MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 6, 1991, at 10:00 a.m.

ROLL CALL

Members Present:
Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HOUSE BILL 71

Presentation and Opening Statement by Sponsor:

Representative Bill Strizich, District 41, told the Committee HB 71 is part of a package of bills from the interim committee on juvenile detention. He said the bill enhances current law by requiring that those who are incarcerated pay for the cost of incarceration if they have the ability to do so.

Representative Strizich explained that such things as lack of funding for and recreation at incarceration facilities are two of the costs which could be met by this bill. He stated there is a "logical connection" between space available and paying for cost of incarceration. Representative Strizich advised the Committee the

detention facility bills from this package are long overdue, and said the fiscal note reflects revenue and not expenses.

Proponents' Testimony:

Gordon Morris, Montana Association of Counties, said he worked closely with the interim committee and supports HB 71.

Opponents' Testimony:

Patricia Bradley, Montana Magistrates Association, stated the judges believe this sentencing should not be legislated as mandatory. She read from prepared testimony in opposition to the bill (Exhibit #1).

Questions From Committee Members:

Chairman Pinsoneault commented to Patricia Bradley that judges have a detailed form for each individual defense, and said he did not see making this determination as being very difficult. Ms. Bradley replied that it could develop into extra workload.

Chairman Pinsoneault asked Representative Strizich to address the concerns of the Magistrates. Representative Strizich replied that the bill is part of even treatment.

Chairman Pinsoneault stated he believes the judges would be more comfortable with this language as part of the law.

Senator Towe said he had concerns about "shall", and asked if it were the intent that the court would have no discretion. Representative Strizich replied the intent is that the ability to pay can be done on a sliding fee scale. He explained that the state average is $27.50 per day.

Senator Towe said he also had concerns with "is confined in a detention center", and asked if that included state prison. Representative Strizich replied it does not include the prison, and said detention centers have a specific application.

Closing by Sponsor:

Representative Strizich told the Committee HB 71 had a good hearing in the House, and that he would be available to answer any questions.

HEARING ON SENATE BILL 198

Presentation and Opening Statement by Sponsor:

Senator Bob Brown, District 2, said SB 198 was introduced at the request of the Human Rights Commission. He explained that the bill addresses incorrect provisions of federal code. Senator Brown

advised the Committee that in the 1987 discrimination bill, the Legislature recognized the value of discrimination in preventing families with children from living in housing designed specifically for older persons, but the wrong code is referred to in that legislation. He said that part of the code has been corrected, and that it also contains a retroactivity clause.

Proponents' Testimony:

There were no proponents.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

There were no questions.

Closing by Sponsor:

Senator Brown made no closing comments.

HEARING ON SENATE BILL 199

Presentation and Opening Statement by Sponsor:

Senator Bob Brown, District 2, told the Committee SB 199 was also drafted at the request of the Human Rights Commission. He stated that about ten years ago, Montana began a cooperative effort with the federal Fair Housing Development. He explained that in 1988 the federal Fair Housing Act was amended by Congress and that Montana needs to be brought into compliance by January 1992.

Senator Brown stated there are substantial changes on pages 3-7, and that procedural changes reflect 1988 federal changes.

Proponents' Testimony:

Anne MacIntyre, Administrator, Human Rights Commission (HRC), provided committee members with written testimony in support of SB 199 (Exhibit #2). She said the bill makes provision for handicapped persons; prohibits blockbusting; prohibits discrimination in real estate transactions and the real estate industry; prohibits coercion and intimidation on the basis of race, sex, etc.; and prohibits criminal acts.

Ms. MacIntyre said subsection (c) of 49-2-305, MCA is repealed, as there can be valid reasons for making inquiry for records, such as real estate industry marketing. She advised the Committee that the bill allows the HRC to set penalties, the funds from which are to be placed in an ear-marked revenue account. Ms. MacIntyre further advised the Committee that the statute of

limitations for filing complaints has been changed from 180 days to one year.

Ms. MacIntyre stated the HRC is seeking these changes to remain substantially equivalent with HUD (federal Housing and Urban Development), and to continue receiving $23,500 annually from HUD (see fiscal note). She explained this amount represents one of nine full time employees in the HRC budget, and said this is not documented in the fiscal note.

Ms. MacIntyre advised the Committee that if HRC is not in compliance, it will lose grants for education which have been about $58,000 annually for the past four years. She said housing discrimination is a serious problem in Montana with about 50 percent of minorities.

Ms. MacIntyre told the Committee that Lloyd Miller, Equal Housing Opportunity Director, HUD, Denver, was present to answer questions. She said she brought a copy of the federal Fair Housing Act and Equal Housing Opportunity Regulations (Exhibits #3 and #4).

Lloyd Miller, Regional Director, Fair Housing and Equal Opportunity, HUD, Denver, said he was neither a proponent nor an opponent, and was present to share significant data.

Mr. Miller stated the federal Fair Housing Act was amended September 13, 1988, and became effective in March 1989. He commented that the U.S. Congress must have been serious about this legislation, as it was passed far more quickly then any other HUD legislation. Mr. Miller said states have 40 months to comply with the Act and, if not, they will be decertified. He advised the Committee that, at that point, HUD can no longer recognize decertified states and will be required to come to local jurisdictions to investigate complaints. He added that this would bring about duplication of effort which would cost both the state and the federal governments more money.

Mr. Miller said the logic behind the bill is that costs will be significantly reduced and significant grants will remain intact. He explained that Denver has a good relationship with Montana which is second to Colorado in workload in the region. He commented that Utah is bringing its legislation up to date, and that Wyoming and North Dakota have yet to bring their states into compliance with the Act.

Toni Austad, Director of Concerned Citizens Coalition (CCC) for Fair Housing in Great Falls, said hers is the only private fair housing agency in Montana. She read from a prepared statement in support of SB 199 (Exhibit #5), and said CCC is unique in its focus on American Indians. Ms. Austad stated the rate of discrimination against Indians in Montana is twice that of any other minority in the state. She said problems are complicated by the difficult complaint process which deters many people from filing a complaint.

Ms. Austad added that CCC has provided fair housing education in Montana.

Kate Cholewa, Montana Womens Lobby, stated her support of SB 199.

Opponents' Testimony:

There were no opponents of SB 199.

Questions from the Committee:

Senator Crippen asked how a mind-set to discrimination could be changed. He referred to language deleted on page 3, lines 11-14, and said that language was there for a reason. He asked if the door would be opened to abuse what the original language was there to correct. Anne MacIntyre replied that was assuming the information was being gathered to use in a discriminatory manner. She stated it is not unlawful to make inquiry, and said that what is unlawful is to use the information for discriminatory purposes.

