

HOUSE BILL NO. 714

INTRODUCED BY SPAETH, CHRISTIAENS, FULLER, HALLIGAN,  
R. MANNING, FARRIS, BACHINI, PECK, DARKO, REAM, J. JENSEN

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

IN THE HOUSE

|                   |  |
|-------------------|--|
| February 10, 1983 | Introduced and referred to<br>Committee on Judiciary.  |
| February 15, 1983 | Committee recommend bill do<br>pass as amended. Report<br>adopted.<br><br>Statement of Intent<br>attached. |
| February 16, 1983 | Bill printed and placed on<br>members' desks.  |
| February 18, 1983 | Second reading, do pass as<br>amended.   |
| February 21, 1983 | Correctly engrossed.   |
| February 22, 1983 | Third reading, passed.<br>Transmitted to Senate.   |

IN THE SENATE

|                |   |
|----------------|---|
| March 1, 1983  | Introduced and referred to<br>Committee on State<br>Administration.         |
| March 23, 1983 | Rereferred to Committee on<br>Judiciary.                                    |
| March 25, 1983 | Committee recommend bill be<br>concurrent in as amended.<br>Report adopted. |
| March 26, 1983 | Second reading, concurred<br>in.  |

March 28, 1983

Third reading, concurred in.  
Ayes, 45; Noes, 2.

IN THE HOUSE

March 28, 1983

Returned to House with  
amendments.

April 1, 1983

Second reading, pass  
consideration.

April 4, 1983

Second reading, amendments  
concurred in.

April 5, 1983

Third reading, amendments  
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 *J. Jensen* *House* BILL NO. *714*  
 2 INTRODUCED BY *Smith* *Christensen*, *Fuller* *Stadler*  
 3 *Richard E. Manning*  
 4 BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS  
*Carol Jarvis* *Deborah Rose* *Jackie Ream*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH PROCEDURES  
 6 TO BE FOLLOWED BY THE HUMAN RIGHTS COMMISSION IN THE  
 7 ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND  
 8 TO PROVIDE FOR CONSISTENCY OF INTERPRETATION AND ENFORCEMENT  
 9 OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND THE HUMAN  
 10 RIGHTS LAWS; AMENDING SECTIONS 49-3-101 AND 49-3-303, MCA;  
 11 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 49-3-101, MCA, is amended to read:  
 15 "49-3-101. Definitions. As used in this chapter, the  
 16 following definitions apply:

17 (1) "Age" means number of years since birth. It does  
 18 not mean level of maturity or ability to handle  
 19 responsibility, which may represent legitimate  
 20 considerations as reasonable grounds for discrimination  
 21 without reference to age.

22 (2) "Commission" means the commission for human rights  
 23 provided for in 2-15-1706.

24 (3) "Mental handicap" means any mental disability  
 25 resulting in subaverage intellectual functioning or impaired

1 social competence.

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

11 (5) "State and or local governmental agencies  
 12 agency" means:

13 (a) all branches, departments, offices, boards,  
 14 bureaus, commissions, agencies, university units, colleges,  
 15 and other instrumentalities of state government and branches,  
 16 departments, offices, boards, bureaus, commissions, agency,  
 17 university unit, college, or other instrumentality of state  
 18 government; and or

19 (b) counties, cities, towns, school districts, and  
 20 other units of a county, city, town, school district, or other  
 21 unit of local government and all instrumentalities and  
 22 instrumentality of local government.

23 (6) "Qualifications" means such qualifications as  
 24 are genuinely related to competent performance of the  
 25 particular occupational task."

**NEW\_SECTION.** Section 2. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

(1) filing of complaints;  
 (2) conducting investigations of complaints;  
 (3) petitioning for a declaratory ruling, as provided in [section 4]; and

(4) conduct of hearings.

**NEW\_SECTION.** Section 3. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

**NEW\_SECTION.** Section 4. Procedure for claiming exemption. A state or local governmental agency seeking to apply any exemption from the requirements of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for applying an exemption exist, it may issue a ruling exempting

the petitioner from the particular provision. The burden is on the petitioner to demonstrate that an exemption should be applied. Any provision in this chapter allowing an exemption from its requirements must be strictly construed.

**NEW\_SECTION.** Section 5. Filing complaints. (1) A complaint may be filed with the commission or in district court by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter.

(2) A complaint under this chapter must be filed with the commission or in district court within 180 days after the alleged unlawful discriminatory practice occurred or was discovered. A complaint not filed within that time may not be considered by the commission or the court.

**NEW\_SECTION.** Section 6. Form of complaint. (1) A complaint filed with the commission must be in the form of a written, verified complaint, stating the name and address of the state or local governmental agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

(2) The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

**NEW\_SECTION.** Section 7. Temporary relief by court order. (1) At any time after a complaint is filed with the commission under this chapter alleging an unlawful

1 discriminatory practice, the commission may file a petition  
2 in the district court in the county in which the subject of  
3 the complaint occurred or in the county in which a  
4 respondent resides or transacts business, seeking  
5 appropriate temporary relief against this practice,  
6 including an order restraining the respondent from  
7 interfering in any manner with an order the commission may  
8 enter with respect to the complaint.

