

HOUSE BILL NO. 496

INTRODUCED BY WYATT, BARTLETT, TOOLE, CRIPPEN, WANZENRIED,
WINSLOW, J. RICE, B. BROWN, DOHERTY, DAVIS
BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

IN THE HOUSE

FEBRUARY 5, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. FIRST READING.
FEBRUARY 15, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. POSTED ON CONSENT CALENDAR.
FEBRUARY 16, 1993	CONSENT CALENDAR, QUESTIONS AND ANSWERS. ENGROSSING REPORT.
FEBRUARY 17, 1993	THIRD READING, PASSED. AYES, 99; NOES, 0.
FEBRUARY 18, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. FIRST READING.
MARCH 15, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 16, 1993	SECOND READING, CONCURRED IN.
MARCH 17, 1993	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0. RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 496
 2 INTRODUCED BY Walter Bontrich Co
 3 BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS Dr. Brown
 4 Amended John Smith
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
 6 HUMAN RIGHTS LAWS; REPLACING THE TERMS "HANDICAP" AND
 7 "HANDICAPPED PERSON" WITH THE TERMS "DISABILITY" AND "PERSON
 8 WITH A DISABILITY"; PROVIDING OTHER CHANGES IN TERMINOLOGY;
 9 AND AMENDING SECTIONS 49-1-102, 49-2-101, 49-2-303,
 10 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403,
 11 49-2-602, 49-3-101, 49-3-103, 49-3-201, 49-3-202, 49-3-203,
 12 49-3-204, 49-3-205, 49-3-206, 49-3-207, 49-4-101, 49-4-202,
 13 49-4-211, 49-4-212, 49-4-301, 49-4-302, 49-4-304, AND
 14 49-4-305, MCA."

15
 16 WHEREAS, many individuals with disabilities and many
 17 organizations representing individuals with disabilities
 18 object to the use of the terms "handicap" and "handicapped
 19 person"; and

20 WHEREAS, as with racial and ethnic terms, the choice of
 21 words used to describe a person with a disability is
 22 overlaid with stereotypes and emotional connotations; and

23 WHEREAS, it is important to use terminology most in line
 24 with the sensibilities of most persons with disabilities;
 25 and

1 WHEREAS, the current accepted terminology is
 2 "disability" rather than "handicap" and "person with a
 3 disability" rather than "handicapped person"; and

4 WHEREAS, the federal Americans with Disabilities Act of
 5 1990 uses the terms "disability" and "individual with a
 6 disability" rather than the terms "handicap" or "handicapped
 7 person"; and

8 WHEREAS, making the state human rights laws consistent
 9 with the Americans with Disabilities Act will eliminate some
 10 confusion between state and federal laws.

11 THEREFORE, it is appropriate for the Legislature to
 12 revise the state human rights laws to replace the terms
 13 "handicap" and "handicapped person" with the terms
 14 "disability" and "person with a disability".

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 49-1-102, MCA, is amended to read:

18 "49-1-102. Freedom from discrimination. (1) The right
 19 to be free from discrimination because of race, creed,
 20 religion, color, sex, physical or mental handicap
 21 disability, age, or national origin is recognized as and
 22 declared to be a civil right. This right must include but
 23 not be limited to:

24 (a) the right to obtain and hold employment without
 25 discrimination; and

(b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1). Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section."

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

"49-2-101. Definitions. As used in this chapter, 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 the person's 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 an individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to

procure employees or opportunities to work.

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

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

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

(13) "National origin" means ancestry.

(14) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

(15) (a) "Physical or mental handicap disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental handicap disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap disability. Any An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

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

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution,

club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (16), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

(17) "Staff" or "commission staff" means the staff of the commission for human rights."

Section 3. Section 49-2-303, MCA, is amended to read:

"49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him a person from employment, or to discriminate against him a person in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap disability, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap disability, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any

person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap disability, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap disability, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on

1 bona fide occupational qualifications shall must be strictly
2 construed.

3 (3) Compliance with 2-2-302 and 2-2-303, which prohibit
4 nepotism in public agencies, may not be construed as a
5 violation of this section.

6 (4) The application of a hiring preference as provided
7 for in 2-18-111 and 18-1-110 may not be construed to be a
8 violation of this section."

9 **Section 4.** Section 49-2-304, MCA, is amended to read:

10 "49-2-304. Discrimination in public accommodations. (1)
11 Except when the distinction is based on reasonable grounds,
12 it is an unlawful discriminatory practice for the owner,
13 lessee, manager, agent, or employee of a public
14 accommodation:

15 (a) to refuse, withhold from, or deny to a person any
16 of its services, goods, facilities, advantages, or
17 privileges because of sex, marital status, race, age,
18 physical or mental handicap disability, creed, religion,
19 color, or national origin;

20 (b) to publish, circulate, issue, display, post, or
21 mail a written or printed communication, notice, or
22 advertisement which states or implies that any of the
23 services, goods, facilities, advantages, or privileges of
24 the public accommodation will be refused, withheld from, or
25 denied to a person of a certain race, creed, religion, sex,

1 marital status, age, physical or mental handicap disability,
2 color, or national origin.

3 (2) Except when the distinction is based on reasonable
4 grounds, it is an unlawful discriminatory practice for a
5 licensee under Title 16, chapter 4, to exclude from its
6 membership or from its services, goods, facilities,
7 advantages, privileges, or accommodations any individual on
8 the grounds of race, color, religion, creed, sex, marital
9 status, age, physical or mental handicap disability, or
10 national origin. This subsection does not apply to any lodge
11 of a recognized national fraternal organization.

12 (3) Nothing in this section prohibits public
13 accommodations from giving or providing special benefits,
14 incentives, discounts, or promotions for the benefit of
15 individuals based on age."

16 **Section 5.** Section 49-2-305, MCA, is amended to read:

17 "49-2-305. Discrimination in housing — exemptions. (1)
18 It is an unlawful discriminatory practice for the owner,
19 lessee, or manager having the right to sell, lease, or rent
20 a housing accommodation or improved or unimproved property
21 or for any other person:

22 (a) to refuse to sell, lease, or rent the housing
23 accommodation or property to a person because of sex,
24 marital status, race, creed, religion, color, age, familial
25 status, physical or mental handicap disability, or national

1 origin;

2 (b) to discriminate against a person because of sex,
3 marital status, race, creed, religion, age, familial status,
4 physical or mental handicap disability, color, or national
5 origin in a term, condition, or privilege relating to the
6 use, sale, lease, or rental of the housing accommodation or
7 property;

8 (c) to make an inquiry of the sex, marital status,
9 race, creed, religion, age, familial status, physical or
10 mental handicap disability, color, or national origin of a
11 person seeking to buy, lease, or rent a housing
12 accommodation or property for the purpose of discriminating
13 on the basis of sex, marital status, race, creed, religion,
14 age, familial status, physical or mental handicap
15 disability, color, or national origin;

16 (d) to refuse to negotiate for a sale or to otherwise
17 make unavailable or deny a housing accommodation or property
18 because of sex, marital status, race, creed, religion, age,
19 familial status, physical or mental handicap disability,
20 color, or national origin;

21 (e) to represent to a person that a housing
22 accommodation or property is not available for inspection,
23 sale, or rental because of that person's sex, marital
24 status, race, creed, religion, age, familial status,
25 physical or mental handicap disability, color, or national

1 origin when the housing accommodation or property is in fact
2 available; or

3 (f) for profit, to induce or attempt to induce a person
4 to sell or rent a housing accommodation or property by
5 representations regarding the entry or prospective entry
6 into the neighborhood of a person or persons of a particular
7 sex, marital status, race, creed, religion, age, familial
8 status, physical or mental handicap disability, color, or
9 national origin.

10 (2) The rental of sleeping rooms in a private residence
11 designed for single-family occupancy in which the owner also
12 resides is excluded from the provisions of subsection (1),
13 provided that the owner rents no more than three sleeping
14 rooms within the residence.

15 (3) It is an unlawful discriminatory practice to make,
16 print, or publish or cause to be made, printed, or published
17 any notice, statement, or advertisement that indicates any
18 preference, limitation, or discrimination that is prohibited
19 by subsection (1) or any intention to make or have such a
20 prohibited preference, limitation, or discrimination.

21 (4) It is an unlawful discriminatory practice for a
22 person to discriminate because of a physical or mental
23 handicap disability of a buyer, lessee, or renter; a person
24 residing in or intending to reside in or on the housing
25 accommodation or property after it is sold, leased, rented,

or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental handicap disability includes:

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

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use

and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by handicapped-persons a person with a disability;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by handicapped--persons a person with a disability in wheelchairs a wheelchair; and

(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an

1 individual in a wheelchair to maneuver about the space;

2 (ii) a covered multifamily housing accommodation that
3 does not have at least one building entrance on an
4 accessible route because it is impractical to do so due to
5 the terrain or unusual characteristics of the site is not
6 required to comply with the requirements of subsection
7 (5)(c)(i).

8 (6) For purposes of subsection (5), the term "covered
9 multifamily housing accommodation" means:

10 (a) a building consisting of four or more dwelling
11 units if the building has one or more elevators; and

12 (b) ground floor units in a building consisting of four
13 or more dwelling units.

