

Senate Bill 56

In The Senate

January 5, 1981

Introduced and referred  
to Committee on State  
Administration.

April 23, 1981

Died in Committee.

SENATE BILL NO. 56

INTRODUCED BY B. BROWN

BY REQUEST OF THE MONTANA HUMAN RIGHTS COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO HUMAN RIGHTS BY SHOWING THE INTERRELATIONSHIP OF CHAPTERS 2 AND 3 OF TITLE 49, MCA; BY PROVIDING A METHOD OF APPOINTING AN ACTING COMMISSIONER TO REPLACE AN ABSENT COMMISSIONER; BY CLARIFYING ADMINISTRATIVE CONTESTED CASE PROCEDURES; AMENDING SECTIONS 49-2-101, 49-2-202, 49-2-204, 49-2-301, 49-2-401, 49-2-402, 49-2-501, 49-2-502, 49-2-505, 49-2-601, 49-3-101 THROUGH 49-3-104, 49-3-202, 49-3-204, 49-3-205, 49-3-302, AND 49-3-303, MCA."

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

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

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

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

(2) "Commission" means the commission for human rights

provided for in 2-15-1706.

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

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

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

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

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

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or

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1 religious association or corporation if the association or  
2 corporation is not organized either for private profit or to  
3 provide accommodations or services that are available on a  
4 nonmembership basis.

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

7 (10) "Financial institution" means a commercial bank,  
8 trust company, savings bank, finance company, savings and  
9 loan association, investment company, or insurance company.

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

14 (12) "Labor organization" means an organization or an  
15 agent of an organization organized for the purpose, in whole  
16 or in part, of collective bargaining, of dealing with  
17 employers concerning grievances or terms or conditions of  
18 employment, or of other mutual aid and protection of  
19 employees.

20 (13) "Mental handicap" means any mental disability  
21 resulting in subaverage intellectual functioning or impaired  
22 social competence.

23 (14) "National origin" means ancestry.

24 (15) "Person" means one or more individuals, labor  
25 unions, partnerships, associations, corporations, legal

1 representatives, mutual companies, joint-stock companies,  
2 trusts, unincorporated employees' associations, employers,  
3 employment agencies, or labor organizations.

4 (16) "Physical handicap" means a physical disability,  
5 infirmity, malformation, or disfigurement which is caused by  
6 bodily injury, birth defect, or illness, including epilepsy.  
7 It includes without limitation any degree of paralysis;  
8 amputation; lack of physical coordination; blindness or  
9 visual impediment; deafness or hearing impediment; muteness  
10 or speech impediment; or physical reliance on a guide dog  
11 for the blind, a wheelchair, or any other remedial appliance  
12 or device.

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

1 ~~(18)~~ "Right-to-sue letter" means a letter requested by  
 2 a complainant from the commission staff in order to file a  
 3 discrimination action in district court.

4 ~~(18)~~(19) "Staff" or "commission staff" means the staff  
 5 of the commission for human rights."

6 Section 2. Section 49-2-202, MCA, is amended to read:

7 "49-2-202. Authority to require posted notice. The  
 8 commission may require any employer, employment agency,  
 9 labor union, educational institution, or financial  
 10 institution or the owner, lessee, manager, agent, or  
 11 employee of any public accommodation or housing  
 12 accommodation subject to ~~this~~ chapter 2 or 3 of this title  
 13 to post, in a conspicuous place on his premises or in the  
 14 accommodation, a notice to be prepared or approved by the  
 15 commission containing relevant information that the  
 16 commission considers necessary to explain this chapter. Any  
 17 person or institution subject to this section who refuses to  
 18 comply with an order of the commission respecting the  
 19 posting of a notice is guilty of a misdemeanor and  
 20 punishable by a fine of not more than \$50."

21 Section 3. Section 49-2-204, MCA, is amended to read:

22 "49-2-204. Commission to adopt rules. The commission  
 23 shall adopt procedural and substantive rules necessary to  
 24 implement ~~this chapter~~ chapters 2 and 3 of this title.  
 25 Rulemaking procedures shall comply with the requirements of

1 the Montana Administrative Procedure Act."