9 (2) The court has the power to grant the temporary  
10 relief or restraining order it considers just and proper.  
11 However, no relief or order extending beyond 14 days may be  
12 granted except by consent of the respondent or upon a  
13 finding by the court that there is reasonable cause to  
14 believe that the respondent has engaged in discriminatory  
15 practices.

16 NEW SECTION. Section 8. Informal settlement. The  
17 commission staff shall promptly and impartially investigate  
18 the matters set out in a complaint filed with the  
19 commission. If the staff determines that the allegations are  
20 supported by substantial evidence, it shall immediately try  
21 to eliminate the discriminatory practice by informal  
22 conference, conciliation, and persuasion.

23 NEW SECTION. Section 9. Contested case hearing before  
24 commission. (1) If the informal efforts to eliminate the  
25 discrimination alleged in a complaint filed with the

1 commission are unsuccessful, the staff shall inform the  
2 commission of the failure and the commission shall serve  
3 written notice, together with a copy of the complaint,  
4 requiring the state or local governmental agency charged in  
5 the complaint to answer the allegations of the complaint at  
6 a hearing before the commission.

7 (2) The commission hearing must be held in the county  
8 where the unlawful conduct is alleged to have occurred  
9 unless the state or local governmental agency charged in the  
10 complaint or the commission requests a change of venue for  
11 good cause shown. The case in support of the complaint may  
12 be presented before the commission by the commission staff,  
13 the complainant, or an attorney representing the  
14 complainant. The hearing and any subsequent proceedings  
15 under this chapter must be held in accordance with the  
16 Montana Administrative Procedure Act, except as provided in  
17 [section 12] and 49-3-303.

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

21 (4) The prevailing party in a hearing under this  
22 section may bring an action in district court for attorney  
23 fees. The court in its discretion may award the prevailing  
24 party reasonable attorney fees. Such action must comply  
25 with the Montana Rules of Civil Procedure.

~~NEW SECTION~~ Section 10. Procedure upon a finding of discrimination by commission. (1) If the commission finds that a state or local governmental agency against which a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order it to refrain from engaging in the discriminatory practice. The order may:

(a) prescribe conditions for the governmental agency's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against; and

(c) require a report on the manner of compliance.

(2) The order may not require the payment of punitive damages.

(3) If a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with the order or agreement, the period of time may not exceed 3 years.

~~NEW SECTION~~ Section 11. Procedure upon failure by commission to find discrimination. If the commission finds that a state or local governmental agency against which a complaint was filed has not engaged in the discriminatory

practice alleged in the complaint, it shall issue and serve on the complainant an order dismissing the complaint.

~~NEW SECTION~~ Section 12. Injunction to enforce commission order. If the commission's order is not obeyed, the commission staff shall petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

Section 13. Section 49-3-303, MCA, is amended to read:

~~"49-3-303. Remedies-for-individuals Action-in-district court. (1) Any A person claiming-to-be-aggrieved-by-a violation-of-any-provision-of-this-chapter-may-file~~ filing a complaint ~~for-redress-of-the-violation~~ with the commission ~~for-human-rights-and pursuant-to-[section-5] may~~ upon exhaustion of administrative remedies, may petition the district court in the district ~~where-the-alleged-violation occurred~~ or where the complainant resides or where the ~~alleged-violation-occurred~~ for appropriate relief. The court may grant such relief, by injunction or otherwise, as it considers appropriate ~~and may in its discretion award the prevailing-party-reasonable-attorney-fees.~~

(2) The complainant may pursue a complaint in district court without filing a complaint before ~~with~~ the human rights commission but may not then pursue the complaint before ~~with~~ the commission.

1       (3) Actions under this section are original actions."

2       NEW\_SECTION. Section 14. Codification instruction.

3       Sections 2 through 12 are intended to be codified as an  
4       integral part of Title 49, chapter 3, and the provisions of  
5       Title 49, chapter 3, apply to sections 2 through 12.

6       NEW\_SECTION. Section 15. Effective date. This act is  
7       effective on passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 399-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, 19 83, there is hereby submitted a Fiscal Note for House Bill 714 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 714 establishes procedures to be followed by the Human Rights Commission in the enforcement of the governmental code of fair practices and provides for consistency of interpretation and enforcement of the governmental code of fair practices and the human rights laws.

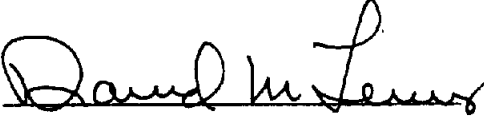
ASSUMPTIONS:

- 1) The Human Rights Commission presently has enforcement authority for Chapter 3 of Title 49, MCA.
- 2) Bill establishes procedures for enforcement when a complaint is filed.
- 3) Bill does not expand the authority of the commissioner.

