HOUSE BILL 624

Introduced by Cobb, et al.

2/13 Introduced

Referred to Judiciary First Reading 2/13 2/13

2/17

Hearing Tabled in Committee 2/19

House BILL NO. 624 1 2 INTRODUCED BY

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCEDURAL 5 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."

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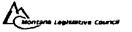
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WHEREAS, the Legislature has extended the statute of limitations for filing administrative complaints concerning housing discrimination with the Montana Commission for Human Rights from 180 days to 1 year; and

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

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



WHEREAS, the present 180-day statute of limitations for
 filing nonhousing discrimination complaints is much shorter
 than the statute of limitations for filing most civil
 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 WHEREAS, it is appropriate for the Legislature to extend 11 statute of limitations for filing nonhousing 12 the 13 discrimination complaints under the human rights laws from 14 180 days to 1 year and to establish procedures for pursuing 15 complaints district court without exhausting iп administrative remedies. 16

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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

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institution, or governmental entity or agency alleged to
 have engaged in the discriminatory practice and the
 particulars of the alleged discriminatory practice. The
 commission staff may file a complaint in like manner when a
 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 100-days <u>1 year</u> after 9 the alleged unlawful discriminatory practice occurred or was 10 discovered.

(b) If the complainant has initiated efforts to resolve 11 the dispute underlying the complaint by filing a grievance 12 in accordance with any grievance procedure established by a 13 collective bargaining agreement, contract, or written rule 14 or policy, the complaint may be filed within 188-days 1 year 15 after the conclusion of the grievance procedure if the 16 grievance procedure concludes within 120 days after the 17 alleged unlawful discriminatory practice occurred or was 18 discovered. If the grievance procedure does not conclude 19 within 120 days, the complaint must be filed within 300 485 20 days after the alleged unlawful discriminatory practice 21 occurred or was discovered. 22

(c) Any A complaint not filed within the times set
forth herein in this section may not be considered by the
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 informatly promptly and 4 impartially investigate the matters set out in a filed complaint prompthy---and---impartially filed with the 5 6 commission. 7 (2) The commission staff may dismiss a complaint filed 8 pursuant to 49-2-501 if: (a) the staff determines that the commission lacks 9 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

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discriminatory practice by conference, conciliation, and

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1	persuasion."	1	staff-from-investigating-the-complaint-
2	Section 3. Section 49-2-509, MCA, is amended to read:	2	t3)Thecommission-staff-may-dismiss-a-complaint-filed
3	*49-2-509. Filing a complaint in district court. (1)	3	under49-2-501andallowthecomplainanttofilea
4	Except-as-provided-in-subsection(2)orwithrespectto	4	discrimination-action-in-district-court-if;
5	complaintsalleging-a-violation-of-49-2-305y-the-commission	. 5	(a)the-commission-staff-determines-that-the-commission
6	staff-shally-at-the-request-of-either-partyy-issue-aletter	6	lacks-jurisdiction-over-the-complaint;
7	entitling-the-complainant-to-file-a-discrimination-action-in	7	{b}thecomplainantfails-to-cooperate-in-the-staff*s
8	district-court-if:	8	investigationofthecomplaintorfailstokeepthe
9	(a)thecommissionhasnot-yet-heid-a-contested-case	9	commission-advised-of-changes-of-address;-or
10	hearing-pursuant-to-49-2-505;-and	10	<pre>tc;thecommissionstaffdeterminesthatthe</pre>
11	(b)12-months-haveelapsedsincethecomplaintwas	11	allegationsofthecomplaintarenotsupportedby
12	filed	12	substantial-evidence-
	tite.	13	(4)Adecisionofthecommission-staff-to-dismiss-a
13		14	complaint-or-to-refuse-to-permitremovaltothedistrict
14	of-a-case-to-district-court-if:	15	courtisfinalunlessapartyseeksreviewby-filing
15	ta)the-party-requesting-removal-fails-tocomplywith	-	
16	thetermsof-a-lawful-subpoena-issued-in-the-investigative	16	objections-within-14-days-after-the-decisionisservedon
17	process;	17	himThecommissionshall-review-the-decision-in-informal
18	tb)the-party-requesting-removal-has-waivedtheright	18	proceedings-under-2-4-6047-exceptthat2-4-604(5)applies
19	to-request-removal-to-the-district-court;	19	only-to-review-of-a-refusal-to-permit-removal-
		20	<pre>t5}Within90daysafterreceiptofanoticeof</pre>
20	tctmorethan30dayshave-clapsed-since-service-of	21	dismissalunder-subsection-(3)-or-an-order-under-subsection
21	notice-of-hearingunder49-2-5857unlessthecommission		
22	failstoscheduleahearing-to-be-held-within-90-days-of	22	(4)-of-affirmance-of-a-dismissaly-whichever-accurs-latery-or
23	service-of-notice-of-hearing;-or	23	of-a-letter-issued-under-subsection-(1);-the-complainant-may
24	td)the-partyrequestingremovalhasunsuccessfulity	24	petition-the-district-court-in-thedistrictinwhichthe
25	attempted-through-court-litigation-to-prevent-the-commission	25	alleged-violation-occurred-for-appropriate-relief;-Except-as