Senator Crippen said he was concerned that it could become open abuse. He asked what reasonable grounds for discrimination are, on page 2. Anne MacIntyre replied that she was unsure. She said 49-2- 01, MCA, says the term "reasonable" is to be strictly construed.

Senator Crippen said he believes "reasonable" is in the language for constitutional purposes.

Senator Halligan asked what requirements in the bill would apply to construction of multi-family units. Anne MacIntyre replied the bill has special requirements concerning handicapped persons beginning on page 5, line 5. She said the requirements are in place under federal law and are in the bill for new construction, but she was not certain about education on new construction.

Senator Rye asked for clarification of "familial status". Anne MacIntyre replied it means a child or children residing with adults. Senator Rye asked if this phrase would preclude unmarried persons who reside together. Ms. MacIntyre replied it would not, nor does it address cohabitation.

Senator Rye asked if an elderly retirement villa would preclude families. Anne MacIntyre replied that a specific section of the law allows renting to older persons and not a family with children in this instance.

Senator Mazurek asked why the statute of limitations was being changed in sections 3 and 7. Anne MacIntyre replied the federal statute of limitations for hearing complaints is one year. She commented that did not sit well with her when the bill was drafted.

Senator Towe asked how much of the material in section 2 is federally mandated. Anne MacIntyre replied it parallels federally mandated law closely.

Senator Towe asked why there is no test for determining what punitive damages are to be assessed by the HRC, and said he was assuming they would be adopted without a test. Anne MacIntyre replied that was true.

Senator Towe asked who pays for the appointed attorney on page 13, line 21. He commented that, unless provided otherwise, it would be the district court. Anne MacIntyre replied she was not certain.

Senator Towe said he also shared Senator Crippen's concerns that mischief could result from taking out the provisions banning inquiry. He asked why this is being done. Anne MacIntyre replied the Board of Realty Regulation and the Montana Association of Realtors (MAR), are required to track this information and have construed current law as prohibiting them from doing so. She added that the HRC may need comparative information from a landlord concerning other tenants relative to an investigation.

Senator Towe asked if she were suggesting the new language would be more advantageous for tracking and if it should be retained in the bill.

Senator Crippen commented that he could see that if the history of a landlord could show a pattern of discrimination, it might be of value. Senator Crippen asked if homosexuality were covered on page 3, lines 6-9, and if it differed from federal language. Anne MacIntyre replied that Montana law does not address the issue at all, and that to her experience "no one has ever been construed to do this". She added that it is not covered in federal law.

Senator Doherty asked if punitive damages language on page 14, "if the court finds discrimination", referred to the district court. Anne MacIntyre replied it did.

Senator Doherty asked about the substantial equivalency test. Anne MacIntyre replied laws and standards can still be adopted by Montana that are tougher than federal laws and standards.

Chairman Pinsoneault commented that the HUD reputation was pretty severely damaged during the past six years. He cited the 40 percent voter turnout in the last election as evidence of federal notoriety, and asked why HUD did not clean up their own act. Lloyd Miller replied that the HUD problem had very little impact at the regional level. He stated that he could not recall any regional people who were involved, and said that was particularly true of Region 8.

Chairman Pinsoneault further commented that he had to close down a six or eight apartment rental unit in St. Ignatius, primarily because of drug and alcohol use by Native Americans. He explained that the Confederated Kootenai-Salish Tribes supported the action, but such incidents are a problem in small communities. Toni Austad replied she hears such comments all the time. She said she basically does not accept putting the burden on an entire race when these incidents involve only a few. Ms. Austad stated that the same situation exists with non-Indian, and that she, basically, does not accept this as it can't be used for a method of discrimination.

Senator Towe asked why blockbusting was added to the bill, and if it were a federal provision. Anne MacIntyre replied it is federally mandated.

Senator Mazurek asked if the one-year statue of limitations on complaints was required by federal law. Anne MacIntyre replied it is.

Closing by bill sponsor:

Senator Brown made no closing comments.

Senator Mazurek asked Valencia Lane to prepare an amendment to make the statute of limitations one year on housing and 180 days on all else.

EXECUTIVE ACTION ON SENATE BILL 153

Motion:

Discussion:

Chairman Pinsoneault said he was hesitant to open up this area.

Senator Towe asked if the Legislature had considered an insurance user dropping an insured who then has to pay medical bills. He stated he believes the issue has to be addressed.

Senator Halligan reported that Jackie Terrell, American Insurance Association, told that Legislature there was an insurance pool. Jackie Terrell replied that Title 33, Chapter 10, part 1 applied to the property and casualty insurance guarantee fund and part 2 refers to the life and health guarantee fund. She stated that if a company goes bankrupt, the fund covers claims that would have been paid by that company. She explained that the fund is comprised of other companies writing insurance in the area. Ms. Terrell advised the Committee it is her understanding that health

insurance would be covered, as it operates the same way. She added that the effect to the claimant is the same.

Senator Towe said he is concerned with what happens if a company or an employer cancels insurance.

Senator Mazurek stated that an attempt was made to make the application fairly narrow and to take into account the present value of future insurance costs. He added that this was a fairly workable compromise at the time.

Senator Mazurek suggested that an attorney could cover the contingencies, and said the bill requires determining the amount of offset.

Amendments, Discussion, and Votes:

Senator Crippen made a motion that SB 153 do not pass. He stated this would give Senator Towe an opportunity for a more straight-forward form of presentation on the floor.

Senator Towe stated he is concerned that the problem is simply not being addressed.

Chairman Pinsoneault commented that one can "what if" a bill to death.

Senator Towe stated, "The collateral source is a hypothetical that has never been used".

Recommendation and Vote:

The motion made by Senator Crippen carried 9-3 in a roll call vote (attached).

EXECUTIVE ACTION ON HOUSE BILL 94

Motion:

Discussion:

Senator Crippen stated the purpose of the bill was to further protect the copyright.

Valencia Lane reported that the copyright is being protected by the action of the Code Commission.

Amendments, Discussion, and Votes:

Recommendation and Vote:

Senator Svrcek made a motion that HB 94 BE TABLED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 190

Motion:

Discussion:

Senator Mazurek advised the Committee that several years ago a pre-judgment interest provision was very carefully drafted.

Senator Towe stated this is not addressed by the amendment, and that if the Committee is going to treble damages it should give the full intent. He said that if it is applied to the McCarthy Farms case (a long, drawn-out litigation) it would be atrocious. He added that the amount of business lost is nebulous after 15 years of litigation.

Senator Mazurek stated there is no difference with special damages, but there is with general damages.

Amendments, Discussion, and Votes:

Recommendation and Vote:

There was no further discussion or action on SB 190 this date.

