party to submit additional evidence regarding the merits the case. Such evidence is to be heard and considered by the agency before bmission to the court. However, the court may hear evidence relating to leged procedural irregularities before the agency.

[redacted] to the weight of evidence on questions of fact. However, the court may

erroneous in view of the reliable, probative, and substantial evidence on th whole record." Specific grounds for challenging the decision of an agency ar set forth in [2-4-704].

Section 308 [2-4-702 through 2-4-704] follows section 15 of the Revise Model Act, with two exceptions. Under section 15(a) of the Revised Mode Act, pre-existing methods of review are not eliminated. The Commissioner' comment indicates that this provision is inserted as a matter of expediency to eliminate opposition to passage of the act, not because it is considered t be the most desirable provision.

The Revised Model Act does not give any guidance as to the allegation which should be contained in a petition for review. It is believed that mini mum requirements should be stated by statute. This has been done ir [2-4-702].

Judicial review of agency decisions [is] one of the most confused anc troublesome areas in the state administrative procedures. There is a lack of uniformity among agencies as to mode and scope of review. A number of stat-utes make no mention whatsoever of judicial review. Some mention only the right to appeal or review, but say little or nothing about how it should be accomplished or the extent to which a court may review the agency's find-ings. The statutes which are more specific with regard to method or scope of review lack uniformity and, in many cases are ambiguous and incomplete. The methods of review specifically provided for include trial de novo, certio-rari and injunction.

It is the author's conclusion that there is no justification for the lack of uniformity in judicial review proceedings. This matter is discussed in some detail in the report of the study of state administrative procedures. It would not be practical to restate the discussion here. However, a few words about de novo review are deemed warranted. A number of statutes provide for de novo review specifically, some seem to provide for it by implication, and oth-ers specifically prohibit it. De novo review, even where specifically provided for, has no common meaning. Each statute seems to reflect a different con-cept of the term.

De novo review is abolished under [2-4-702 (not enacted in proposed form, see uniform commissioner's comment at 2-4-702)] along with other pre-existing forms of review because it causes wasteful and costly duplication of effort by courts and agencies. If a party can present a new or substantially different case to a court than was presented to the agency, there is no real purpose in having an agency hearing at all. Such procedures will only encour-age parties to withhold evidence at the agency hearing so as not to fully advise the opposition of their case. Orderly administrative procedures should foreclose such practices. The procedural safeguards set forth in the contested case sections of the [proposed] MAPA should eliminate any need which may previously have existed for de novo review.

Compiler's Comments

Source: Revised Model Act, sec. 15(f), (g).

Case Notes

GENERAL

MAPA Inapplicable to Pre-1977 County School Sup[redacted]tendent Decision — Substantial Evidence: Plaintiff was terminated from [redacted] tenured teaching [redacted] and upheld by the County Superintendent of Schools, the State Superin-

Attachment C

PROCEDURE FOR HANDLING COMPLAINTS OF DISCRIMINATION BEFORE THE HUMAN RIGHTS COMMISSION

Step 1: Informal investigation and conciliation efforts by Commission staff pursuant to §49-2-504, MCA.

Investigative file developed by Commission staff

Step 2: Contested case hearing before Commission pursuant to §49-2-505, MCA, and Administrative Procedure Act

- Hearing before hearing examiner consisting of introduction of witness testimony and documentary evidence by parties

- Findings of fact, conclusions of law and proposed order issued by hearing examiner

- Briefs and oral argument on parties' exeptions to proposed order before full Commission

- Final Commission order

Record of contested case developed by parties through introduction of witness testimony and documentary evidence.

Step 3: Judicial review pursuant to Administrative Procedure Act based on record developed at Step 2.

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EXHIBIT NO. 21
DATE March 20, 1987
BILL NO. HB 696

TESTIMONY OF MARGERY H. BROWN, CHAIR OF HUMAN RIGHTS COMMISSION, IN OPPOSITION TO HB 696

Senator Mazurek, members of Senate Judiciary Committee, I am Margery Brown, Chair of the Montana Human Rights Commission. I am here today to speak in opposition to House Bill 696.

In his effort to single out the Human Rights Commission, Representative Hannah implies that there is an element of bias in the proceedings of the Commission which justifies requiring trial de novo. As Chair of the Commission, I can assure you that no such bias exists.