1	providedin-49-2-5107-if-the-claimant-fails-to-petition-the
2	district-court-within-90-days-after-receipt-oftheletter;
3	noticeyororder-issued-by-the-commission-staffy-the-claim
4	shall-be-barred.
5	(1) An aggrieved person may commence a civil action in
6	an appropriate district court within 2 years after an
7	alleged unlawful discriminatory practice occurred or was
8	discovered or within 2 years of the breach of a conciliation
9	agreement entered into under 49-2-504. With respect to a
10	complaint alleging a violation of this chapter, the
11	computation of the 2-year period does not include time
12	during which an administrative proceeding under this chapter
13	was pending. The tolling of the time limit for commencing a
14	civil action does not apply to actions arising from breach
15	of a conciliation agreement.
16	(2) Except as provided in subsection (4), an aggrieved
17	person may commence a civil action for a violation of this
18	chapter whether or not a complaint has been filed pursuant
19	to 49-2-501 and without regard to the status of a complaint
20	filed with the commission. If the commission has obtained a
21	conciliation agreement with the consent of the aggrieved
22	person, an action may not be filed by the aggrieved person
23	regarding the alleged violation of this chapter that is the
24	basis for the complaint except for the purpose of enforcing
25	the terms of the conciliation agreement.

1	(3) The commission may not continue administrative
2	proceedings on a complaint after the beginning of the trial
3	of a civil action commenced by the aggrieved party seeking
4	relief with respect to the same alleged violation of this
5	chapter.
6	(4) An aggrieved person may not commence a civil action
7	with respect to an alleged violation of this chapter if the
8	commission has commenced a hearing on the record concerning
9	the same complaint.
10	(6)(5) (a) If the district court finds, in an action
11	under this section, that a person, institution, entity, or
12	agency against whom or which a complaint was filed has
13	engaged in the unlawful discriminatory practice alleged in
14	the complaint, the court:
15	(i) shall prescribe the conditions on the defendant's
16	future conduct to enjoin the discriminatory practice found
17	and to ensure that the discriminatory practice does not
18	occur in the future; and
19	(ii) may provide the same relief as described in
20	49-2-506 for a commission order, except that the court may
21	also require the payment of punitive damages.
22	(b) inadditionthe The court may in its discretion
23	allow the prevailing party reasonable attorney fees.
24	(7)Theprovisionsofthischapterestablishthe
25	exclusiveremedy-for-acts-constituting-an-alleged-violation

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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.

7 (6) The commission may intervene in any action brought 8 under subsection (1) in order to protect the public 9 interest."

NEW SECTION, Section 4. Exclusive remedy. Except for 10 11 claims arising under chapter 4, the provisions of this chapter establish the exclusive remedy for claims arising 12 under state law for acts constituting an alleged violation 13 14 of this chapter, including acts that may otherwise also 15 constitute a violation of Article II, section 4, of the Montana constitution or 49-1-102. A claim or request for 16 relief under state law based upon the acts may not be 17 entertained by a district court other than by the procedures 18 19 provided for in this chapter.