14 (7) (a) It is an unlawful discriminatory practice for
15 any person or other entity whose business includes engaging
16 in residential real estate-related transactions to
17 discriminate because of sex, race, creed, religion, age,
18 familial status, physical or mental handicap disability,
19 color, or national origin against a person in making
20 available a transaction or in the terms or conditions of a
21 transaction.

22 (b) For purposes of this subsection (7), the term
23 "residential real estate-related transaction" means any of
24 the following:

25 (i) the making or purchasing of loans or providing

1 other financial assistance:

2 (A) for purchasing, constructing, improving, repairing,
3 or maintaining a housing accommodation or property; or

4 (B) secured by residential real estate; or

5 (ii) the selling, brokering, or appraising of
6 residential real property.

7 (8) It is an unlawful discriminatory practice to deny a
8 person access to or membership or participation in a
9 multiple-listing service; real estate brokers' organization;
10 or other service, organization, or facility relating to the
11 business of selling, leasing, or renting housing
12 accommodations or property or to discriminate against the
13 person in the terms or conditions of access, membership, or
14 participation because of sex, race, creed, religion, age,
15 familial status, physical or mental handicap disability,
16 color, or national origin.

17 (9) It is an unlawful discriminatory practice to
18 coerce, intimidate, threaten, or interfere with a person in
19 the exercise or enjoyment of or because of his the person
20 having exercised or enjoyed or having aided or encouraged
21 any other person in the exercise or enjoyment of a right
22 granted or protected by this section.

23 (10) The prohibitions of this section against
24 discrimination because of age and familial status do not
25 extend to housing for older persons. "Housing for older

persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (3) and 24 C.F.R. 100.304, as those sections read on October 1, 1989.

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his the owner's residence.

(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."

Section 6. Section 49-2-306, MCA, is amended to read:

"49-2-306. Discrimination in financing and credit transactions. (1) It is an unlawful discriminatory practice

for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of his that person's duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental handicap disability, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical handicap disability, sex, or marital status against any person in any credit transaction which that is subject to the jurisdiction of any state or federal court of record."

Section 7. Section 49-2-307, MCA, is amended to read:

"49-2-307. Discrimination in education. It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical handicap disability, or national origin or because of mental handicap

1 disability, unless based on reasonable grounds;

2 (2) to make or use a written or oral inquiry or form of
3 application for admission that elicits or attempts to elicit
4 information or to make or keep a record concerning the race,
5 color, sex, marital status, age, creed, religion, physical
6 or mental handicap disability, or national origin of an
7 applicant for admission, except as permitted by regulations
8 of the commission;

9 (3) to print, publish, or cause to be printed or
10 published a catalog or other notice or advertisement
11 indicating a limitation, specification, or discrimination
12 based on the race, color, creed, religion, age, physical or
13 mental handicap disability, sex, marital status, or national
14 origin of an applicant for admission; or

15 (4) to announce or follow a policy of denial or
16 limitation of educational opportunities of a group or its
17 members, through a quota or otherwise, because of race,
18 color, sex, marital status, age, creed, religion, physical
19 or mental handicap disability, or national origin."

20 **Section 8.** Section 49-2-308, MCA, is amended to read:

21 "49-2-308. Discrimination by the state. (1) It is an
22 unlawful discriminatory practice for the state or any of its
23 political subdivisions:

24 (a) to refuse, withhold from, or deny to a person any
25 local, state, or federal funds, services, goods, facilities,

1 advantages, or privileges because of race, creed, religion,
2 sex, marital status, color, age, physical or mental handicap
3 disability, or national origin, unless based on reasonable
4 grounds;

5 (b) to publish, circulate, issue, display, post, or
6 mail a written or printed communication, notice, or
7 advertisement which states or implies that any local, state,
8 or federal funds, services, goods, facilities, advantages,
9 or privileges of the office or agency will be refused,
10 withheld from, or denied to a person of a certain race,
11 creed, religion, sex, marital status, color, age, physical
12 or mental handicap disability, or national origin or that
13 the patronage of a person of a particular race, creed,
14 religion, sex, marital status, color, age, or national
15 origin or possessing a physical or mental handicap
16 disability is unwelcome or not desired or solicited, unless
17 based on reasonable grounds;

18 (c) to refuse employment to a person, to bar him a
19 person from employment, or to discriminate against him a
20 person in compensation or in a term, condition, or privilege
21 of employment because of his that person's political
22 beliefs. However, this prohibition does not apply to
23 policymaking positions on the immediate staff of an elected
24 officer of the executive branch provided for in Article VI,
25 section 1, of the Montana constitution, to the appointment

by the governor or a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1)."

Section 9. Section 49-2-403, MCA, is amended to read:

"49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) and (4) and 49-3-201(5), sex, marital status, age, physical or mental handicap disability, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap disability may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations."

Section 10. Section 49-2-602, MCA, is amended to read:

"49-2-602. Intimidation or interference in right to be free from housing discrimination -- penalties. (1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or

knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because he that person is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because he the citizen is or has been, or in order to discourage him that citizen or any other citizen

from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because he the citizen is or has been lawfully participating in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life."

Section 11. 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) (a) "Physical or mental handicap disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental handicap disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap disability. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(4) "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

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

Section 12. Section 49-3-103, MCA, is amended to read:

"49-3-103. Permitted distinctions. (1) Nothing in this

chapter prohibits any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap disability when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in 2-18-111, 10-2-402, 18-1-110, and Title 39, chapter 29 or 30, by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter."

Section 13. Section 49-3-201, MCA, is amended to read:

"49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and

qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap disability, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure ensure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure ensure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section."

Section 14. Section 49-3-202, MCA, is amended to read:

"49-3-202. Employment referrals and placement services.

(1) All state and local governmental agencies, including educational institutions, which that provide employment referrals or placement services to public or private

employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap disability, or national origin ~~shall~~ must be rejected.

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

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities."

Section 15. Section 49-3-203, MCA, is amended to read:

"49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap

disability, or national origin. ~~Such~~ The programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of persons who are culturally deprived, or who are educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest."

Section 16. Section 49-3-204, MCA, is amended to read:

"49-3-204. Licensing. (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap disability, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of family services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious

1 factors by a licensed child-placing agency that is
2 affiliated with a particular religious faith is not
3 arbitrary consideration of religion within the meaning of
4 this section.

5 (2) The state may not issue or renew a license under
6 Title 16, chapter 4, to an applicant or licensee that
7 excludes from its membership or from its goods, services,
8 facilities, privileges, or advantages any individual on the
9 grounds of race, color, religion, creed, political ideas,
10 sex, age, marital status, physical or mental handicap
11 disability, or national origin. This subsection does not
12 apply to any lodge of a recognized national fraternal
13 organization."

14 **Section 17.** Section 49-3-205, MCA, is amended to read:

15 "49-3-205. Governmental services. (1) All services of
16 every state or local governmental agency must be performed
17 without discrimination based upon race, color, religion,
18 creed, political ideas, sex, age, marital status, physical
19 or mental handicap disability, or national origin.

20 (2) No A state or local facility may not be used in the
21 furtherance of any discriminatory practice, nor may a state
22 or local governmental agency become a party to an agreement,
23 arrangement, or plan which that has the effect of
24 sanctioning discriminatory practices.

25 (3) Each state or local governmental agency shall

1 analyze all of its operations to ascertain possible
2 instances of noncompliance with the policy of this chapter
3 and shall initiate comprehensive programs to remedy any
4 defect found to exist.

5 (4) This section does not prevent the nonarbitrary
6 consideration in adoption proceedings of relevant
7 information concerning the factors listed in this section."

8 **Section 18.** Section 49-3-206, MCA, is amended to read:

9 "49-3-206. Distribution of governmental funds. Race,
10 color, religion, creed, political ideas, sex, age, marital
11 status, physical or mental handicap disability, or national
12 origin may not be considered as limiting factors with regard
13 to applicants' qualifications for benefits authorized by law
14 in state or locally administered programs involving the
15 distribution of funds; nor may state agencies provide
16 grants, loans, or other financial assistance to public
17 agencies, private institutions, or organizations which
18 engage in discriminatory practices."

19 **Section 19.** Section 49-3-207, MCA, is amended to read:

20 "49-3-207. Nondiscrimination provision in all public
21 contracts. Every state or local contract or subcontract for
22 construction of public buildings or for other public work or
23 for goods or services shall must contain a provision that
24 all hiring must be on the basis of merit and qualifications
25 and a provision that there may not be no discrimination on

1 the basis of race, color, religion, creed, political ideas,
2 sex, age, marital status, physical or mental handicap
3 disability, or national origin by the persons performing the
4 contract."

5 **Section 20.** Section 49-4-101, MCA, is amended to read:

6 "49-4-101. Discrimination prohibited. It is unlawful to
7 discriminate, in hiring or employment, against a person
8 because of the person's physical handicap disability of such
9 person. There is no discrimination where when the nature or
10 extent of the handicap disability reasonably precludes the
11 performance of the particular employment or where when the
12 particular employment may subject the handicapped-or-his
13 person with a disability or that person's fellow employees
14 to physical harm."

