HB 696 INTRODUCED BY HANNAH DE NOVO REVIEW OF DECISIONS OF COMMISSION FOR HUMAN RIGHTS

- 2/10 INTRODUCED
- 2/10 REFERRED TO JUDICIARY
- 2/10 FISCAL NOTE REQUESTED
- 2/16 FISCAL NOTE RECEIVED
- 2/18 HEARING
- 2/19 COMMITTEE REPORT--BILL PASSED
- 2/21 2ND READING PASSED
- 2/23 3RD READING PASSED

52 41 ->-> 53 46

TRANSMITTED TO SENATE

- 3/02 REFERRED TO JUDICIARY
- 3/20 HEARING
- 3/27 TABLED IN COMMITTEE

LC 1435/01

House BILL NO. 696 1 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR APPEAL OF 4 AND TRIAL ANEW ON ALL FINAL RULINGS AND DECISIONS OF THE S COMMISSION FOR HUMAN RIGHTS; AND AMENDING SECTIONS 49-2-401, 6 7 49-2-505, 49-3-105, AND 49-3-308, MCA." 8 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: NEW SECTION. Section 1. Appeal of commission rulings 10 and decisions. (1) Any final ruling or decision of the 11 commission under this chapter or chapter 3 of this title may 12 be appealed to the district court within 30 days after 13 service of the ruling or decision upon the appellant or, if 14 a rehearing is held, within 30 days after service of the 15 decision on rehearing. Trial in the district court must be 16 anew and conducted in all respects as other trials in the 17 district court. The provisions of this code as to trials in 18 the district courts are applicable to the appeal and trial 19 20 anew. There is no right to review under Title 2, chapter 4, 21 part 7. 22 (2) The record before and findings, conclusions, and

(2) The record before and findings, conclusions, and
 decision of the commission are entitled to no special weight
 or presumption.

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



1 "49-2-401. Procedure for claiming exemption. A person. 2 educational institution, financial institution. nr 3 governmental entity or agency who or which seeks to be exempted from the requirements of part 3 of this chapter may 4 5 petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. The 6 ruling is reviewable under [section 1]. If the commission 7 8 finds that reasonable grounds for granting an exemption 9 exist, it may issue a ruling exempting the petitioner from the particular provision. This section, however, shall be 10 strictly construed, and the burden is on the petitioner to 11 12 demonstrate that an exemption should be granted."

13 Section 3. Section 49-2-505, MCA, is amended to read: 14 "49-2-505. Contested case hearing. (1) If the informal 15 efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the 16 failure and the commission shall cause written notice to be 17 served, together with a copy of the complaint, requiring the 18 person, educational institution, financial institution, or 19 governmental entity or agency charged in the complaint to 20 21 answer the allegations of the complaint at a hearing before 22 the commission.

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

INTRODUCED BILL HB.696 -2-

charged in the complaint or the commission requests a change 1 of venue for good cause shown. The case in support of the 2 complaint may be presented before the commission by the 3 staff, the complainant, or an attorney representing the 4 5 complainant. The hearing and any subsequent proceedings б under this chapter must be held in accordance with the 7 Montana Administrative Procedure Act except as provided in [section 1] and 49-2-508. 8

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 4. Section 49-3-105, MCA, is amended to read: 19 "49-3-105. Procedure for claiming exemption. A state 20 or local governmental agency seeking to apply any exemption 21 from the requirements of this chapter may petition the 22 commission for a declaratory ruling as provided in 2-4-501 23 of the Montana Administrative Procedure Act. The ruling is reviewable under [section 1]. If the commission finds that 24 25 reasonable grounds for applying an exemption exist, it may 1 issue a ruling exempting the petitioner from the particular 2 provision. The burden is on the petitioner to demonstrate 3 that an exemption should be applied. Any provision in this 4 chapter allowing an exemption from its requirements must be 5 strictly construed."

Section 5. Section 49-3-308, MCA, is amended to read: 6 "49-3-308. Contested case hearing before commission. 7 (1) If the informal efforts to eliminate the discrimination 8 alleged in a complaint filed with the commission are 9 unsuccessful, the staff shall inform the commission of the 10 failure and the commission shall serve written notice, 11 together with a copy of the complaint, requiring the state 12 or local governmental agency charged in the complaint to 13 answer the allegations of the complaint at a hearing before 14 the commission. 15

(2) The commission hearing must be held in the county 16 where the unlawful conduct is alleged to have occurred 17 unless the state or local governmental agency charged in the 18 complaint or the commission requests a change of venue for 19 good cause shown. The case in support of the complaint may 20 be presented before the commission by the commission staff, 21 the complainant, or an attorney representing the 22 complainant. The hearing and any subsequent proceedings 23 under this chapter must be held in accordance with the 24 Montana Administrative Procedure Act, except as provided in 25

-3-

. .

- 4 -

4

1 [section 1] and 49-3-311.

.