Section 5. Section 49-3-304, MCA, is amended to read:
"49-3-304. Piling complaints with commission. (1)
Except as provided in subsection (2), a complaint under this
chapter must be filed with the commission within 100-days 1
<u>year</u> after the alleged unlawful discriminatory practice
occurred or was discovered.

1 (2) If the complainant has initiated efforts to resolve 2 the dispute underlying the complaint by filing a grievance 3 in accordance with any grievance procedure established by a 4 collective bargaining agreement, contract, or written rule 5 or policy, the complaint may be filed within $\frac{100}{100}$ days 1 year after the conclusion of the grievance procedure if the 6 7 grievance procedure concludes within 120 days after the 8 alleged unlawful discriminatory practice occurred or was 9 discovered. If the grievance procedure does not conclude 10 within 120 days, the complaint must be filed within 300 485 11 days after the alleged unlawful discriminatory practice 12 occurred or was discovered.

13 (3) A complaint not filed within the times set forth in14 this section may not be considered by the commission."

15 Section 6. Section 49-3-307, MCA, is amended to read: 16 "49-3-307. Informal investigation and settlement. (1) 17 The commission staff shall promptly and impartially 18 investigate the matters set out in a complaint filed with 19 the commission.

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

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

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

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1	commission advised of changes of address; or
2	(c) the staff determines that there is a lack of
3	reasonable cause to believe that the unlawful discrimination
4	occurred.
5	(3) The commission staff may reopen a complaint at any
6	time after dismissing the complaint pursuant to subsection
7	(2) if the staff determines that the complaint should not
8	have been dismissed.
9	(4) If the commission staff determines that the
10	allegationsaresupported-by-substantial-evidence there is
11	reasonable cause to believe that the unlawful discrimination
12	occurred, it shall immediately try to eliminate the
13	discriminatory practice by informal conference,
14	conciliation, and persuasion."
15	Section 7. Section 49-3-312, MCA, is amended to read:
16	*49-3-312. Filing a complaint in district court. +++
17	Exceptasprovided-in-subsection-(2)y-the-commission-staff
18	shally-at-therequestofeitherparty7issuealetter
19	entitling-the-complainant-to-file-a-discrimination-action-in
20	district-court-if.
21	ta;thecommissionhasnot-yet-heid-a-contested-case
22	hearing-pursuant-to-49-3-308;-and
23	tb)12-months-haveelapsedsincethecomplaintwas
24	filed.
25	(2) Thecommissionstaff-may-refuse-to-permit-removal

1	of-a-case-to-district-court-if;
2	<pre>ta}the-party-requesting-removal-fails-tocomplywith</pre>
3	thetermsof-a-lawful-subpoena-issued-in-the-investigative
4	process;
5	(b)the-party-requesting-removal-has-waivedtheright
6	to-request-removal-to-the-district-court;
7	<pre>(c)morethan30dayshave-elapsed-since-service-of</pre>
8	notice-of-hearingunder49-3-308yunlessthecommission
9	failstoscheduleahearing-to-be-held-within-90-days-of
10	service-of-notice-of-hearing;-or
11	(d) the-partyrequestingremovalhasunsuccessfully
12	attempted-through-court-litigation-to-prevent-the-commission
13	staff-from-investigating-the-complaint;
14	t3)Thecommission-staff-may-dismiss-a-complaint-filed
15	under49-3-384andallowthecomplainanttofilea
16	discrimination-action-in-district-court-if:
17	<pre>ta)the-commission-staff-determines-that-the-commission</pre>
18	lacks-jurisdiction-over-the-complaint;
19	tb)thecomplainantfails-to-cooperate-in-the-staffis
20	investigationofthecomplaintorfailstokeepthe
21	commission-advised-of-changes-of-address;-or
22	tc)thecommissionstaffdeterminesthatthe
23	allegationsofthecomplaintarenotsupportedby
24	substantial-evidence-
25	(4)Adecisionofthecommission-staff-to-dismiss-a

