

HOUSE BILL 624

Introduced by Cobb, et al.

2/13	Introduced
2/13	Referred to Judiciary
2/13	First Reading
2/17	Hearing
2/19	Tabled in Committee

1 House BILL NO. 624
2 INTRODUCED BY Hallgren
3 BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCEDURAL
6 PROVISIONS OF THE HUMAN RIGHTS LAWS TO EXTEND THE PERIOD FOR
7 FILING OF COMPLAINTS CONCERNING DISCRIMINATION IN
8 EMPLOYMENT, PUBLIC ACCOMMODATIONS, HOUSING, FINANCING AND
9 CREDIT, EDUCATION, STATE SERVICES, INSURANCE, AND RETIREMENT
10 PLANS; REVISING PROCEDURES FOR PURSUING COMPLAINTS IN COURT;
11 AMENDING SECTIONS 49-2-501, 49-2-504, 49-2-509, 49-3-304,
12 49-3-307, AND 49-3-312, MCA; AND PROVIDING AN EFFECTIVE DATE
13 AND AN APPLICABILITY DATE."
14

15 WHEREAS, the Legislature has extended the statute of
16 limitations for filing administrative complaints concerning
17 housing discrimination with the Montana Commission for Human
18 Rights from 180 days to 1 year; and

19 WHEREAS, the statute of limitations for filing all other
20 discrimination complaints with the Montana Commission for
21 Human Rights is 180 days; and

22 WHEREAS, a uniform statute of limitations for filing
23 discrimination complaints will provide for equal
24 administrative remedies and eliminate confusion on the part
25 of complainants; and

1 WHEREAS, the present 180-day statute of limitations for
2 filing nonhousing discrimination complaints is much shorter
3 than the statute of limitations for filing most civil
4 actions; and

5 WHEREAS, the Montana human rights laws provide that the
6 administrative remedy is the exclusive remedy for resolution
7 of individual disputes and elimination of discrimination;
8 and

9 WHEREAS, the increasing caseload of the administrative
10 system has created long delays for the parties to cases; and

11 WHEREAS, it is appropriate for the Legislature to extend
12 the statute of limitations for filing nonhousing
13 discrimination complaints under the human rights laws from
14 180 days to 1 year and to establish procedures for pursuing
15 complaints in district court without exhausting
16 administrative remedies.
17

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

19 Section 1. Section 49-2-501, MCA, is amended to read:

20 "49-2-501. Filing complaints. (1) A complaint may be
21 filed with the commission by or on behalf of any person
22 claiming to be aggrieved by any discriminatory practice
23 prohibited by this chapter. The complaint must be in the
24 form of a written, verified complaint stating the name and
25 address of the person, educational institution, financial

1 institution, or governmental entity or agency alleged to
2 have engaged in the discriminatory practice and the
3 particulars of the alleged discriminatory practice. The
4 commission staff may file a complaint in like manner when a
5 discriminatory practice comes to its attention.

6 (2) (a) Except as provided in 49-2-510 and subsection
7 (2)(b) of this section, a complaint under this chapter must
8 be filed with the commission within ~~180-days~~ 1 year after
9 the alleged unlawful discriminatory practice occurred or was
10 discovered.

11 (b) If the complainant has initiated efforts to resolve
12 the dispute underlying the complaint by filing a grievance
13 in accordance with any grievance procedure established by a
14 collective bargaining agreement, contract, or written rule
15 or policy, the complaint may be filed within ~~180-days~~ 1 year
16 after the conclusion of the grievance procedure if the
17 grievance procedure concludes within 120 days after the
18 alleged unlawful discriminatory practice occurred or was
19 discovered. If the grievance procedure does not conclude
20 within 120 days, the complaint must be filed within ~~300~~ 485
21 days after the alleged unlawful discriminatory practice
22 occurred or was discovered.

23 (c) Any A complaint not filed within the times set
24 forth herein in this section may not be considered by the
25 commission."

1 **Section 2.** Section 49-2-504, MCA, is amended to read:

2 **"49-2-504. Informal investigation and settlement. (1)**
3 The commission staff shall informally promptly and
4 impartially investigate the matters set out in a filed
5 complaint promptly---and---impartially filed with the
6 commission.

7 (2) The commission staff may dismiss a complaint filed
8 pursuant to 49-2-501 if:

9 (a) the staff determines that the commission lacks
10 jurisdiction over the complaint;

11 (b) the complainant fails to cooperate in the staff's
12 investigation of the complaint or fails to keep the
13 commission advised of changes of address; or

14 (c) the staff determines that there is a lack of
15 reasonable cause to believe that the unlawful discrimination
16 occurred.

17 (3) The commission staff may reopen a complaint at any
18 time after dismissing the complaint pursuant to subsection
19 (2) if the staff determines that the complaint should not
20 have been dismissed.

21 (4) If the commission staff determines that the
22 allegations---are---supported-by-substantial-evidence there is
23 reasonable cause to believe that unlawful discrimination
24 occurred, it shall immediately try to eliminate the
25 discriminatory practice by conference, conciliation, and

persuasion."

Section 3. Section 49-2-509, MCA, is amended to read:

"49-2-509. Filing a complaint in district court. (1) Except as provided in subsection (2) or with respect to complaints alleging a violation of 49-2-305, the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

(b) 12 months have elapsed since the complaint was filed;

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission

staff from investigating the complaint;

(3) The commission staff may dismiss a complaint filed under 49-2-501 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence;

(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal;

(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. Except as

~~provided--in-49-2-510, if the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the claim shall be barred.~~

(1) An aggrieved person may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504. With respect to a complaint alleging a violation of this chapter, the computation of the 2-year period does not include time during which an administrative proceeding under this chapter was pending. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(2) Except as provided in subsection (4), an aggrieved person may commence a civil action for a violation of this chapter whether or not a complaint has been filed pursuant to 49-2-501 and without regard to the status of a complaint filed with the commission. If the commission has obtained a conciliation agreement with the consent of the aggrieved person, an action may not be filed by the aggrieved person regarding the alleged violation of this chapter that is the basis for the complaint except for the purpose of enforcing the terms of the conciliation agreement.