2 Section 4. Section 49-2-301, MCA, is amended to read:

3 "49-2-301. Retaliation prohibited. It is an unlawful  
 4 discriminatory practice for a person, educational  
 5 institution, financial institution, or governmental entity  
 6 or agency to discharge, expel, blacklist, or otherwise  
 7 discriminate against an individual because he has opposed  
 8 any practices forbidden under ~~this~~ chapter 2 or 3 of this  
 9 title, or because he has filed a complaint, testified,  
 10 assisted, or participated in any manner in an investigation  
 11 or proceeding under this chapter."

12 Section 5. Section 49-2-302, MCA, is amended to read:

13 "49-2-302. Aiding, coercing, or attempting. It is  
 14 unlawful for a person, educational institution, financial  
 15 institution, or governmental entity or agency to aid, abet,  
 16 incite, compel, or coerce the doing of an act forbidden  
 17 under ~~this~~ chapter 2 or 3 of this title or to attempt to do  
 18 so."

19 Section 6. Section 49-2-401, MCA, is amended to read:

20 "49-2-401. Procedure for claiming exemption. A person,  
 21 educational institution, financial institution, or  
 22 governmental entity or agency who or which seeks to be  
 23 exempted from the requirements of chapter 3 of this title or  
 24 part 3 of this chapter may petition the commission for a  
 25 declaratory ruling as provided in 2-4-501 of the Montana

1 Administrative Procedure Act. If the commission finds that  
2 reasonable grounds for granting an exemption exist, it may  
3 issue a ruling exempting the petitioner from the particular  
4 provision. This section, however, shall be strictly  
5 construed, and the burden is on the petitioner to  
6 demonstrate that an exemption should be granted."

7 Section 7. Section 49-2-402, MCA, is amended to read:

8 "49-2-402. "Reasonable" to be strictly construed. Any  
9 grounds urged as a "reasonable" basis for an exemption under  
10 any section of ~~this~~ chapter 2 or 3 of this title shall be  
11 strictly construed."

12 Section 8. Section 49-2-501, MCA, is amended to read:

13 "49-2-501. Filing complaints. (1) A complaint may be  
14 filed by or on behalf of any person claiming to be aggrieved  
15 by any discriminatory practice prohibited by ~~this~~ chapter 2  
16 or 3 of this title. The complaint must be in the form of a  
17 written, verified complaint stating the name and address of  
18 the person, educational institution, financial institution,  
19 or governmental entity or agency alleged to have engaged in  
20 the discriminatory practice and the particulars of the  
21 alleged discriminatory practice. The commission staff may  
22 file a complaint in like manner when a discriminatory  
23 practice comes to its attention.

24 (2) A complaint under ~~this~~ chapter 2 or 3 of this  
25 title must be filed with the commission within 180 days

1 after the alleged unlawful discriminatory practice occurred  
2 or was discovered. Any complaint not filed within the time  
3 set forth herein may not be considered by the commission."

4 Section 9. Section 49-2-502, MCA, is amended to read:

5 "49-2-502. Notification of and action by commission.  
6 The staff shall notify the commission in writing of all  
7 complaints filed with the commission. The commission shall  
8 meet a minimum of four times a year to hear and act upon all  
9 complaints filed. ~~The chairman of the commission may appoint~~  
10 ~~an acting commission member to vote in place of an absent~~  
11 ~~member."~~

12 Section 10. Section 49-2-505, MCA, is amended to read:

13 "49-2-505. Contested case hearing. (1) If the informal  
14 efforts to eliminate the alleged discrimination are  
15 unsuccessful ~~and the complainant does not request a~~  
16 ~~right-to-sue letter~~, the staff shall inform the commission  
17 of the failure and the commission shall cause written notice  
18 to be served, together with a copy of the complaint,  
19 requiring the person, educational institution, financial  
20 institution, or governmental entity or agency charged in the  
21 complaint to answer the allegations of the complaint at a  
22 hearing before the commission.

23 (2) The hearing must be held by the commission in the  
24 county where the unlawful conduct is alleged to have  
25 occurred unless the person, institution, entity, or agency

1 charged in the complaint or the commission requests a change  
 2 of venue for good cause shown. The case in support of the  
 3 complaint may be presented before the commission by the  
 4 staff, the complainant, or an attorney representing the  
 5 complainant. The hearing and any subsequent proceedings  
 6 under this chapter must be held in accordance with the  
 7 Montana Administrative Procedure Act except as provided in  
 8 49-2-503.