At the outset, I wish to note that it is misleading to state that the Commission has the multitude of roles in the manner suggested by Representative Hannah. Under the statute, the Human Rights Division, staff of the Commission, is assigned the responsibility of conducting an impartial investigation and then attempting to resolve valid cases through conciliation. Following the completion of the process at the staff level, the Commission, utilizing an attorney hearing examiner, conducts a neutral hearing and makes findings of fact, conclusions of law, and an order. The information obtained by the staff during the investigation is not made available to the hearing examiner or Commission unless it is admitted into evidence by the stipulation of the parties or by its introduction into evidence by a party. Staff members involved in the investigation do not discuss their views of a case with the hearing examiner or Commission members. And although the statute does permit the staff to present the case in support of a complaint, the staff rarely exercised this option. The staff has not presented the complainant's case to the Commission in well over six years.

In further reply to the suggestion of bias, the statistics concerning the Commission caseload are substantial evidence that no such bias exists. Of the roughly 3,000 cases disposed of in the Commission's 12 year history 36% have resulted in a dismissal after a staff determination of no reasonable cause or no jurisdiction. Another 48% have been resolved through mediation, conciliation, withdrawal or other administrative closure. Four percent have been removed to district court, usually after a finding of reasonable cause. Only the remaining 12% have been resolved by Commission decision. To demonstrate the record of the Commission, during the last four years, the Commission has decided 44 cases. Of those, 20 were decided in favor of the complainant and 24 in favor of the respondent. A written index of Commission decisions made from July 1, 1985 through approximately the end of January of this year is available for any Committee member who would like to review the substance of those decisions.

I feel it is also important to note that the Commission and its staff have matured a great deal in the 12 years the Act has been in place. We have had significant continuity over the past several years, both among staff and Commission members. We have a truly seasoned and professional staff, which does a large job on very limited resources. The members of the Commission are:

- Ed Lien of Wolf Point, a rancher;

- Angelina V. Cormier of Billings, a business-woman and educator
- Dennis Limberhand of Lame Deer, a personnel manager with Montana Power;
- Jack McLean of Helena, an attorney; and
- myself, Margery Brown of Missoula, a professor of law.

Each member of the Commission is presently serving in his or her second term of appointment by the Governor. WE have three attorneys on staff - our administrator, staff attorney, and hearing examiner - and two attorneys on the Commission. Without being self-serving, I would assert that care is being taken to insure that the obligations you have given us are being carried out properly.

In light of this, I cannot help but read House Bill 696 as a disparagement and a vote of no confidence for a forum which is working well to resolve cases, to screen out cases which lack merit, and to provide appropriate relief in cases which have merit. The legislature should not give this vote of no confidence based only on pressure from a few disgruntled individuals. We cannot properly enforce the law and at the same time expect that both sides to each case will agree with out decision. In every contested matter, and especially in matters contested as strenuously as those you have heard discussed today, one side will be dissatisfied with the Commission's decision. We strongly hope that this Committee will not sanction this significant departure from the state's policy of limited review of administrative agency decisions based on the concerns you have heard expressed today. I urge this Committee to recommend that House Bill 696 not be concurred in.

Thank you.

DR0003

SENATE JUDICIARY
EXHIBIT NO. 22
DATE March 20, 1987
BILL NO. HB696

TESTIMONY OF JACK McLEAN IN OPPOSITION TO HOUSE BILL 696

I am Jack McLean, an attorney in private practice in Helena, Montana, and a four year member of the Montana Human Rights Commission. I rise in opposition to House Bill 696.

The sponsor of this bill has previously stated that the primary motivation behind this bill was to limit the "authority" of the Human Rights Commission. He cited examples of where the Human Rights Commission awarded substantial damages, and believes that it is inappropriate for the Human Rights Commission to have that much discretion.

I believe that it is important to scrutinize this bill and see where that authority is being transferred. This bill gives "trial anew" to the district court and entirely does away with the "right of review." Lines 16 through 18, of page 1 of the bill states: "Trial in district court must be anew, and conducted in all respects as other trials in the district court." Thus, what this bill actually does is transfer the "fact finding" authority from the five member Human Rights Commission to a district court jury of 12. If the sponsor of this bill is truly concerned about controlling the authority to make large judgments, it is absurd to transfer that authority from a five member commission which now hears most of the contested discrimination cases in Montana to a 12 person jury which has probably never dealt with a discrimination case before.

Given the unpredictable nature of district court juries, this bill would actually expand the authority to make large judgments in discrimination cases.

Further, it is unlikely that the sponsor of this bill is truly concerned about the authority of the Human Rights Commission in light of some of the testimony which has been presented in support of the bill. One of the primary witnesses in support of the concept of trial anew was Patty Brockel, based on her experience in a case before the Commission. Mrs. Brockel fails to mention that the Commission awarded the complainant in that case the sum of $53.55. Mrs. Brockel's testimony left little doubt that she would have sought trial anew if it was available. It is not reasonable to believe, in light of that testimony, that House Bill 696 is proposed only to correct the perceived problem of the Commission's ability to award substantial damages.