EXECUTIVE ACTION ON SENATE BILL 154

Motion:

Discussion:

Valencia Lane advised the Committee there were school board amendments and Alec Hansen's (Montana League of Cities and Towns) amendments. She explained that Mr. Hansen's amendments needed to

be drafted in amendment form, and explained that they define government entity to include any other entity empowered by law. She said they also define a legislative body and request immunity on anything covered by another recourse such as zoning laws. Valencia Lane stated the amendments also address an entity not being subject to liability when there are financial constraints.

Senator Mazurek asked Valencia Lane if any work were done on the retroactive aspect. Valencia Lane replied no.

Chairman Pinsoneault said he spoke with Noni Linder's attorney and was advised that her case had not yet reached the point of asking for payment on a judgment not paid. He commented that if there are very few dollars left, it will not be much compensation for her, and suggested a Committee bill may be the vehicle for appropriate compensation for damages.

Mike Sherwood, Montana Trial Lawyers Association, advised the Committee that Eccleston (Mary Fitzpatrick) case has gone to the Supreme Court and has been ruled upon. He stated that Noni Linder's case has not yet been ruled upon.

Senator Towe suggested stating that the rule would apply to any decision made after the effective date. He commented that Ms. Fitzgerald would then have to apply to the Legislature.

Senator Svrcek addressed the water poisoning situation near Helena, and said he believes these people should be addressed. He added that retroactivity should be narrow.

Chairman Pinsoneault advised the Committee that the proposed amendments need to be finalized.

Senator Towe requested that Valencia Lane draft the language he proposed.

Amendments, Discussion, and Votes:

Recommendation and Vote:

There was no further discussion or action on SB 154 this date.

ADJOURNMENT

Adjournment At: 11:50 a.m.

Senator Dick Pinsonault, Chairman

Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 6 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 6, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 153 (first reading copy -- white), respectfully report that Senate Bill No. 153 do not pass.

Signed: Richard Pinsoneault
Richard Pinsoneault, Chairman

RLD 2/6/91
Amd. Coord.

SB 2-6-91
Sec. of Senate

EXHIBIT 1
6 Feb 91
HB 71

Montana Magistrates Association

February 6, 1991

HB 71, an act requiring courts to determine if inmates can pay the cost of incarceration and then ordering them to pay

Testimony of Pat Bradley, Lobbyist for MMA

MR. CHAIRMAN AND COMMITTEE MEMBERS:

The MMA does not oppose the possibility of requiring people to pay their own costs of incarceration. Judges now have this sentencing option and consider it on a case by case basis.

The concern of judges of courts of limited jurisdiction is that this sentencing discretion should not be legislated as mandatory.

Some comments from legislators that arose in previous committee hearingand the house floor were that it places judges in a position of an arbitrary nature to implement; that the attorneys may have to develop cases of defense including ability to pay costs of incarceration; that per diem costs of jails vary across the state; and that costs of incarceration could impose hardships on defendant's families.

We request your consideration of these potential problems in your deliberation of this bill.

Pat Bradley

EXHIBIT #2
6 Feb 91
SB199

Statement of Anne L. MacIntyre
Administrator, Human Rights Commission
In support of Senate Bill 199
Senate Judiciary Committee
February 6, 1990

Since 1982, the Human Rights Commission has had a cooperative worksharing relationship with the U.S. Department of Housing and Urban Development (HUD) for enforcement of housing discrimination laws in Montana. The Commission was considered to be eligible to engage in this worksharing relationship because, at the time we entered into our memorandum of understanding with HUD, we were enforcing a state law which was deemed to be substantially equivalent to the federal Fair Housing Act. This worksharing relationship is an advantageous one for Montana and Montanans in that when a complaint of housing discrimination is filed over which both agencies have jurisdiction, only one agency processes the complaint. This relationship means that parties involved in discrimination complaints need only to deal with one governmental agency concerning the complaint. Furthermore, the relationship allows the agencies to more appropriately focus their resources, and the federal government provides payments to the Commission when it processes complaints in accordance with the worksharing agreement. Further, this relationship allows the Commission to participate in HUD's educational programs and other enforcement activities designed to deal with housing discrimination, which is a significant problem in Montana.

When the Commission first entered into this relationship, Montana law contained broader protection against housing discrimination and more significant procedures for remedying instances of housing discrimination than were contained in the federal law. In 1988, however, Congress enacted the Fair Housing Amendments Act, which substantially altered the federal Fair Housing Act, both substantively and procedurally. The 1988 Act allowed HUD to continue worksharing relationships with agencies considered to be substantially equivalent before the enactment of the 1988 amendments for a period of 40 months after enactment. In order to maintain this cooperative relationship after the 40-month period, the state law must be amended so that it is substantially equivalent to the federal amendments. The 40-month period expires on January 12, 1992, however. After that time, we will no longer be able to maintain our cooperative relationship if the state law is not amended as provided in SB199.

The bill makes the following substantive changes in the housing discrimination provisions of the statute:

1. Specific provisions are added concerning housing discrimination on the basis of handicap, including:

•a requirement that housing providers permit reasonable modifications to housing accommodations, at the expense of the handicapped person. Page 5, lines 8-18.

•a requirement that housing providers make reasonable accommodations in rules, policies, practices, and services. Page 5, lines 19-22.

•a requirement that all new construction of housing accommodations with four or more units be done in a manner to make the housing accessible and adaptable. Page 5, line 23, through page 7, line 6.

2. A provision is added making it unlawful to represent because of race, sex, etc., that a housing accommodation is unavailable when it is in fact available. Page 3, lines 20-25.

3. A provision is added prohibiting blockbusting, that is to induce a person to sell or rent a housing accommodation or property based on representations that a person of a particular race, sex, etc. is moving into the neighborhood. Page 4, lines 1-6.

4. A provision is added making it clear that discrimination on the basis of race, sex, etc. is prohibited in real estate related transactions such as financing, selling, brokering, and appraising. Page 7, lines 7-23. Although section 49-2-306, MCA, prohibits discrimination in financing and credit transactions on the basis of race, sex, etc., it is a poorly drafted section and would need to be completely reworked if we were to amend it for this purpose. Further, section 49-2-306, MCA does not cover real estate related transactions other than financing and does not prohibit discrimination on the basis of familial status.

5. A provision is added prohibiting discrimination in membership or participation in real estate industry organizations on the basis of race, sex, etc. Page 7, line 24 through page 8, line 8.

6. A provision is added prohibiting coercion, intimidation, etc. against a person attempting to exercise his or her rights to be free of housing discrimination on the basis of race, sex, etc. Page 8, lines 9-14. While this provision may seem somewhat duplicative of the provisions of sections 49-2-301 and 49-2-302, MCA, it is added here to insure that we have a state provision which mirrors the federal.

7. Specific criminal sanctions for intimidation or interference in the right to be free of housing discrimination are added. Page 23, line 2 through page 24, line 18.