15 **Section 21.** Section 49-4-202, MCA, is amended to read:

16 "49-4-202. Policy of the state. It is the policy of the
17 state to encourage and enable the blind, the visually
18 handicapped impaired, the deaf, and the otherwise physically
19 disabled to participate fully in the social and economic
20 life of the state and to engage in remunerative employment.
21 The blind, the visually handicapped impaired, the deaf, and
22 the otherwise physically disabled ~~shall~~ must be employed in
23 the state service, the service of the political subdivisions
24 of the state, the public schools, and all other employment
25 supported in whole or in part by public funds on the same

1 terms and conditions as the able-bodied, unless it is shown
2 that the particular disability prevents the performance of
3 the work involved."

4 **Section 22.** Section 49-4-211, MCA, is amended to read:

5 "49-4-211. Right to use public places and
6 accommodations. (1) The blind, the visually handicapped
7 impaired, and the deaf have the same right as the
8 able-bodied to the full and free use of the streets,
9 highways, sidewalks, walkways, public buildings, public
10 facilities, and other public places.

11 (2) The blind, the visually handicapped impaired, and
12 the deaf are entitled to full and equal accommodations,
13 advantages, facilities, and privileges of all common
14 carriers, as defined in 69-11-101, and all public
15 accommodations, as defined in 49-2-101, subject only to the
16 conditions and limitations established by law and applicable
17 alike to all persons."

18 **Section 23.** Section 49-4-212, MCA, is amended to read:

19 "49-4-212. Access to housing accommodations. Blind,
20 visually handicapped impaired, and deaf persons are entitled
21 to as full and equal access as other members of the general
22 public to any housing accommodation offered for compensation
23 in this state."

24 **Section 24.** Section 49-4-301, MCA, is amended to read:

25 "49-4-301. Who eligible for special parking permit. (1)

The department of justice shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical handicap disability that impairs his mobility when not in a motor vehicle;

(b) regardless of whether he the person holds a driver's license or owns a motor vehicle, has a permanent physical handicap disability that impairs his driving ability and impairs his mobility when not in a motor vehicle to such an extent that he the person needs to be driven by another person to a destination; or

(c) has a temporary physical handicap disability that impairs his driving ability or his mobility when not in a motor vehicle to such an extent that he the person needs to be driven by another person to a destination.

(2) No--one An applicant may not receive more than one permit."

Section 25. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permit holder -- privilege for disabled veteran -- exemptions from time limits -- requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking spaces space reserved for handicapped--persons a person with a

disability, whether on public property or on private property available for public use.

(2) No A vehicle other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing handicapped-person's license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a handicapped person with a disability or one displaying a specially inscribed license plate issued under 61-3-332(10)(c) and conveying a 100% disabled veteran may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped-persons a person with a disability.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c) and parked in public places along public streets from any time limitation imposed upon parking in-such-area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of

the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for handicapped--persons a person with a disability or permitholders a permitholder on ways of this state open to the public as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for handicapped--persons a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for handicapped--persons a person with a disability must be designated by a sign showing the international symbol of accessibility and indicating that a permit is required. The sign must be

attached to a wall or post in such a way that it is not obscured by a vehicle parked in the space."

Section 26. Section 49-4-304, MCA, is amended to read:

"49-4-304. Special license plate or card to be provided and displayed -- additional cards allowed for owners of more than one vehicle. (1) The department of justice shall provide a special license plate under 61-3-332(10)(f) or a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the handicapped person with a disability in a vehicle other than the one to which his a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide to him additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-303, a handicapped person with a disability who does not hold a driver's license or does not own a vehicle may receive a card

1 described in subsection (1) to be displayed in a vehicle in
2 which the handicapped person with a disability is being
3 conveyed when the parking privilege is being used.

4 (4) The card must bear a representation of a wheelchair
5 as the symbol of a handicapped person with a disability."

6 **Section 27.** Section 49-4-305, MCA, is amended to read:

7 "49-4-305. Expiration of permit. A permit expires on:

8 (1) the death of the permittee; or

9 (2) certification by a physician that the permittee's
10 physical handicap disability impairing his mobility no
11 longer exists."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 496

INTRODUCED BY WYATT, BARTLETT, TOOLE, CRIPPEN, WANZENRIED,
WINSLOW, J. RICE, B. BROWN, DOHERTY, DAVIS
BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
HUMAN RIGHTS LAWS; REPLACING THE TERMS "HANDICAP" AND
"HANDICAPPED PERSON" WITH THE TERMS "DISABILITY" AND "PERSON
WITH A DISABILITY"; PROVIDING OTHER CHANGES IN TERMINOLOGY;
AND AMENDING SECTIONS 49-1-102, 49-2-101, 49-2-303,
49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403,
49-2-602, 49-3-101, 49-3-103, 49-3-201, 49-3-202, 49-3-203,
49-3-204, 49-3-205, 49-3-206, 49-3-207, 49-4-101, 49-4-202,
49-4-211, 49-4-212, 49-4-301, 49-4-302, 49-4-304, AND
49-4-305, MCA."

WHEREAS, many individuals with disabilities and many
organizations representing individuals with disabilities
object to the use of the terms "handicap" and "handicapped
person"; and

WHEREAS, as with racial and ethnic terms, the choice of
words used to describe a person with a disability is
overlaid with stereotypes and emotional connotations; and

WHEREAS, it is important to use terminology most in line
with the sensibilities of most persons with disabilities;

and

WHEREAS, the current accepted terminology is
"disability" rather than "handicap" and "person with a
disability" rather than "handicapped person"; and

WHEREAS, the federal Americans with Disabilities Act of
1990 uses the terms "disability" and "individual with a
disability" rather than the terms "handicap" or "handicapped
person"; and

WHEREAS, making the state human rights laws consistent
with the Americans with Disabilities Act will eliminate some
confusion between state and federal laws.

THEREFORE, it is appropriate for the Legislature to
revise the state human rights laws to replace the terms
"handicap" and "handicapped person" with the terms
"disability" and "person with a disability".

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

Section 1. Section 49-1-102, MCA, is amended to read:

"49-1-102. Freedom from discrimination. (1) The right
to be free from discrimination because of race, creed,
religion, color, sex, physical or mental handicap
disability, age, or national origin is recognized as and
declared to be a civil right. This right must include but
not be limited to:

(a) the right to obtain and hold employment without



1 discrimination; and

2 (b) the right to the full enjoyment of any of the
3 accommodation facilities or privileges of any place of
4 public resort, accommodation, assemblage, or amusement.

5 (2) This section does not prevent the nonarbitrary
6 consideration in adoption proceedings of relevant
7 information concerning the factors listed in subsection (1).
8 Consideration of religious factors by a licensed
9 child-placing agency that is affiliated with a particular
10 religious faith is not arbitrary consideration of religion
11 within the meaning of this section."

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

13 "49-2-101. Definitions. As used in this chapter, unless
14 the context requires otherwise, the following definitions
15 apply:

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

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

23 (3) "Credit" means the right granted by a creditor to a
24 person to defer payment of a debt, to incur debt and defer
25 its payment, or to purchase property or services and defer

1 payment therefor. It includes without limitation the right
2 to incur and defer debt which is secured by residential real
3 property.

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

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

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

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

20 (8) "Employer" means an employer of one or more persons
21 but does not include a fraternal, charitable, or religious
22 association or corporation if the association or corporation
23 is not organized either for private profit or to provide
24 accommodations or services that are available on a
25 nonmembership basis.

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

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

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

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

(13) "National origin" means ancestry.

(14) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

(15) (a) "Physical or mental handicap disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental handicap disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap disability. Any An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

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

(b) Public accommodation does not include an institution, club, or place of accommodation that proves

that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (16), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

(17) "Staff" or "commission staff" means the staff of the commission for human rights."

Section 3. Section 49-2-303, MCA, is amended to read:

"49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him a person from employment, or to discriminate against him a person in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap disability, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap disability, marital status, or sex distinction;

(b) a labor organization or joint labor management

committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap disability, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap disability, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall must be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be construed to be a violation of this section."

Section 4. Section 49-2-304, MCA, is amended to read:

"49-2-304. Discrimination in public accommodations. (1)

Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, marital status, race, age, physical or mental handicap disability, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or

denied to a person of a certain race, creed, religion, sex, marital status, age, physical or mental handicap disability, color, or national origin.

(2) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for a licensee under Title 16, chapter 4, to exclude from its membership or from its services, goods, facilities, advantages, privileges, or accommodations any individual on the grounds of race, color, religion, creed, sex, marital status, age, physical or mental handicap disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

(3) Nothing in this section prohibits public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age."

Section 5. Section 49-2-305, MCA, is amended to read:

"49-2-305. Discrimination in housing -- exemptions. (1)

It is an unlawful discriminatory practice for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial

1 status, physical or mental handicap disability, or national
2 origin;

3 (b) to discriminate against a person because of sex,
4 marital status, race, creed, religion, age, familial status,
5 physical or mental handicap disability, color, or national
6 origin in a term, condition, or privilege relating to the
7 use, sale, lease, or rental of the housing accommodation or
8 property;

9 (c) to make an inquiry of the sex, marital status,
10 race, creed, religion, age, familial status, physical or
11 mental handicap disability, color, or national origin of a
12 person seeking to buy, lease, or rent a housing
13 accommodation or property for the purpose of discriminating
14 on the basis of sex, marital status, race, creed, religion,
15 age, familial status, physical or mental handicap
16 disability, color, or national origin;

17 (d) to refuse to negotiate for a sale or to otherwise
18 make unavailable or deny a housing accommodation or property
19 because of sex, marital status, race, creed, religion, age,
20 familial status, physical or mental handicap disability,
21 color, or national origin;

22 (e) to represent to a person that a housing
23 accommodation or property is not available for inspection,
24 sale, or rental because of that person's sex, marital
25 status, race, creed, religion, age, familial status,

1 physical or mental handicap disability, color, or national
2 origin when the housing accommodation or property is in fact
3 available; or

4 (f) for profit, to induce or attempt to induce a person
5 to sell or rent a housing accommodation or property by
6 representations regarding the entry or prospective entry
7 into the neighborhood of a person or persons of a particular
8 sex, marital status, race, creed, religion, age, familial
9 status, physical or mental handicap disability, color, or
10 national origin.

