

HOUSE BILL 590

Introduced by Toole, et al.

2/10	Introduced	
2/10	Referred to Judiciary	
2/10	First Reading	
2/11	Fiscal Note Requested	
2/15	Fiscal Note Received	
2/16	Hearing	
2/17	Fiscal Note Printed	
2/19	Tabled in Committee	
2/19	Motion Failed to Take From Committee	and
	Place on 2nd Reading	

1 *House* BILL NO. *590*  
2 INTRODUCED BY *David Fork Larson*  
3 *Cochiarella* *Ray* *Lehys* *Stanford* *Ream*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE  
5 EMPLOYMENT AND PUBLIC ACCOMMODATIONS PROVISIONS OF THE HUMAN  
6 RIGHTS LAWS; ADDING PUBLIC ACCOMMODATIONS PROVISIONS TO THE  
7 HUMAN RIGHTS LAWS GOVERNING ACCESSIBILITY OF PLACES OF  
8 PUBLIC ACCOMMODATION; AND AMENDING SECTIONS 49-2-101,  
9 49-2-303, 49-2-304, 49-3-101, AND 49-3-201, MCA."

10  
11 WHEREAS, with the Americans With Disabilities Act of  
12 1990, Congress enacted comprehensive legislation protecting  
13 disabled persons from discrimination in employment, public  
14 accommodations, and governmental services; and

15 WHEREAS, the existing Montana human rights laws contain  
16 general prohibitions on discrimination in employment, public  
17 accommodations, and governmental services but do not contain  
18 the specific language of the Americans With Disabilities Act  
19 of 1990; and

20 WHEREAS, the existing Montana human rights laws should  
21 be clarified to include the more specific requirements of  
22 the Americans With Disabilities Act of 1990; and

23 WHEREAS, the existing Montana human rights laws should  
24 be construed as consistently as possible by the Montana  
25 Commission for Human Rights in accordance with the

1 provisions of the Americans With Disabilities Act of 1990;  
2 and

3 WHEREAS, the existing Montana human rights laws should  
4 be amended to add provisions requiring places of public  
5 accommodation to be accessible to persons with disabilities  
6 in accordance with the specific requirements of the  
7 Americans With Disabilities Act of 1990.

8 THEREFORE, it is appropriate for the Legislature to  
9 amend the language of the Montana human rights laws to  
10 conform to the main provisions of the Americans With  
11 Disabilities Act of 1990.

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

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

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

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

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

25 (3) "Credit" means the right granted by a creditor to a

1 person to defer payment of a debt, to incur debt and defer  
2 its payment, or to purchase property or services and defer  
3 payment therefor. It includes without limitation the right  
4 to incur and defer debt which is secured by residential real  
5 property.

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

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

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

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

22 (8) "Employer" means an employer of one or more persons  
23 but does not include a fraternal, charitable, or religious  
24 association or corporation if the association or corporation  
25 is not organized either for private profit or to provide

1 accommodations or services that are available on a  
2 nonmembership basis.

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

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

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

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

19 (13) "National origin" means ancestry.

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

25 (15) (a) "Physical or mental handicap" 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 includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap. Any 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.~~

(i) an inn, hotel, motel, or other place of lodging;

(ii) a restaurant, bar, or other establishment serving food or drink;

(iii) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(iv) an auditorium, convention center, lecture hall, or other place of public gathering;

(v) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(vi) a laundromat, drycleaner, bank, barbershop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(vii) a terminal, depot, or other station used for specified public transportation;

(viii) a museum, library, gallery, or other place of public display or collection;

(ix) a park, zoo, amusement park, or other place of recreation;

(x) a nursery, elementary, secondary, undergraduate, or postgraduate private school or other place of education;

(xi) a day-care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service establishment;

(xii) a gymnasium, health spa, bowling alley, golf course, swimming pool, skating rink, or other place of exercise or recreation;

(xiii) a resort, trailer park, or campground; and

(xiv) any other public amusement or commercial business establishment.

(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) "Qualified individual with a physical or mental handicap" means an individual with a handicap who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. Consideration must be given to the employer's judgment as to which functions of a job are essential, and if an employer has prepared a written

description before advertising or interviewing applicants for the job, the description is evidence of the essential functions of the job.

(18) "Reasonable accommodation" includes:

(a) making existing facilities used by employees readily accessible to and usable by individuals with physical or mental handicaps; and

(b) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials and policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with physical or mental handicaps.