Further, I believe this bill would have very serious negative ramifications upon discrimination law in Montana.

(1) The bill would have the effect of "rewarding" sloppy practice before the Human Rights Commission. Any decision could simply be appealed to district court and tried again. There would be no reason to properly try the case at the administrative level.

(2) I believe that the process before the Human Rights Commission would become nothing but discovery. If one's opponent can appeal any decision to the district court, why

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take the procedure seriously? Rather, it would be an ideal opportunity to learn what "ammunition" one's opponent has permitting rebuttal of that evidence at the district court trial.

(3) Ultimately, I believe that proceedings before the Human Rights Commission would become a meaningless layer of litigation. Any decision, regardless of the amount of consequence, could be appealed directly to district court. Many parties might actually allow their default to be entered before the Human Rights Commission since that decision would also just be appealed.

(4) I believe that this bill would also have the effect of adding substantial costs in ultimately disposing of discrimination cases. This bill certainly gives the right to a jury trial in district court, and a jury trial alone would be much more expensive and time consuming to all parties concerned than a proceeding before the Human Rights Commission Hearing Examiner.

(5) This bill also does away entirely with the right of appeal. Line 20 of page 1 states: "There is no right of review." Thus, even if a party wanted to appeal to the district court on the record established before the Human Rights Commission, he could not do so. Some parties simply want an issue of law determined. This bill would require an entire new trial before the district court simply to decide that issue of law.

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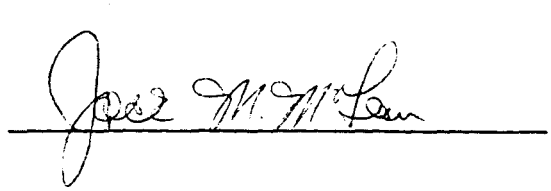
(6) Finally, the bill could substantially increase the damages awarded in discrimination cases. In most cases, damages are awarded to the date of trial. Since the date of the trial before a district court would be delayed, damages would continue to accrue.

CONCLUSION

The ultimate effect of this bill is to transfer the fact finding authority from the Montana Human Rights Commission to a district court jury. If you are concerned about the authority to award substantial damages this bill will not address that issue. The ultimate effect of the bill would be to stymie the prosecution of claims for unlawful discrimination. The proceedings before the Human Rights Commission would become a meaningless discovery tool which would only foster the sloppy practice of law and add to the costs of litigation. I strongly urge you to give this bill a do not pass recommendation.



SENATE JUDICIARY
EXHIBIT NO. 22
DATE 3-20-8
BILL NO H.B. 69

SENATE JUDICIARY
EXHIBIT NO. 23
DATE March 20, 1987
BILL NO. HB 696

March 16, 1987

Dear Senator,

My name is Jeanne Close Wagner. I am a Graphic Designer from Billings, Montana. I am preparing this statement to address members of the Senate regarding my concern should House Bill #696 be passed. I had been the victim of rather blatant discrimination by my former employer in April, 1981. I attempted to negotiate to correct the situation to no avail. I reluctantly pursued the matter legally, because my employer left me no other alternative at that point.

It was six months from the time of the incident before the case came before a hearing examiner. It was the decision of the examiner , after careful investigation, that I had indeed been discriminated against.

In the interim, I attempted to secure employment with other firms. I was frustrated in my attempts at locating employment, feeling that my previous employer may have "black-balled" me in the commercial art field in our area.

After the first hearing, when my back wages amounted to about $8,000, my former employer attempted to settle for $2,000. I countered with an offer of $6,000 which they refused.

The company appealed and our next hearing was scheduled for February of 1983. My employer did not even show up for the hearing and his lawyer asked for a postponement. My attorney and I were very frustrated as we had hoped to conclude the matter.

Another hearing was scheduled. This hearing was postponed by the Human Rights Commission due to lack of funding for the remainder of that fiscal year. Had my employer not sought a continuance, or been willing to settle the matter earlier, when given the opportunity, the case could have already been resolved. I assure you that my attorney and I were very frustrated.

The next hearing took place in November of 1983. Both sides presented exhibits and testimony and had the opportunity to call witnesses. I found myself in a very awkward position as persons still working for my ex-employer, while supportive, were hesitant to testify on my behalf for fear of jeopardizing their jobs. Nonetheless, justice prevailed.

My previous employer, being used to having things go his way, seemed angered by the decisions and all the more determined. It was on this feeling that the company decided to appeal to the full Human Rights Commission. This hearing took place on July 27, 1984, over three years after the original incident. In the meantime, my ex-boss had discharged the legal firm who had represented him in the first two hearings, apparently feeling that they had not done an adequate job. The full commission was not permitted to hear any new testimony, but had to decide the merits of the case on the basis of the testimony which had been given at the last hearing.