8. Former subsection (c) of 49-2-305, MCA is repealed. This provision makes it unlawful to make a written or oral inquiry or record of the race, sex, etc. of a person seeking housing. There can be valid reasons for making the inquiry or record, even when relying on the information for a discriminatory purpose would be unlawful. The existence of this provision is a detriment to the efforts of some real estate industry groups to engage in voluntary affirmative marketing and efforts to monitor the existence of housing discrimination. Page 3, lines 11-15.

9. The bill also amends section 49-4-212 by deleting a subsection in existing law which states that a housing provider is not required to modify property in any way for a person with a handicap because this provision conflicts with the provisions of the bill. Page 24, line 19 through page 25, line 4.

The bill also makes a number of procedural changes in the laws prohibiting discrimination. The following are the most significant:

1. A provision is added allowing the Commission to award civil penalties after a finding of unlawful housing discrimination. The penalties are discretionary and the dollar amounts are maximum amounts. Page 9, line 16 through page 10, line 19. Under the federal law, these penalties are placed into the U.S. Treasury, not awarded to the complainant. A similar provision is appropriate here, with the penalties to be placed in an earmarked revenue account. Page 15, lines 15-18.

2. A provision is added allowing either party to make an election for a trial of the housing discrimination claim in a civil action instead of in a hearing before the Commission. Page 11, line 10 through page 12, line 8. The Human Rights Act presently has a provision something like this at section 49-2-509, MCA. However, section 49-2-509, MCA, differs from the federal law in enough respects that it seems more appropriate to except housing discrimination claims from the provisions of section 49-2-509, MCA (at page 18, lines 19-20) and establish a procedure specifically for housing complaints. Note that if the Commission staff finds cause to believe discrimination occurred as a result of its investigation, the Commission staff must represent the complainant in the civil action. This is a specific requirement of the HUD regulations.

3. A provision is added allowing the complainant to pursue a civil action for housing discrimination without recourse to the Commission. Page 12, line 9 through page

14, line 6. The court is specifically authorized to award punitive damages. Page 14, lines 7-13.

4. The statute of limitations is modified to increase the time for filing to 1 year. Page 16, lines 6-21 and page 21, line 12 through page 22, line 2.

5. The authority of a court to award temporary injunctive relief in a case of alleged discrimination is modified to make it conform to the normal statutory rules governing such actions. Page 17, line 22 through page 18, line 16 and page 22, line 5 and page 23, line 1.

I want to emphasize again that the reason the Commission is seeking these changes is so that we will be able to maintain our status as a substantially equivalent agency with HUD for fair housing enforcement. The Commission now receives approximately $23,500 from HUD per year in its base budget to support its case processing activities. This funding issue is documented in the fiscal note which is attached to the bill. While this may not seem like a great deal of money, it represents approximately one FTE of the nine authorized in the Commission's current level budget. This funding would have to be replaced by general fund or the ability of the Commission to administer the law would be more hampered than it already is. Further, and this is not documented in the fiscal note, if the Commission does not maintain substantial equivalency with the federal law, we will lose our eligibility to receive special grants to perform educational work in the area of housing discrimination. Although these grants have not been included in the Commission's base, we have received an average of about $58,000 per year in the past four years for such purposes.

Even without these fiscal impacts, there are good reasons to maintain equivalency. I alluded to some of these in the beginning of my testimony. Furthermore, housing discrimination is a serious problem in Montana, as it is in the rest of the nation. The Fair Housing Act was initially enacted in 1968, and the United States, if anything, is more segregated now than it was then. A study conducted in Montana by the Commission in 1987-88 demonstrated that minorities experienced discriminatory treatment in more than 50% of their efforts to acquire rental housing. The Fair Housing Amendments Act was generally intended to enhance fair housing enforcement and SB199 will have that effect in Montana as well.

I have asked Lloyd Miller, the regional director of HUD's Office of Fair Housing and Equal Opportunity in Denver to be here today to address any questions the committee may have concerning substantial equivalency.

Exhibit # 3
SB 199 2/6/91

from Amy Macfarlane
Re: SB 199
2/6/91

FAIR HOUSING ACT AS AMENDED, EFFECTIVE MARCH 12, 1989

Sec. 800. [42 U.S.C. 3601 note] Short Title

This title may be cited as the "Fair Housing Act".

Sec. 801. [42 U.S.C. 3601] Declaration of Policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Sec. 802. [42 U.S.C. 3602] Definitions

As used in this subchapter--

(a) "Secretary" means the Secretary of Housing and Urban Development.

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

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 [of the United States Code], receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Handicap" means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

Exhibit # 4
SB 199 2/6/91

14. In § 110.5, paragraphs (b), (e), (g) and (h) are revised to read as follows:

§ 110.5 Definitions.

* * * * *

(b) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 of the Act.

* * * * *

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries.

* * * * *

(g) "Fair housing poster" means the poster prescribed by the Secretary for display by persons subject to sections 804–806 of the Act.

(h) "The Act" means the Fair Housing Act (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988), 42 U.S.C. 3600, *et seq.*

* * * * *

15. In § 110.10, paragraph (a) introductory text and paragraph (c) is revised to read as follows:

§ 110.10 Persons subject.

(a) Except to the extent that paragraph (b) of this section applies, all persons subject to section 804 of the Act, Discrimination in the Sale or Rental of Housing and Other Prohibited Practices, shall post and maintain a fair housing poster as follows:

* * * * *

(c) All persons subject to section 805 of the Act, Discrimination In Residential Real Estate-Related Transactions shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.

* * * * *

16. Section 110.15 is revised to read as follows:

§ 110.15 Location of posters.

All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services as contemplated by sections 804 through 806 of the Act.

17. In § 110.25, paragraph (a) is revised to read as follows:

§ 110.25 Description of posters

(a) The fair housing poster shall be 11 inches by 14 inches and shall bear the following legend:

EQUAL HOUSING OPPORTUNITY

We do Business in Accordance With the Fair Housing Act

(The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988)

IT IS ILLEGAL TO DISCRIMINATE AGAINST

ANY PERSON BECAUSE OF RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS (HAVING ONE OR MORE CHILDREN), OR NATIONAL ORIGIN

- In the sale or rental of housing or residential lots.
- In advertising the sale or rental of housing.
- In the financing of housing.
- In the appraisal of housing.
- In the provision of real estate brokerage services.
- Blockbusting is also illegal.

Anyone who feels he or she has been discriminated against should send a complaint to:

U.S. Department of Housing and Urban Development, Assistant Secretary for Fair Housing and Equal Opportunity, Washington, DC 20410

or

HUD Region or [Area Office stamp]

* * * * *

18. Part 115 is revised to read as follows:

PART 115—CERTIFICATION OF SUBSTANTIALLY EQUIVALENT AGENCIES

Sec.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600–3620); sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

§ 115.1 Purpose.