FISCAL IMPACT:

None anticipated.

FISCAL NOTE 13:EE/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-17-83



Approved by Committee  
on Judiciary

1                   STATEMENT OF INTENT

2                   HOUSE BILL 714

3                   House Judiciary Committee

4  
5           A statement of intent is required for this bill because  
6   it grants rulemaking authority to the Human Rights  
7   Commission in section 2.

8           The intent of this bill is to eliminate a confusion  
9   which now exists between the Human Rights Act and the  
10   Governmental Code of Fair Practices by establishing general  
11   consistency in the enforcement of these two chapters by the  
12   Human Rights Commission. Therefore, it is the intent of the  
13   Legislature that the rules adopted by the Commission under  
14   the Governmental Code of Fair Practices be modeled after and  
15   be as consistent as practicable with the rules adopted by  
16   the Commission under the Human Rights Act.

SECOND READING

## HOUSE BILL NO. 714

INTRODUCED BY SPAETH, CHRISTIAENS,

FULLER, HALLIGAN, R. MANNING, FARRIS,

BACHINI, PECK, DARKO, REAM, J. JENSEN

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH PROCEDURES TO BE FOLLOWED BY THE HUMAN RIGHTS COMMISSION IN THE ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND TO PROVIDE FOR CONSISTENCY OF INTERPRETATION AND ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND THE HUMAN RIGHTS LAWS; AMENDING SECTIONS SECTION 49-3-101 AND 49-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 49-3-101, MCA, is amended to read:

"49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which 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) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

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

(5) "State and or local governmental agencies agency" means:

(a) all--branches--departments--offices--boards--bureaus--commissions--agencies--university-units--colleges--and other instrumentalities of state government any branch department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; and or

(b) counties--cities--towns--school districts--and other units a county, city, town, school district, or other unit of local government and all--instrumentalities any instrumentality of local government.

(6) "Qualifications" means such qualifications as

are genuinely related to competent performance of the particular occupational task."

**NEW\_SECTION.** Section 2. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

(1) filing of complaints;

(2) conducting investigations of complaints;

(3) petitioning for a declaratory ruling, as provided in [section 4]; and

(4) conduct of hearings.

**NEW\_SECTION.** Section 3. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

**NEW\_SECTION.** Section 4. Procedure for claiming exemption. A state or local governmental agency seeking to apply any exemption from the requirements of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure

Act. If the commission finds that reasonable grounds for applying an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. The burden is on the petitioner to demonstrate that an exemption should be applied. Any provision in this chapter allowing an exemption from its requirements must be strictly construed.

**NEW\_SECTION.** Section 5. Filing complaints. ~~{1}--A complaint may be filed with the commission or in district court by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter.~~

~~{2} A complaint under this chapter must be filed with the commission or in district court within 180 days after the alleged unlawful discriminatory practice occurred or was discovered. A complaint not filed within that time may not be considered by the commission or the court.~~

**NEW\_SECTION.** Section 6. Form of complaint. ~~{1} A~~ complaint filed with the commission must be in the form of a written, verified complaint, stating the name and address of the state or local governmental agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

~~{2}--The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.~~

**NEW\_SECTION.** Section 7. Temporary relief by court

1 order. (1) At any time after a complaint is filed with the  
 2 commission under this chapter alleging an unlawful  
 3 discriminatory practice, the commission may file a petition  
 4 in the district court in the county in which the subject of  
 5 the complaint occurred or in the county in which a  
 6 respondent resides or transacts business, seeking  
 7 appropriate temporary relief against this practice,  
 8 including an order restraining the respondent from  
 9 interfering in any manner with an order the commission may  
 10 enter with respect to the complaint.

11 (2) The court has the power to grant the temporary  
 12 relief or restraining order it considers just and proper.  
 13 However, no relief or order extending beyond 14 days may be  
 14 granted except by consent of the respondent or upon a  
 15 finding by the court that there is reasonable cause to  
 16 believe that the respondent has engaged in discriminatory  
 17 practices.

18 NEW SECTION. Section 8. Informal settlement. The  
 19 commission staff shall promptly and impartially investigate  
 20 the matters set out in a complaint filed with the  
 21 commission. If the staff determines that the allegations are  
 22 supported by substantial evidence, it shall immediately try  
 23 to eliminate the discriminatory practice by informal  
 24 conference, conciliation, and persuasion.

25 NEW SECTION. Section 9. Contested case hearing before

1 commission. (1) If the informal efforts to eliminate the  
 2 discrimination alleged in a complaint filed with the  
 3 commission are unsuccessful, the staff shall inform the  
 4 commission of the failure and the commission shall serve  
 5 written notice, together with a copy of the complaint,  
 6 requiring the state or local governmental agency charged in  
 7 the complaint to answer the allegations of the complaint at  
 8 a hearing before the commission.