11 (2) The rental of sleeping rooms in a private residence
12 designed for single-family occupancy in which the owner also
13 resides is excluded from the provisions of subsection (1),
14 provided that the owner rents no more than three sleeping
15 rooms within the residence.

16 (3) It is an unlawful discriminatory practice to make,
17 print, or publish or cause to be made, printed, or published
18 any notice, statement, or advertisement that indicates any
19 preference, limitation, or discrimination that is prohibited
20 by subsection (1) or any intention to make or have such a
21 prohibited preference, limitation, or discrimination.

22 (4) It is an unlawful discriminatory practice for a
23 person to discriminate because of a physical or mental
24 handicap disability of a buyer, lessee, or renter; a person
25 residing in or intending to reside in or on the housing

1 accommodation or property after it is sold, leased, rented,
2 or made available; or any person associated with that buyer,
3 lessee, or renter:

4 (a) in the sale, rental, or availability of the housing
5 accommodation or property;

6 (b) in the terms, conditions, or privileges of a sale
7 or rental of the housing accommodation or property; or

8 (c) in the provision of services or facilities in
9 connection with the housing accommodation or property.

10 (5) For purposes of subsections (1) and (4),
11 discrimination because of physical or mental handicap
12 disability includes:

13 (a) refusal to permit, at the expense of the
14 handicapped person with a disability, reasonable
15 modifications of existing premises occupied or to be
16 occupied by the handicapped person with a disability if the
17 modifications may be necessary to allow the person full
18 enjoyment of the premises, except that in the case of a
19 lease or rental, the landlord may, where it is reasonable to
20 do so, condition permission for a modification on the
21 lessor's or renter's agreement to restore the interior of
22 the premises to the condition that existed before the
23 modification, except for reasonable wear and tear;

24 (b) refusal to make reasonable accommodations in rules,
25 policies, practices, or services when the accommodations may

1 be necessary to allow the person equal opportunity to use
2 and enjoy a housing accommodation or property; or

3 (c) (i) except as provided in subsection (5)(c)(ii), in
4 connection with the design and construction of a covered
5 multifamily housing accommodation, a failure to design and
6 construct the housing accommodation in a manner that:

7 (A) provides at least one accessible building entrance
8 on an accessible route;

9 (B) makes the public use and common use portions of the
10 housing accommodation readily accessible to and usable by
11 handicapped-persons a person with a disability;

12 (C) provides that all doors designed to allow passage
13 into and within all premises within the housing
14 accommodation are sufficiently wide to allow passage by
15 handicapped--persons a person with a disability in
16 wheelchairs a wheelchair; and

17 (D) ensures that all premises within the housing
18 accommodation contain the following features of adaptive
19 design:

20 (I) an accessible route into and through the housing
21 accommodation;

22 (II) light switches, electrical outlets, thermostats,
23 and other environmental controls in accessible locations;

24 (III) reinforcements in bathroom walls to allow later
25 installation of grab bars; and

1 (IV) usable kitchens and bathrooms that allow an
2 individual in a wheelchair to maneuver about the space;

3 (ii) a covered multifamily housing accommodation that
4 does not have at least one building entrance on an
5 accessible route because it is impractical to do so due to
6 the terrain or unusual characteristics of the site is not
7 required to comply with the requirements of subsection
8 (5)(c)(i).

9 (6) For purposes of subsection (5), the term "covered
10 multifamily housing accommodation" means:

11 (a) a building consisting of four or more dwelling
12 units if the building has one or more elevators; and

13 (b) ground floor units in a building consisting of four
14 or more dwelling units.

15 (7) (a) It is an unlawful discriminatory practice for
16 any person or other entity whose business includes engaging
17 in residential real estate-related transactions to
18 discriminate because of sex, MARITAL STATUS, race, creed,
19 religion, age, familial status, physical or mental handicap
20 disability, color, or national origin against a person in
21 making available a transaction or in the terms or conditions
22 of a transaction.

23 (b) For purposes of this subsection (7), the term
24 "residential real estate-related transaction" means any of
25 the following:

1 (i) the making or purchasing of loans or providing
2 other financial assistance:

3 (A) for purchasing, constructing, improving, repairing,
4 or maintaining a housing accommodation or property; or

5 (B) secured by residential real estate; or

6 (ii) the selling, brokering, or appraising of
7 residential real property.

8 (8) It is an unlawful discriminatory practice to deny a
9 person access to or membership or participation in a
10 multiple-listing service; real estate brokers' organization;
11 or other service, organization, or facility relating to the
12 business of selling, leasing, or renting housing
13 accommodations or property or to discriminate against the
14 person in the terms or conditions of access, membership, or
15 participation because of sex, MARITAL STATUS, race, creed,
16 religion, age, familial status, physical or mental handicap
17 disability, color, or national origin.

18 (9) It is an unlawful discriminatory practice to
19 coerce, intimidate, threaten, or interfere with a person in
20 the exercise or enjoyment of or because of his the person
21 having exercised or enjoyed or having aided or encouraged
22 any other person in the exercise or enjoyment of a right
23 granted or protected by this section.

24 (10) The prohibitions of this section against
25 discrimination because of age and familial status do not

1 extend to housing for older persons. "Housing for older
2 persons" means housing:

3 (a) provided under any state or federal program
4 specifically designed and operated to assist elderly
5 persons;

6 (b) intended for, and solely occupied by, persons 62
7 years of age or older; or

8 (c) intended and operated for occupancy by at least one
9 person 55 years of age or older per unit in accordance with
10 the provisions of 42 U.S.C. 3607(b)(2)(C) and (3) and 24
11 C.F.R. 100.304, as those sections read on October 1, 1989.

12 (11) The prohibitions of subsection (1) against
13 discrimination because of age and familial status do not
14 extend to rooms or units in dwellings containing living
15 quarters occupied or intended to be occupied by no more than
16 two families living independently of each other, if the
17 owner actually maintains and occupies one of the living
18 quarters as his the owner's residence.

19 (12) For purposes of this section, "familial status"
20 means having a child or children who live or will live with
21 a person. A distinction based on familial status includes
22 one that is based on the age of a child or children who live
23 or will live with a person."

24 **Section 6.** Section 49-2-306, MCA, is amended to read:

25 "49-2-306. Discrimination in financing and credit

1 transactions. (1) It is an unlawful discriminatory practice
2 for a financial institution, upon receiving an application
3 for financial assistance, to permit an official or employee,
4 during the execution of his that person's duties, to
5 discriminate against the applicant because of sex, marital
6 status, race, creed, religion, age, physical or mental
7 handicap disability, color, or national origin in a term,
8 condition, or privilege relating to the obtainment or use of
9 the institution's financial assistance, unless based on
10 reasonable grounds.

11 (2) It is an unlawful discriminatory practice for a
12 creditor to discriminate on the basis of race, color,
13 religion, creed, national origin, age, mental or physical
14 handicap disability, sex, or marital status against any
15 person in any credit transaction which that is subject to
16 the jurisdiction of any state or federal court of record."

17 **Section 7.** Section 49-2-307, MCA, is amended to read:

18 "49-2-307. Discrimination in education. It is an
19 unlawful discriminatory practice for an educational
20 institution:

21 (1) to exclude, expel, limit, or otherwise discriminate
22 against an individual seeking admission as a student or an
23 individual enrolled as a student in the terms, conditions,
24 or privileges of the institution because of race, creed,
25 religion, sex, marital status, color, age, physical handicap

1 disability, or national origin or because of mental handicap
2 disability, unless based on reasonable grounds;

3 (2) to make or use a written or oral inquiry or form of
4 application for admission that elicits or attempts to elicit
5 information or to make or keep a record concerning the race,
6 color, sex, marital status, age, creed, religion, physical
7 or mental handicap disability, or national origin of an
8 applicant for admission, except as permitted by regulations
9 of the commission;

10 (3) to print, publish, or cause to be printed or
11 published a catalog or other notice or advertisement
12 indicating a limitation, specification, or discrimination
13 based on the race, color, creed, religion, age, physical or
14 mental handicap disability, sex, marital status, or national
15 origin of an applicant for admission; or

16 (4) to announce or follow a policy of denial or
17 limitation of educational opportunities of a group or its
18 members, through a quota or otherwise, because of race,
19 color, sex, marital status, age, creed, religion, physical
20 or mental handicap disability, or national origin."