(a) Section 810(f) of the Fair Housing Act, (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Act)) provides that: whenever a complaint alleges a discriminatory housing practice within the jurisdiction of a State or local public agency that has been certified by the Secretary as substantially equivalent, the Secretary shall refer the complaint to that certified agency before taking any action with respect to the complaint. Except with the consent of the certified agency, the Secretary, after referral is made, shall take no further action with respect to the complaint unless:

(1) The certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of referral;

(2) The certified agency, having commenced proceedings, fails to carry forward proceedings with reasonable promptness; or

(3) The Secretary determines that the certified agency no longer qualifies for certification.

The Secretary has delegated the exercise of functions and duties under section 810(f) of the Act to the Assistant Secretary for Fair Housing and Equal Opportunity (the Assistant Secretary).

(b) The purpose of this part is to set forth:

(1) The basis for agency certification.

(2) The procedure by which a determination to certify is made by the Assistant Secretary.

(3) The basis and procedure for withdrawal of certification.

(4) The consequences of certification.

§ 115.2 Basis of determination.

A determination to certify an agency as substantially equivalent involves a two-phase procedure. The determination requires examination and an affirmative conclusion by the Assistant Secretary on two separate inquiries:

(a) Whether the law, administered by the agency, on its face, provides that:

(1) The substantive rights protected by the agency in the jurisdiction with respect to which certification is to be made;

(2) The procedures followed by the agency;

(3) The remedies available to the agency; and

(4) The availability of judicial review of the agency's actions;

Are Substantially substantively equivalent to those created by and under the act; and

(b) Whether the current practices and past performance of the agency demonstrate that, in operation, the law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

§ 115.3 Criteria for adequacy of law.

(a) In order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Act, the law or ordinance must:

(1) Provide for an administrative enforcement body to receive and process complaints and provide that:

(i) Complaints must be in writing;

(ii) Upon the filing of a complaint the agency shall serve notice upon the complainant acknowledging the filing and advising the complainant of the time limits and choice of forums provided under the law;

(iii) Upon the filing of a complaint the agency shall promptly serve notice on the respondent or person charged with the commission of a discriminatory housing practice advising of his or her procedural rights and obligations under the law or ordinance together with a copy of the complaint;

(iv) A respondent may file an answer to a complaint.

(2) Delegate to the administrative enforcement body comprehensive authority, including subpoena power, to investigate the allegations of complaints, and power to conciliate complaint matters, and require that:

(i) The agency commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint;

(ii) The agency investigate the allegations of the complaint and complete the investigation in no more than 100 days after receipt of the complaint, unless it is impracticable.

(iii) If the agency is unable to complete the investigation within 100 days it shall notify the complainant and respondent in writing of the reasons for not doing so;

(iv) The agency make final administrative disposition of a complaint within one year of the date of receipt of a complaint, unless it is impracticable to do so. If the agency is unable to do so it shall notify the complaintant and respondent, in writing, of the reasons for not doing so;

(v) Any conciliation agreement arising out of conciliation efforts by the agency shall be an agreement between the respondent and the complainant and shall be subject to the approval of the agency;

(vi) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law or ordinance.

(3) Not place any excessive burdens on the complainant that might discourage the filing of complaints, such as:

(i) A provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory housing practice has occurred or terminated;

(ii) Anti-testing provisions;

(iii) Provisions that could subject a complainant to costs, criminal penalties or fees in connection with filing of complaints.

(4) Not contain exemptions that substantially reduce the coverage of housing accommodations as compared to Section 803 of the Act (which provides coverage with respect to all dwellings except, under certain circumstances, single family homes sold or rented by the owner and units in owner-occupied dwellings containing living quarters for no more than four families).

(5) Be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, *i.e.*, prohibit the following acts:

(i) Refusal to sell or rent based on discrimination because of race, color, religion, sex, familial status, or national origin;

(ii) Refusal to negotiate for a sale or rental based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iii) Otherwise making unavailable or denying a dwelling based on discrimination because of race, color, religion, sex, familial status, or national origin;

(iv) Discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, based on discrimination because of race, color, religion, sex, familial status, or national origin;

(v) Advertising in a manner that indicates any preference, limitation, or discrimination because of race, color, religion, sex, familial status, or national origin;

(vi) Falsely representing that a dwelling is not available for inspection, sale, or rental because of discrimination because of race, color, religion, sex, familial status, or national origin;

(vii) Coercion, intimidation, threats, or interference with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise of enjoyment of any right granted or protected by section 803, 804, 805, or 806 of the Act;

(viii) Blockbusting based on representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin;

(ix) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, familial status, or national origin. Such transactions include:

(A) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(B) The selling, brokering, or appraising of residential real property;

(x) Denying a person access to, or membership or participation in, a multiple listing service, real estate brokers' organization, or other service because of race, color, religion, sex, familial status or national origin.

(b) In addition to the factors described in paragraph (a) of this section, the provisions of the State or local law must afford administrative and judicial protection and enforcement of the rights embodied in the law.

(1) The agency must have authority to:

(i) Seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the agency concludes that such action is necessary to carry out the purposes of the law or ordinance;

(ii) Issue subpoenas;

(iii) Grant actual damages or arrange to have adjudicated in court at agency expense the award of actual damages to an aggrieved person;

(iv) Grant injunctive or other equitable relief, or be specifically authorized to seek such relief in a court of competent jurisdiction.

(v) Assess a civil penalty against the respondent, or arrange to have adjudicated in court at agency expense

the award of punitive damages against the respondent.

(2) Agency actions must be subject to judicial review upon application by any party aggrieved by a final agency order.

(3) Judicial review of a final agency order must be in a court with authority to grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper; affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and enforce the order to the extent that the order is affirmed or modified.

(c) The requirement that the State or local law prohibit discrimination on the basis of familial status does not require that the State or local law limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) The State or local law may assure that no prohibition based on discrimination because of familial status applies to housing for older persons substantially as described in Part 100, Subpart E.

(e) A detemination of the adequancy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law but must take into account all relevant maters of State or local law, *e.g.*, regulations, directives and rules of procedure, or interpretations of the fair housing law by competent authorities, as may be necessary.

(f) A law will be held to be not adequate "on its face" if it permits any of the agency's decision making authority to be contracted out or delegated to a non-governmental authority. For the purposes of this paragraph, "decision making authority" shall include:

(1) acceptance of the complaint;

(2) Approval of the concilitation agreement;

(3) Dismissal of a complaint;

(4) Any action specified in Section 115.3(a)(2)(iv) or 115.3(b)(1).