9 (2) The commission hearing must be held in the county  
 10 where the unlawful conduct is alleged to have occurred  
 11 unless the state or local governmental agency charged in the  
 12 complaint or the commission requests a change of venue for  
 13 good cause shown. The case in support of the complaint may  
 14 be presented before the commission by the commission staff,  
 15 the complainant, or an attorney representing the  
 16 complainant. The hearing and any subsequent proceedings  
 17 under this chapter must be held in accordance with the  
 18 Montana Administrative Procedure Act, except as provided in  
 19 [section 12] and 49-3-303.

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

23 (4) The prevailing party in a hearing under this  
 24 section may bring an action in district court for attorney  
 25 fees. The court in its discretion may award the prevailing

1 party reasonable attorney fees. Such action must comply  
2 with the Montana Rules of Civil Procedure.

3 **NEW\_SECTION.** Section 10. Procedure upon a finding of  
4 discrimination by commission. (1) If the commission finds  
5 that a state or local governmental agency against which a  
6 complaint was filed has engaged in the discriminatory  
7 practice alleged in the complaint, the commission shall  
8 order it to refrain from engaging in the discriminatory  
9 practice. The order may:

10 (a) prescribe conditions for the governmental agency's  
11 future conduct relevant to the type of discriminatory  
12 practice found;

13 (b) require any reasonable measure to correct the  
14 discriminatory practice and to rectify any harm, pecuniary  
15 or otherwise, to the person discriminated against; and

16 (c) require a report on the manner of compliance.

17 (2) The order may not require the payment of punitive  
18 damages.

19 (3) If a commission order or conciliation agreement  
20 requires inspection by the commission staff for a period of  
21 time to determine if the respondent is complying with the  
22 order or agreement, the period of time may not exceed 3  
23 years.

24 **NEW\_SECTION.** Section 11. Procedure upon failure by  
25 commission to find discrimination. If the commission finds

1 that a state or local governmental agency against which a  
2 complaint was filed has not engaged in the discriminatory  
3 practice alleged in the complaint, it shall issue and serve  
4 on the complainant an order dismissing the complaint.

5 **NEW\_SECTION.** Section 12. Injunction to enforce  
6 commission order. If the commission's order is not obeyed,  
7 the commission staff shall petition the district court in  
8 the county where the discriminatory practice occurred or in  
9 which the respondent resides or transacts business to  
10 enforce the commission's order by injunction.

11 ~~Section 13--Section 49-3-303--MEAs--is amended to read:~~

12 ~~"49-3-303--Remedies for individuals Action in district~~  
13 ~~court--(1)--Any a person--claiming--to-be-aggrieved-by-a~~  
14 ~~violation-of-any-provision-of-this-chapter-may file filing a~~  
15 ~~complaint-for-redress-of-the-violation-with--the--commission~~  
16 ~~for--human--rights--and pursuant--to--[section 53] may, upon~~  
17 ~~exhaustion-of--administrative--remedies, may--petition--the~~  
18 ~~district--court--in-the-district where-the-alleged-violation~~  
19 ~~occurred--or where--the--complainant--resides--or--where--the~~  
20 ~~alleged--violation--occurred for--appropriate--relief--The~~  
21 ~~court-may-grant-such-relief-by-injunction-or-otherwise--as~~  
22 ~~it-considers-appropriate and may-in-its-discretion-award-the~~  
23 ~~prevailing-party-reasonable-attorney-fees"~~

24 ~~(2)--The-complainant-may-pursue-a-complaint-in-district~~  
25 ~~court--without--filing--a--complaint--before with the-human~~

1 ~~rights-commission-but-may-not-then-pursue-the-complaint~~  
2 ~~before with the-commission~~

3 ~~{3}--Actions--under--this--section--are--original--actions--~~

4 THERE IS A NEW MCA SECTION THAT READS:

5 Section 13. Filing a complaint in district court. (1)  
6 The commission staff shall, at the request of the  
7 complainant, issue a letter entitling the complainant to  
8 file a discrimination action in district court if:

9 (a) the commission has not yet held a contested case  
10 hearing pursuant to [section 9]; and

11 (b) one of the following has occurred:

12 (i) 180 days have elapsed since the date the complaint  
13 was filed under [section 5]; or

14 (ii) the commission staff determines that its efforts  
15 to informally investigate and settle the complaint pursuant  
16 to [section 8] are unsuccessful.

17 (2) Within 90 days after receipt of a letter issued by  
18 the commission pursuant to subsection (1), a complainant may  
19 petition the district court in the district in which the  
20 alleged violation occurred for appropriate relief.

21 (3) If the district court finds, in an action under  
22 this section, that a person, institution, entity, or agency  
23 against whom or which a complaint was filed has engaged in  
24 the unlawful discriminatory practice alleged in the  
25 complaint, the court may provide the same relief as

1 described in [section 10] for a commission order. In  
2 addition, the court may in its discretion allow the  
3 prevailing party reasonable attorney fees.