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

(20) (a) "Undue hardship" means an action requiring significant difficulty or expense when considered in light of the factors set forth in subsection (20)(b).

(b) In determining whether an accommodation would impose an undue hardship on an entity prohibited from discriminating on the basis of physical or mental handicap by this chapter, factors to be considered include:

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at the facility, the effect on expenses and resources of the facility, and other impacts of the accommodation upon the operation of the facility;

(iii) the overall financial resources of the entity; the overall size of the business of the entity with respect to the number of its employees; and the number, type, and location of its facilities; and

(iv) the type of operation or operations of the entity, including the composition, structure, and functions of the workforce of the entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the entity."

**Section 2.** 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 the person from employment, or to discriminate against him the 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, marital status, or sex when the reasonable demands of the position do not require

an age, physical or mental handicap, 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, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, 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 that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, 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, race, creed, religion, color,

1 or national origin, unless based upon a bona fide  
2 occupational qualification.

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

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

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

12 (5) As used in this section, the term "discriminate"  
13 includes:

14 (a) limiting, segregating, or classifying a job  
15 applicant, employee, union member, or applicant for union  
16 membership in a way that adversely affects the opportunities  
17 or status of the applicant, employee or union member because  
18 of the physical or mental handicap of the applicant,  
19 employee, or union member;

20 (b) participating in a contractual or other arrangement  
21 or relationship that has the effect of subjecting a  
22 qualified applicant, employee, or union member with a  
23 physical or mental handicap to the discrimination prohibited  
24 by this section. The relationship includes a relationship  
25 with an employment or referral agency, labor union,

1 organization providing fringe benefits to an employee, or  
2 organization that provides training and apprenticeship  
3 programs.

4 (c) using standards, criteria, or methods of  
5 administration that have the effect of discrimination on the  
6 basis of physical or mental handicap or that perpetuate the  
7 discrimination of others who are subject to common  
8 administrative control;

9 (d) excluding or otherwise denying equal jobs or  
10 benefits to a qualified individual because of the known  
11 physical or mental handicap of an individual with whom the  
12 qualified individual is known to have a relationship or  
13 association;

14 (e) (i) not making reasonable accommodations to the  
15 known physical or mental limitations of an otherwise  
16 qualified individual with a physical or mental handicap who  
17 is an applicant, employee, or union member unless the  
18 employer, labor organization, joint labor management  
19 committee, or employment agency can demonstrate that the  
20 accommodation would impose an undue hardship on the  
21 operation of its business; or

22 (ii) denying employment opportunities to an applicant,  
23 employee, or union member who is an otherwise qualified  
24 individual with a physical or mental handicap, if the denial  
25 is based on the need of the employer, labor organization,

1 joint labor management committee, or employment agency to  
 2 make reasonable accommodation to the physical or mental  
 3 handicap of the applicant, employee, or union member;

4 (f) using qualification standards, employment tests, or  
 5 other selection criteria that screen out or tend to screen  
 6 out an individual or class of individuals with a physical or  
 7 mental handicap, unless the standard, test, or other  
 8 selection criteria, as used by the employer, labor  
 9 organization, joint labor management committee, or  
 10 employment agency, is shown to be job-related for the  
 11 position in question and is consistent with business  
 12 necessity; and

13 (g) failing to select and administer tests concerning  
 14 employment in the most effective manner to ensure that when  
 15 the test is administered to an applicant, employee, or union  
 16 member who has a physical or mental handicap that impairs  
 17 sensory, manual, or speaking skills, the test results  
 18 accurately reflect the skills, aptitude, or other tested  
 19 factor of the person that the test purports to measure,  
 20 rather than reflecting the impaired sensory, manual, or  
 21 speaking skills of the person (except when the skills are  
 22 the factors that the test purports to measure).

23 (6) (a) The prohibition against discrimination in this  
 24 section includes preemployment medical examinations and  
 25 inquiries. Except as provided in subsection (6)(c), an

1 employer, labor organization, joint labor management  
 2 committee, or employment agency may not conduct a medical  
 3 examination or make inquiries of a job applicant or  
 4 applicant for membership as to whether the applicant is an  
 5 individual with a physical or mental handicap or as to the  
 6 nature or severity of a physical or mental handicap.

7 (b) An employer, labor organization, joint labor  
 8 management committee, or employment agency may make  
 9 preemployment inquiries into the ability of an applicant to  
 10 perform job-related functions.