(g) The State or local law must provide for civil enforcement of the law or ordinance by an aggrieved person by the commencement of an action in an appropriate court not less than 1 year after the occurrence or termination of an alleged discriminatory housing practice. The court should be empowered to:

(1) Award the plaintiff actual and punitive damages;

(2) Grant as relief, as it deems appropriate, any temporary or permanent injunction, temporary restraining order or other order;

(3) Allow reasonable attorney's fees and costs.

§ 115.3a Criteria for adequacy of law—discrimination because of handicap.

(a) In addition to the provisions of § 115.3, in order for a determination to be made that a State or local fair housing agency administers a law which, on its face, provides rights and remedies for alleged discriminatory housing practices, based on handicap, that are substantially equivalent to those provided in the Act, the law or ordinance must be sufficiently comprehensive in its prohibitions to be an effective instrument in carrying out and achieving the intent and purposes of the Act, *i.e.*, it must prohibit the following acts:

(1) Advertising in a manner that indicates any preference, limitation, or discrimination because of handicap;

(2) Falsely representing that a dwelling is not available for inspection, sale, or rental based on discrimination because of handicap;

(3) Blockbusting, based on representations regarding the entry or prospective entry into the neighborhood of a person or persons with a particular handicap;

(4) Discrimination in residential real estate-related transactions by providing that: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of handicap. Residential and real estate-related transactions include:

(i) The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or

(ii) The selling, brokering, or appraising of residential real property;

(5) Denying a person access to, or membership or participation in, multiple listing services, real estate brokers' organizations, or other services because of handicap;

(6) Discrimination in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of a handicap of that buyer or renter, or of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or of any person associated with the buyer or renter;

(7) Discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of that person, of a person residing in or intending to reside in the dwelling after it is sold, rented, or made available, or of any person associated with that person.

(b) For purposes of this section, discrimination includes—

(1) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person, if the modifications may be necessary to afford the handicapped person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; or

(3) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that—

(i) The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;

(ii) With respect to dwellings with a building entrance on an accessible route—

(A) The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;

(B) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(C) All premises within covered multifamily dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are

usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(c) The law or ordinance administered by the State or local fair housing agency may provide that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1–1986") suffices to satisfy the requirements of paragraph (b)(3)(ii)(C) of this section.

(d) As used in this section, the term "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

§ 115.4 Performance standards.

(a) The initial and continued certification that a State or local fair housing law provides rights and remedies substantially equivalent to those provided in the Act will be dependent upon an assessment of the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of the law to determine that, in operation, the law is in fact providing substantially equivalent rights and remedies. The performance standards set forth in paragraph (b) of this section will be used in making this assessment.

(b) A State or local agency must:

(1) Engage in comprehensive and thorough investigative activities; and

(2) Commence proceedings with respect to a complaint before the end of the 30th day after the receipt of the complaint, carry forward proceedings with reasonable promptness, and in accordance with the memorandum of understanding described in section 115.6 of this part, make final administrative disposition of a complaint within one year of the date of receipt of the complaint and, within 100 days of receipt of the complaint, complete the following proceedings:

(i) Investigation, including the preparation of a final investigative report containing—

(A) The names and dates of contacts with witnesses;

(B) A summary and dates of correspondence and other contacts with the aggrieved person and the respondent;

(C) A summary description of other pertinent records;

(D) A summary of witness statements; and

(E) Answers to interrogatories.

(ii) Conciliation activity.

(3) Conduct compliance reviews of all settlements, conciliation agreements and orders issued by or entered into to resolve discriminatory housing practices.

(4) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices;

(5) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law;

(c) Where the State or local agency has duties and responsibilities in addition to administration of the fair housing law, the Assistant Secretary may consider such matters as the relative priority given to fair housing administration, as compared to such other duties and responsibilities, and the compatibility or potential conflict of fair housing objectives with the agency's other duties and responsibilities.

§ 115.5 Request for certification.

(a) A request for certification under this part may be filed with the Assistant Secretary by the State or local official having principal responsibility for administration of the State or local fair housing law. The request shall be supported by the following materials and information:

(1) The text of the jurisdiction's fair housing law, the law creating and empowering the agency, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

(2) Organization of the agency responsible for administering and enforcing the law.

(3) Funding and personnel made available to the agency for administration and enforcement of the fair housing law during the current operating year, and not less than the preceding three operating years (or such lesser number during which the law was in effect).

(4) Data demonstrating that the agency's current practices and past performance comply with the performance standards described in § 115.4.

(5) Any additional information which the submitting official may wish to be considered.

(b) The request and supporting materials shall be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A copy of the request and supporting materials will be kept available for public examination and copying at:

(1) The office of the Assistant Secretary, and

(2) the HUD Regional Office in whose jurisdiction the State or local jurisdiction seeking recognition is located, and

(3) the office of the State or local agency charged with administration and enforcement of the State or local law.

§ 115.6 Procedure for certification.

(a) Upon receipt of a request for certification filed under § 115.5, the Assistant Secretary may request further information that he or she considers relevant to the determinations required to be made under this part.

(b) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a, that the State or local fair housing law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of that determination. Except under circumstances where the Assistant Secretary determines that interim referrals or other utilization of services under § 115.11 is appropriate, the Assistant Secretary shall publish a notice in the **Federal Register** which advises the public of the determination that the law, on its face, is substantially equivalent, and shall invite interested persons and organizations, during a period of not less than 30 days following publication of the notice, to file written comments relevant to the determination whether the current practices and past performance of the State or local agency charged with administration and enforcement of such law demonstrates that, in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act. The **Federal Register** notice shall also invite comments on the Department's determination as to the adequacy of the law on its face.

(c) If the Assistant Secretary determines, on the basis of the standards specified in § 115.4 and after considering the materials and information submitted pursuant to § 115.5, additional material obtained under paragraph (a) of this section, and any written comments filed under paragraph (b) of this section, that, in operation, a State or local fair housing law in fact provides rights and remedies which are substantially equivalent to

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those provided in the Act, the Assistant Secretary shall offer to enter into a written agreement with the appropriate State or local agency providing for referral of complaints to the agency and for procedures for communication between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the continuing substantial equivalency of the State or local law. The written agreement may, but need not, be incorporated in a Memorandum of Understanding as described in 24 CFR 111.104(a)(2). Upon execution of a satisfactory agreement, the Assistant Secretary shall publish notice of certification under this part in the **Federal Register.**

(d) During the period which begins on September 13, 1988 and ends January 13, 1992, each State or locality recognized as substantially equivalent under 24 CFR Part 115 (including any State or locality which had entered into an agreement for interim referrals under § 115.11, unless the State or locality is subsequently denied recognition under 24 CFR 115.7) for the purposes of the Fair Housing Act before September 13, 1988 shall, for the purposes of this paragraph, be considered certified under this part with respect to those matters for which the agency was previously recognized. If the Secretary determines in an individual case that a State or locality has not been able to meet the certification requirements within this 40-month period because of exceptional circumstances (such as the infrequency of legislative sessions in that jurisdiction), the Secretary may extend the period of temporary certification to no later than September 13, 1992.