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

5 (4) The prevailing party in a hearing under this 6 section may bring an action in district court for attorney 7 fees. The court in its discretion may award the prevailing 8 party reasonable attorney fees. Such action must comply 9 with the Montana Rules of Civil Procedure."

10 <u>NEW SECTION.</u> Section 6. Extension of authority. Any 11 existing authority of the commission for human rights to 12 make rules on the subject of the provisions of this act is 13 extended to the provisions of this act.

14 <u>NEW SECTION.</u> Section 7. Codification instruction.
15 Section 1 is intended to be codified as an integral part of
16 Title 49, chapter 2, and the provisions of Title 49 apply to
17 section 1.

-End-

-5-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB696, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for appeal of and trial anew on all final rulings and decisions of the Commission for Human Rights.

ASSUMPTIONS:

The Commission's case load will remain approximately the same and the Commission will hear about the same number of cases per year.

FISCAL IMPACT:

No change.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The Commission issued only 12 final orders in FY86. Even if every Commission order was appealed to a trial de novo, the fiscal impact on the courts would probably be negligible.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

None.

DATE 2

DTRECTOR HUNTER. Office of Budget and Program Planning

DATE 2-16-8

TOM HANNAH. PRIMARY SPONSOR

Fiscal Note for HB696, as introduced HB 696 50th Legislature

LC 1435/01

APPROVED BY COMMITTEE ON JUDICIARY

l	House BILL NO. 696
2	INTRODUCED BY Hand
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR APPEAL OF
5	AND TRIAL ANEW ON ALL FINAL RULINGS AND DECISIONS OF THE
6	COMMISSION FOR HUMAN RIGHTS; AND AMENDING SECTIONS 49-2-401,
7	49-2-505, 49-3-105, AND 49-3-308, MCA."
8	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10	NEW SECTION. Section 1. Appeal of commission rulings
11	and decisions. (1) Any final ruling or decision of the
12	commission under this chapter or chapter 3 of this title may
13	be appealed to the district court within 30 days after
14	service of the ruling or decision upon the appellant or, if
15	a rehearing is held, within 30 days after service of the
1 6	decision on rehearing. Trial in the district court must be
17	anew and conducted in all respects as other trials in the
18	district court. The provisions of this code as to trials in
19	the district courts are applicable to the appeal and trial
20	anew. There is no right to review under Title 2, chapter 4,
21	part 7.
22	(2) The record before and findings, conclusions, and

(2) The record before and findings, conclusions, and
decision of the commission are entitled to no special weight
or presumption.

25

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



LC 1435/01

"49-2-401. Procedure for claiming exemption. A person, 1 2 educational institution, financial institution. or governmental entity or agency who or which seeks to be 3 exempted from the requirements of part 3 of this chapter may 4 5 petition the commission for a declaratory ruling as provided 6 in 2-4-501 of the Montana Administrative Procedure Act. The 7 ruling is reviewable under [section 1]. If the commission finds that reasonable grounds for granting an exemption 8 9 exist, it may issue a ruling exempting the petitioner from 10 the particular provision. This section, however, shall be strictly construed, and the burden is on the petitioner to 11 demonstrate that an exemption should be granted." 12 13 Section 3. Section 49-2-505, MCA, is amended to read: "49-2-505. Contested case hearing. (1) If the informal 14 15 efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the 16 17 failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the 18 19 person, educational institution, financial institution, or 20 governmental entity or agency charged in the complaint to

21 answer the allegations of the complaint at a hearing before 22 the commission.

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

-2- SECOND READING HB-1096

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 under this chapter must be held in accordance with the 6 7 Montana Administrative Procedure Act except as provided in 8 [section 1] and 49-2-508.

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 4. Section 49-3-105, MCA, is amended to read: 19 "49-3-105. Procedure for claiming exemption. A state 20 or local governmental agency seeking to apply any exemption 21 from the requirements of this chapter may petition the 22 commission for a declaratory ruling as provided in 2-4-501 23 of the Montana Administrative Procedure Act. The ruling is 24 reviewable under [section 1]. If the commission finds that 25 reasonable grounds for applying an exemption exist, it may

-3-

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."

б Section 5. Section 49-3-308, MCA, is amended to read: 7 "49-3-308. Contested case hearing before commission. 8 (1) If the informal efforts to eliminate the discrimination 9 alleged in a complaint filed with the commission are 10 unsuccessful, the staff shall inform the commission of the failure and the commission shall serve written notice, 11 12 together with a copy of the complaint, requiring the state or local governmental agency charged in the complaint to 13 14 answer the allegations of the complaint at a hearing before 15 the commission.

16 (2) The commission hearing must be held in the county 17 where the unlawful conduct is alleged to have occurred 18 unless the state or local governmental agency charged in the 19 complaint or the commission requests a change of venue for 20 good cause shown. The case in support of the complaint may 21 be presented before the commission by the commission staff, 22 the complainant, or an attorney representing the 23 complainant. The hearing and any subsequent proceedings 24 under this chapter must be held in accordance with the 25 Montana Administrative Procedure Act, except as provided in

4

-4-

LC 1435/01 ·

1 [section 1] and 49-3-311.