9 (3) The commission may make provisions for defraying  
 10 the expenses of an indigent party in a contested case  
 11 hearing held pursuant to this chapter.

12 (4) The prevailing party in a hearing under this  
 13 section may bring an action in district court for attorneys'  
 14 fees. The court in its discretion may allow the prevailing  
 15 party reasonable attorneys' fees. An action under this  
 16 section must comply with the Montana Rules of Civil  
 17 Procedure."

18 Section 11. Section 49-2-601, MCA, is amended to read:

19 "49-2-601. Criminal penalty. A person, educational  
 20 institution, or financial institution, either public or  
 21 private, or a governmental entity or agency who or which  
 22 willfully engages in an unlawful discriminatory practice  
 23 prohibited by ~~this~~ chapter 2 or 3 of this title, or  
 24 willfully resists, prevents, impedes, or interferes with the  
 25 commission, the department, or any of its authorized

1 representatives in the performance of a duty under ~~this~~  
 2 chapter 2 or 3 of this title, or who or which willfully  
 3 violates an order of the commission or willfully violates  
 4 ~~this~~ chapter 2 or 3 of this title in any other manner is  
 5 guilty of a misdemeanor and is punishable by a fine of not  
 6 more than \$500 or by imprisonment for not more than 6  
 7 months, or both."

8 Section 12. Section 49-3-101, MCA, is amended to read:

9 "49-3-101. Definitions. As used in ~~this~~ ~~chapter~~  
 10 chapters 2 and 3 of this title, the following definitions  
 11 apply:

12 (1) "State and local governmental agencies" means:

13 (a) all branches, departments, offices, boards,  
 14 bureaus, commissions, agencies, university units, colleges,  
 15 and other instrumentalities of state government; and

16 (b) counties, cities, towns, school districts, and  
 17 other units of local government and all instrumentalities of  
 18 local government.

19 (2) "Qualifications" means such qualifications as are  
 20 genuinely related to competent performance of the particular  
 21 occupational task."

22 Section 13. Section 49-3-102, MCA, is amended to read:

23 "49-3-102. What local governmental units affected.  
 24 Local governmental units affected by ~~this~~ ~~chapter~~ chapters 2  
 25 and 3 of this title include all political subdivisions of

1 the state, including school districts."

2 Section 14. Section 49-3-103, MCA, is amended to read:

3 "49-3-103. Permitted distinctions. Nothing in this  
4 chapter ~~or chapter 2 of this title~~ shall prohibit any public  
5 or private employer:

6 (1) from enforcing a differentiation based on age or  
7 physical or mental handicap when based on a bona fide  
8 occupational qualification reasonably necessary to the  
9 normal operation of the particular business or where the  
10 differentiation is based on reasonable factors other than  
11 age;

12 (2) from observing the terms of a bona fide seniority  
13 system or any bona fide employee benefit plan such as a  
14 retirement, pension, or insurance plan which is not a  
15 subterfuge to evade the purposes of this chapter, except  
16 that no such employee benefit plan shall excuse the failure  
17 to hire any individual; or

18 (3) from discharging or otherwise disciplining an  
19 individual for good cause."

20 Section 15. Section 49-3-104, MCA, is amended to read:

21 "49-3-104. Quotas not required. Nothing in ~~this~~  
22 chapter ~~2 or 3 of this title~~ shall be construed as requiring  
23 the institution of a system of quotas for representation of  
24 any sex, age, religious, racial, ethnic, or other group  
25 affected by this chapter."

1 Section 16. Section 49-3-202, MCA, is amended to read:

2 "49-3-202. Employment referrals and placement  
3 services. (1) All state and local governmental agencies,  
4 including educational institutions, which provide employment  
5 referrals or placement services to public or private  
6 employers shall accept job orders on a fair practice basis.  
7 A job request indicating an intention to exclude a person  
8 because of race, color, religion, creed, political ideas,  
9 sex, age, marital status, physical or mental handicap, or  
10 national origin shall be rejected.

11 (2) All state and local governmental agencies shall  
12 cooperate in programs developed by the commission for human  
13 rights for the purpose of broadening the base of job  
14 recruitment and shall further cooperate with employers and  
15 unions providing such programs.

16 (3) The department of labor and industry shall  
17 cooperate with the commission for human rights in  
18 encouraging and enforcing compliance by employers and labor  
19 unions with the policy of ~~this chapter~~ chapters 2 and 3 of  
20 this title and promotion of equal employment opportunities."