(1) No State, locality or agency thereof shall be considered certified under this paragraph for the purpose of processing complaints alleging—

(i) Discrimination based on familial status;

(ii) Discrimination based on handicap; or

(iii) Coercion, intimidation or threats as described in § 115.3(a)(5)(vii).

(2) Certification under this paragraph is not a determination that the administrative or judicial remedies provided by the State or locality is substantially equivalent to those provided by the Act.

(e) Certification of a State or local fair housing agency under this part shall remain in effect until withdrawn under § 115.8.

(f) Not less frequently than annually, the Assistant Secretary will cause to be published in the **Federal Register** a notice which sets forth:

(1) An updated, consolidated list of all certified agencies;

(2) A list of all agencies whose certification under this part has been withdrawn since publication of the previous notice;

(3) A list of agencies with respect to which notice of denial of certification has been published under § 115.7(c) since issuance of the previous notice;

(4) A list of agencies with respect to which a notice for comment has been published under paragraph (b) of this section whose request for certification remains pending;

(5) A list of agencies for which notice of proposed withdrawal of certification has been published under § 115.8(c) whose proposed withdrawal remains pending; and

(6) A list of agencies with which an agreement for interim referrals or other utilization of services has been entered under § 115.11 and remains in effect.

§ 115.7 Denial of certification.

(a) If the Assistant Secretary determines, after application of the criteria set forth in §§ 115.3 and 115.3a, that a State or local fair housing law, on its face, fails to provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing of the reasons for that determination. The Assistant Secretary's advice may include specification of the manner in which the State or local law could be amended in order to provide substantially equivalent rights and remedies. The Assistant Secretary shall extend to the State or local official an opportunity to submit data, views, and arguments in opposition to the Assistant Secretary's determination and to request an opportunity for a conference in accordance with § 115.9. If no submission or request is made, no further action shall be required to be taken by the Assistant Secretary. If the State or local official submits materials but does not request a conference, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency. If, after that evaluation, the Assistant Secretary is still of the opinion that the law, on its face, fails to provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in the Act, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(b) If the Assistant Secretary determines, after considering the materials and information submitted under § 115.5, any additional information obtained under § 115.6(a), an assessment of the current practices and past peformance of the agency in meeting the standards of § 115.4(b), and any written comments received under § 115.6(b), that it has not been demonstrated that, in operation, a State or local fair housing agency in fact provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, the Assistant Secretary shall communicate this determination in writing to the State or local agency and shall allow the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9. If a request for a conference is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and, if after that evaluation the Assistant Secretary is still of the opinion that certification should be denied, the Assistant Secretary shall inform the submitting State or local official in writing that certification is denied.

(c) Where comment on a request for certification was invited in accordance with § 115.6(b), notice of denial of certification under this section shall be published in the **Federal Register.**

§ 115.8 Withdrawal of certification.

(a) Not less frequently than every 5 years, the Assistant Secretary shall determine whether each agency certified under this part continues to qualify for certification. The Assistant Secretary shall take appropriate action with respect to any agency not so qualifying.

(b) The Assistant Secretary shall periodically review the administration of fair housing laws recognized under this part. If the Assistant Secretary finds, as a result of a periodic review, upon the petition of an interested person or organization, or otherwise, that taken as a whole, the agency's administration of its fair housing law or the law, on its face, no longer meets the requirements of this part, the Assistant Secretary shall propose to withdraw the certification previously granted.

(c) The Assistant Secretary shall propose withdrawal of certification unless review establishes that the current fair housing law administered by the certified agency meets the criteria of § 115.3 and that current practices and past performance of the agency meet the standards of § 115.4.

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(d) Before the Assistant Secretary publishes notice of a proposed withdrawal of certification, the Assistant Secretary shall inform the State or local agency in writing of his or her intention to withdraw certification. The communication shall state the reasons for the proposed withdrawal and provide the agency not less than 15 days to submit data, views, and arguments in opposition and to request an opportunity for a conference in accordance with § 115.9.

(e) Notice of a proposed withdrawal shall be published in the **Federal Register**. The notice shall allow the State or local agency and other interested persons and organizations not less than 30 days in which to file written comments on the proposal.

(f) If a request for a conference in accordance with § 115.9 is not received within the time provided, the Assistant Secretary shall evaluate any arguments in opposition or other materials received from the State or local agency and other interested persons or organizations, and if after that evaluation the Assistant Secretary is still of the opinion that certification should be withdrawn, the Assistant Secretary shall withdraw certification and shall publish notice of the withdrawal in the **Federal Register.**

§ 115.9 Conferences.

(a) Whenever an opportunity for a conference is timely requested by a State or local agency in accordance with § 115.7 or § 115.8, the Assistant Secretary shall issue an order designating an officer who shall preside at the conference. The order shall indicate the issues to be resolved and any initial procedural instructions that might be appropriate for a particular conference. It shall fix the date, time and place of the conference. The date shall not be less than 20 days after the date of the order. The date and place shall be subject to change for good cause.

(b) A copy of the order shall be served on the State or local agency and:

(1) In the case of a denial of certification, on any person or organization that files a written comment in accordance with § 115.6(b); or

(2) in the case of a withdrawal of certification, on any person or organization that files a petition in accordance with § 115.8(a) or written comment in accordance with § 115.8(c). The agency and all such persons and organizations shall be considered to be participants in the conference. After service of the order designating the conference officer, and until the officer submits a recommended determination, all communications relating to the subject matter of the conference shall be addressed to that officer.

(c) The conference officer shall have full authority to regulate the course and conduct of the conference. A transcript shall be made of the proceedings at the conference. The transcript and all comments and petitions relating to the proceedings shall be made available for inspection by interested persons.

(d) The conference officer shall prepare proposed findings and a recommended determination, a copy of which shall be served on each participant. Within 20 days after service, any participant may file written exceptions. After the expiration of the period for filing exceptions, the conference officer shall certify the entire record, including the proposed findings and recommended determination, and any exceptions to the findings and recommendations, to the Assistant Secretary, who shall review the record and issue a final determination within 30 days. Where applicable, this determination shall be published in the **Federal Register.**

§ 115.10 Consequences of certification.