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

5 (4) The prevailing party in a hearing under this 6 section may bring an action in district court for attorney 7 fees. The court in its discretion may award the prevailing 8 party reasonable attorney fees. Such action must comply 9 with the Montana Rules of Civil Procedure."

NEW SECTION. Section 6. Extension of authority. Any
 existing authority of the commission for human rights to
 make rules on the subject of the provisions of this act is
 extended to the provisions of this act.

<u>NEW SECTION.</u> Section 7. Codification instruction.
Section 1 is intended to be codified as an integral part of
Title 49, chapter 2, and the provisions of Title 49 apply to
section 1.

-End-

-5-

-50th Legislature

House BILL NO. 696 1 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR APPEAL OF 4 AND TRIAL ANEW ON ALL FINAL RULINGS AND DECISIONS OF THE 5 COMMISSION FOR HUMAN RIGHTS; AND AMENDING SECTIONS 49-2-401, 6 49-2-505, 49-3-105, AND 49-3-308, MCA." 7 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 NEW SECTION. Section 1. Appeal of commission rulings 10 and decisions. (1) Any final ruling or decision of the 11 commission under this chapter or chapter 3 of this title may 12 be appealed to the district court within 30 days after 13 service of the ruling or decision upon the appellant or, if 14 a rehearing is held, within 30 days after service of the 15 decision on rehearing. Trial in the district court must be 16 anew and conducted in all respects as other trials in the 17 district court. The provisions of this code as to trials in 18 the district courts are applicable to the appeal and trial 19 anew. There is no right to review under Title 2, chapter 4, 20 part 7. 21

(2) The record before and findings, conclusions, and
decision of the commission are entitled to no special weight
or presumption.

25

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

1 "49-2-401. Procedure for claiming exemption. A person, financial 2 educational institution, institution, or 3 governmental entity or agency who or which seeks to be 4 exempted from the requirements of part 3 of this chapter may 5 petition the commission for a declaratory ruling as provided 6 in 2-4-501 of the Montana Administrative Procedure Act. The 7 ruling is reviewable under [section 1]. If the commission 8 finds that reasonable grounds for granting an exemption 9 exist, it may issue a ruling exempting the petitioner from the particular provision. This section, however, shall be 10 11 strictly construed, and the burden is on the petitioner to demonstrate that an exemption should be granted." 12

Section 3. 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, the staff shall inform the commission of the 16 17 failure and the commission shall cause written notice to be 18 served, together with a copy of the complaint, requiring the 19 person, educational institution, financial institution, or 20 governmental entity or agency charged in the complaint to 21 answer the allegations of the complaint at a hearing before 22 the commission.

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

-2-THIRD READING

1 charged in the complaint or the commission requests a change 2 of venue for good cause shown. The case in support of the З. 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 [section 1] and 49-2-508.

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 4. Section 49-3-105, MCA, is amended to read: 19 "49-3-105. Procedure for claiming exemption. A state 20 or local governmental agency seeking to apply any exemption 21 from the requirements of this chapter may petition the 22 commission for a declaratory ruling as provided in 2-4-501 23 of the Montana Administrative Procedure Act. The ruling is 24 reviewable under [section 1]. If the commission finds that 25 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."

Section 5. Section 49-3-308, MCA, is amended to read: 6 7 "49-3-308. Contested case hearing before commission. (1) If the informal efforts to eliminate the discrimination 8 alleged in a complaint filed with the commission are 9 unsuccessful, the staff shall inform the commission of the 10 failure and the commission shall serve written notice, 11 12 together with a copy of the complaint, requiring the state 13 or local governmental agency charged in the complaint to answer the allegations of the complaint at a hearing before 14 15 the commission.

(2) The commission hearing must be held in the county 16 17 where the unlawful conduct is alleged to have occurred 18 unless the state or local governmental agency charged in the 19 complaint or the commission requests a change of venue for 20 good cause shown. The case in support of the complaint may be presented before the commission by the commission staff, 21 22 the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings 23 under this chapter must be held in accordance with the 24 25 Montana Administrative Procedure Act, except as provided in

-3-

4/ 4/XX

LC 1435/01

-4-

1 [section 1] and 49-3-311.

.

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

5 (4) The prevailing party in a hearing under this 6 section may bring an action in district court for attorney 7 fees. The court in its discretion may award the prevailing 8 party reasonable attorney fees. Such action must comply 9 with the Montana Rules of Civil Procedure."

NEW SECTION. Section 6. Extension of authority. Any
existing authority of the commission for human rights to
make rules on the subject of the provisions of this act is
extended to the provisions of this act.

<u>NEW SECTION.</u> Section 7. Codification instruction.
Section 1 is intended to be codified as an integral part of
Title 49, chapter 2, and the provisions of Title 49 apply to
section 1.

-End-

-5-