21 **Section 8.** Section 49-2-308, MCA, is amended to read:

22 "49-2-308. Discrimination by the state. (1) It is an
23 unlawful discriminatory practice for the state or any of its
24 political subdivisions:

25 (a) to refuse, withhold from, or deny to a person any

1 local, state, or federal funds, services, goods, facilities,
2 advantages, or privileges because of race, creed, religion,
3 sex, marital status, color, age, physical or mental handicap
4 disability, or national origin, unless based on reasonable
5 grounds;

6 (b) to publish, circulate, issue, display, post, or
7 mail a written or printed communication, notice, or
8 advertisement which states or implies that any local, state,
9 or federal funds, services, goods, facilities, advantages,
10 or privileges of the office or agency will be refused,
11 withheld from, or denied to a person of a certain race,
12 creed, religion, sex, marital status, color, age, physical
13 or mental handicap disability, or national origin or that
14 the patronage of a person of a particular race, creed,
15 religion, sex, marital status, color, age, or national
16 origin or possessing a physical or mental handicap
17 disability is unwelcome or not desired or solicited, unless
18 based on reasonable grounds;

19 (c) to refuse employment to a person, to bar him a
20 person from employment, or to discriminate against him a
21 person in compensation or in a term, condition, or privilege
22 of employment because of his that person's political
23 beliefs. However, this prohibition does not apply to
24 policymaking positions on the immediate staff of an elected
25 officer of the executive branch provided for in Article VI,

section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1)."

Section 9. Section 49-2-403, MCA, is amended to read:

"49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) and (4) and 49-3-201(5), sex, marital status, age, physical or mental handicap disability, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap disability may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations."

Section 10. Section 49-2-602, MCA, is amended to read:

"49-2-602. Intimidation or interference in right to be free from housing discrimination -- penalties. (1) It is unlawful for a person, whether or not acting under color of

law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because he that person is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because he the citizen is or has been, or

1 in order to discourage him that citizen or any other citizen
 2 from, lawfully aiding or encouraging other persons to
 3 participate in any of the activities, services,
 4 organizations, or facilities described in this subsection
 5 (1) or because he the citizen is or has been lawfully
 6 participating in speech or peaceful assembly opposing any
 7 denial of the opportunity to participate.

8 (2) A person who violates a provision of subsection
 9 (1):

10 (a) shall be fined not more than \$1,000 or imprisoned
 11 for not more than 1 year, or both;

12 (b) if bodily injury results, shall be fined not more
 13 than \$10,000 or imprisoned for not more than 10 years, or
 14 both; or

15 (c) if death results, shall be subject to imprisonment
 16 for any term of years or for life."

17 **Section 11.** Section 49-3-101, MCA, is amended to read:

18 "49-3-101. Definitions. As used in this chapter, the
 19 following definitions apply:

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

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

1 provided for in 2-15-1706.

2 (3) (a) "Physical or mental handicap disability" means:

3 (i) a physical or mental impairment that substantially
 4 limits one or more of a person's major life activities;

5 (ii) a record of such an impairment; or

6 (iii) a condition regarded as such an impairment.

7 (b) Discrimination based upon, because of, on the basis
 8 of, on the grounds of, or with regard to physical or mental
 9 handicap disability includes the failure to make reasonable
 10 accommodations that are required by an otherwise qualified
 11 person who has a physical or mental handicap disability. Any
 12 accommodation that would require an undue hardship or that
 13 would endanger the health or safety of any person is not a
 14 reasonable accommodation.

15 (4) "State or local governmental agency" means:

16 (a) any branch, department, office, board, bureau,
 17 commission, agency, university unit, college, or other
 18 instrumentality of state government; or

19 (b) a county, city, town, school district, or other
 20 unit of local government and any instrumentality of local
 21 government.

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

25 **Section 12.** Section 49-3-103, MCA, is amended to read:

1 "49-3-103. Permitted distinctions. (1) Nothing in this
2 chapter prohibits any public or private employer:

3 (a) from enforcing a differentiation based on marital
4 status, age, or physical or mental handicap disability when
5 based on a bona fide occupational qualification reasonably
6 necessary to the normal operation of the particular business
7 or where the differentiation is based on reasonable factors
8 other than age;

9 (b) from observing the terms of a bona fide seniority
10 system or any bona fide employee benefit plan, such as a
11 retirement, pension, or insurance plan, that is not a
12 subterfuge to evade the purposes of this chapter, except
13 that an employee benefit plan may not excuse the failure to
14 hire any individual; or

15 (c) from discharging or otherwise disciplining an
16 individual for good cause.

17 (2) The application of an employment preference as
18 provided for in 2-18-111, 10-2-402, 18-1-110, and Title 39,
19 chapter 29 or 30, by a public employer as defined in
20 39-29-101 and 39-30-103 may not be construed to constitute a
21 violation of this chapter."

22 **Section 13.** Section 49-3-201, MCA, is amended to read:

23 "49-3-201. Employment of state and local government
24 personnel. (1) State and local government officials and
25 supervisory personnel shall recruit, appoint, assign, train,

1 evaluate, and promote personnel on the basis of merit and
2 qualifications without regard to race, color, religion,
3 creed, political ideas, sex, age, marital status, physical
4 or mental handicap disability, or national origin.

5 (2) All state and local governmental agencies shall:

6 (a) promulgate written directives to carry out this
7 policy and to guarantee equal employment opportunities at
8 all levels of state and local government;

9 (b) regularly review their personnel practices to
10 assure compliance; and

11 (c) conduct continuing orientation and training
12 programs with emphasis on human relations and fair
13 employment practices.

14 (3) The department of administration shall insure
15 ensure that the entire examination process, including
16 appraisal of qualifications, is free from bias.

17 (4) Appointing authorities shall exercise care to
18 insure ensure utilization of minority group persons.

19 (5) Compliance with 2-2-302 and 2-2-303, which prohibit
20 nepotism in public agencies, may not be construed as a
21 violation of this section."

22 **Section 14.** Section 49-3-202, MCA, is amended to read:

23 "49-3-202. Employment referrals and placement services.

24 (1) All state and local governmental agencies, including
25 educational institutions, which that provide employment

1 referrals or placement services to public or private
 2 employers shall accept job orders on a fair practice basis.
 3 A job request indicating an intention to exclude a person
 4 because of race, color, religion, creed, political ideas,
 5 sex, age, marital status, physical or mental handicap
 6 disability, or national origin shall must be rejected.

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

12 (3) The department of labor and industry shall
 13 cooperate with the commission for human rights in
 14 encouraging and enforcing compliance by employers and labor
 15 unions with the policy of this chapter and promotion of
 16 equal employment opportunities."

17 **Section 15.** Section 49-3-203, MCA, is amended to read:

18 "49-3-203. Educational, counseling, and training
 19 programs. All educational, counseling, and vocational
 20 guidance programs and all apprenticeship and on-the-job
 21 training programs of state and local governmental agencies
 22 or in which state and local governmental agencies
 23 participate must be open to all persons, who must be
 24 accepted on the basis of merit and qualifications without
 25 regard to race, color, religion, creed, political ideas,

1 sex, age, marital status, physical or mental handicap
 2 disability, or national origin. Such The programs must be
 3 conducted to encourage the full development of the
 4 interests, aptitudes, skills, and capacities of all students
 5 and trainees, with special attention to the problems of
 6 persons who are culturally deprived, or who are
 7 educationally handicapped, or economically disadvantaged
 8 persons. Expansion of training opportunities under these
 9 programs must be encouraged to involve larger numbers of
 10 participants from those segments of the labor force in which
 11 the need for upgrading levels of skill is greatest."

12 **Section 16.** Section 49-3-204, MCA, is amended to read:

13 "49-3-204. Licensing. (1) A state or local governmental
 14 agency may not grant, deny, or revoke the license or charter
 15 of a person on the grounds of race, color, religion, creed,
 16 political ideas, sex, age, marital status, physical or
 17 mental handicap disability, or national origin. Each state
 18 or local governmental agency shall take such appropriate
 19 action in the exercise of its licensing or regulatory power
 20 as will assure equal treatment of all persons, eliminate
 21 discrimination, and enforce compliance with the policy of
 22 this chapter. This subsection does not prevent the
 23 department of family services from licensing a child-placing
 24 agency that gives nonarbitrary consideration in adoption
 25 proceedings to relevant information concerning the factors

1 listed in this subsection. Consideration of religious
2 factors by a licensed child-placing agency that is
3 affiliated with a particular religious faith is not
4 arbitrary consideration of religion within the meaning of
5 this section.

6 (2) The state may not issue or renew a license under
7 Title 16, chapter 4, to an applicant or licensee that
8 excludes from its membership or from its goods, services,
9 facilities, privileges, or advantages any individual on the
10 grounds of race, color, religion, creed, political ideas,
11 sex, age, marital status, physical or mental handicap
12 disability, or national origin. This subsection does not
13 apply to any lodge of a recognized national fraternal
14 organization."

15 **Section 17.** Section 49-3-205, MCA, is amended to read:

16 "49-3-205. Governmental services. (1) All services of
17 every state or local governmental agency must be performed
18 without discrimination based upon race, color, religion,
19 creed, political ideas, sex, age, marital status, physical
20 or mental handicap disability, or national origin.

21 (2) No A state or local facility may not be used in the
22 furtherance of any discriminatory practice, nor may a state
23 or local governmental agency become a party to an agreement,
24 arrangement, or plan which that has the effect of
25 sanctioning discriminatory practices.