After almost ten months of agonizing wait on my part, and careful deliberation over the facts on the part of the Human Rights Commission, the commission decided the case overwhelmingly in my favor. I was awarded back wages benefits, and interest in the amount of $47,500. I remind you that the company had had an opportunity to settle for as little as $6,000.

My employer, still very disgruntled, filed an appeal with the State District Court. In the fall of 1985, my attorney was contacted by their attorneys to settle. They offered a lower figure with no accrual of interest. Back wages had stopped accruing approximately two years earlier. My attorney and I decided that since it was my ex-employer who had so stubbornly drug out the proceedings unnecessarily, we would not settle for less than the full amount. After much consternation, my employer finally agreed to settle rather than to waste more money in attorneys' fees at the district court level. Also, by settling, he made an issue that he was not admitting to discrimination. At the present time, we are involved in litigation to be reimbursed for legal fees amounting to one third of the settlement.

My previous employer in this matter was Billings Neon Company, and I was a Graphic Artist in the design department. I understand that Mr. Brooks Fitzgerald has been lobbying heavily in favor of House Bill #696. I understand further that he has represented himself as the owner of Billings Neon and purported that the company is near bankruptcy as a result of this discimination suit.

This is utterly ridiculous. In the first place, Billings Neon is a subsidiary of Empire Development Corporation. The Corporation has offices and or production facilities in Casper, Rapid City and Great Falls as well as Billings. It is a company with millions of dollars of assets. the primary owners are Mr. William Nyman, Mr. Dennis Harriman, and Mr. Wally Streeter.
While Mr. Fitzgerald may have been given minor holdings as part of his retirement after years of service as a salesman, he is in no way a major stockholder in this company. Furthermore, it is important to know that Mr. Fitzgerald was not a party to, nor was he present at any of the hearings leading up to the final decision. He apparently

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did become involved after the fact, but obviously has not read the transcripts of the case or is misrepresenting them. I am sure Mr. Fitzgerald is a good man with fine intentions, but he has apparently been misinformed, I assume, by one of the owners of Empire Development Corporation.

The facts speak for themselves. I had been working at the company for a year and a half, doing illustration and design. The second most senior designer took a position in sales which left an opening in the department. Mr. Harriman, owner and head of the Design Department, attempted to fill the position with someone with years of sign design experience. When he was unable to locate such a person, he settled upon a person with no experience with a sign company.

Mr. Fitzgerald has contended that my case was based on the fact that I applied for a specific job for which I was not qualified. This contention may have had a slight resemblance to the facts had Mr. Harriman been able to locate a person with experience in the sign industry. Instead, he created an entry-level position for the new employee.

I had graduated from Ohio University "Summa Cum Laude" with a degree in graphic design, had worked years in this field before working a year and a half for Billings Neon's Design Department. I assume this is why my help was enlisted in training the man who was finally hired without training in sign design.

Shortly after his hiring, rumors began circulating that the new employee was making more than I. I confronted my boss, Mr. Harriman, who assured me, in his words, "Don't worry, you're number two in the department based on your seniority, ability and workload". He told me that I was making more than the new employee who was still in his probationary period.

I later discovered that I had been lied to and was making substantially less than the man I was training. I felt hurt. I confronted my boss with this information only to be told that it was none of my business what he paid his employees.

Mr. Fitzgerald, in his letter, made a point of the fact that I was a young doctor's wife, implying that I apparently did not need a raise in pay because of my husband's occupation. I fail to see what my husband's occupation has to do with the level at which I am reimbursed. The law clearly states, "Equal pay for equal work". I was training a man who I "out-produced" because he was in training. I fail to see how, under these circumstances, he would warrant greater pay than I.

During the confrontation with my boss, I reminded him that he had lied to me about my salary, and I demanded equal wages, at which point his temper flared. I then attempted to negotiate the matter, but was told by Mr. Harriman not to return to work and in his words,

"I know myself, if you return to the job, I'll make your life miserable". With no other recourse, I sought justice through legal means.

I greatly resent Mr. Fitzgerald's rude insinuation in his letter that I had attempted to influence a male examiner. I quote, "This pretty young woman...convinced the male examiner". My case was won over and over again by the Facts, not the way I looked, or my age. These facts were carefully gone over by two separate examiners and the full board of the Human Rights Commission, which included two women. I find this statement insulting to me and the examiners.

At this point, I feel that Billings Neon Company has a vendetta against the Human Rights Commission and is attempting to render it impotent or eliminate them out of spite. This is very sad. I would say to the company, that after six years, it is time to accept the fact that Billings Neon broke the law, learn from their mistakes, and go on. Don't continue to strike out against the Human Rights Commission.