4 NEW SECTION. Section 14. Codification instruction.  
5 Sections 2 through ~~12~~ 13 are intended to be codified as an  
6 integral part of Title 49, chapter 3, and the provisions of  
7 Title 49, chapter 3, apply to sections 2 through ~~12~~ 13.

8 NEW SECTION. Section 15. Effective date. This act is  
9 effective on passage and approval.

-End-

1                   STATEMENT OF INTENT

2                   HOUSE BILL 714

3                   House Judiciary Committee

4  
5           A statement of intent is required for this bill because  
6 it grants rulemaking authority to the Human Rights  
7 Commission in section 2.

8           The intent of this bill is to eliminate a confusion  
9 which now exists between the Human Rights Act and the  
10 Governmental Code of Fair Practices by establishing general  
11 consistency in the enforcement of these two chapters by the  
12 Human Rights Commission. Therefore, it is the intent of the  
13 Legislature that the rules adopted by the Commission under  
14 the Governmental Code of Fair Practices be modeled after and  
15 be as consistent as practicable with the rules adopted by  
16 the Commission under the Human Rights Act.

THIRD READING

PLEASE ATTACH TO HB 714  
THIRD READING (BLUE)

## HOUSE BILL NO. 714

INTRODUCED BY SPAETH, CHRISTIAENS,

FULLER, HALLIGAN, R. MANNING, FARRIS,

BACHINI, PECK, DARKO, REAM, J. JENSEN

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH PROCEDURES TO BE FOLLOWED BY THE HUMAN RIGHTS COMMISSION IN THE ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND TO PROVIDE FOR CONSISTENCY OF INTERPRETATION AND ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND THE HUMAN RIGHTS LAWS; AMENDING SECTIONS SECTION 49-3-101 AND 49-3-303, MCA; REPEALING SECTION 49-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 49-3-101, MCA, is amended to read:

"49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which 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) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

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

(5) "State and or local governmental agencies" means:

(a) all--branches--departments--offices--boards--bureaus--commissions--agencies--university--units--colleges--and other instrumentalities of state government any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; and or

(b) counties--cities--towns--school--districts--and other units a county, city, town, school district, or other unit of local government and all--instrumentalities any instrumentality of local government.



~~(2)(6)~~ "Qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task."

**NEW SECTION.** Section 2. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

(1) filing of complaints;

(2) conducting investigations of complaints;

(3) petitioning for a declaratory ruling, as provided in [section 4]; and

(4) conduct of hearings.

**NEW SECTION.** Section 3. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

**NEW SECTION.** Section 4. Procedure for claiming exemption. A state or local governmental agency seeking to apply any exemption from the requirements of this chapter may petition the commission for a declaratory ruling as

provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for applying an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. The burden is on the petitioner to demonstrate that an exemption should be applied. Any provision in this chapter allowing an exemption from its requirements must be strictly construed.

**NEW SECTION.** Section 5. Filing complaints. ~~(1) A complaint may be filed with the commission or in district court by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter.~~

~~(2) A complaint under this chapter must be filed with the commission or in district court within 180 days after the alleged unlawful discriminatory practice occurred or was discovered. A complaint not filed within that time may not be considered by the commission or the court.~~

**NEW SECTION.** Section 6. Form of complaint. ~~(1) A complaint filed with the commission must be in the form of a written, verified complaint, stating the name and address of the state or local governmental agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.~~

~~(2) The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.~~

1       **NEW\_SECTION.** Section 7. Temporary relief by court  
 2 order. (1) At any time after a complaint is filed with the  
 3 commission under this chapter alleging an unlawful  
 4 discriminatory practice, the commission may file a petition  
 5 in the district court in the county in which the subject of  
 6 the complaint occurred or in the county in which a  
 7 respondent resides or transacts business, seeking  
 8 appropriate temporary relief against this practice,  
 9 including an order restraining the respondent from  
 10 interfering in any manner with an order the commission may  
 11 enter with respect to the complaint.

12       (2) The court has the power to grant the temporary  
 13 relief or restraining order it considers just and proper.  
 14 However, no relief or order extending beyond 14 days may be  
 15 granted except by consent of the respondent or upon a  
 16 finding by the court that there is reasonable cause to  
 17 believe that the respondent has engaged in discriminatory  
 18 practices.

19       **NEW\_SECTION.** Section 8. Informal settlement. The  
 20 commission staff shall promptly and impartially investigate  
 21 the matters set out in a complaint filed with the  
 22 commission. If the staff determines that the allegations are  
 23 supported by substantial evidence, it shall immediately try  
 24 to eliminate the discriminatory practice by informal  
 25 conference, conciliation, and persuasion.