1 (3) Each state or local governmental agency shall
2 analyze all of its operations to ascertain possible
3 instances of noncompliance with the policy of this chapter
4 and shall initiate comprehensive programs to remedy any
5 defect found to exist.

6 (4) This section does not prevent the nonarbitrary
7 consideration in adoption proceedings of relevant
8 information concerning the factors listed in this section."

9 **Section 18.** Section 49-3-206, MCA, is amended to read:

10 "49-3-206. Distribution of governmental funds. Race,
11 color, religion, creed, political ideas, sex, age, marital
12 status, physical or mental handicap disability, or national
13 origin may not be considered as limiting factors with regard
14 to applicants' qualifications for benefits authorized by law
15 in state or locally administered programs involving the
16 distribution of funds; nor may state agencies provide
17 grants, loans, or other financial assistance to public
18 agencies, private institutions, or organizations which
19 engage in discriminatory practices."

20 **Section 19.** Section 49-3-207, MCA, is amended to read:

21 "49-3-207. Nondiscrimination provision in all public
22 contracts. Every state or local contract or subcontract for
23 construction of public buildings or for other public work or
24 for goods or services shall must contain a provision that
25 all hiring must be on the basis of merit and qualifications

and a provision that there may not be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap disability, or national origin by the persons performing the contract."

Section 20. Section 49-4-101, MCA, is amended to read:

"49-4-101. Discrimination prohibited. It is unlawful to discriminate, in hiring or employment, against a person because of the person's physical handicap disability of such person. There is no discrimination where when the nature or extent of the handicap disability reasonably precludes the performance of the particular employment or where when the particular employment may subject the handicapped-or-his person with a disability or that person's fellow employees to physical harm."

Section 21. Section 49-4-202, MCA, is amended to read:

"49-4-202. Policy of the state. It is the policy of the state to encourage and enable the blind, the visually handicapped impaired, the deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually handicapped impaired, the deaf, and the otherwise physically disabled ~~shall~~ must be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment

supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved."

Section 22. Section 49-4-211, MCA, is amended to read:

"49-4-211. Right to use public places and accommodations. (1) The blind, the visually handicapped impaired, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually handicapped impaired, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons."

Section 23. Section 49-4-212, MCA, is amended to read:

"49-4-212. Access to housing accommodations. Blind, visually handicapped impaired, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state."

Section 24. Section 49-4-301, MCA, is amended to read:

"49-4-301. Who eligible for special parking permit. (1)

The department of justice shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical handicap disability that impairs his mobility when not in a motor vehicle;

(b) regardless of whether he the person holds a driver's license or owns a motor vehicle, has a permanent physical handicap disability that impairs his driving ability and impairs his mobility when not in a motor vehicle to such an extent that he the person needs to be driven by another person to a destination; or

(c) has a temporary physical handicap disability that impairs his driving ability or his mobility when not in a motor vehicle to such an extent that he the person needs to be driven by another person to a destination.

(2) No--one An applicant may not receive more than one permit."

Section 25. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder -- privilege for disabled veteran -- exemptions from time limits -- requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking spaces

space reserved for handicapped--persons a person with a disability, whether on public property or on private property available for public use.

(2) No A vehicle other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing handicapped-person's license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a handicapped person with a disability or one displaying a specially inscribed license plate issued under 61-3-332(10)(c) and conveying a 100% disabled veteran may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped-persons a person with a disability.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c) and parked in public places along public streets from any time limitation imposed upon parking in-such-area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for handicapped--persons a person with a disability or permitholders a permitholder on ways of this state open to the public as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for handicapped--persons a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for handicapped--persons a person with a disability must be designated by a sign showing the international symbol of accessibility and

indicating that a permit is required. The sign must be attached to a wall or post in such a way that it is not obscured by a vehicle parked in the space."

Section 26. Section 49-4-304, MCA, is amended to read:

"49-4-304. Special license plate or card to be provided and displayed -- additional cards allowed for owners of more than one vehicle. (1) The department of justice shall provide a special license plate under 61-3-332(10)(f) or a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the handicapped person with a disability in a vehicle other than the one to which his a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide to him additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-303, a handicapped person with a disability who does not hold a driver's

1 license or does not own a vehicle may receive a card
2 described in subsection (1) to be displayed in a vehicle in
3 which the handicapped person with a disability is being
4 conveyed when the parking privilege is being used.

5 (4) The card must bear a representation of a wheelchair
6 as the symbol of a handicapped person with a disability."

7 **Section 27.** Section 49-4-305, MCA, is amended to read:

8 "49-4-305. Expiration of permit. A permit expires on:

9 (1) the death of the permittee; or

10 (2) certification by a physician that the permittee's
11 physical handicap disability impairing his mobility no
12 longer exists."

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 15, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 496 (first reading copy -- blue), respectfully report that House Bill No. 496 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 14, line 15.
Strike: "in"
Insert: "who uses"
2. Page 15, line 2.
Strike: "in"
Insert: "who uses"

-END-

SENATE

ADU Amd. Coord.
IN Sec. of Senate

Bartlett
Senator Carrying Bill

HB 496
581223SC.San

1 HOUSE BILL NO. 496

2 INTRODUCED BY WYATT, BARTLETT, TOOLE, CRIPPEN, WANZENRIED,
3 WINSLOW, J. RICE, B. BROWN, DOHERTY, DAVIS
4 BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
7 HUMAN RIGHTS LAWS; REPLACING THE TERMS "HANDICAP" AND
8 "HANDICAPPED PERSON" WITH THE TERMS "DISABILITY" AND "PERSON
9 WITH A DISABILITY"; PROVIDING OTHER CHANGES IN TERMINOLOGY;
10 AND AMENDING SECTIONS 49-1-102, 49-2-101, 49-2-303,
11 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403,
12 49-2-602, 49-3-101, 49-3-103, 49-3-201, 49-3-202, 49-3-203,
13 49-3-204, 49-3-205, 49-3-206, 49-3-207, 49-4-101, 49-4-202,
14 49-4-211, 49-4-212, 49-4-301, 49-4-302, 49-4-304, AND
15 49-4-305, MCA."
16

17 WHEREAS, many individuals with disabilities and many
18 organizations representing individuals with disabilities
19 object to the use of the terms "handicap" and "handicapped
20 person"; and

21 WHEREAS, as with racial and ethnic terms, the choice of
22 words used to describe a person with a disability is
23 overlaid with stereotypes and emotional connotations; and

24 WHEREAS, it is important to use terminology most in line
25 with the sensibilities of most persons with disabilities;

1 and

2 WHEREAS, the current accepted terminology is
3 "disability" rather than "handicap" and "person with a
4 disability" rather than "handicapped person"; and

5 WHEREAS, the federal Americans with Disabilities Act of
6 1990 uses the terms "disability" and "individual with a
7 disability" rather than the terms "handicap" or "handicapped
8 person"; and

9 WHEREAS, making the state human rights laws consistent
10 with the Americans with Disabilities Act will eliminate some
11 confusion between state and federal laws.

12 THEREFORE, it is appropriate for the Legislature to
13 revise the state human rights laws to replace the terms
14 "handicap" and "handicapped person" with the terms
15 "disability" and "person with a disability".
16

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

18 **Section 1.** Section 49-1-102, MCA, is amended to read:

19 "49-1-102. **Freedom from discrimination.** (1) The right
20 to be free from discrimination because of race, creed,
21 religion, color, sex, physical or mental **handicap**
22 **disability**, age, or national origin is recognized as and
23 declared to be a civil right. This right must include but
24 not be limited to:

25 (a) the right to obtain and hold employment without

1 discrimination; and

2 (b) the right to the full enjoyment of any of the
3 accommodation facilities or privileges of any place of
4 public resort, accommodation, assemblage, or amusement.

5 (2) This section does not prevent the nonarbitrary
6 consideration in adoption proceedings of relevant
7 information concerning the factors listed in subsection (1).
8 Consideration of religious factors by a licensed
9 child-placing agency that is affiliated with a particular
10 religious faith is not arbitrary consideration of religion
11 within the meaning of this section."

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

13 "49-2-101. Definitions. As used in this chapter, unless
14 the context requires otherwise, the following definitions
15 apply:

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

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

23 (3) "Credit" means the right granted by a creditor to a
24 person to defer payment of a debt, to incur debt and defer
25 its payment, or to purchase property or services and defer

1 payment therefor. It includes without limitation the right
2 to incur and defer debt which is secured by residential real
3 property.

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

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

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

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

20 (8) "Employer" means an employer of one or more persons
21 but does not include a fraternal, charitable, or religious
22 association or corporation if the association or corporation
23 is not organized either for private profit or to provide
24 accommodations or services that are available on a
25 nonmembership basis.

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

3 (10) "Financial institution" means a commercial bank,
4 trust company, savings bank, finance company, savings and
5 loan association, credit union, investment company, or
6 insurance company.

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

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

17 (13) "National origin" means ancestry.

18 (14) "Person" means one or more individuals, labor
19 unions, partnerships, associations, corporations, legal
20 representatives, mutual companies, joint-stock companies,
21 trusts, unincorporated employees' associations, employers,
22 employment agencies, or labor organizations.

23 (15) (a) "Physical or mental handicap disability" means:

24 (i) a physical or mental impairment that substantially
25 limits one or more of a person's major life activities;

1 (ii) a record of such an impairment; or

2 (iii) a condition regarded as such an impairment.