In my experience, the Human Rights Commission fully investigated and deliberated the matter painstakingly at each level in the hearing process before arriving at a fair decision. It is my understanding that various commissions have been developed to save the taxpayers' money which might, otherwise, be spent in unnecessary litigation.

To pass House Bill #696 would simply add another unnecessary step in the legal process and make the process more arduous and expensive than it is already.

Had this bill been in effect at the time I filed, I am certain Billings Neon would have gone to District Court after the decision had been rendered by the Human Rights Commission. I feel furthermore, th given the facts of the case and the laws of our state, that the outcome would have been exactly the same. The only difference would have been that even more time and attorney's fees would have been consumed in the process.

As it was, Billings Neon did not exercise its option to take the matter all the way to the Supreme Court level. Their reason was, undoubtedly, that they had been advised by their counsel that to do so would have been futile in view of the weight of the evidence. It, also, would have added further to their legal expenses. I view adoption of this legislation as unwarranted and totally unnecessary for either plaintiff or defendant.

Given the facts of my case, it seems fairly clear, or so it did, at all levels of hearing that blatant discrimination had been perpetrated. Mr. Fitzgerald would like you to believe that Billings Neon is nearly bankrupt because of this suit. I am aware, through my sources, that the company is thriving and may even plan to expand in the near future. Even if this were not the case, and the company had to fold "throwing 34 persons out of work", whose fault would it be?

I believe that all of us, individuals and companies, must accept responsibility for their actions. This means to accept the consequences for our decisions, particularly if we violate the law.

A recent study conducted by "The Montana Department of Commerce" as recently as February of 1987, found that outright job discrimination is probably why women working full time earn about 56 percent of what their male counterparts earn in our state. Dr. Richard Barrett, an economist of the University of Montana, conducted a study that concluded that two equally prepared individuals end up with vastly different incomes due to no other factor than gender. Barrett went on to say, "We obviously as a matter of public policy need to be concerned with the economic status of women in Montana".

A bill such as House Bill #696 would benefit no one and be a big step backwards for women in Montana. The bill would simply prolong litigation unnecessarily and add to the cost of the taxpayer, simply to satisfy the grudge of one company against the Human Rights Commission for not having found in their favor.

By voting for this bill, this is exactly what you would be doing. I, therefore, urge you to vote against House Bill #696.

Thank you very much.

Sincerely,

Jeanne Close Wagner

Jeanne Close Wagner

JCW;rld
Enclosure

SENATE JUDICIARY
EXHIBIT NO. 23
DATE 3-20-87
BILL NO. HB 191

Wage inequity blamed on discrimination

BOZEMAN (AP) — Outright job discrimination is probably why Montana women earn about half of what men earn, a government report says.

Women working full time earn about 56 percent of what men do, and women working part time make only 45 percent of their male counterparts, according to a report by the Montana Department of Commerce.

The differences are greater in Montana than in the rest of the United States and probably are caused by discrimination in the workplace, the department's 1986 report on economic conditions says.

The difference in men's and women's earnings "obviously suggests that women face severe disadvantages in the state's labor market," says University of Montana economist Richard Barrett, who prepared the analysis of women's and men's earnings in Montana.

Barrett's study took into account key factors that often explain the gap between pay for men and women: education, age, occupational choice, and changes in the economy's industrial structure.

But Barrett found that each factor barely touched the income differential, leaving him to conclude that "market discrimination" appears to be alive and well in Montana.

"Two equally prepared individuals end up with different incomes due to some irrelevant characteristic," often gender, Barrett said later.

"I've accounted for at least four very important factors, and the large differences in men's and women's earnings aren't attributable to any of those," Barrett said.

"We obviously, as a matter of public policy, need to be concerned with the economic status of women," he added. "For better or for worse, there's an increasing number of households where the only income earner is a woman."

Barrett says one reason for doing the study was that state policy makers need to be concerned about the effects of economic development and consider more than creating more jobs and development.

Meanwhile, the state Department of Administration in January submitted its second report to the Legislature on progress made toward achieving comparable worth among state workers.

According to the comparable worth update, the state pay system has "for the most part," reached the goal of comparable worth, or equal pay for jobs of equal value.

The state pays more for female-dominated jobs than the private sector, according to John McEwen, chief of the Personnel Classification Bureau in the state Department of Administration.

Among state employees, women's wages have improved since 1985 compared with men's, primarily because more women are working in professional jobs instead of clerical jobs, McKewen says.

