

HOUSE BILL NO. 561

INTRODUCED BY D. BROWN, DOHERTY
BY REQUEST OF THE HUMAN RIGHTS COMMISSION

IN THE HOUSE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
FEBRUARY 19, 1993	SECOND READING, DO PASS.
FEBRUARY 20, 1993	ENGROSSING REPORT.
FEBRUARY 22, 1993	THIRD READING, PASSED. AYES, 91; NOES, 7.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 12, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 13, 1993	ON MOTION, CONSIDERATION PASSED TILL THE 59TH LEGISLATIVE DAY.
MARCH 16, 1993	SECOND READING, CONCURRED IN.
MARCH 17, 1993	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 18, 1993	RECEIVED FROM SENATE.
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SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

21 WHEREAS, the federal counterpart of the employment
22 discrimination provision of the Montana Human Rights Act,
23 Title VII of the Civil Rights Act of 1964, 42 U.S.C.
24 2000e(b), does make the agent of an employer responsible for
25 discriminatory acts committed by that agent.

1 THEREFORE, it is appropriate for the Legislature to
2 amend the Montana Human Rights Act to make an agent of an
3 employer responsible for discriminatory acts committed by
4 that agent.

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

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

8 "49-2-101. Definitions. As used in this chapter, unless
9 the context requires otherwise, the following definitions
10 apply:

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

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

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

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

1 credit sale.

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

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

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

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

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

24 (10) "Financial institution" means a commercial bank,
25 trust company, savings bank, finance company, savings and

1 loan association, credit union, investment company, or
2 insurance company.

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

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

13 (13) "National origin" means ancestry.

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

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

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

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

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

24 (b) Discrimination based on, because of, on the basis
25 of, or on the grounds of physical or mental handicap

1 includes the failure to make reasonable accommodations that
2 are required by an otherwise qualified person who has a
3 physical or mental handicap. Any accommodation that would
4 require an undue hardship or that would endanger the health
5 or safety of any person is not a reasonable accommodation.

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

19 (b) Public accommodation does not include an
20 institution, club, or place of accommodation that proves
21 that it is by its nature distinctly private. An institution,
22 club, or place of accommodation may not be considered by its
23 nature distinctly private if it has more than 100 members,
24 provides regular meal service, and regularly receives
25 payment for dues, fees, use of space, facilities, services,

1 meals, or beverages, directly or indirectly, from or on
2 behalf of nonmembers, for the furtherance of trade or
3 business. For the purposes of this subsection (16), any
4 lodge of a recognized national fraternal organization is
5 considered by its nature distinctly private.

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

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APPROVED BY COMMITTEE
ON JUDICIARY

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2 INTRODUCED BY Dave Brown Dineen
3 BY REQUEST OF THE HUMAN RIGHTS COMMISSION
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5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
6 HUMAN RIGHTS ACT TO PROHIBIT DISCRIMINATION BY AN AGENT OF
7 AN EMPLOYER; AND AMENDING SECTION 49-2-101, MCA."

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9 WHEREAS, the employment discrimination provision of
10 Montana law, commonly called the Montana Human Rights Act,
11 Title 49, chapter 2, MCA, prohibits discriminatory acts by
12 an employer; and

13 WHEREAS, the Montana Human Rights Act does not include
14 an agent of an employer in the definition of employer; and

15 WHEREAS, certain discriminatory employment acts,
16 including sexual harassment, may be committed by an agent of
17 the employer, such as a supervisor; and

18 WHEREAS, under the present Montana Human Rights Act, a
19 complainant has no remedy against an agent of an employer;
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