3 (b) Discrimination based on, because of, on the basis
4 of, or on the grounds of physical or mental handicap
5 disability includes the failure to make reasonable
6 accommodations that are required by an otherwise qualified
7 person who has a physical or mental handicap disability. Any
8 An accommodation that would require an undue hardship or
9 that would endanger the health or safety of any person is
10 not a reasonable accommodation.

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

24 (b) Public accommodation does not include an
25 institution, club, or place of accommodation that proves

1 that it is by its nature distinctly private. An institution,
 2 club, or place of accommodation may not be considered by its
 3 nature distinctly private if it has more than 100 members,
 4 provides regular meal service, and regularly receives
 5 payment for dues, fees, use of space, facilities, services,
 6 meals, or beverages, directly or indirectly, from or on
 7 behalf of nonmembers, for the furtherance of trade or
 8 business. For the purposes of this subsection (16), any
 9 lodge of a recognized national fraternal organization is
 10 considered by its nature distinctly private.

11 (17) "Staff" or "commission staff" means the staff of
 12 the commission for human rights."

13 **Section 3.** Section 49-2-303, MCA, is amended to read:

14 **"49-2-303. Discrimination in employment.** (1) It is an
 15 unlawful discriminatory practice for:

16 (a) an employer to refuse employment to a person, to
 17 bar him a person from employment, or to discriminate against
 18 him a person in compensation or in a term, condition, or
 19 privilege of employment because of his race, creed,
 20 religion, color, or national origin or because of his age,
 21 physical or mental handicap disability, marital status, or
 22 sex when the reasonable demands of the position do not
 23 require an age, physical or mental handicap disability,
 24 marital status, or sex distinction;

25 (b) a labor organization or joint labor management

1 committee controlling apprenticeship to exclude or expel any
 2 person from its membership or from an apprenticeship or
 3 training program or to discriminate in any way against a
 4 member of or an applicant to the labor organization or an
 5 employer or employee because of race, creed, religion,
 6 color, or national origin or because of his age, physical or
 7 mental handicap disability, marital status, or sex when the
 8 reasonable demands of the program do not require an age,
 9 physical or mental handicap disability, marital status, or
 10 sex distinction;

11 (c) an employer or employment agency to print or
 12 circulate or cause to be printed or circulated a statement,
 13 advertisement, or publication or to use an employment
 14 application which expresses, directly or indirectly, a
 15 limitation, specification, or discrimination as to sex,
 16 marital status, age, physical or mental handicap disability,
 17 race, creed, religion, color, or national origin or an
 18 intent to make the limitation, unless based upon a bona fide
 19 occupational qualification;

20 (d) an employment agency to fail or refuse to refer for
 21 employment, to classify, or otherwise to discriminate
 22 against any individual because of sex, marital status, age,
 23 physical or mental handicap disability, race, creed,
 24 religion, color, or national origin, unless based upon a
 25 bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications ~~shall~~ must be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be construed to be a violation of this section."

Section 4. Section 49-2-304, MCA, is amended to read:

"49-2-304. Discrimination in public accommodations. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, marital status, race, age, physical or mental handicap disability, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or

denied to a person of a certain race, creed, religion, sex, marital status, age, physical or mental handicap disability, color, or national origin.

(2) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for a licensee under Title 16, chapter 4, to exclude from its membership or from its services, goods, facilities, advantages, privileges, or accommodations any individual on the grounds of race, color, religion, creed, sex, marital status, age, physical or mental handicap disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

(3) Nothing in this section prohibits public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age."

Section 5. Section 49-2-305, MCA, is amended to read:

"49-2-305. Discrimination in housing -- exemptions. (1) It is an unlawful discriminatory practice for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial

status, physical or mental handicap disability, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, marital status, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin;

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, marital status, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status,

physical or mental handicap disability, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin.

(2) The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a prohibited preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental handicap disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing

1 accommodation or property after it is sold, leased, rented,
2 or made available; or any person associated with that buyer,
3 lessee, or renter:

4 (a) in the sale, rental, or availability of the housing
5 accommodation or property;

6 (b) in the terms, conditions, or privileges of a sale
7 or rental of the housing accommodation or property; or

8 (c) in the provision of services or facilities in
9 connection with the housing accommodation or property.

10 (5) For purposes of subsections (1) and (4),
11 discrimination because of physical or mental handicap
12 disability includes:

13 (a) refusal to permit, at the expense of the
14 handicapped person with a disability, reasonable
15 modifications of existing premises occupied or to be
16 occupied by the handicapped person with a disability if the
17 modifications may be necessary to allow the person full
18 enjoyment of the premises, except that in the case of a
19 lease or rental, the landlord may, where it is reasonable to
20 do so, condition permission for a modification on the
21 lessor's or renter's agreement to restore the interior of
22 the premises to the condition that existed before the
23 modification, except for reasonable wear and tear;

24 (b) refusal to make reasonable accommodations in rules,
25 policies, practices, or services when the accommodations may

1 be necessary to allow the person equal opportunity to use
2 and enjoy a housing accommodation or property; or

3 (c) (i) except as provided in subsection (5)(c)(ii), in
4 connection with the design and construction of a covered
5 multifamily housing accommodation, a failure to design and
6 construct the housing accommodation in a manner that;

7 (A) provides at least one accessible building entrance
8 on an accessible route;

9 (B) makes the public use and common use portions of the
10 housing accommodation readily accessible to and usable by
11 handicapped-persons a person with a disability;

12 (C) provides that all doors designed to allow passage
13 into and within all premises within the housing
14 accommodation are sufficiently wide to allow passage by
15 handicapped-persons a person with a disability in WHO USES
16 wheelchairs a wheelchair; and

17 (D) ensures that all premises within the housing
18 accommodation contain the following features of adaptive
19 design:

20 (I) an accessible route into and through the housing
21 accommodation;

22 (II) light switches, electrical outlets, thermostats,
23 and other environmental controls in accessible locations;

24 (III) reinforcements in bathroom walls to allow later
25 installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual in WHO USES a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, MARITAL STATUS, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of

the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, MARITAL STATUS, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of his the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against

1 discrimination because of age and familial status do not
2 extend to housing for older persons. "Housing for older
3 persons" means housing:

4 (a) provided under any state or federal program
5 specifically designed and operated to assist elderly
6 persons;

7 (b) intended for, and solely occupied by, persons 62
8 years of age or older; or

9 (c) intended and operated for occupancy by at least one
10 person 55 years of age or older per unit in accordance with
11 the provisions of 42 U.S.C. 3607(b)(2)(C) and (3) and 24
12 C.F.R. 100.304, as those sections read on October 1, 1989.

13 (11) The prohibitions of subsection (1) against
14 discrimination because of age and familial status do not
15 extend to rooms or units in dwellings containing living
16 quarters occupied or intended to be occupied by no more than
17 two families living independently of each other, if the
18 owner actually maintains and occupies one of the living
19 quarters as his the owner's residence.

20 (12) For purposes of this section, "familial status"
21 means having a child or children who live or will live with
22 a person. A distinction based on familial status includes
23 one that is based on the age of a child or children who live
24 or will live with a person."

25 **Section 6.** Section 49-2-306, MCA, is amended to read:

1 **"49-2-306. Discrimination in financing and credit**
2 **transactions.** (1) It is an unlawful discriminatory practice
3 for a financial institution, upon receiving an application
4 for financial assistance, to permit an official or employee,
5 during the execution of his that person's duties, to
6 discriminate against the applicant because of sex, marital
7 status, race, creed, religion, age, physical or mental
8 handicap disability, color, or national origin in a term,
9 condition, or privilege relating to the obtainment or use of
10 the institution's financial assistance, unless based on
11 reasonable grounds.

12 (2) It is an unlawful discriminatory practice for a
13 creditor to discriminate on the basis of race, color,
14 religion, creed, national origin, age, mental or physical
15 handicap disability, sex, or marital status against any
16 person in any credit transaction which that is subject to
17 the jurisdiction of any state or federal court of record."

18 **Section 7.** Section 49-2-307, MCA, is amended to read:

19 **"49-2-307. Discrimination in education.** It is an
20 unlawful discriminatory practice for an educational
21 institution:

22 (1) to exclude, expel, limit, or otherwise discriminate
23 against an individual seeking admission as a student or an
24 individual enrolled as a student in the terms, conditions,
25 or privileges of the institution because of race, creed,

1 religion, sex, marital status, color, age, physical handicap
2 disability, or national origin or because of mental handicap
3 disability, unless based on reasonable grounds;

4 (2) to make or use a written or oral inquiry or form of
5 application for admission that elicits or attempts to elicit
6 information or to make or keep a record concerning the race,
7 color, sex, marital status, age, creed, religion, physical
8 or mental handicap disability, or national origin of an
9 applicant for admission, except as permitted by regulations
10 of the commission;

11 (3) to print, publish, or cause to be printed or
12 published a catalog or other notice or advertisement
13 indicating a limitation, specification, or discrimination
14 based on the race, color, creed, religion, age, physical or
15 mental handicap disability, sex, marital status, or national
16 origin of an applicant for admission; or

17 (4) to announce or follow a policy of denial or
18 limitation of educational opportunities of a group or its
19 members, through a quota or otherwise, because of race,
20 color, sex, marital status, age, creed, religion, physical
21 or mental handicap disability, or national origin."