(3) The commission may not continue administrative proceedings on a complaint after the beginning of the trial of a civil action commenced by the aggrieved party seeking relief with respect to the same alleged violation of this chapter.

(4) An aggrieved person may not commence a civil action with respect to an alleged violation of this chapter if the commission has commenced a hearing on the record concerning the same complaint.

(5) (A) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court:

(i) shall prescribe the conditions on the defendant's future conduct to enjoin the discriminatory practice found and to ensure that the discriminatory practice does not occur in the future; and

(ii) may provide the same relief as described in 49-2-506 for a commission order, except that the court may also require the payment of punitive damages.

(b) In--addition,--the The court may in its discretion allow the prevailing party reasonable attorney fees.

(7)--The--provisions--of--this--chapter--establish--the exclusive--remedy--for--acts--constituting--an--alleged--violation

of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter.

(6) The commission may intervene in any action brought under subsection (1) in order to protect the public interest.

NEW SECTION. Section 4. Exclusive remedy. Except for claims arising under chapter 4, the provisions of this chapter establish the exclusive remedy for claims arising under state law for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of Article II, section 4, of the Montana constitution or 49-1-102. A claim or request for relief under state law based upon the acts may not be entertained by a district court other than by the procedures provided for in this chapter.

Section 5. Section 49-3-304, MCA, is amended to read:

"49-3-304. Filing complaints with commission. (1) Except as provided in subsection (2), a complaint under this chapter must be filed with the commission within 180 days 1 year after the alleged unlawful discriminatory practice occurred or was discovered.

(2) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days 1 year after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 485 days after the alleged unlawful discriminatory practice occurred or was discovered.

(3) A complaint not filed within the times set forth in this section may not be considered by the commission."

Section 6. Section 49-3-307, MCA, is amended to read:

"49-3-307. Informal investigation and settlement. (1) The commission staff shall promptly and impartially investigate the matters set out in a complaint filed with the commission.

(2) The commission staff may dismiss a complaint filed pursuant to 49-3-304 if:

(a) the staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the

commission advised of changes of address; or

(c) the staff determines that there is a lack of reasonable cause to believe that the unlawful discrimination occurred.

(3) The commission staff may reopen a complaint at any time after dismissing the complaint pursuant to subsection (2) if the staff determines that the complaint should not have been dismissed.

(4) If the commission staff determines that the allegations are supported by substantial evidence there is reasonable cause to believe that the unlawful discrimination occurred, it shall immediately try to eliminate the discriminatory practice by informal conference, conciliation, and persuasion."

Section 7. Section 49-3-312, MCA, is amended to read:

"49-3-312. Filing a complaint in district court. (1) Except as provided in subsection (2), the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-3-308; and

(b) 12 months have elapsed since the complaint was filed;

(2) The commission staff may refuse to permit removal

of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-3-308, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint;

(3) The commission staff may dismiss a complaint filed under 49-3-304 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence;

(4) A decision of the commission staff to dismiss a

~~complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.~~

~~(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the complaint shall be barred.~~

(1) An aggrieved person may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-3-307. With respect to a complaint alleging a violation of this chapter, the computation of the 2-year period does not include time during which an administrative proceeding under this chapter was pending. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach

of a conciliation agreement.

(2) Except as provided in subsection (4), an aggrieved person may commence a civil action for a violation of this chapter whether or not a complaint has been filed pursuant to 49-2-501 and without regard to the status of a complaint filed with the commission. If the commission has obtained a conciliation agreement with the consent of the aggrieved person, an action may not be filed by the aggrieved person regarding the alleged violation of this title that is the basis for the complaint except for the purpose of enforcing the terms of the conciliation agreement.

(3) The commission may not continue administrative proceedings on a complaint after the beginning of the trial of a civil action commenced by the aggrieved party seeking relief with respect to the same alleged violation of this chapter.

(4) An aggrieved person may not commence a civil action with respect to an alleged violation of this chapter if the commission has commenced a hearing on the record concerning the same complaint.

(6)(5) (a) If the district court finds, in an action under this section, that a state or local governmental agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court:

(i) shall prescribe conditions on the defendant's future conduct to enjoin the discriminatory practice found and to ensure that the discriminatory practice does not occur in the future; and

(ii) may provide the same relief as described in 49-3-309 for a commission order.

(b) In--addition,--the The court may in its discretion allow the prevailing party reasonable attorney fees.

~~(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter.~~

(6) The commission may intervene in any action brought under subsection (1) in order to protect the public interest."

NEW SECTION. Section 8. Exclusive remedy. Except for claims arising under chapter 4, the provisions of this chapter establish the exclusive remedy for claims arising under state law for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of Article II, section 4, of the

Montana constitution or 49-1-102. A claim or request for relief under state law based upon the acts may not be entertained by a district court other than by the procedures provided for in this chapter.

NEW SECTION. Section 9. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 49, chapter 2, and the provisions of Title 49, chapter 2, apply to [section 4].

(2) [Section 8] is intended to be codified as an integral part of Title 49, chapter 3, and the provisions of Title 49, chapter 3, apply to [section 8].

NEW SECTION. Section 10. Effective date -- applicability. [This act] is effective July 1, 1993, and applies to claims filed with the commission and for which the statute of limitations has not run on July 1, 1993.

-End-