11 (c) An employer, labor organization, joint labor  
 12 management committee, or employment agency may require a  
 13 medical examination after an offer of employment has been  
 14 made to a job applicant or applicant for membership and  
 15 prior to the commencement of the employment duties of the  
 16 applicant and may condition an offer of employment on the  
 17 results of the examination if:

18 (i) all entering employees or members are subjected to  
 19 the examination regardless of handicap;

20 (ii) information obtained regarding the medical  
 21 condition or history of the applicant is collected and  
 22 maintained on separate forms and in separate medical files  
 23 and is treated as a confidential medical record, except  
 24 that:

25 (A) supervisors and managers may be informed regarding



necessary restrictions on the work or duties of the employee or member and regarding necessary accommodations;

(B) first aid and safety personnel may be informed, when appropriate, if the handicap might require emergency treatment; and

(C) government officials investigating compliance with this section must be provided relevant information on request; and

(iii) the results of the examination are used only in accordance with this section.

(7) (a) The prohibition against discrimination in this section includes medical examinations and inquiries of employees. An employer may not require a medical examination and may not make inquiries of an employee as to whether the employee is an individual with a physical or mental handicap or as to the nature or severity of the handicap, unless the examination or inquiry is shown to be job-related and consistent with business necessity.

(b) An employer may conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health program available to employees at that work site.

(c) An employer may make inquiries into the ability of an employee to perform job-related functions.

(d) Information obtained under subsection (7)(b)

regarding the medical condition or history of any employee is subject to the requirements of subsections (6)(c)(ii) and (6)(c)(iii)."

**Section 3.** 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, 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, 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, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

(3) Nothing--in--this This section prohibits does not prohibit public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age.

(4) For purposes of this section, discrimination includes:

(a) the imposition or application of eligibility criteria that screen out or tend to screen out an individual or class of individuals with a physical or mental handicap from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless the criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(b) a failure to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to afford the goods, services, facilities, privileges, advantages, or accommodations to individuals with a physical or mental handicap, unless the public

accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations;

(c) a failure to take steps that may be necessary to ensure that an individual with a physical or mental handicap is not excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden;

(d) a failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities when the removal is readily achievable; and

(e) if a public accommodation can demonstrate that the removal of a barrier is not readily achievable, a failure to make the goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if alternative methods are readily achievable.

(5) (a) Except as provided in subsection (5)(b), as applied to public accommodations and commercial facilities, discrimination for purposes of this section includes:

(i) a failure to design and construct facilities that

1 are readily accessible to and usable by individuals with  
 2 physical and mental handicaps, except when the public  
 3 accommodation can demonstrate that it is structurally  
 4 impracticable to meet the requirements of this subsection  
 5 (i) in accordance with standards set forth or incorporated  
 6 by reference in rules adopted by the commission; and

7 (ii) with respect to a facility or part of a facility  
 8 that is altered by, on behalf of, or for the use of an  
 9 establishment in a manner that affects or could affect the  
 10 usability of the facility or part of the facility, a failure  
 11 to make alterations in a manner that to the maximum extent  
 12 feasible, the altered portions of the facility are readily  
 13 accessible to and usable by individuals with a physical or  
 14 mental handicap, including individuals who use wheelchairs.  
 15 If the public accommodation is undertaking an alteration  
 16 that affects or could affect usability of or access to an  
 17 area of the facility containing a primary function, it shall  
 18 also make the alterations in a manner that to the maximum  
 19 extent feasible, the path of travel to the altered area and  
 20 the bathrooms, telephones, and drinking fountains serving  
 21 the altered area are readily accessible to and usable by  
 22 individuals with a physical or mental handicap when the  
 23 alterations to the path of travel or the bathrooms,  
 24 telephones, and drinking fountains serving the altered area  
 25 are not disproportionate to the overall alterations in terms

1 of cost and scope as determined under criteria established  
 2 by the commission by rule.

3 (b) Subsection (5)(a) does not require the installation  
 4 of an elevator for facilities that are less than three  
 5 stories or have less than 3,000 square feet per story unless  
 6 the building is a shopping center, a shopping mall, or the  
 7 professional office of a health care provider or unless the  
 8 commission determines that a particular category of those  
 9 facilities requires the installation of elevators based on  
 10 the usage of the facilities."