1	complaint-or-to-refuse-to-permitremovaltothedistrict
2	courtisfinalunlessapartyseeksreviewby-filing
3	objections-within-14-days-after-the-decisionisservedon
4	himThecommissionshall-review-the-decision-in-informal
5	proceedings-under-2-4-6047-exceptthat2-4-604(5)applies
6	only-to-review-of-a-refusal-to-permit-removal.
7	(5)Within-90daysafterreceiptofanoticeof
8	dismissalunder-subsection-(3)-or-an-order-under-subsection
9	<pre>t4)-of-affirmance-of-a-dismissaly-whichever-occurs-latery-or</pre>
10	of-a-letter-issued-under-subsection-(l);-the-complainant-may
11	petition-the-district-court-in-thedistrictinwhichthe
12	allegedviolationoccurredfor-appropriate-reliefIf-the
13	claimant-fails-to-petition-the-district-court-within-90-days
14	after-receipt-of-the-latter;-notice;-or-order-issued-bythe
15	commission-staffy-the-complaint-shall-be-barred-
16	(1) An aggrieved person may commence a civil action in
17	an appropriate district court within 2 years after an
18	alleged unlawful discriminatory practice occurred or was
19	discovered or within 2 years of the breach of a conciliation
20	agreement entered into under 49-3-307. With respect to a
2 1	complaint alleging a violation of this chapter, the
22	computation of the 2-year period does not include time
23	during which an administrative proceeding under this chapter
24	was pending. The tolling of the time limit for commencing a
25	civil action does not apply to actions arising from breach

1	of a conciliation agreement.
2	(2) Except as provided in subsection (4), an aggrieved
3	person may commence a civil action for a violation of this
4	chapter whether or not a complaint has been filed pursuant
5	to 49-2-501 and without regard to the status of a complaint
6	filed with the commission. If the commission has obtained a
7	conciliation agreement with the consent of the aggrieved
8	person, an action may not be filed by the aggrieved person
9	regarding the alleged violation of this title that is the
10	basis for the complaint except for the purpose of enforcing
11	the terms of the conciliation agreement.
12	(3) The commission may not continue administrative
13	proceedings on a complaint after the beginning of the trial
14	of a civil action commenced by the aggrieved party seeking
15	relief with respect to the same alleged violation of this
16	chapter.
17	(4) An aggrieved person may not commence a civil action
18	with respect to an alleged violation of this chapter if the
19	commission has commenced a hearing on the record concerning
20	the same complaint.
21	+6+(5) (a) If the district court finds, in an action
22	under this section, that a state or local governmental
23	agency against whom or which a complaint was filed has

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engaged in the unlawful discriminatory practice alleged in

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the complaint, the court:

1 (i) shall prescribe conditions on the defendant's 2 future conduct to enjoin the discriminatory practice found 3 and to ensure that the discriminatory practice does not 4 occur in the future; and

5 (ii) may provide the same relief as described in
6 49-3-309 for a commission order.

7 (b) In--addition,--the <u>The</u> court may in its discretion
8 allow the prevailing party reasonable attorney fees.

9 {7}--The-~provisions--of--this--chapter--establish---the 10 exclusive--remedy-for-acts-constituting-an-alleged-violation 11 of-this-chaptery-including--acts--that--may--otherwise--also 12 constitute--a--violation-of-the-discrimination-provisions-of 13 Article-II7--section--47--of--the--Montana--constitution--or 14 49-1-102---No--other--claim-or-request-for-relief-based-upon such-acts-may-be-entertained-by-a-district-court-other--than 15 16 by-the-procedures-specified-in-this-chapter-(6) The commission may intervene in any action brought

17 (6) The commission may intervene in any action brought 18 under subsection (1) in order to protect the public 19 interest."

20 <u>NEW SECTION.</u> Section 8. Exclusive remedy. Except for 21 claims arising under chapter 4, the provisions of this 22 chapter establish the exclusive remedy for claims arising 23 under state law for acts constituting an alleged violation 24 of this chapter, including acts that may otherwise also 25 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.

5 <u>NEW SECTION.</u> Section 9. Codification instruction. (1) 6 [Section 4] is intended to be codified as an integral part 7 of Title 49, chapter 2, and the provisions of Title 49, 8 chapter 2, apply to [section 4].

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

12 <u>NEW SECTION.</u> Section 10. Effective date --13 applicability. [This act] is effective July 1, 1993, and
14 applies to claims filed with the commission and for which
15 the statute of limitations has not run on July 1, 1993.

-End-

LC 1284/01