21 Section 17. Section 49-3-204, MCA, is amended to read:

22 "49-3-204. Licensing. No state or local governmental  
23 agency may grant, deny, or revoke the license or charter of  
24 a person on the grounds of race, color, religion, creed,  
25 political ideas, sex, age, marital status, physical or

1 mental handicap, or national origin. Each state or local  
 2 governmental agency shall take such appropriate action in  
 3 the exercise of its licensing or regulatory power as will  
 4 assure equal treatment of all persons, eliminate  
 5 discrimination, and enforce compliance with the policy of  
 6 ~~this chapter chapters 2 and 3 of this title.~~"

7 Section 18. Section 49-3-205, MCA, is amended to read:

8 "49-3-205. Governmental services. (1) All services of  
 9 every state or local governmental agency must be performed  
 10 without discrimination based upon race, color, religion,  
 11 creed, political ideas, sex, age, marital status, physical  
 12 or mental handicap, or national origin.

13 (2) No state or local facility may be used in the  
 14 furtherance of any discriminatory practice, nor may a state  
 15 or local governmental agency become a party to an agreement,  
 16 arrangement, or plan which has the effect of sanctioning  
 17 discriminatory practices.

18 (3) Each state or local governmental agency shall  
 19 analyze all of its operations to ascertain possible  
 20 instances of noncompliance with the policy of ~~this chapter~~  
 21 ~~chapters 2 and 3 of this title,~~ and shall initiate  
 22 comprehensive programs to remedy any defect found to exist."

23 Section 19. Section 49-3-302, MCA, is amended to read:

24 "49-3-302. Annual reports to governor. All state  
 25 governmental agencies which report to the governor shall

1 include in their annual reports to the governor activities  
 2 undertaken in the past year to effectuate ~~this--chapter~~  
 3 ~~chapters 2 and 3 of this title.~~ Such reports shall cover  
 4 both internal activities and external relations with the  
 5 public or with other state agencies and shall contain other  
 6 information as specifically requested by the governor."

7 Section 20. Section 49-3-303, MCA, is amended to read:

8 "49-3-303. Remedies for individuals. (1) Any person  
 9 claiming to be aggrieved by a violation of any provision of  
 10 this chapter may file a complaint for redress of the  
 11 violation with the commission for human rights. The  
 12 complaint shall be filed within the time limit set forth in  
 13 49-2-501(2) and shall be considered by the commission  
 14 according to the procedures in chapter 2.

15 (2) After a complaint has been filed under this  
 16 section or 49-2-501 for 180 days or after the commission  
 17 staff determines that its informal efforts to eliminate the  
 18 alleged discrimination are unsuccessful, whichever comes  
 19 first, it shall, at the request of the complainant, issue a  
 20 right-to-sue letter. The commission shall dismiss a  
 21 complaint when a right-to-sue letter is issued.

22 (3) A complainant who has been issued a right-to-sue  
 23 letter may, within 90 days of the date of that letter, and  
 24 upon filing that complaint may, in addition, petition the  
 25 district court in the district where the complainant resides

1 or--where the alleged violation occurred for appropriate  
2 relief. The court may grant such relief, by injunction or  
3 otherwise, as it considers appropriate. Commencement of the  
4 administrative remedy does not preclude the judicial remedy  
5 ~~unless the case has already been certified to the commission~~  
6 ~~for a contested case hearing.~~

7 ~~(2)(4)~~ Actions under this section are original  
8 actions."

9 NEW SECTION. Section 21. Other provisions applicable.  
10 In addition to the provisions of this chapter, the following  
11 sections apply to this chapter: 49-3-101 through 49-3-104,  
12 49-3-202, 49-3-204, 49-3-205, and 49-3-302.

13 NEW SECTION. Section 22. Applicability of other  
14 provisions. In addition to the provisions of this chapter,  
15 the following sections apply to this chapter: 49-2-101,  
16 49-2-202, 49-2-204, 49-2-301, 49-2-302, 49-2-401, 49-2-402,  
17 49-2-501, and 49-2-601.

18 Section 23. Codification instructions. (1) Section 21  
19 is intended to be codified as an integral part of Title 49,  
20 chapter 2.

21 (2) Section 22 is intended to be codified as an  
22 integral part of Title 49, chapter 3.

-End-