22 **Section 8.** Section 49-2-308, MCA, is amended to read:

23 "49-2-308. Discrimination by the state. (1) It is an
24 unlawful discriminatory practice for the state or any of its
25 political subdivisions:

1 (a) to refuse, withhold from, or deny to a person any
2 local, state, or federal funds, services, goods, facilities,
3 advantages, or privileges because of race, creed, religion,
4 sex, marital status, color, age, physical or mental handicap
5 disability, or national origin, unless based on reasonable
6 grounds;

7 (b) to publish, circulate, issue, display, post, or
8 mail a written or printed communication, notice, or
9 advertisement which states or implies that any local, state,
10 or federal funds, services, goods, facilities, advantages,
11 or privileges of the office or agency will be refused,
12 withheld from, or denied to a person of a certain race,
13 creed, religion, sex, marital status, color, age, physical
14 or mental handicap disability, or national origin or that
15 the patronage of a person of a particular race, creed,
16 religion, sex, marital status, color, age, or national
17 origin or possessing a physical or mental handicap
18 disability is unwelcome or not desired or solicited, unless
19 based on reasonable grounds;

20 (c) to refuse employment to a person, to bar him a
21 person from employment, or to discriminate against him a
22 person in compensation or in a term, condition, or privilege
23 of employment because of his that person's political
24 beliefs. However, this prohibition does not apply to
25 policymaking positions on the immediate staff of an elected

officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1)."

Section 9. Section 49-2-403, MCA, is amended to read:

"49-2-403. **Specific limits on justification.** (1) Except as permitted in 49-2-303(3) and (4) and 49-3-201(5), sex, marital status, age, physical or mental handicap disability, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap disability may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations."

Section 10. Section 49-2-602, MCA, is amended to read:

"49-2-602. **Intimidation or interference in right to be free from housing discrimination -- penalties.** (1) It is

unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because he that person is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental handicap disability, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because he the citizen is or has been, or in order to discourage him that citizen or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because he the citizen is or has been lawfully participating in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life."

Section 11. 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) (a) "Physical or mental handicap disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental handicap disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap disability. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(4) "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

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

Section 12. Section 49-3-103, MCA, is amended to read:

"49-3-103. Permitted distinctions. (1) Nothing in this chapter prohibits any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap disability when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in 2-18-111, 10-2-402, 18-1-110, and Title 39, chapter 29 or 30, by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter."

Section 13. Section 49-3-201, MCA, is amended to read:

"49-3-201. Employment of state and local government personnel. (1) State and local government officials and

supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap disability, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure ensure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure ensure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section."

Section 14. Section 49-3-202, MCA, is amended to read:

"49-3-202. Employment referrals and placement services.

(1) All state and local governmental agencies, including

educational institutions, which that provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap disability, or national origin ~~shall~~ must be rejected.

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

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities."

Section 15. Section 49-3-203, MCA, is amended to read:

"49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without

regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap disability, or national origin. ~~Such The~~ programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of persons who are culturally deprived, or who are educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest."

Section 16. Section 49-3-204, MCA, is amended to read:

"49-3-204. Licensing. (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap disability, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of family services from licensing a child-placing agency that gives nonarbitrary consideration in adoption

proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization."

Section 17. Section 49-3-205, MCA, is amended to read:

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

(2) No A state or local facility may not be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan which that has the effect of

sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

(4) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in this section."

Section 18. Section 49-3-206, MCA, is amended to read:

"49-3-206. Distribution of governmental funds. Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap disability, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices."

Section 19. Section 49-3-207, MCA, is amended to read:

"49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services ~~shall~~ must contain a provision that

all hiring must be on the basis of merit and qualifications and a provision that there may not be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap disability, or national origin by the persons performing the contract."

Section 20. Section 49-4-101, MCA, is amended to read:

"49-4-101. Discrimination prohibited. It is unlawful to discriminate, in hiring or employment, against a person because of the person's physical handicap disability of-such person. There is no discrimination ~~where~~ when the nature or extent of the handicap disability reasonably precludes the performance of the particular employment or ~~where~~ when the particular employment may subject the handicapped--or--his person with a disability or that person's fellow employees to physical harm."

Section 21. Section 49-4-202, MCA, is amended to read:

"49-4-202. Policy of the state. It is the policy of the state to encourage and enable the blind, the visually handicapped impaired, the deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually handicapped impaired, the deaf, and the otherwise physically disabled ~~shall~~ must be employed in the state service, the service of the political subdivisions

of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved."

Section 22. Section 49-4-211, MCA, is amended to read:

"49-4-211. Right to use public places and accommodations. (1) The blind, the visually handicapped impaired, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually handicapped impaired, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons."

Section 23. Section 49-4-212, MCA, is amended to read:

"49-4-212. Access to housing accommodations. Blind, visually handicapped impaired, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state."

Section 24. Section 49-4-301, MCA, is amended to read:

"49-4-301. Who eligible for special parking permit. (1)

The department of justice shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical handicap disability that impairs his mobility when not in a motor vehicle;

(b) regardless of whether he the person holds a driver's license or owns a motor vehicle, has a permanent physical handicap disability that impairs his driving ability and impairs his mobility when not in a motor vehicle to such an extent that he the person needs to be driven by another person to a destination; or

(c) has a temporary physical handicap disability that impairs his driving ability or his mobility when not in a motor vehicle to such an extent that he the person needs to be driven by another person to a destination.

(2) No-one An applicant may not receive more than one permit."

Section 25. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder -- privilege for disabled veteran -- exemptions from time limits -- requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a

person to park a motor vehicle in a special parking spaces space reserved for handicapped--persons a person with a disability, whether on public property or on private property available for public use.

(2) No A vehicle other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing handicapped-person's license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a handicapped person with a disability or one displaying a specially inscribed license plate issued under 61-3-332(10)(c) and conveying a 100% disabled veteran may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped-persons a person with a disability.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c) and parked in public places along public streets from any time limitation imposed upon parking in-such-area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

1 (b) only special vehicles may be parked; or
 2 (c) parking is not allowed during specific periods of
 3 the day in order to accommodate heavy traffic.
 4 (4) In accordance with subsection (2), the governing
 5 body of a city, town, or county or appropriate state agency
 6 may impose all, but not less than all, of the following
 7 requirements with respect to any special parking space
 8 constructed after September 30, 1985, and reserved for
 9 ~~handicapped---persons~~ a person with a disability or
 10 ~~permitholders~~ a permitholder on ways of this state open to
 11 the public as defined in 61-8-101:
 12 (a) The space must be located on a smooth, level
 13 surface as near as practicable to building entrances or
 14 walkways that have curb cuts and appropriately designed
 15 ramps and access lanes to accommodate wheelchairs.
 16 (b) If parallel to curbside, the parking space must be
 17 separated from an adjacent space, either in the front or the
 18 rear, by at least 5 feet of striped no-parking area.
 19 (c) If at an angle to curbside, the parking space must
 20 be at least 8 feet wide and free of obstruction if located
 21 at the end of a line of angle parking spaces, and each other
 22 angle parking space designated for ~~handicapped-persons~~ a
 23 person with a disability must be at least 13 feet wide.
 24 (d) A parking space reserved for ~~handicapped-persons~~ a
 25 person with a disability must be designated by a sign

1 showing the international symbol of accessibility and
 2 indicating that a permit is required. The sign must be
 3 attached to a wall or post in such a way that it is not
 4 obscured by a vehicle parked in the space."

5 **Section 26.** Section 49-4-304, MCA, is amended to read:

6 "49-4-304. Special license plate or card to be provided
 7 and displayed -- additional cards allowed for owners of more
 8 than one vehicle. (1) The department of justice shall
 9 provide a special license plate under 61-3-332(10)(f) or a
 10 card to be displayed on or in a motor vehicle to indicate a
 11 parking privilege granted under this part. The special
 12 license plate must be affixed to the vehicle according to
 13 61-3-301, or the card must be prominently displayed in the
 14 windshield of a vehicle when the parking privilege is being
 15 used by the handicapped person with a disability in a
 16 vehicle other than the one to which ~~his~~ a special license
 17 plate is affixed.

18 (2) Subject to the provisions of 49-4-301 through
 19 49-4-305, a person who is eligible to receive a special
 20 parking permit and who owns more than one motor vehicle may
 21 request and the department of justice shall provide ~~to--him~~
 22 additional cards described in subsection (1) to equal the
 23 number of motor vehicles, other than commercial vehicles,
 24 owned by the person.

25 (3) Upon application under 49-4-303, a handicapped

1 person with a disability who does not hold a driver's
2 license or does not own a vehicle may receive a card
3 described in subsection (1) to be displayed in a vehicle in
4 which the handicapped person with a disability is being
5 conveyed when the parking privilege is being used.

6 (4) The card must bear a representation of a wheelchair
7 as the symbol of a handicapped person with a disability."

8 **Section 27.** Section 49-4-305, MCA, is amended to read:

9 "49-4-305. **Expiration of permit.** A permit expires on:

10 (1) the death of the permittee; or

11 (2) certification by a physician that the permittee's
12 physical handicap disability impairing his mobility no
13 longer exists."

-End-