NAME: Thelma Fuhrman DATE: 3-20-87

ADDRESS: 1115 S Wyoming Butte Montana

PHONE: 782-6466

REPRESENTING WHOM? BCUL

APPEARING ON WHICH PROPOSAL: HB 400

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Jerry Croteau DATE: 1-20-87

ADDRESS: 2705 Dodge Ave. Helena

PHONE: 449-7683

REPRESENTING WHOM? Montana Ass't Children

APPEARING ON WHICH PROPOSAL: HB 400

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Larry Witt DATE: 3/20/07

ADDRESS: 1601 W. Olive Bozeman

PHONE: 587-1700

REPRESENTING WHOM? Montana Landlords' Assoc.

APPEARING ON WHICH PROPOSAL: HB400

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Lois M Durand DATE: 3/20-84

ADDRESS: 211 N 10 Idaho

PHONE: 783-5537

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: M. Bates-Hedges DATE: 3/20/87

ADDRESS: Billings

PHONE: 252-6348

REPRESENTING WHOM? Billings Clinic

APPEARING ON WHICH PROPOSAL: HB696

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MINUTES OF SUBCOMMITTEE ON
WRONGFUL DISCHARGE (Judiciary)

March 21, 1987

The Senate Judiciary subcommittee on Wrongful Discharge met on Saturday morning, the 21st of March, 1987, at 7:00 a.m. in Room No. 325. Present at the meeting were all subcommittee members: Senators Galt, Beck, Halligan and Pinsoneault.

Carl England, who represents the Montana Trial Lawyers, was present and acted as secretary for the committee during its deliberations. The following action was taken by the subcommittee relating to HB 241. (1) The committee had been presented by the Coalition, certain amendments to HB 241, which are referred to in these minutes as the Spaeth amendments. There was no objection voiced by the ad hoc committee on wrongful discharge to the proposed amendments 1 through 6 of the Spaeth amendments. On motion of Senator Halligan, the committee agreed concerning the proposed Spaeth amendment #7, that the language in the 3rd Reading bill be kept in tact and that from the proposed amendment of the ad hoc committee, that there be added the following sentence. "Employer discretions must be taken into consideration by the trier of fact in applying the "good cause" standard." The vote on the amendment was 3 voting yes and Senator Galt voting no.

(2) Senator Halligan moved that the subcommittee adopt Spaeth amendment #8. All committee members moved in favor of the motion.

(3) Senator Galt moved that the committee adopt the Spaeth amendment #9, with Sen. Galt voting yes and Senators Beck and Halligan voting no. Motion failed.

Senator Halligan then moved that at line 4, page 4, that (3) be retained and modified as follows: "The employer violated the

express provisions of its own personnel policies." On the voting, Senator Galt voted no and Senators Beck and Halligan voted yes.

(4) Spaeth amendments #10 and #11 were moved to be adopted by Senator Halligan, the subcommittee voted unanimously in favor of the motion. In addition, on page 4, line 19, following "(1) close friends" add ":" and "and (2)".

(5) Senator Galt moved Spaeth amendment #12. Motion failed with Sen. Galt voting yes and Senators Pinsoneault, Beck and Halligan voting no.

(6) Senator Galt moved Spaeth amendment #13. The committee voted unanimously to accept Spaeth amendment #13.

(7) Senator Beck moved Spaeth amendment #14. The subcommittee voted unanimously for the motion.

(8) Senator Galt moved Spaeth amendment #15. Senators Beck, Pinsoneault and Galt voted yes and Senator Halligan voted no. The motion carried.

(9) Motion was made by Senator Halligan that on page 9, line 3, that the word "accruing" be stricken and that inserted in its place, the word "arising".

The meeting adjourned at 7:55 a.m.

Senator R. J. "Dick" Pinsoneault

CAFE 8 f

Friday 20th

AMENDMENTS - HB 241
(Third Reading Copy)

1. Page 1, line 23. After the word "employment." delete the following sentence. (Spaeth)

2. Page 2, line 13. After the word "and" delete "means the" and insert "any other". (Spaeth)

3. Page 2, line 14. After the word "employment" delete "through an action other than retirement," and insert "including resignation,". (Spaeth)

4. Page 2, line 15. After the word "work," insert "failure to recall or rehire and". (Spaeth)

5. Page 2, line 17. After the word "reason," insert "." and strike "or resignation." (Spaeth)

6. Page 2, line 22. Delete subsection (4), and renumber the following subsections accordingly. (Spaeth)

7. Page 3, line 9. Delete lines 9, 10 and 11 and insert "a legitimate business reason." (Spaeth)

8. Page 3, line 25. Delete subsection (2) and insert "(2) the discharge was not for good cause and the employee had completed the employer's probationary period of employment." (Ad Hoc Committee)

adopted

9. Page 4, line 4. Delete subsection (3). (Spaeth)

10. Page 4, line 14. Add a new subsection (2) as follows: "(2). The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of Section 4(1)." (Spaeth as suggested by Ad Hoc Committee)