1       **NEW\_SECTION.** Section 9. Contested case hearing before  
 2 commission. (1) If the informal efforts to eliminate the  
 3 discrimination alleged in a complaint filed with the  
 4 commission are unsuccessful, the staff shall inform the  
 5 commission of the failure and the commission shall serve  
 6 written notice, together with a copy of the complaint,  
 7 requiring the state or local governmental agency charged in  
 8 the complaint to answer the allegations of the complaint at  
 9 a hearing before the commission.

10       (2) The commission hearing must be held in the county  
 11 where the unlawful conduct is alleged to have occurred  
 12 unless the state or local governmental agency charged in the  
 13 complaint or the commission requests a change of venue for  
 14 good cause shown. The case in support of the complaint may  
 15 be presented before the commission by the commission staff,  
 16 the complainant, or an attorney representing the  
 17 complainant. The hearing and any subsequent proceedings  
 18 under this chapter must be held in accordance with the  
 19 Montana Administrative Procedure Act, except as provided in  
 20 [section 12] and 49-3-303.

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

24       (4) The prevailing party in a hearing under this  
 25 section may bring an action in district court for attorney

fees. The court in its discretion may award the prevailing party reasonable attorney fees. Such action must comply with the Montana Rules of Civil Procedure.

**NEW SECTION.** Section 10. Procedure upon a finding of discrimination by commission. (1) If the commission finds that a state or local governmental agency against which a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order it to refrain from engaging in the discriminatory practice. The order may:

(a) prescribe conditions for the governmental agency's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against; and

(c) require a report on the manner of compliance.

(2) The order may not require the payment of punitive damages.

(3) If a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with the order or agreement, the period of time may not exceed 3 years.

**NEW SECTION.** Section 11. Procedure upon failure by

commission to find discrimination. If the commission finds that a state or local governmental agency against which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and serve on the complainant an order dismissing the complaint.

**NEW SECTION.** Section 12. Injunction to enforce commission order. If the commission's order is not obeyed, the commission staff shall petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

~~Section 13--Section 49-3-303-MCA-is amended to read:~~

~~"49-3-303--Remedies for individuals **Action in district**~~

~~court--(1)--Any A person--claiming--to-be-aggrieved-by-a violation-of-any-provision-of-this-chapter-may-file **filing a** complaint-for-redress-of-the-violation-with--the--commission for--human--rights--and ~~pursuant--to--(section-11-may) upon exhaustion-of--administrative--remedies may--petition--the district--court--in-the-district where-the-alleged-violation occurred-or where--the--complainant--resides--or--where--the alleged--violation--occurred for--appropriate--relief--The court-may-grant-such-relief-by-injunction-or-otherwise--as it-considers-appropriate and-may-in-its-discretion-award-the prevailing-party-reasonable-attorney-fees~~~~

~~(2)--The-complainant-may-pursue-a-complaint-in-district~~

~~court--without--filing--a--complaint--before with the human  
rights commission but may not then pursue the complaint  
before with the commission~~

~~{3}--Actions--under--this--section--are--original--actions--"~~

THERE IS A NEW MCA SECTION THAT READS:

Section 13. Filing a complaint in district court. (1)  
The commission staff shall, at the request of the  
complainant, issue a letter entitling the complainant to  
file a discrimination action in district court if:

(a) the commission has not yet held a contested case  
hearing pursuant to [section 9]; and

(b) one of the following has occurred:

(i) 180 days have elapsed since the date the complaint  
was filed under [section 5]; or

(ii) the commission staff determines that its efforts  
to informally investigate and settle the complaint pursuant  
to [section 8] are unsuccessful.

(2) Within 90 days after receipt of a letter issued by  
the commission pursuant to subsection (1), a complainant may  
petition the district court in the district in which the  
alleged violation occurred for appropriate relief.

(3) If the district court finds, in an action under  
this section, that a ~~person, institution, entity, or STATE~~  
OR LOCAL GOVERNMENTAL agency against whom or which a  
complaint was filed has engaged in the unlawful

discriminatory practice alleged in the complaint, the court  
may provide the same relief as described in [section 10] for  
a commission order. In addition, the court may in its  
discretion allow the prevailing party reasonable attorney  
fees.

SECTION 14. REPEALER. SECTION 49-3-303, MCA, IS  
REPEALED.

NEW SECTION. Section 15. Codification instruction.  
Sections 2 through ~~12~~ 13 are intended to be codified as an  
integral part of Title 49, chapter 3, and the provisions of  
Title 49, chapter 3, apply to sections 2 through ~~12~~ 13.

NEW SECTION. Section 16. Effective date. This act is  
effective on passage and approval.