11 **Section 4.** Section 49-3-101, MCA, is amended to read:

12 **"49-3-101. Definitions.** As used in this chapter, the  
 13 following definitions apply:

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

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

21 (3) (a) "Physical or mental handicap" means:

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

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

25 (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 includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has with a physical or mental handicap. 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) "Qualified individual with a physical or mental handicap" has the meaning as defined in 49-2-101.

(5) "Reasonable accommodation" has the meaning as defined in 49-2-101.

(6) "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.

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

(8) "Undue hardship" has the meaning as defined in 49-2-101."

**Section 5.** 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 discrimination because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, 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 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.

(6) As used in this section, the term "discrimination" has the meaning as defined for the term "discriminate" in 49-2-303.

(7) (a) The prohibition against discrimination in this section includes preemployment medical examinations and inquiries. Except as provided in subsection (7)(c), a state or local governmental entity may not conduct a medical examination or make inquiries of a job applicant as to whether the applicant is an individual with a physical or mental handicap or as to the nature or severity of a physical or mental handicap.

(b) A state or local governmental agency may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(c) A state or local governmental agency may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination if:

(i) all entering employees are subjected to the examination regardless of handicap;

(ii) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except

that:

(A) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(B) first aid and safety personnel may be informed, when appropriate, if the handicap might require emergency treatment; and

(C) government officials investigating compliance with this section must be provided relevant information on request; and

(iii) the results of the examination are used only in accordance with this section.

(8) (a) The prohibition against discrimination in this section includes medical examinations and inquiries of employees. A state or local governmental agency may not require a medical examination and may not make inquiries of an employee as to whether the employee is an individual with a physical or mental handicap or as to the nature or severity of the handicap, unless the examination or inquiry is shown to be job-related and consistent with business necessity.

(b) A state or local governmental agency may conduct voluntary medical examinations of employees, including voluntary medical histories, that are part of an employee health program available to employees at that work site.

1     (c) A state or local governmental agency may make  
2     inquiries into the ability of an employee to perform  
3     job-related functions.

4     (d) Information obtained under subsection (8)(b)  
5     regarding the medical condition or history of any employee  
6     is subject to the requirements of subsections (7)(c)(ii) and  
7     (7)(c)(iii)."

8     **NEW SECTION.** **Section 6.** Coordination instruction. If  
9     \_\_\_ Bill No. \_\_\_ [LC 327] is passed and approved, then all  
10    references in this bill to "physical or mental handicap" are  
11    changed to "physical or mental disability" and all  
12    references to "handicap" are changed to "disability".

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0590, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying the employment and public accommodations provisions of the human rights laws; adding public accommodations provisions to the human rights laws governing accessibility of places of public accommodation.

ASSUMPTIONS:Human Rights Commission:

1. Sections 1, 2, 4, 5 and 6 of HB 590 only clarify the existing law and would not increase the caseload of the Human Rights Commission.
2. Section 3 of HB0590 will increase the Commission's caseload by approximately 25 cases per year.
3. The Commission can complete 50 additional cases per year per additional investigator. The addition of section 3 will therefore require the addition of 0.5 FTE investigator to the Commission staff at grade 14.

Statewide:

1. It is assumed that the State of Montana is already generally required to abide by the requirements of the Americans With Disabilities Act because the state receives federal funds.
2. It is assumed that this legislation would not significantly change the state's responsibilities with regards to the ADA.

FISCAL IMPACT:Expenditures:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Human Rights Comm. (Pg 08):						
FTE	13.00	13.50	0.50	13.00	13.50	0.50
Personal Services	429,813	445,116	15,303	430,439	445,982	15,543
Operating Costs	203,462	213,814	10,352	202,350	211,204	8,854
Equipment	10,500	11,900	1,400	8,400	8,400	0
Total	643,775	670,830	27,055	641,189	665,586	24,397

Funding:

General Fund	489,175	516,230	27,055	486,589	510,986	24,397
Federal Revenue	154,600	154,600	0	154,600	104,600	0
Total	643,775	670,830	27,055	641,189	665,586	24,397

Statewide:

There would be no significant change in the existing responsibilities of the state of Montana in providing provide public accommodations and employment opportunities to the disabled.

*David Lewis* 7-15-93

DAVID LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

*Howard Toole* 6/17/93  
HOWARD TOOLE, PRIMARY SPONSOR DATE

Fiscal Note for HB0590, as introduced

#B590