(a) Where all alleged violations of the Act contained in a complaint received by the Assistant Secretary appear to constitute violations of a State or local fair housing law administered by an agency that has been certified as substantially equivalent, the complaint shall be referred promptly to the appropriate State or local agency, and no further action shall be taken by the Assistant Secretary with respect to such complaint, except as provided for by the Act, this Part, and by §§ 103.100 through 103.115 or § 105.20 through 105.22 of this chapter.

(b) Notwithstanding paragraph (a) of this section, no complaint based in whole or in part on allegations of discrimination on the basis of familial status or handicap shall be referred to any State, locality or agency thereof whose certification was granted in accordance with § 115.6(d) or section 810(f)(4) of the Act, without regard to whether the fair housing law administered by such certified agency appears to prohibit discrimination based on familial status or handicap.

(c) Notwithstanding paragraph (a) of this section, whenever the Secretary has reason to believe that a complaint shows a basis may exist for the commencement of proceedings against any respondent under section 814(a) of the Act, or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which that belief is based to the Attorney General, or to appropriate governmental licensing or supervisory authorities.

§ 115.11 Interim referrals.

If the Assistant Secretary determines after application of the criteria set forth in § 115.3, that a State or local fair housing law on its face provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, but that the law has not been in effect, or the appropriate State or local agency in operation, for a sufficient time to permit a demonstration of compliance with the performance standards described in § 115.4, the Assistant Secretary may enter into a written agreement with the State or local agency providing for referral of complaints to the agency on such terms and conditions as the Assistant Secretary shall prescribe, or providing for other utilization of the services of the State or local agency and its employees upon agreed terms, and providing further for procedures for communications between the agency and HUD that are adequate to permit the Assistant Secretary to monitor the agency's administration and enforcement of its law and to assist the Assistant Secretary in making the determination required in § 115.2(b). The agreement may provide for reactivation of referred complaints by the Assistant Secretary without regard to the limitations described in § 115.10. If such an agreement for interim referrals or other utilization of services is entered, the Assistant Secretary may defer final determination under § 115.6 or § 115.7 for a reasonable period determined by the Assistant Secretary to be necessary in order to permit a fair assessment of the agency's performance. In no event shall this period extend more than two years beyond the date of entry into the agreement for interim referrals or other utilization of services. This two-year limitation does not apply to agencies certified in accordance with § 115.6(d). However, an agreement under this section shall not be extended beyond the date of certification under § 115.6 or denial of recognition under § 115.7. Notice of entry into an agreement under this section shall be published in the **Federal Register.**

19. Part 121 is added to read as follows:

PART 121—COLLECTION OF DATA

Sec.

Exhibit #5
6 Feb 91
SB 199

TO: Montana Senate Judiciary Committee

FROM: Toni Austad
Fair Housing Project Director
Concerned Citizens Coalition
825 3rd Avenue South
Great Falls, MT 59405

CONCERNING: Support for Senate Bill No. 199

Chairman Pinsoneault and other members of this committee. My name is name is Toni Austad. I am the Director of Concerned Citizens Coalition Fair Housing Project. Concerned Citizens Coalition is a grass roots organization active in Great Falls since 1982 working on economic and social issues affecting low and moderate income people.

CCC is the only private Fair Housing organization in Montana and we are currently conducting enforcement activities in Great Falls, Missoula, and Billings, utilizing demonstration grant funding from the Department of Housing and Urban Development. What is unique about our work is our focus on American Indians.

Housing discrimination is a significant issue in Montana. Unfortunately, housing discrimination is viewed with apathy by most of the groups likely to benefit from equal housing opportunities and affirmative marketing.

Funding for Fair Housing in Montana except from Federal sources is non-existent. With unemployment on Montana's reservation exceeding 60 percent, Indians frequently move from the reservation to find work or go to school. Their search for housing is often frustrated by landlords who refuse to rent to Indians, charge higher security deposits or impose strict and discriminatory rules for occupancy. The rate of discrimination against Indians in Montana is twice that for other minorities in the United States. Some landlords attempt to justify their discrimination by clinging to stereotypical beliefs, while others perceive their property interests as just cause for discrimination.

The problem is complicated by Indians who do not believe government can or will help them with their complaints, by cultural beliefs that challenging discrimination is not necessary, and finally, because American Indians have experienced discrimination for such a long time that it is commonly accepted as a way of life. Many people do not know they have been discriminated against or their rights under the law.

The problems we face in Montana in housing discrimination are complicated even more by the fact that the complaint process is difficult, confusing, and often takes longer than anyone expected. And, for many people in Montana, the Commission is as far away as 250 miles.

When the need for shelter is immediate, the prospect of a long and difficult complaint process quickly deters many people from following through with complaints.

I give you this brief background of housing discrimination to bring home an important point. CCC has, over the years, worked cooperatively and successfully with the Commission to further fair housing activities in Montana. I cannot imagine what it would be like to have HUD investigate complaints from 800 miles away. If Montana does not work cooperatively with HUD, it is possible that complaints could end up being investigated by both HUD and the Commission. That would be difficult for us and difficult for landlords.

Additionally, the Commission for Human Rights has provided Fair Housing education and outreach activities in Montana, funded in part by HUD. The passage of this bill insures that the Commission would continue to be eligible for federal grants to continue this important work.

By making the Montana Human Rights Act consistent with the Federal Fair Housing Act Amendments of 1988, we can all work to end housing discrimination in a responsible manner by maximizing enforcement and educational resouces here in Montana.

Thank you for the opportunity to speak with you today.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 6 Feb 91 Bill No. SB153 Time 11:30 a.m.

NAME	YES	NO
Sen. Brown	✓	X/
Sen. Crippen	✓	
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan	✓	
Sen. Harp	✓	
Sen. Mazurek	✓	
Sen. Rye	✓	
Sen. Svrcek	✓	
Sen. Towe		✓
Sen. Yellowtail		✓
Sen. Pinsoneault	✓	
	9	3

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: Crippen - DNP

SF-3 (Rev. 1987)

Ex. 6
SB 154
2-6-91

Amendment to SB 154

White Copy

Prepared by Montana School Boards Association

1. Page 2, line 1
   Following: "policy"
   Delete: ";"
   Add: "or school board policy or other official action required to be taken by a school board;"

DATE 2-6-91

COMMITTEE ON Judiciary

SB 198

VISITORS' REGISTER SB 199 H.B 71

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
PAT BRADLEY	MT MAGISTRATES ASSN	71		X
Greg MacIntyre	Human Rights Comm	198 & 199	X	
Lloyd R Miller	U.S Dept of HUD	199		
Toni Austad	Concerned Citizens Coalition	199	X	
Tom Hopgood	M-1 Assoc. Realtors	SB 199	✓	
Kate Cholewa	Montana Womens Lobby	199	X	
Gordon Morris	MACo.	71	✓	
Marcia Dick	MLIC.		✓	