-End-

March 25, 1983

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 714 be amended as follows:

1. Page 9, lines 7 and 8.  
Following: "request of"  
Strike: "the complainant"  
Insert: "either party"
2. Page 9, line 11.  
Following: "[section 9]"  
Strike: remainder of lines 11-17 in their entirety  
Insert: "and has determined that it will be unable to hold  
a contested case hearing within 12 months of the date  
the complaint was filed under [section 5]; and  
(b) 180 days have elapsed since the complaint was  
filed and the efforts of the commission staff to settle  
the complaint after informal investigation pursuant to  
[section 8] are unsuccessful."
3. Page 9, line 19.  
Following: "subsection (1), "  
Strike: "a"  
Insert: "the"  
Following: "complainant"  
Strike: "may"  
Insert: "shall"
4. Page 9, line 21.  
Following: "appropriate relief."  
Insert: "If the claimant fails to petition the district court  
within 90 days after receipt of a letter issued by the  
commission, the complaint shall be barred."

## HOUSE BILL NO. 714

INTRODUCED BY SPAETH, CHRISTIAENS,

FULLER, HALLIGAN, R. MANNING, FARRIS,

BACHINI, PECK, DARKO, REAM, J. JENSEN

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH PROCEDURES TO BE FOLLOWED BY THE HUMAN RIGHTS COMMISSION IN THE ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND TO PROVIDE FOR CONSISTENCY OF INTERPRETATION AND ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND THE HUMAN RIGHTS LAWS; AMENDING SECTIONS SECTION 49-3-101 AND 49-3-303, MCA; REPEALING SECTION 49-3-323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 49-3-101, MCA, is amended to read:

"49-3-101. Definitions. As used in this chapter, the following definitions apply:

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

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

provided for in 2-15-1704.

(3) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

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

(5) "State and or local governmental agencies agency" means:

(a) all branches, departments, offices, boards, bureaus, commissions, agencies, university units, colleges, and other instrumentalities of state government any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; and or

(b) counties, cities, towns, school districts, and other units a county, city, town, school district, or other unit of local government and all instrumentalities any instrumentality of local government.

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

NEW SECTION. Section 2. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

- (1) filing of complaints;
- (2) conducting investigations of complaints;
- (3) petitioning for a declaratory ruling, as provided in [section 4]; and
- (4) conduct of hearings.

NEW SECTION. Section 3. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

NEW SECTION. Section 4. Procedure for claiming exemption. A state or local governmental agency seeking to apply any exemption from the requirements of this chapter may petition the commission for a declaratory ruling as

provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for applying an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. The burden is on the petitioner to demonstrate that an exemption should be applied. Any provision in this chapter allowing an exemption from its requirements must be strictly construed.

NEW SECTION. Section 5. Filing complaints. ~~(1) A complaint may be filed with the commission or in district court by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter.~~

~~(2) A complaint under this chapter must be filed with the commission or in district court within 180 days after the alleged unlawful discriminatory practice occurred or was discovered. A complaint not filed within that time may not be considered by the commission or the court.~~

NEW SECTION. Section 6. Form of complaint. ~~(1) A complaint filed with the commission must be in the form of a written, verified complaint, stating the name and address of the state or local governmental agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.~~

~~(2) The commission staff may file a complaint in the manner when a discriminatory practice comes to its attention.~~

1        **NEW SECTION.** Section 7. Temporary relief by court  
 2 order. (1) At any time after a complaint is filed with the  
 3 commission under this chapter alleging an unlawful  
 4 discriminatory practice, the commission may file a petition  
 5 in the district court in the county in which the subject of  
 6 the complaint occurred or in the county in which a  
 7 respondent resides or transacts business, seeking  
 8 appropriate temporary relief against this practice,  
 9 including an order restraining the respondent from  
 10 interfering in any manner with an order the commission may  
 11 enter with respect to the complaint.

12        (2) The court has the power to grant the temporary  
 13 relief or restraining order it considers just and proper.  
 14 However, no relief or order extending beyond 14 days may be  
 15 granted except by consent of the respondent or upon a  
 16 finding by the court that there is reasonable cause to  
 17 believe that the respondent has engaged in discriminatory  
 18 practices.

19        **NEW SECTION.** Section 8. Informal settlement. The  
 20 commission staff shall promptly and impartially investigate  
 21 the matters set out in a complaint filed with the  
 22 commission. If the staff determines that the allegations are  
 23 supported by substantial evidence, it shall immediately try  
 24 to eliminate the discriminatory practice by informal  
 25 conference, conciliation, and persuasion.

1        **NEW SECTION.** Section 9. Contested case hearing before  
 2 commission. (1) If the informal efforts to eliminate the  
 3 discrimination alleged in a complaint filed with the  
 4 commission are unsuccessful, the staff shall inform the  
 5 commission of the failure and the commission shall serve  
 6 written notice, together with a copy of the complaint,  
 7 requiring the state or local governmental agency charged in  
 8 the complaint to answer the allegations of the complaint at  
 9 a hearing before the commission.