11. Page 4, line 19. After the word "(1)." insert "and (2)." (Spaeth as suggested by Ad Hoc Committee)

12. Page 5, line 20. Delete subsection (1) in its entirety and renumber following sections accordingly. (Spaeth)

13. Page 6, line 6. Delete subsection (3) in its entirety. (Ad Hoc Committee) ?

14. Page 6, line 15. After the word "for" delete "wrongful". (Spaeth)

15. Page 6, line 17. After the word "contract" insert "." and delete the remainder of subsection (1) and all of subsection (2). (Spaeth)

HOUSE BILL NO. 241

INTRODUCED BY SPAETH, THAYER, HOLLIDAY, POULSEN, COBB, BOYLAN, RASMUSSEN, HARP, DONALDSON, THOMAS, MERCER, MAZUREK, MANUEL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE AND REMEDIES FOR WRONGFUL DISCHARGE; AUTHORIZING ARBITRATION AS AN ALTERNATIVE; ELIMINATING COMMON-LAW REMEDIES; REPEALING SECTIONS 39-2-504 AND 39-2-505, MCA; AND PROVIDING AN APPLICABILITY CLAUSE AND AN EFFECTIVE DATE."

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

Section 1. Short title. [Sections 1 through 9] may be cited as the "Wrongful Discharge From Employment Act".

Section 2. Purpose. [Sections 1 through 9] set forth certain rights and remedies with respect to wrongful discharge. Except as limited in [sections 1 through 9], employment having no specified term may be terminated at the will of either the employer or the employee on notice to the other for any reason considered sufficient by the terminating party. Except as provided in [section 7], [sections 1 through 9] provide the exclusive remedy for a wrongful discharge from employment. ~~[Sections 1 through 9] do not apply to any employment-related personnel action other than wrongful discharge.~~

Section 3. Definitions. In [sections 1 through 9], the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" INCLUDES A CONSTRUCTIVE DISCHARGE AS DEFINED IN SUBSECTION (1) AND ~~means the~~ any other termination of employment ~~through an action other than retirement~~ including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, or any other cutback in the number of employees for a legitimate business reason ~~or resignation not constituting a constructive discharge. Discharge includes constructive discharge.~~

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

~~(4) "Employment-related personnel action" means an employer's action or failure to act involving discharge or other termination of employment, suspension, removal, failure to recall or rehire, demotion, discipline,~~

~~promotion, transfer, assignment, pay, or change in pay or benefits.~~

(4)(5) "FRINGE BENEFITS" MEANS THE VALUE OF ANY EMPLOYER-PAID VACATION LEAVE, SICK LEAVE, MEDICAL INSURANCE PLAN, DISABILITY INSURANCE PLAN, LIFE INSURANCE PLAN, AND PENSION BENEFIT PLAN IN FORCE ON THE DATE OF THE TERMINATION.

(5)~~(5)~~(6) "Good cause" means ~~a legitimate business reason~~ REASONABLE, JOB-RELATED GROUNDS FOR DISMISSAL BASED ON A FAILURE TO SATISFACTORILY PERFORM JOB DUTIES OR DISRUPTION OF THE EMPLOYER'S OPERATION. Employer discretion must be taken into consideration by the trier of fact in applying the "good cause" standard.

(6)~~(6)~~(7) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7)~~(7)~~(8) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.

Section 4. Elements of wrongful discharge. A discharge is wrongful ONLY if:

(1) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy; or

~~(2) the employee was employed by the employer for at~~ (2) the discharge was not for good cause and

the employee had completed the employer's probationary period of employment.

~~least 1,000 hours a year for 5 3 consecutive years immediately preceding the discharge and the discharge was not for good cause; OR~~

(3) THE EMPLOYER VIOLATED THE EXPRESS PROVISIONS OF ITS OWN ~~WRITTEN~~ PERSONNEL ~~POLICY.~~ Policies.

Section 5. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages AND FRINGE BENEFITS for a period not to exceed ~~2~~ 3 years from the date of discharge, TOGETHER WITH INTEREST THEREON. Interim earnings, including ~~unemployment compensation benefits and amounts earnable with reasonable diligence by the employee~~ THE EMPLOYEE COULD HAVE EARNED WITH REASONABLE DILIGENCE, must be deducted from the amount awarded for lost wages. (2) *

(3) (2) There is no right under any legal theory to damages for wrongful discharge under [sections 1 through 9] for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages not, EXCEPT AS provided for in subsection (1) and (2).

Section 6. Limitation of actions. (1) An action under [sections 1 through 9] must be filed within 1 year after the date of discharge.