10        (2) The commission hearing must be held in the county  
 11 where the unlawful conduct is alleged to have occurred  
 12 unless the state or local governmental agency charged in the  
 13 complaint or the commission requests a change of venue for  
 14 good cause shown. The case in support of the complaint may  
 15 be presented before the commission by the commission staff,  
 16 the complainant, or an attorney representing the  
 17 complainant. The hearing and any subsequent proceedings  
 18 under this chapter must be held in accordance with the  
 19 Montana Administrative Procedure Act, except as provided in  
 20 [section 12] and 49-3-303.

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

24        (4) The prevailing party in a hearing under this  
 25 section may bring an action in district court for attorney



fees. The court in its discretion may award the prevailing party reasonable attorney fees. Such action must comply with the Montana Rules of Civil Procedure.

**NEW SECTION.** Section 10. Procedure upon a finding of discrimination by commission. (1) If the commission finds that a state or local governmental agency against which a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order it to refrain from engaging in the discriminatory practice. The order may:

(a) prescribe conditions for the governmental agency's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against; and

(c) require a report on the manner of compliance.

(2) The order may not require the payment of punitive damages.

(3) If a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with the order or agreement, the period of time may not exceed 3 years.

**NEW SECTION.** Section 11. Procedure upon failure by

commission to find discrimination. If the commission finds that a state or local governmental agency against which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and serve on the complainant an order dismissing the complaint.

**NEW SECTION.** Section 12. Injunction to enforce commission order. If the commission's order is not obeyed, the commission staff shall petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

~~Section 13. Section 49-3-303, MCA, is amended to read:~~  
~~"49-3-303. Remedies for individuals. Action in district court. (1) Any a person claiming to be aggrieved by a violation of any provision of this chapter may file filing a complaint for redress of the violation with the commission for human rights and pursuant to section 11 may upon exhaustion of administrative remedies may petition the district court in the district where the alleged violation occurred or where the complainant resides or where the alleged violation occurred for appropriate relief. The court may grant such relief by injunction or otherwise as it considers appropriate and may in its discretion award the prevailing party reasonable attorney fees.~~  
~~(2) The complainant may pursue a complaint in district~~

1 court--without--filing--a--complaint--before with the human  
2 rights commission but may--not--then--pursue--the--complaint  
3 before with the commission

4 (3)--Actions--under--this--section--are--original--actions--

5 THERE IS A NEW MCA SECTION THAT READS:

6 Section 13. Filing a complaint in district court. (1)  
7 The commission staff shall, at the request of the  
8 complainant EITHER EARLY, issue a letter entitling the  
9 complainant to file a discrimination action in district  
10 court if:

11 (a) the commission has not yet held a contested case  
12 hearing pursuant to [section 9]--and

13 (b)--one-of-the-following-has-occurred--

14 (i)--180-days-have-elapsed-since-the-date-the-complaint  
15 was-filed-under-[section-5]--or

16 (ii)--the--commission--staff--determines--that--its--efforts  
17 to--informally--investigate--and--settle--the--complaint--pursuant  
18 to--[section-8]--are--unsuccessful--AND--HAS--DETERMINED--THAT--IT  
19 WILL--BE--UNABLE--TO--HOLD--A--CONTESTED--CASE--HEARING--WITHIN--12  
20 MONTHS--OF--THE--DATE--THE--COMPLAINT--WAS--FILED--UNDER--[SECTION  
21 5]--AND

22 181-180 DAYS HAVE ELAPSED SINCE THE COMPLAINT WAS  
23 FILED AND THE EFFORTS OF THE COMMISSION STAFF TO SETTLE THE  
24 COMPLAINT AFTER INFORMAL INVESTIGATION PURSUANT TO [SECTION  
25 8] ARE UNSUCCESSFUL.

1 (2) Within 90 days after receipt of a letter issued by  
2 the commission pursuant to subsection (1), a IHE complainant  
3 may SHALL petition the district court in the district in  
4 which the alleged violation occurred for appropriate relief.  
5 IF THE CLAIMANT FAILS TO PETITION THE DISTRICT COURT WITHIN  
6 90 DAYS AFTER RECEIPT OF A LETTER ISSUED BY THE COMMISSION,  
7 THE COMPLAINT SHALL BE BARRED.

8 (3) If the district court finds, in an action under  
9 this section, that a person--institution--entity--or STATE  
10 OR LOCAL GOVERNMENTAL agency against whom or which a  
11 complaint was filed has engaged in the unlawful  
12 discriminatory practice alleged in the complaint, the court  
13 may provide the same relief as described in [section 10] for  
14 a commission order. In addition, the court may in its  
15 discretion allow the prevailing party reasonable attorney  
16 fees.

17 SECTION 14. REPEALER. SECTION 49-3-303, MCA, IS  
18 REPEALED.

19 NEW SECTION. Section 15. Codification instruction.  
20 Sections 2 through 13 are intended to be codified as an  
21 integral part of Title 49, chapter 3, and the provisions of  
22 Title 49, chapter 3, apply to sections 2 through 13.

23 NEW SECTION. Section 16. Effective date. This act is  
24 effective on passage and approval.

-End-