(2) If an employer maintains WRITTEN internal procedures, other than those specified in [section 7], under which an employee may appeal a discharge within the

* (2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of section 4(1).

organization structure of the employer, ~~no-suit-for-wrongful discharge-may-be-brought,-and-the-time-for-bringing-the-suit under-subsection-(1)--does--not--begin--to--run,--until--the employee--has-exhausted-those-procedures.~~ THE EMPLOYEE SHALL FIRST EXHAUST THOSE PROCEDURES PRIOR TO FILING AN ACTION UNDER [SECTIONS 1 THROUGH 9]. THE EMPLOYEE'S FAILURE TO INITIATE OR EXHAUST AVAILABLE INTERNAL PROCEDURES IS A DEFENSE TO AN ACTION BROUGHT UNDER [SECTIONS 1 THROUGH 9]. IF THE EMPLOYER'S INTERNAL PROCEDURES ARE NOT COMPLETED WITHIN 90 DAYS FROM THE DATE THE EMPLOYEE INITIATES THE INTERNAL PROCEDURES, THE EMPLOYEE MAY FILE AN ACTION UNDER [SECTIONS 1 THROUGH 9] AND FOR PURPOSES OF THIS SUBSECTION THE EMPLOYER'S INTERNAL PROCEDURES ARE CONSIDERED EXHAUSTED. THE LIMITATION PERIOD IN SUBSECTION (1) IS TOLLED UNTIL THE PROCEDURES ARE EXHAUSTED. IN NO CASE MAY THE PROVISIONS OF THE EMPLOYER'S INTERNAL PROCEDURES EXTEND THE LIMITATION PERIOD IN SUBSECTION (1) MORE THAN 120 DAYS.

Section 7. Exemptions. [Sections 1 through 9] do not apply to a discharge:

(1) that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute. Such statutes include those that prohibit discharge for filing complaints, charges, or claims with administrative bodies or that prohibit unlawful discrimination based on race, national origin, sex, age,

handicap, CREED, RELIGION, POLITICAL BELIEF, ~~color,~~ MARITAL STATUS, and other similar grounds.

(2) of an employee covered by a written collective bargaining agreement or a written contract of employment for a specific term; or

~~(3) of an employee who is covered by an employment policy that provides for final and binding arbitration before a neutral third party.~~

Section 8. Preemption of common-law remedies. ~~[Sections 1 through 9] preempt all other rights relating to and claims seeking redress for wrongful discharge. This preemption includes but is not limited to rights and claims at common law or in equity that arise from tort or express or implied contract, including claims that are~~ (1) EXCEPT AS PROVIDED IN [SECTIONS 1 THROUGH 9], NO CLAIM FOR ~~WRONGFUL~~ DISCHARGE MAY ARISE FROM TORT OR EXPRESS OR IMPLIED CONTRACT, NOR MAY IT BE based on:

~~(1)~~(A) public policy;

~~(2)~~(B) an implied covenant of good faith and fair dealing;

~~(3)~~(C) intentional or negligent interference with contractual rights, prospective or otherwise;

~~(4)~~(D) intentional or negligent infliction of emotional distress;

~~(5) fraud;~~

~~(6)--defamation;~~

~~(7)~~(E) breach of fiduciary duty;

~~(8)~~(F) negligent or intentional misrepresentation; OR

~~(9)--loss-of-consortium;-or~~

~~(10)~~(G) negligence.

(2) THIS SECTION DOES NOT PREEMPT INDEPENDENT CAUSES OF ACTION OR INDEPENDENT CLAIMS, OTHER THAN FOR WRONGFUL DISCHARGE, UNDER SUBSECTIONS (1)(A) THROUGH (1)(G) SIMPLY BECAUSE THEY ARISE IN THE EMPLOYMENT SETTING.

Section 9. Arbitration. (1) Under a written agreement of the parties, a dispute that otherwise could be adjudicated under [sections 1 through 9] may be resolved by final and binding arbitration as provided in this section.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) In the absence of a written agreement to allocate the arbitrator's fees and the arbitration costs, the employer and the employee shall each pay one-half of those fees and costs.

(c) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and [sections 1 through

9], [sections 1 through 9] apply.

(d) The arbitrator is bound by [sections 1 through 9].

(3) If a complaint is filed under [sections 1 through 9], the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

(4) A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under [sections 1 through 9] is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.

(5) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under [sections 1 through 8]. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act.

Section 10. Repealer. Sections 39-2-504 and 39-2-505, MCA, are repealed.

Section 11. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the

invalid applications.

Section 12. Applicability. This act applies to claims ~~accruing~~ arising after the effective date of this act ~~and to claims accruing prior to the effective date of this act that have not been filed~~.

SECTION 13. EFFECTIVE DATE. THIS ACT IS EFFECTIVE JULY 1, 1987.

-End-